

HB 33

SENATE FINANCE COMMITTEE REPORT

DATE: 5/9/92

FURTHER:

DATE TURNED INTO OFFICE:

5/11/92

The Finance Committee considered CS SSB 33 (JUDICIARY) am

"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."

and recommends:

- replace with _____ CS _____ (FINANCE)
- or adopt previous SCS C SSB 33 (JUD)
- attaches amendment(s)

- same title
- new title
- technical title change (HB only)

adopts _____ Letter of Intent

further referral to the _____

do pass

do not pass

no recommendation

individual recommendations

NEW FISCAL NOTES: Dept/Date

zero fiscal notes _____

fiscal notes _____

appropriation--no fiscal note

PREVIOUS FISCAL NOTES: Dept/Date

zero fiscal notes _____

fiscal notes Debar 15.0 1-10-92

DO PASS:

OTHER RECOMMENDATIONS:

1. *[Signature]*

Co-Chair: Signature/Recommendation

2. *[Signature]*

Co-Chair: Signature/Recommendation

FISCAL NOTE

5-11-92

STATE OF ALASKA
1992 LEGISLATIVE SESSION

REPORTED OUT OF

Bill NO :

SCS CSSSHB 33(Jud)

Revision Date: _____
Title: " An Act relating to penalties for violation of workplace safety laws..."
Sponsor: Representative Koponen, et.al.
Requestor: Senate Finance

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

EXPENDITURES/REVENUES: (Thousands of Dollars)

| OPERATING | FY 93 | FY 94 | FY 95 | FY 96 | FY 97 | FY 98 |
|-------------------|-------|-------|-------|-------|-------|-------|
| PERSONAL SERVICES | | | | | | |
| TRAVEL | | | | | | |
| CONTRACTUAL | 15.0 | 15.0 | | | | |
| SUPPLIES | | | | | | |
| EQUIPMENT | | | | | | |
| LAND&STRUCTURES | | | | | | |
| GRANTS,CLAIMS | | | | | | |
| MISCELLANEOUS | | | | | | |
| TOTAL OPERATING | 15.0 | 15.0 | 0.0 | 0.0 | 0.0 | 0.0 |

| | | | | | | |
|---------|--|--|--|--|--|--|
| CAPITAL | | | | | | |
|---------|--|--|--|--|--|--|

| | | | | | | |
|--------------|----------|----------|----------|----------|----------|-----|
| REVENUE | 224.0 | 172.0 | 86.0 | 22.0 | 6.0 | 0.0 |
| FUND SOURCE: | GF #1004 | GF #1004 | GF #1004 | GF #1004 | GF #1004 | |

FUNDING: (Thousands of Dollars)

| | | | | | | |
|---------------|------|------|-----|-----|-----|-----|
| GENERAL FUND | 15.0 | 15.0 | 0.0 | 0.0 | 0.0 | 0.0 |
| FEDERAL FUNDS | | | | | | |
| OTHER | | | | | | |
| TOTAL | 15.0 | 15.0 | 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: Richard Arab, Deputy Director Phone: 465-4855
Division: Labor Standards & Safety Date: 5/9/92
Approved by Commissioner: C. W. Mahlen
Agency: Department of Labor Date: 5/9/92

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. We estimate an additional \$15,000 of legal support for the OSH review board would be needed in FY 93 and FY 94. 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 would have no additional costs beyond 1994.

Revenues

The department assessed a total of approximately \$ 292,000 in penalties in FY 91 with a collection rate of approximately 80%. Since Federal OSHA started to assess higher penalties starting in March, 1991, their average penalty amount has increased by approximately 95%. Assuming that Alaska will have the same experience as OSHA, we estimate that approximately \$ 280,000 in additional penalties would be assessed in FY 93. Assuming our 80% collection rate, revenue would increase by approximately \$ 224,000.

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

The reason that federal OSHA penalties have not increased seven fold is that they have adopted a penalty adjustment policy that significantly lowers penalties based on factors such as severity of the violation; good faith of the employer in correcting the violation; the employer's past history of violations; and the size of the employer's work force. If HB 33 is enacted the Department will adopt the same adjustment policy. The following is an explanation of the adjustment method:

* The penalty is adjusted based on the severity of the injury that could occur and the probability of that injury occurring. OSHA has developed a formula that will reduce the \$7,000 maximum to a high of \$5,000 and a low of \$1,500.

* The adjusted penalty based on severity and probability will then be adjusted further based on size of employer, good faith and history. The maximum reduction of 95% can be provided through these factors.

For example, an employer with 50 employees is cited for a serious violation because heavy engine and automotive parts were stored and stacked in an unstable manner. The following penalty adjustment would occur:

* 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 two employees must enter the warehouse where these automotive parts are stored for approximately one hour a day. The \$7,000 penalty would be reduced to \$2,000 based on the severity/probability determination. The \$2,000 would then be reduced by 25% because the employer exhibited good faith and corrected the violation immediately. It would be further reduced by 40 percent because the employer only has 50 employees and it would be reduced by a further 10 percent because the employer had no history of violations with the department. Thus the final assessed penalty would be \$ 500.

It should be noted that the states of Washington, Oregon, California, Utah, North Carolina, Maryland, Indiana, Tennessee, and Nevada have passed legislation to increase occupational safety and health penalties to come into compliance with the OSHA higher penalties and the other states with occupational safety and health state jurisdiction have legislation pending to conform with the higher penalty rates.

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.

SENATE CS FOR CS FOR SS FOR HOUSE BILL NO. 33 (JUDICIARY)

IN THE LEGISLATURE OF THE STATE OF ALASKA

SEVENTEENTH LEGISLATURE - SECOND SESSION

BY THE SENATE JUDICIARY COMMITTEE

Offered: 5/9/92
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 18.60.085 is amended to read:

5 Sec. 18.60.085. PROHIBITION OF UNAUTHORIZED NOTICE OF INSPECTION. A
6 person may not give [AN] unauthorized notice of a department safety or health inspection
7 [MAY NOT BE GIVEN]. A person who gives unauthorized notice of a safety or health
8 inspection, upon conviction, is punishable by a fine of not more than \$7,000 [\$1,000], or by
9 imprisonment for not more than 180 days, or by both.

10 * Sec. 2. AS 18.60.093 is amended by adding a new subsection to read:

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

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

2 (a) An employer who wilfully or repeatedly violates a provision of AS 18.60.010 -
3 18.60.105 that is applicable to the employer or a standard or regulation adopted under
4 AS 18.60.010 - 18.60.105 may be assessed by the commissioner a civil penalty of not more than
5 \$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 wilfully.

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 wilfully or repeatedly violates a provision of AS 18.60.010 -
30 18.60.105 that is applicable to the employer or a standard or regulation adopted under
31 AS 18.60.010 - 18.60.105, and the violation causes death to an employee, upon conviction, is

1 punishable by a fine of not more than \$10,000, or by imprisonment for not more than six months,
2 or by both. However, upon a second conviction after a prior conviction for a violation causing
3 death, an employer is punishable by a fine of not more than \$20,000, or by imprisonment for not
4 more than one year, or by both. This subsection does not preclude prosecution of the
5 employer under AS 11.

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

7 (f) A person who knowingly makes a false statement, representation, or certification with
8 the intent to mislead in an application, record, report, plan or other document filed or required
9 to be maintained under AS 18.60.010 - 18.60.105 is guilty of unsworn falsification [, UPON
10 CONVICTION, IS PUNISHABLE BY A FINE OF NOT MORE THAN \$10,000, OR BY
11 IMPRISONMENT FOR NOT MORE THAN SIX MONTHS, OR BY BOTH].

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

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

15 * Sec. 10. AS 18.60.085, as amended by sec. 1 of this Act, and AS 18.60.095, as amended by
16 secs. 3 - 9 of this Act, apply to violations that occur on or after the effective date of this Act.

FISCAL NOTE

No. 3

STATE OF ALASKA
1992 LEGISLATIVE SESSION

BILL N 1 Version: SCSC555 HB 33(xtc)

(S) Publish Date: 2-5-92

Revision Date: _____
Title: " An Act relating to penalties for violation of workplace safety laws..."
Sponsor: Representative Koponen, et.al.
Requestor: _____

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

EXPENDITURES/REVENUES: (Thousands of Dollars)

| OPERATING | FY 93 | FY 94 | FY 95 | FY 96 | FY 97 | FY 98 |
|-------------------|-------|-------|-------|-------|-------|-------|
| PERSONAL SERVICES | | | | | | |
| TRAVEL | | | | | | |
| CONTRACTUAL | 15.0 | 15.0 | | | | |
| SUPPLIES | | | | | | |
| EQUIPMENT | | | | | | |
| LAND&STRUCTURES | | | | | | |
| GRANTS,CLAIMS | | | | | | |
| MISCELLANEOUS | | | | | | |
| TOTAL OPERATING | 15.0 | 15.0 | 0.0 | 0.0 | 0.0 | 0.0 |

| | | | | | | |
|---------|--|--|--|--|--|--|
| CAPITAL | | | | | | |
|---------|--|--|--|--|--|--|

| | | | | | | |
|--------------|----------|----------|----------|----------|----------|----------|
| REVENUE | 229.0 | 172.0 | 86.0 | 22.0 | 6.0 | 0.0 |
| FUND SOURCE: | GF #1004 | GF #1004 | GF #1004 | GF #1004 | GF #1004 | GF #1004 |

FUNDING: (Thousands of Dollars)

| | | | | | | |
|---------------|------|------|-----|-----|-----|-----|
| GENERAL FUND | 15.0 | 15.0 | 0.0 | 0.0 | 0.0 | 0.0 |
| FEDERAL FUNDS | | | | | | |
| OTHER | | | | | | |
| TOTAL | 15.0 | 15.0 | 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

Changes in CSHB 33 (SJR) reflect NO FISCAL CHANGE from the original fiscal note. This fiscal note is appropriate.

1/10/92 CA
date Comte Aide (initial)

Prepared by: Richard Arab, Deputy Director Phone: 465-4855
Division: Labor Standards & Safety Date: 1/10/92

Approved by Commissioner: John G. Abshire
Agency: Department of Labor Date: 1/10/92

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

Fiscal Note Analysis for:

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It should be noted that the states of Washington, Oregon, California, Utah, North Carolina, Maryland, Indiana, Tennessee, and Nevada have passed legislation to increase occupational safety and health penalties to come into compliance with the OSHA higher penalties and the other states with occupational safety and health state jurisdiction have legislation pending to conform with the higher penalty rates.

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.

**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
(907) 456-8172

***POSITION PAPER*
CS HB33 (Jud)**

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.

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.

Alaska continues to have the second highest occupational injury rate in the nation. In just one year we have jumped from an occupational safety, health injury and illness incidence rate of 31% to 43% higher than that of the national average. This is not a record of which we can be proud. CSHB 33 will bring Alaska into conformity with Federal law.

Due to the request of the Department of Law, the criminal penalties were increased to that of the federal mandated civil penalties. It did not make sense for the criminal penalty to be less than the federal mandated civil penalties. The federal law does not have any requirements for criminal penalties. This is provided by state law.

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 LAW

CRIMINAL DIVISION

WALTER J. HICKEL, GOVERNOR

REPLY TO:

CRIMINAL DIVISION CENTRAL OFFICE
P.O. BOX KC
JUNEAU, ALASKA 99811-0310
PHONE: (907) 465-3428

OFFICE OF SPECIAL PROSECUTIONS
AND APPEALS
1031 WEST 4TH AVENUE, SUITE 318
ANCHORAGE, ALASKA 99501-5993
PHONE: (907) 279-7424

May 6, 1991

The Honorable Niilo Koponen
Alaska State Legislature
P.O. Box V
Juneau, Alaska 99811

Re: HB 33 (Penalties for viol. of workplace safety laws)

Dear Representative Koponen:

This letter is to indicate our support for CS HB33 (Jud), "An Act relating to penalties for violation of workplace safety laws," and particularly for section 7 of the bill, which amends the criminal penalties that may be imposed for wilful or repeated violations that cause an employee's death.

If the defendant is an individual, the bill makes the criminal penalties as great as the civil penalties. This only makes sense; a criminal offense must have consequences at least as serious as a civil violation.

If the defendant is an organization, the bill makes available the criminal penalties already set out for organizations in AS 12.55. AS 12.55.035(c), relating to fines, was amended by the legislature last year to give sentencing judges greater discretion in setting fines for organizations. That amendment can be made effective only if it applies in cases such as these.

Once again, we support this bill and thank you for the opportunity to comment on it. If there are any questions that we may be able to answer, please do not hesitate to call upon us.

Very truly yours,

CHARLES E. COLE
ATTORNEY GENERAL

By: 

Margot O. Knuth
Assistant Attorney General

MOK:mm-046

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 cursive script, reading "G. Scannell", is written over the typed name of Gerard F. Scannell.

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 or 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

MEMORANDUM

State of Alaska

| | | |
|---------------------|-----|---|
| Director | WBL | ✓ |
| Deputy | | |
| Sr Asst | | |
| Sr Asst | | |
| Adm Asst | | |
| Int Aud | | |
| ASD | | |
| ESD | | |
| LS&S | | |
| W/C | | |
| cc: Senator Collins | | |
| cc: Rep. Kagenon | | |

TO: Robert W. Libbey, Director
 Labor Standards and Safety

DATE: May 6, 1991

RECEIVED
 Department of Labor
 MAY 6 1991
 Office of the Commissioner

TELEPHONE NO: 465-4856

FROM: *RA*
 Richard Arab, Deputy Director
 Labor Standards and Safety

SUBJECT: Scheduling Enforcement
 Inspections and
 Solicitation of
 Consultative Inspections

The OSH Section has a system to schedule enforcement inspections and to solicit employers to ask them to request our consultative and training services. The key stone to this system is the annual occupational injury and illness survey conducted by the Research and Analysis Section. This survey uses the methodology developed by the Bureau of Labor Statistics.

The results of this survey provides us with a list of industries that are considered "most hazardous." This list is updated each year. Of course many of the industries do not change i.e. logging, seafood processing, construction. The high hazard list is prepared by OSHA for each state. We supplement the OSHA high hazard list which is based on national statistics with what we called our "local emphasis" list. For safety inspections it is those industries not on the OSHA high hazard list that have an occupational injury and illness rate that is at least one point higher than the statewide average. For health we use the history of our inspection results to determine if there are industries not on the high hazard list that should be included on our programmed inspection list.

In addition to the "high hazard" and "local emphasis" programmed inspection list, we have also developed a list of state and local government agencies for safety and health programmed inspections.

We have a contract with Research and Analysis to add individual company injury frequency rates for the industries that we have identified as "high hazard" and "local emphasis". This will allow us to inspect those companies with the highest injury frequency rate in our list of industries to be inspected.

U.S. Department of Labor

Occupational Safety & Health Administration
1111 Third Avenue - Suite 715
Seattle, Washington 98101-3212
Telephone: (206) 553-5930
Fax: (206) 553-6489



Refer to: FSO/SND
AK STP 2-1.163

April 30, 1992

The Honorable Charles W. Mahlen
Commissioner, Alaska Department of Labor
P.O. Box 21149
Juneau, AK 99802-1149

Dear Commissioner Mahlen:

This is in reference to Alaska House Bill (HB) 33 addressing proposed penalty legislation for the State 18(b) program. Regional and OSHA National Office review of the HB has been ongoing for the past several weeks. I have attached a copy of the memorandum from our National Office dated April 21, 1992, about HB 33 for your review and appropriate action.

Essentially, review of HB 33 has resulted in the following issues for your consideration:

- AKOSH criminal provisions at AS 18.60.095(f) should provide maximum monetary penalties equivalent to those available under federal OSHA as found in section 17(g) of the OSH Act; and
- the penalty and prison term levels should be stated in the text.

Although, all other sections of HB 33 are acceptable, it could be concluded that modifying Alaska's current provisions under AS 18.60.095(f) may jeopardize Alaska's at least as effective status regarding penalties. Please be aware, however, it is imperative Alaska enact into law the seven-fold civil penalty provisions of HB 33 during the current Alaska legislative session.

If there are questions, or you would like to discuss this matter in more detail, please contact me.

Sincerely,

James W. Lake
Regional Administrator

Enclosure

cc: Randy Carr, Acting Director, w/enclosure
Richard Arab, Deputy Director, w/enclosure
Barry Noll, Area Director, w/enclosure

News

United States
Department
of Labor

Office of Information

Washington, D.C. 20210

NB4 ✓

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| So Asst | |
| So Asst | |
| Info Off | |
| Adm Asst | |
| INT Asst | |
| ESD | |
| LS&S | |
| W/C | |
| cc: Reg/Kaplan | |
| cc: | |



Occupational Safety and Health Administration

USDL: 91-28

CONTACT: Frank Kane
OFFICE: (202) 523-8151
AFTER HOURS: (703) 360-7080

FOR RELEASE: 1:00 PM EST
Thursday, Jan. 24, 1991

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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WCCA Sounder

"A publication for people concerned about workers' compensation reform"

January, 1991

Timber
industry
record
improves

Workplace casualty rate highest

A set of statistics from the early 1980s was released by the Alaska Department of Labor recently and served as a timely reminder of earlier times, before safety programs and other measures implemented by employers caused significant reductions in the rate of job-related accidents and deaths. Today, these safety programs are threatened by a court case that held an insurance carrier liable for additional damages—even after the carrier had paid compensation. The so-called "Van Biene" decision jeopardized safety inspection programs throughout the state. Seeking legislative relief from Van Biene is WCCA's top legislative priority for 1991.

An unusually high percentage of perilous occupations kept Alaska's workplace casualty rate by far the highest in the nation throughout the early 1980s. But Alaska's employers, spurred by the high cost of workers' compensation insurance, have been successful in cutting those accident rates, in some cases dramatically.

During the six years between 1979 and 1985, Alaskans died on the job at a rate two to four times higher than their Lower 48 counterparts.

Seafood processors, loggers, construction workers and oil rig workers accounted for most of the casualties. Some 34.2 deaths per 100,000 workers have been recorded each year in these high-risk fields. Not included in the numbers were the accidents in the offshore fishing industry, which includes floating processors and fishing fleets. Had these categories been added to the total, the annual death toll would have topped 65.

Aviation and logging accounted for the greatest number of fatalities. In 1988 aviation claimed the lives of eight pilots and five loggers as well as three construction workers and two shore-based fish processors.

Klukwan Forest Products CEO Dick Reagan attributed part of the industry's statistics to Alaska's higher-than-average numbers of transient, inexperienced loggers. A Department of Labor researcher also cited rough terrain, harsh weather and huge trees that require large ground crews with chainsaws. More than half the accidents to loggers involved sprains and strains,

while contusions and bruises accounted for another 10 percent.

Improved education programs and mandatory drug testing in the timber industry were two elements of beefed-up safety programs which caused a significant drop in injuries and illnesses as well as fatalities. Preliminary statistics for 1989 indicate that injury and illness rates fell from 53.2 to 44.9 per 100 workers, while only a single fatality was recorded in 1990.

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