

ALASKA STATE LEGISLATURE
HOUSE LABOR AND COMMERCE STANDING COMMITTEE

February 27, 2017

3:16 p.m.

MEMBERS PRESENT

Representative Sam Kito, Chair
Representative Adam Wool, Vice Chair
Representative Andy Josephson
Representative Louise Stutes
Representative Chris Birch
Representative Gary Knopp
Representative Colleen Sullivan-Leonard

MEMBERS ABSENT

Representative Mike Chenault (alternate)
Representative Bryce Edgmon (alternate)

COMMITTEE CALENDAR

HOUSE BILL NO. 121

"An Act relating to occupational safety and health enforcement penalties; and providing for an effective date."

- HEARD & HELD

HOUSE BILL NO. 114

"An Act relating to boiler and unfired pressure vessel inspection reports and fees."

- HEARD & HELD

PREVIOUS COMMITTEE ACTION

BILL: HB 121

SHORT TITLE: OCC. HEALTH AND SAFETY CIVIL PENALTIES

SPONSOR(s): LABOR & COMMERCE

02/13/17	(H)	READ THE FIRST TIME - REFERRALS
02/13/17	(H)	L&C, JUD
02/27/17	(H)	L&C AT 3:15 PM BARNES 124

BILL: HB 114

SHORT TITLE: BOILER/PRESSURE VESSEL INSPECTION REPORTS

SPONSOR(s): LABOR & COMMERCE

02/10/17 (H) READ THE FIRST TIME - REFERRALS
02/10/17 (H) L&C, FIN
02/27/17 (H) L&C AT 3:15 PM BARNES 124

WITNESS REGISTER

BIANCA CARPENETI, Staff
Representative Sam Kito
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Presented HB 121 and HB 114 on behalf of the House Labor and Commerce Standing Committee, sponsor, on which Representative Kito serves as chair.

DEBORAH KELLY, Director
Division of Labor Standards & Safety
Department of Labor & Workforce Development (DLWD)
Juneau, Alaska

POSITION STATEMENT: Offered details on HB 121 and HB 114.

ACTION NARRATIVE

[3:16:18 PM](#)

CHAIR SAM KITO called the House Labor and Commerce Standing Committee meeting to order at 3:16 p.m. Representatives Knopp, Sullivan-Leonard, Stutes, Josephson, Wool, and Kito were present at the call to order. Representative Birch arrived as the meeting was in progress.

HB 121-OCC. HEALTH AND SAFETY CIVIL PENALTIES

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CHAIR KITO announced that the first order of business would be HOUSE BILL NO. 121, "An Act relating to occupational safety and health enforcement penalties; and providing for an effective date."

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BIANCA CARPENETI, Staff, Representative Sam Kito, Alaska State Legislature, presented HB 121 on behalf of the House Labor and Commerce Standing Committee, sponsor, on which Representative Kito serves as chair. She said the bill was requested by the Department of Labor & Workforce Development (DLWD), which

previously presented the concept of the bill to the committee. On January 20, 2017, the committee authorized the chair to draft a bill on its behalf to bring the State of Alaska's Occupational Safety and Health Administration (OSHA) state plan into compliance with federal requirements. She expressed that HB 121 would ensure Alaska's continued eligibility for federal grant funds, which help protect workers from workplace injuries, illness, and fatalities.

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DEBORAH KELLY, Director, Division of Labor Standards & Safety, Department of Labor & Workforce Development (DLWD), offered details on HB 121. She explained that for violations of safety and health laws, there is one minimum and five maximum penalties set in statute. Under HB 121, DLWD would set the minimum and maximums by regulation and the bill would limit the minimum and maximums for each penalty type to the corresponding federal penalty amount. She offered that the bill is purely for federal compliance.

MS. KELLY stated that Alaska Occupational Safety and Health (AKOSH) is Alaska's state plan which receives federal grants and is responsible for the safety and health standards that protect almost all Alaskan workers. She remarked, "Alaska's program may develop and implement safety and health standards that fit Alaska's unique environment using input from Alaska's industries, workers, and from the public." She explained that AKOSH inspects all private and public workplaces in Alaska with a few federal exceptions; AKOSH can issue citations and penalties if, during an inspection, an employer is found to be violating a standard. A state plan such as AKOSH is required to be at least as effective as federal OSHA.

MS. KELLY reported that in 2015, Congress passed an Act requiring many federal agencies to adjust penalties for inflation going back to 1990 and to continue to adjust those penalties yearly along with a consumer price index (CPI). She remarked:

OSHA complied and raised their penalties in July of last year. Alaska's requirement to be at least as effective includes maximum penalty amounts. In your packet is the department's notification we received from the U.S. Assistant Secretary of Labor of our requirement to adjust our penalties to equal or higher than federal penalties. As of January 1, 2017, we

fell out of compliance with that requirement. A failure to come into compliance will eventually risk the over \$2 million in federal grant funds AKOSH receives every year. This bill allows the department to set the current federal amount in regulation - no more and no less. [It] simply allows AKOSH to come in compliance with federal law and stay in compliance as penalties change from year to year.

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REPRESENTATIVE SULLIVAN-LEONARD stated her concern that under HB 121, some penalty fees would increase 70 to 80 percent. She asked whether the penalties were previously tied to a CPI in statute.

MS. KELLY answered that the adjustment for inflation going back to 1990 is approximately a 73 percent increase. She explained that CPI is part of the Federal Civil Penalties [Inflation Adjustment] Act passed by Congress, which initiated the requirement to tie the penalties to future CPI changes. She offered her understanding that a previous draft of [HB 121] did not specify the [CPI requirement].

REPRESENTATIVE SULLIVAN-LEONARD restated her concern regarding the increase in penalties. She noted her desire to hear from industry about the effects of HB 121.

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CHAIR KITO noted that many states, including Alaska, have adopted the enforcement of OSHA laws. He asked, "If we do not comply, do we risk losing our program to the federal Occupational Safety and Health Administration?"

MS. KELLY responded, "That's correct." She stated that if Alaska does not comply, then the state could lose its grant funds and authorization, which would lead to federal OSHA reclaiming authority and increasing the penalty amounts to the federal levels at that time.

CHAIR KITO offered his conclusion that the penalties will be increased either way.

MS. KELLY agreed. When asked if the penalty amounts can be adjusted, she explained:

These are maximum penalties with the exception of the one minimum penalty. They are maximum penalties, they are not usually the amount that the employer actually pays. There are multiple reductions that are built into that maximum penalty - starts out with that maximum and then it's reduced for business size, so small businesses are not paying as much in penalties as large businesses. It's reduced for other mitigating factors. And we also have the discretion to reduce during an informal conference with the employer if they come in and talk about their safety program or their plans to comply in the future.

3:25:42 PM

REPRESENTATIVE KNOPP asked where retroactive measures would come in and how a maximum assessment for a violation would be set. He remarked, "I struggle with the federal regulation stating we must go back to 1990 to adjust for CPI going forward to set our maximum penalty." He supposed that the federal government set the maximum to make sure [Alaska] meets it. He asked to see: the federal maximums and minimums, Alaska's current fees, and the proposed fees as adjusted to CPI from 1990. He voiced his concern that the analysis of potential generated revenue in the fiscal notes may not be accurate since the fees can be "bargained down." He asked how the numbers were reached. He requested to see the language in the Federal Civil Penalties Adjustment Act to compare the maximum rates.

MS. KELLY answered that the numbers in the fiscal notes came from the actual penalties paid by the employees in 2016, which she stated is realistic revenue actually received. She explained that the percent difference between the maximum and the actual amount brought in from the employers stays roughly the same each year; therefore, she supposed that it is reasonable to predict that raising the premiums by 73 percent would lead to actual revenue increasing by 73 percent. She noted that the first fiscal year's revenue is half of the second year's because the rate adjustments in HB 121 are not anticipated to be implemented until halfway through the first fiscal year.

MS. KELLY stated that she doesn't understand the question about retroactive measures. She explained that OSHA has a factsheet showing the details of the maximum increases to. She informed that serious violations, failure to abate violations, and violations of posting requirements currently have a maximum of

\$7,000 per violation; the new federal maximum is \$12,471 per violation for those violation types. The more egregious violations, willful violations, and repeat violations currently have a maximum of \$70,000 per violation, which would increase to \$124,709 per violation. She remarked, "That's just taking the inflation adjustment from 2015 back to 1990 which comes out to that factor."

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REPRESENTATIVE KNOPP again asked what the federal numbers would be.

MS. KELLY stated that her previous explanation detailed the federal numbers the state would use under HB 121. She explained that the initial numbers - \$7,000 and \$70,000, respectively - are the current state numbers.

REPRESENTATIVE KNOPP asked whether the 73 percent increase would bring the state into compliance with the federal mandates.

MS. KELLY answered that's correct.

[3:31:14 PM](#)

CHAIR KITO opened public testimony on HB 121.

[3:31:35 PM](#)

CHAIR KITO announced that HB 121 was held over.

HB 114-BOILER/PRESSURE VESSEL INSPECTION REPORTS

[3:31:46 PM](#)

CHAIR KITO announced that the final order of business would be HOUSE BILL NO. 114, "An Act relating to boiler and unfired pressure vessel inspection reports and fees."

[3:32:09 PM](#)

BIANCA CARPENETI, Staff, Representative Sam Kito, Alaska State Legislature, presented HB 114 on behalf of the House Labor and Commerce Standing Committee, sponsor, on which Representative Kito serves as chair. She explained that HB 114 was drafted by the House Labor and Commerce Standing Committee at the request

of the Department of Labor & Workforce Development. She remarked:

On January twentieth, the department presented the concept behind this bill to the committee. At that time the committee authorized the chair to draft a bill on behalf of the committee that modifies filing requirements for boiler inspections. The bill before you is the result.

MS. CARPENETI explained that HB 114 would do two things: first, it would establish a \$10 fee for each boiler and pressure vessel inspection report not filed using the department's online system; second, it would reduce the time allowed to submit such reports following an inspection from the current 30 days to 15 days.

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DEBORAH KELLY, Director, Division of Labor Standards & Safety, Department of Labor & Workforce Development (DLWD), explained that HB 114 would institute a \$10 fee for each boiler or pressure vessel inspection report filed with the department in a manner other than using the department's online direct-entry system. The bill would also reduce the time allowed to file a report following an inspection from 30 days to 15 days. She said boiler and pressure vessels in Alaska receive routine inspections at intervals of two to five years as a public safety measure to prevent catastrophic failures. She noted that the inspections may be done by State of Alaska inspectors or by private inspectors who generally work for insurance companies or the device owners. The Mechanical Inspection section of the Division of Labor Standards and Safety administers the inspections of the devices. She remarked:

Besides performing inspections, we also collect and review inspection reports and ensure that boiler owners are in compliance with state law. We use "Jurisdiction Online," a software that allows inspectors to enter the reports directly from the field and also gives them access to information while they're in the field. The majority of the inspectors are using this system, but some inspectors submit electronic documents, usually in PDF format, which require Mechanical Inspections staff to do manual data entry...

MS. KELLY detailed that the Mechanical Inspection section spends 350-400 man hours every year entering data for the reports filed without using the department's online system. She noted that the bill would institute a \$10 fee for each report submitted without using "Jurisdiction Online." The fees collected would be deposited into the building safety account to compensate the department for the data entry and support provided to the inspectors paying the fees.

MS. KELLY stated that HB 114 would also reduce the time allowed for submission of boiler inspection reports. The current time limit of 30 days was set when reports were mailed by the inspector in the field to the company headquarters and then mailed to the department. She explained that all reports are now submitted electronically, either through direct data entry or e-mailed PDFs; most reports arrive within a week of the inspection. She said, "Shortening the time to 15 days reflects current technology and practice and ensures that device owners are in compliance with the law in a more timely manner."

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REPRESENTATIVE BIRCH asked how long it takes to enter the data from the reports.

MS. KELLY answered that the department estimates that it takes just a few minutes per report: 350-400 man hours are spent each year for 3,200 reports. She added that the inspectors in the field who don't have access to "Jurisdiction Online" sometimes have to call the department asking for device information that they otherwise could have gotten from that online database.

REPRESENTATIVE BIRCH offered his opinion that a push towards electronic reporting would be good.

[3:37:00 PM](#)

REPRESENTATIVE SULLIVAN-LEONARD asked how many total reports are filed each year.

MS. KELLY answered that the department sees around 11,000-12,000 total inspections per year: of those, 3,200 are being submitted in manners that require data entry. She clarified that it is 12,000 inspections - not devices - in a year, since most devices are in a two- to five-year inspection interval.

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CHAIR KITO opened public testimony on HB 114.

3:38:13 PM

CHAIR KITO announced that HB 114 was held over.

3:38:17 PM

ADJOURNMENT

There being no further business before the committee, the House Labor and Commerce Standing Committee meeting was adjourned at 3:38 p.m.