

HB 33

HOUSE COMMITTEE REPORT

(11)

Date Referred: March 15, 1991

FURTHER REFERRALS:

Date of Committee Action: 4-17-91

The FINANCE Committee considered:

SSHB 33

SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 33 PENALTIES FOR VIOLATION OF OSHA LAWS

"An Act relating to penalties for violation of workplace safety laws; and assessing costs for an employer's failure to appear at certain hearings of the OSHA Review Board."

RECOMMENDATIONS:

be replaced with CSSSH 33 (no) the same title
 a new title

have attached amendments(s)

do pass

do not pass

no recommendations

individual recommendations

additional referral to the _____ Committee

ADOPTS: _____ letter of Intent

ATTACHES NEW FISCAL NOTE(S): (Dept)

APPROVES PREVIOUS: (Dept/Date)

fiscal impact _____

fiscal note(s) LABOR 3-15-91

zero fiscal note _____

zero fiscal note(s) _____

SIGNING <u>DO</u> PASS	DP	OTHER RECOMMENDATIONS	DNP	NR	AM
<i>Mark Baye</i>	✓	<i>Eileen P. Meehan</i>		✓	
<i>Kim Foxworth</i>	✓	<i>(ROCK) JERIC</i>		✓	
<i>Mike Spavone</i>	✓	<i>Barbara Barnes</i>		✓	
<i>Steve A. ...</i>	✓	<i>Ben A. ...</i>		✓	
<i>John ...</i>	✓				
<i>John ...</i>	✓				
<i>Ronald J. ...</i>	x				

Mike Spavone *Eileen P. Meehan*
 CHAIRMAN'S SIGNATURE

CS FOR SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 33 (JUDICIARY)

IN THE LEGISLATURE OF THE STATE OF ALASKA

SEVENTEENTH LEGISLATURE - FIRST SESSION

BY THE HOUSE JUDICIARY COMMITTEE

Offered: 3/15/91
Referred: Finance

Sponsor(s): REPRESENTATIVES KOPONEN, Brown, Donley, Moyer

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to penalties for violation of workplace safety laws; and assessing costs
2 for an employer's failure to appear at certain hearings of the OSHA Review Board."

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

4 * Section 1. AS 18.60.093 is amended by adding a new subsection to read:

5 (f) If an employer fails without good cause to appear at a hearing held under this section
6 after receiving proper notice of the hearing, the OSHA Review Board may order the employer
7 to pay all reasonable expenses incurred by the board for the hearing, including the board's actual
8 travel expenses and per diem.

9 * Sec. 2. AS 18.60.085 is amended to read:

10 Sec. 18.60.085. PROHIBITION OF UNAUTHORIZED NOTICE OF INSPECTION. A
11 person may not give [NO] unauthorized notice of a department safety or health inspection
12 [MAY BE GIVEN]. A person who gives unauthorized notice of a safety or health inspection,
13 upon conviction, is punishable by a fine of not more than \$7,000 [\$1,000], or by imprisonment
14 for not more than 180 days, or by both.

1 * Sec. 3. AS 18.60.095(a) is amended to read:

2 (a) An employer who knowingly [WILFULLY] or repeatedly violates a provision of
3 AS 18.60.010 - 18.60.105 that is applicable to the employer or a standard or regulation adopted
4 under AS 18.60.010 - 18.60.105 may be assessed by the commissioner a civil penalty of not more
5 than \$70,000 [\$10,000] for each violation. Except when a settlement is negotiated, the
6 commissioner shall assess a minimum penalty of \$5,000 for a violation under this subsection
7 that was committed knowingly.

8 * Sec. 4. AS 18.60.095(b) is amended to read:

9 (b) An employer who receives a citation for a serious violation of a provision of
10 AS 18.60.010 - 18.60.105 that is applicable to the employer or of a standard or regulation
11 adopted under AS 18.60.010 - 18.60.105 shall be assessed by the commissioner a civil penalty
12 of up to \$7,000 [\$1,000] for each violation. For purposes of this subsection, a serious violation
13 is considered to exist if the violation creates in the place of employment a substantial probability
14 of death or serious physical harm. However, a serious violation is not considered to exist if the
15 employer did not, and could not with the exercise of reasonable diligence, know of the presence
16 of the violation.

17 * Sec. 5. AS 18.60.095(c) is amended to read:

18 (c) An employer who receives a citation for a violation of a provision of AS 18.60.010 -
19 18.60.105 that is applicable to the employer or a standard or regulation adopted under
20 AS 18.60.010 - 18.60.105, and the violation is specifically determined not to be of a serious
21 nature, may be assessed by the commissioner a civil penalty of up to \$7,000 [\$1,000] for each
22 violation.

23 * Sec. 6. AS 18.60.095(d) is amended to read:

24 (d) An employer who fails to correct a violation within the period permitted for its
25 correction for which a citation has been issued may be assessed by the commissioner a civil
26 penalty of not more than \$7,000 [\$1,000] for each day during which the failure to correct the
27 violation continues.

28 * Sec. 7. AS 18.60.095(e) is amended to read:

29 (e) An employer who knowingly, [WILFULLY] or repeatedly with criminal negligence,
30 as defined in AS 11.81.900, violates a provision of AS 18.60.010 - 18.60.105 that is applicable
31 to the employer or a standard or regulation adopted under AS 18.60.010 - 18.60.105, and the

1 violation causes death to an employee, upon conviction, is guilty of a class A misdemeanor
2 punishable under AS 12.55, except that the maximum fine that the court may impose on a
3 defendant who is an individual is \$70,000 for a first conviction under this subsection and
4 \$140,000 for a subsequent conviction under this subsection. This subsection does not
5 preclude prosecution brought under AS 11 [BY A FINE OF NOT MORE THAN \$10,000.
6 OR BY IMPRISONMENT FOR NOT MORE THAN SIX MONTHS, OR BY BOTH.
7 HOWEVER, UPON A SECOND CONVICTION AFTER A PRIOR CONVICTION FOR A
8 VIOLATION CAUSING DEATH, AN EMPLOYER IS PUNISHABLE BY A FINE OF NOT
9 MORE THAN \$20,000, OR BY IMPRISONMENT FOR NOT MORE THAN ONE YEAR. OR
10 BY BOTH].

11 * Sec. 8. AS 18.60.095(f) is amended to read:

12 (f) A person who knowingly makes a false statement, representation, or certification in
13 an application, record, report, plan or other document filed or required to be maintained under
14 AS 18.60.010 - 18.60.105, upon conviction, is punishable by a fine of not more than \$70,000
15 [\$10,000], or by imprisonment for not more than six months, or by both.

16 * Sec. 9. AS 18.60.095(g) is amended to read:

17 (g) An employer who violates the posting requirements of this chapter shall be assessed
18 by the commissioner a civil penalty of up to \$7,000 [\$1,000] for each violation.

19 * Sec. 10. AS 18.60.085 and 18.60.095, as amended by secs. 2 - 9 of this Act, apply to violations
20 that occur on or after the effective date of this Act.

FISCAL NOTE

STATE OF ALASKA
1991 LEGISLATIVE SESSION

BILL NO. No. 2
Bill Version CSSSHB 33(JUD)
(H) Publish Date: 3/15/91

Revision Date: _____
Title: "An Act relating to penalties for violation of workplace safety laws;..."
Sponsor: Representative Koponen
Requestor: House Judiciary

Department Affected: Labor
BRU: Labor Standards & Safety
Component: Occupational Safety & Health
COMPONENT SERIAL NO. 970

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 92	FY 93	FY 94	FY 95	FY 96	FY 97
PERSONAL SERVICES						
TRAVEL	10.0	10.0				
CONTRACTUAL	20.0	20.0				
SUPPLIES						
EQUIPMENT						
LAND&STRUCTURES						
GRANTS,CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	30.0	30.0	0.0	0.0	0.0	0.0

CAPITAL						
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REVENUE	215.0	86.0	34.0	14.0	6.0	0.0
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FUNDING: (Thousands of Dollars)

GENERAL FUND	30.0	30.0	0.0	0.0	0.0	0.0
FEDERAL FUNDS						
OTHER						
TOTAL	30.0	30.0	0.0	0.0	0.0	0.0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year impact: None

ANALYSIS: (Attach a separate page if necessary)

see attached

Prepared by: Robert Libbey, Director Phone: 264-2452
Division: Labor Standards & Safety Date: 3/12/91

Approved by Commissioner: Nancy Bear Usara
Agency: Department of Labor Date: 3/12/91

Distribution (by preparer): Legislative Finance, Legislative Sponsor, Requestor, OMB, & Impacted Agency(ies).

Fiscal Note Analysis for:

"An Act relating to penalties for violation of workplace safety laws..."

This bill would increase the amount of the penalties charged for the violation of workplace safety laws. Because of the increase in penalties, we expect an increase in the number of contested violations and in the number of requests for informal conferences. This increased workload would result in additional travel for existing staff as well as the OSHA Review Board members. Additional legal support for the review board would also be required.

Expenditures

Travel	\$10.0
OSH Review Board (5.0)	
Existing Staff (5.0)	
Contractual	\$20.0
Legal support for Review Board (15.0)	
Legal support for department (5.0)	
<u>Total Cost</u>	<u>\$30.0</u>

These costs should decrease after the first two years if the bill achieves its goal of providing more incentive for employers to voluntarily correct hazards so that we find fewer serious violations. Therefore we should have no additional costs beyond 1993.

Revenues

The department assessed a total of \$300,600 in penalties in FY 90 with a collection rate of approximately 70%. We estimate about \$300,000 in additional penalties would be assessed in FY 92 with the new rates. Assuming our 70% collection rate, revenues would increase by \$210,000.

After the first year, we anticipate revenues would decrease as employers voluntarily correct hazards and fewer violations are detected. Thus, after five years with the new penalties we project the deterrent affect of the higher rates would bring revenues back to what they currently are.

The bill would also permit the collection of expenses incurred when employers fail to appear at an OSH Review Board Hearing. The average daily cost for the OSH Review Board to hold hearings is \$1,000. If it must cancel five days of hearings because employers do not appear at hearings, the Board could ask for \$5,000 in reimbursable expenses from employers. Once employers understand that they may be liable for such costs, the number of cancellations should decrease and therefore, it is expected after the second year, no significant revenue will be raised under this provision.

Assumption: Effective date of July 1, 1991.

**Alaska State Legislature
Representative Niilo Koponen**

Pouch V
Juneau, Alaska 99811
(907) 465-4992

House District 21

119 N. Cushman, Suite 207
Fairbanks, Alaska 99701
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POSITION PAPER

HB 33

Both Minor and Gross violations of Alaska's Occupational Safety and Health Statutes remained at the same \$10,000 or lower level since passage of the original legislation in 1973.

In November of 1990 Congress passed legislation requiring the federal Occupational Safety and Health Administration to increase penalties for OSHA violations. Under the State occupational safety and health plan, Alaska is required to raise their standards to comply with the new federal OSHA penalties. If we fail to do so, Alaska could lose its enforcement power to the Federal Agency.

The amendments provide for a maximum of \$70,000 for willful and repeated violations, a minimum of \$5,000 for each willful violation, and a maximum of \$7,000 for serious, violations. This is a substantial increase from earlier penalties and more than doubled the increase in penalties that I originally wanted to raise in this legislation.

Congress believes that this increased maximum penalty will encourage businesses to conform to workplace safety laws and regulations. As businesses adjust to a tight economic environment, it is important that worker health and safety not be sacrificed. Maintaining a safe workplace is less costly than facing the potential of high penalties and paying the costs of accidents and injuries. HB 33 will bring Alaska into conformity with Federal law.

According to the latest statistics, Alaska occupational safety and health injury and illness incidence rate is 43% higher than that of the nation and is now the second highest in the nation.

It is my sincere hope that this legislation will result in fewer injuries, fewer fines and lower workers' compensation insurance costs. The continually rising number of injuries and fatalities to Alaskan workers testifies to the ineffectiveness of our present statutes. So long as it is cheaper to pay the fine than to correct a dangerous situation we cannot expect improvement in the workplace.

STATE OF ALASKA

DEPARTMENT OF LABOR

OFFICE OF THE COMMISSIONER

S WALTER J. HICKEL, GOVERNOR

P.O. BOX 21149
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March 12, 1991

Honorable Dave Donley, Chairman
Judiciary Committee
House of Representatives
P. O. Box V
Juneau, Alaska 99801

Dear Representative Donley:

Apparently there has been some confusion over HB 33, to increase occupational safety and health penalties, with regard to which provisions are necessary to adopt in order to bring Alaska into parity with the federal Occupational Safety and Health Act, and which are discretionary. There are three issues contained in the bill. These follow:

1. The penalty increases set out in Sections 3, 4, 5, 6 and 9 of the draft Judiciary committee substitute correspond to the federal increases and need to be adopted to insure State compliance with federal statutes.
2. The increases proposed in Section 2, 7 and 8, are not mandated. They relate to criminal penalties which were not increased at the federal level. Alaska has never had a criminal conviction under its occupational safety and health statutes. For this reason, we do not feel strongly whether or not the criminal penalties are increased at this time.
3. Section 1 of the bill was requested by the department on behalf of the Occupational Safety and Health Review Board which hears appeals of violations and penalties. A hearing before the Board is scheduled at an employer's specific request. Accordingly, it is appropriate and reasonable for the employer to appear at such a hearing.

To further compound the issue, on March 1, 1991, the federal Occupational Safety and Health Administration issued a change in their methodology for adjusting penalties. This change came subsequent to the bill's introduction, and may have some implications which need to be clarified.

March 12, 1991

A review of the new procedures indicates that although the maximum penalty for occupational safety and health violations has increased seven fold, the administrative procedures OSHA started using on March 1, 1991 will not result in a seven fold increase in the actual penalties that will be assessed.

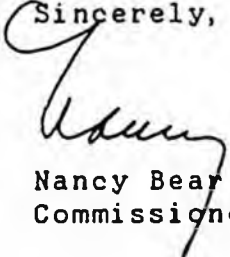
OSHA's new procedures will first provide an adjustment of from 30 to 70 percent based on the severity of the injury that could occur and the probability of that injury occurring. It would then allow up to an additional 95 percent reduction for size of employer, the good faith the employer shows in correcting the violation and for previous inspection history. The current penalty adjustment methodology used by the State does not provide for any adjustment based on severity and probability and only provides for an 80 percent reduction for the items listed above.

Attached are comparisons of the method currently used by the State and the method which federal OSHA started using on March 1, 1991 based on actual violations and penalties.

Inasmuch as the Department will be tailoring its penalty adjustment procedures after those of federal OSHA, we will be revising our fiscal note to decrease our original revenue projections, which were based on a seven-fold increase in penalties assessed. The revised fiscal note will also reflect a decrease in our proposed operating expenditures since, under the revised penalty methodology, we would not expect an increase in contest activity to the extent originally projected.

Thank you, and if additional information or clarification is needed, please let me know.

Sincerely,



Nancy Bear Usera
Commissioner

Enclosure

cc: Honorable Niilo Koponen

A COMPARISON OF CURRENT PENALTY ADJUSTMENT PROCEDURES
AND THOSE THAT ARE BEING USED BY
FEDERAL OSHA AFTER THE INCREASE IN MAXIMUM PENALTY AMOUNTS

This comparison is based on actual State OSH cases:

Case # 1:

Violation description: Guardrail was not installed on scaffolding that was approximately 18 feet above the ground. This is a violation of paragraph 05.120 (b)(1)(D) of the Construction Safety Code and is classified as a **serious** violation.

Employer background: This employer is a construction contractor who employs seven employees. All seven employees use the scaffold on a daily basis. When the violation was brought to the employer's attention, he corrected the hazard immediately. The employer had not been previously inspected by the Occupational Safety and Health Section.

Current Penalty Adjustment Procedure:

* The \$1,000 maximum penalty for serious violations is reduced by 40 percent because the employer employs fewer than 10 employees; by another 30 percent for good faith as the employer immediately corrected the violation; and by another 10 percent because the employer did not have a previous record of occupational safety and health violations. The final assessed penalty is therefore \$200.

Federal OSHA Penalty Procedure (the one that will be adopted by the State if HB 33 becomes law.):

* The compliance officer must first make a determination as to the severity of the injury that is likely to occur and the probability of the accident occurring. In the above case the severity of the injury is high because a fall of 18 feet can result in death or a permanent disability injury and the probability of the accident occurring is also high because seven employees use the scaffold daily for several hours. Under the OSHA procedure, the \$7,000 maximum penalty would first be reduced to \$5,000 base on the high severity/probability determination. The \$5,000 would then be adjusted 60 percent for size of employer (less than 25 employees), 25 percent for good faith (immediate correction of hazard) and 10 percent for history (no previous serious violations). This would result in a reduction of 95 percent and the final assessed penalty would be \$250.

Case # 2:

Violation description: Heavy engine and automobile parts are stored and stacked in an unstable manner. This is a violation of paragraph 01.0701(b) of the General Safety Code and is classified as a serious violation.

Employer background: This employer is a corporation that employs 609 employees. The engine and automobile parts are stored in a warehouse that is used by five employees. When the hazard was brought to the attention of the employer, he showed reluctance in correcting the violation. This employer has been inspected in the past and each inspection revealed several serious violations.

Current Penalty Adjustment Procedure:

* The \$1,000 maximum for serious violation is reduced by 20 percent for good faith as the employer was reluctant to correct the hazard but indicated that he would do so. No reduction is provided for size as the employer employs over 100 employees and no reduction is provided for history because previous inspections revealed other serious violations. The \$1,000 penalty is reduced 20 percent and a penalty of \$800 is assessed.

Federal OSHA Penalty Procedure:

* The violation is of medium severity as the injury, a blow to the body or head from a falling part, may result in hospitalization but the injury would result in only a limited period of disability. The probability of the injury is low because only one of the five employees in the warehouse is required to enter the area where the automobile parts are stored for approximately half hour a day. Under the federal OSHA procedure the \$7,000 maximum penalty would be reduced to \$2,000 based on the severity/probability determination. The \$2,000 would then be reduced by 15 percent for good faith. No reduction would be provided for size as the employer employs more than 250 employees and no reduction for history would be provided because previous inspections revealed serious violations. The final assessed penalty would therefore be \$ 1,700.

Case # 3:

Violation description: The dead front was missing from the main circuit breaker panel located in the process area of a fish processing plant. This is a violation of paragraph 03.200(g)(2)(A), Electric Safety Code.

Employer background: This employer operates a seafood processing plant employing 20 employees. The employer was cited for the same violation during an inspection conducted two years ago. This is, therefore a repeat violation.

Current Penalty Adjustment Procedure:

* The \$1,000 maximum penalty for serious violation is multiple by two because it is a repeat violation. The \$2,000 is then reduced by 30 percent for size of employer. No reduction is given for good faith or history because this is a repeat violation. The final assessed penalty is therefore \$ 1,400.

Federal OSHA Penalty Procedure:

* A determination of the severity of the injury and the probability that the accident would occur for this serious violation would first be made. The severity is medium as the injury, an electric shock, may result in hospitalization but the injury would only result in a limited period of disability. The probability is low as only one employee, the maintenance foreman, may be required to go near the circuit breaker. Under federal OSHA's procedure the \$7,000 maximum penalty would be reduced to \$2,000 based on the severity/probability determination. The \$2,000 would then be multiplied by 2 for the repeat violation for a \$4,000 penalty. It would then be reduced by 40 percent for the size of the employer. No reduction would be given for good faith or history because of the repeat violation. The final assessed penalty would, therefore, be \$ 2,400.

Case # 4:

Violation description: A automobile body repair shop is inspected and is cited for improper storage of combustible substances per paragraph 01.1002 (d)(2)(G). This violation is classified as other-than-serious. When the employer fails to notify the Department that he has corrected the violation, a follow-up inspection is conducted and it is discovered that the employer failed to correct the violation. The department cites the employer for a "Failure to Abate" violation.

Employer background: This automobile body repair shop employer employs five employees.

Current Penalty Adjustment Procedure:

* As there was no penalty assessed for this violation when it was first cited, the department starts with a \$100 base. This base is multiplied by 10 as the employer allowed this hazard to go uncorrected for over 10 days (the maximum number of times the statute allows the department to multiple a failure to abate penalty is 10 days). The \$1,000 penalty is then reduced by 40 percent for size of the employer for a final assessed penalty of \$600.

Federal OSHA Penalty Procedure:

* OSHA starts with a penalty of \$1,000 when no penalty was originally assessed. This penalty is then multiplied by 10 (see reason above) for a unadjusted penalty of \$10,000. This amount will then be reduced by 60 percent for size of the employer for a final assessed penalty of \$ 4,000.

Case # 5:

Violation description: An employee is killed in an industrial accident at a laundry. The department's investigation reveals that the death was caused when an employee reached into a commercial washer during the spin cycle and was torn to death when the machine failed to stop. This is a violation of paragraph 11.110(f)(2)(A)(i) of the Laundry Safety Code which requires all commercial washing machines to have an automatic stopping device when they are opened when they are operating. The investigation reveals that the employer was well aware of this requirement and was warned by several employees that this was a dangerous hazard. The department, based on this information, determined that this was a willful violation.

Employer background: This employer operates a chain of laundry and dry cleaning establishments and employs 50 employees throughout the State.

Current Penalty Adjustment Procedure:

* The \$10,000 maximum penalty for willful violation is not adjusted as it is the department's current methodology does not reduce penalties for violations that can be determined to have caused a serious disability injury or death to an employee. The final assessed penalty is \$10,000.

Federal OSHA Penalty Procedure:

* A determination will be made as to the severity of the injury and the probability of the injury occurring. In the above case the severity would be consider high and the probability high because five employees were required to use the defective machine several times during the day. Under OSHA procedures, the starting penalty would be \$5,000 for the violation. This base would be multiplied by seven because it is a willful violation. The \$35,000 unadjusted penalty would be adjusted 40 percent for size. No reduction will be provided for good faith because the violation is classified as willful. A 10 percent adjustment for history would be given because this was the first inspection conducted at this employer's work site. The \$35,000 penalty would therefore be reduced by 50 percent for a final assessed penalty of \$ 17,500.

FATALITY RATES 1983 - 1989

	United States	Alaska
1983	5.6	15.3
1984	6.4	14.7
1985	6.2	16.1
1986	5.9	14.8
1987	5.4	29.0
1988	4.4	15.4
1989	-	8.3

ILLNESS RATES USING A BASE OF 10,000 WORKERS

	United States	Alaska
1984	18.4	21.4
1985	18.0	28.7
1986	19.2	23.2
1987	26.4	38.6
1988	32.2	31.2
1989	-	53.7

Comparison of Alaska and US Injury/Illness Rate by Industry.

	Ak US 1985	% Above US	Ak US 1986	% Above US	Ak US 1987	% Above US	Ak US 1988	% Above US	Ak US 1989	% Above US
Oil & Gas Extraction	9.7 10.1	-4	8.2 8.1	1	9.0 8.3	8	8.6 8.3	4	9.5 7.6	25
Construction	19.4 15.2	28	16.2 15.2	7	17.1 14.7	16	13.6 14.6	-7	17.6 14.3	23
Seafood Proc - Canned	30.3 -		34.3 19.1	30	35.2 26.4	33	37.5 23.8	33	39.3 25.9	52
Seafood Proc - Frozen	33.9 19.2	77	33.0 18.2	31	35.3 18.8	38	27.1 19.7	38	33.2 24.3	37
Lumber & Wood Product	34.6 18.5	109	33.9 18.9	169	48.6 18.9	157	30.3 19.5	153	41.1 18.4	123
Transport. & Utility	11.3 8.6	31	11.3 8.2	38	10.9 8.4	30	10.1 8.9	13	15.8 9.2	72
Wholesale Trade	10.9 7.2	51	6.0 7.2	11	9.4 7.4	27	10.7 7.6	41	10.3 7.7	34
Retail Trade	9.8 7.5	31	9.2 7.8	18	9.3 7.8	19	10.1 7.9	28	10.7 8.1	32
Services	5.5 5.4	2	5.4 5.3	2	6.5 5.5	18	6.0 5.4	11	5.9 5.5	7

U.S. Department of Labor

Assistant Secretary for
Occupational Safety and Health
Washington, D.C. 20210



JAN 23 1991

MEMORANDUM FOR: STATE DESIGNEES

FROM: GERARD F. SCANNELL
Assistant Secretary

SUBJECT: Statutory Increase in Penalty Levels

A handwritten signature in dark ink, appearing to read "G. Scannell", is written over the typed name and title of the sender.

As you are aware, the Omnibus Budget Reconciliation Act of 1990, that was effective on November 5, amended section 17 of the Occupational Safety and Health Act to provide for increased penalty levels for violations of the Act. The excerpt of the Conference Report on the Budget Act which discusses penalties was sent to you on October 31. The amendments provide for a maximum of \$70,000 for willful and repeat violations, a minimum of \$5,000 for each willful violation, and a maximum of \$7,000 for serious, other than serious, failure to abate, and posting violations.

The Congress (as evidenced by the Conference Report) believes that the increased maximum penalty authority will serve as an important deterrent and will encourage employers to comply with safety and health regulations before they are inspected. Employers should realize that maintaining a safe and healthful workplace is less costly than facing the potential of high penalties, in addition to the major cost of accidents and injuries.

Since the \$5,000 floor for willful penalties is within currently authorized limits, in the interest of national consistency, the States are encouraged to implement it administratively, concurrently with Federal OSHA's implementation. (The Conference Report makes clear that negotiated settlement of willful violations may result in a lower penalty.) OSHA has developed procedures for implementing the new penalty calculations, in consultation with State plan representatives, and will begin proposing penalties at the new levels on all inspections beginning on ~~March 1, 1991~~ after March 1, 1991 for violations which occurred on or after November 5, 1990. (A copy of the final directive is attached, for your information.)

As you are aware, State plan approval criteria in section 18 of the Act and 29 CFR 1902 require the States to provide for standards and enforcement of standards which are at least as effective as OSHA's standards and enforcement. Further, OSHA regulations at 29 CFR 1953.20 and 1953.23 provide that when there is a change in the Federal program (examples given include

revisions in enforcement policies or procedures, and legislative or regulatory changes) the States are required to implement corresponding changes within six months of the Federal change. The time limit may be extended if the Assistant Secretary determines that a State has made a timely and specific showing that good cause exists to extend the time limitation for that State.

We recognize that this is a significant change in the OSHA program for both the Federal and State programs; and that State legislative action is necessary to effect a comparable change. States, in order to be considered at least as effective as the Federal program, must have statutory penalty authority for their private sector programs that at least reflects the new Federal maximums. We urge all States to try to effect this statutory change within the required six months and are available to provide any assistance you may need. However, we also recognize that because of differing State legislative schedules, etc., some States may be unable to accomplish such a change within six months. OSHA will work with each State on an individual basis to effect the required increases as soon as practicable. You also should be aware that State implementation of the new penalty authority, once enacted, need not be identical to Federal procedures, though State performance will be evaluated by OSHA to assure equivalent effectiveness.

Please notify your respective Regional Administrator as soon as possible, if you foresee any problems in accomplishing this legislative change.

Attachment

cc: Regional Administrators

Department of Labor
Proposed Amendments to House Bill 33

1. Amend line 13 on page 1 to read:

than \$70,000 [\$10,000] for each violation. A minimum penalty of \$5,000 must be assessed under this section.

2. Page 2, line 4:

Change \$3,000 to \$7,000

3. Page 2, line 13:

Change \$3,000 to \$7,000

4. Page 2, line 18:

Change \$3,000 to \$7,000

5. Page 2, line 24:

Change \$30,000 to \$70,000

6. Page 2, line 26:

Change \$60,000 to \$140,000

7. Page 2, line 31:

Change \$30,000 to \$70,000

8. Page 3, line 4:

Change \$3,000 to \$7,000

News

United States
Department
of Labor

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Washington, D.C. 20210

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CC: Reg. Kaganen	
CC:	



Occupational Safety and Health Administration

USDL: 91-28

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OSHA ANNOUNCES PROCEDURES FOR IMPLEMENTING NEW SYSTEM OF CIVIL PENALTIES

Procedures for implementing its new system of civil monetary penalties for violations of occupational safety and health law and regulations were announced today by the Occupational Safety and Health Administration (OSHA) of the U.S. Department of Labor.

Congress enacted a seven-fold increase in the maximum limits for such penalties in the Omnibus Budget Reconciliation Act of 1990. The maximum allowable civil penalty now is \$70,000 for each willful or repeated violation; and \$7,000 for each serious or other-than-serious violation as well as \$7,000 for each violation of the posting requirements and \$7,000 for each day beyond a stated abatement date for failure to correct a violation.

Assistant Secretary of Labor Gerard F. Scannell, who heads OSHA, said, "I want to emphasize that these amounts are ceilings--not floors. We will not automatically assess penalties that are seven times what they were previously, although there will be some increases."

He added that OSHA's basic approach will remain the same---striving for voluntary compliance by America's employers with occupational safety and health requirements.

The new civil penalty policy will be applicable to citations issued as the result of inspections initiated after March 1, 1991, for violations occurring after Nov. 5, 1990---the effective date of the Budget Reconciliation Act.

The procedures for implementing the new penalty policy are contained in a new chapter for OSHA's Field Operations Manual which is being distributed to all the agency's regional and area offices.

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As in the past, when calculating penalties, OSHA will take into account these factors: the gravity of the violation; the size of the employer as determined by the number of employees; the employer's good faith as principally demonstrated by efforts to implement a sound, effective workplace safety and health program such as given in the voluntary "Safety and Health Management Guidelines" issued by OSHA in January, 1989; and the employer's past history of compliance with the Occupational Safety and Health Act and OSHA regulations.

"The largest monetary penalties will be reserved for those employers who demonstrate the least concern with their workers' safety and health and who expose those workers to the most serious hazards," Scannell said.

This is in line with Congress's aim in establishing larger maximum penalties as a deterrent to employers who might otherwise decide to ignore workplace safety and health requirements.

To ensure that the most flagrant violators are in fact fined at an effective level, a minimum penalty of \$5,000 for a willful violation of the OSH Act was adopted by Congress. Specific language in the legislative history of the Budget Reconciliation Act, however, gives OSHA the discretion to adjust this amount during a settlement process.

The new penalty system also will apply to those states with OSHA-approved state occupational safety and health programs, under the Congressional direction that these state plans must be "as least as effective" as the national plan. The participating states are being given a reasonable time to implement the new penalty structure which takes into account the states' legislative calendars.

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