

H B

3 3

SENATE COMMITTEE REPORT

DATE: 5/16/91

FURTHER: Judiciary  
Finance

DATE TURNED INTO OFFICE: \_\_\_\_\_

L&C 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 recommended:

- replace with S CS CS SSB 33 (L&C)  same title
- or adopt \_\_\_\_\_ CS \_\_\_\_\_  new title
- attached amendment(s)  technical
- \_\_\_\_\_ letter of intent adopted  title change (HB only)

- do pass
- do not pass
- no recommendation
- individual recommendations

further referral to \_\_\_\_\_

ATTACHES NEW FISCAL NOTE(S):  
Dept/Date:

fiscal note(s) Labor - 1/10/92

zero fiscal note(s) \_\_\_\_\_

appropriation-no fiscal note

APPROVES PREVIOUS:  
Dept/Date:

fiscal note(s) \_\_\_\_\_

zero fiscal note(s) \_\_\_\_\_

Governor's bill w/fiscal note

SIGNING DO/PASS:

Rick Halford  
Chris McEllis  
Shirley Craft

OTHER RECOMMENDATIONS:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Lawrence - 10/1/91  
Chair: Signature and Recommendation

cost  
d."  
ction  
ployer  
actual  
N. A  
ction  
ction,  
ment  
am

**DIVISION OF LEGAL SERVICES**

**LEGISLATIVE AFFAIRS AGENCY  
STATE OF ALASKA**

(907) 465-3867 or 465-2450  
FAX (907) 465-2029  
Mail Stop 3101


240 Main Street, Suite 500  
Juneau, Alaska 99801-2101

MEMORANDUM

February 4, 1992

**SUBJECT:** Changes in Committee Substitute  
(SCS CSSSHB 33(L & C))

**TO:** Senator Drue Pearce  
ATTN: Bill Miles

**FROM:** Terri Lauterbach   
Legislative Counsel

Enclosed is your committee substitute for the OSHA bill.

In addition to the substantive changes you requested, we have made a technical correction in the bill. Sections 1 and 2 of the House version were not in numerical order. In your committee substitute, the order has been fixed so that the amendments to AS 18.60.085 (section 1) correctly precede the addition of the new subsection to AS 18.60.093 (sec. 2). This change does not affect the substance of the bill.

Please let me know if you have questions about this matter.

TML:gc  
92-098.glc

Enclosure

**FISCAL NOTE**

**STATE OF ALASKA**  
**1992 LEGISLATIVE SESSION**

**BILL NO :** CSSSHB 33(Jud) am

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						
<b>TOTAL OPERATING</b>	<b>15.0</b>	<b>15.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

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	

**FUNDING: (Thousands of Dollars)**

GENERAL FUND	15.0	15.0	0.0	0.0	0.0	0.0
FEDERAL FUNDS						
OTHER						
<b>TOTAL</b>	<b>15.0</b>	<b>15.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

**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: 1/10/92

Approved by Commissioner: John A. Abshire, Acting Commissioner

Agency: Department of Labor

Date: 1/10/92

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.

**Bill No:** Sponsor Substitute for  
House Bill No. 33

**Date:** February 19, 1991

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

**Contact:** Richard Arab  
465-4856

SS HB 33 proposes to increase the penalties the Department of Labor may assess for violations of Alaska's occupational safety and health law and regulations.

The Federal OSHA program requires state programs to provide for standards and enforcement of standards which are at least as effective as federal OSHA's standards and enforcement. The provisions of SS HB 33 would bring state penalties into compliance.

Specifically the provisions of this bill relating to penalties will:

- (1) Increase the maximum penalty for willful or repeat violations from \$10,000 to \$70,000, and require that a minimum penalty of \$5,000 be imposed for these violations;
- (2) Increase the maximum penalty for serious violations or non-serious violations from \$1,000 to \$7,000;
- (3) Increase the daily penalty for not correcting a violation from \$1,000 to \$7,000;
- (4) Increase the maximum penalty for a willful or repeat violation which results in the death of a worker from \$10,000 to \$70,000; and increase from \$20,000 to \$140,000 the maximum penalty for a second conviction of a willful or repeat violation causing death;
- (5) Increase from \$10,000 to \$70,000 the maximum penalty for falsifying or otherwise misrepresenting occupational safety and health records and documents; and
- (6) Increase the maximum penalty for a violation of occupational safety and health posting requirements from \$1,000 to \$7,000.

**POSITION PAPER/Department of Labor**

Position Paper Continued

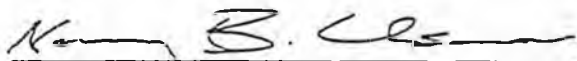
SS HB 33

February 19, 1991

This bill also proposes that employers who fail to appear without good cause at an OSH Review Board hearing may be ordered by the Board to pay all reasonable expenses incurred by the Board at the hearing. In this regard, 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.

The Department supports this bill not only because it brings the state program into conformity with federal requirements, but also because a higher level of penalties is needed to serve as a deterrent to workplace safety and health hazards that cause worker injuries. Alaska's penalties have not changed since enactment of the occupational safety and health law in 1973.

APPROVED:



Nancy Bear Usera, Commissioner

Department of Labor

SENATE CS FOR CS FOR SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 33 (L&C)  
 IN THE LEGISLATURE OF THE STATE OF ALASKA  
 SEVENTEENTH LEGISLATURE - SECOND SESSION

BY THE SENATE LABOR AND COMMERCE COMMITTEE

Offered:

Referred:

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(f) is amended to read:

29 (f) A person who knowingly makes a false statement, representation, or certification with  
30 the intent to mislead in an application, record, report, plan or other document filed or required  
31 to be maintained under AS 18.60.010 - 18.60.105 is guilty of unsworn falsification [, UPON

1 CONVICTION, IS PUNISHABLE BY A FINE OF NOT MORE THAN \$10,000, OR BY  
2 IMPRISONMENT FOR NOT MORE THAN SIX MONTHS, OR BY BOTH].

3 \* Sec. 8. AS 18.60.095(g) is amended to read:

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

6 \* Sec. 9. AS 18.60.085, as amended by sec. 1 of this Act, and AS 18.60.095, as amended by secs.  
7 3 - 8 of this Act, apply to violations that occur on or after the effective date of this Act.

**Bill No:** CS for Sponsor Substitute  
for House Bill No 33  
(Judiciary) am

**Date:** February 3, 1992

**Title:** "An Act Relating to Penalties for Violations of Workplace Safety Laws; and Assessing Costs for an Employer's Failure to Appear at Certain Hearings of the OSHA Review Board."

**Contact:** Arbe Williams 465-2700

CSSS HB33 (JUD) am proposes to increase the penalties the Department of Labor may assess for violations of Alaska's occupational safety and health law and regulations.

The Federal OSHA program requires state programs to provide for standards and enforcement of standards which are at least as effective as federal OSHA's standards and enforcement. Alaska Statutes, Section 18.60.030(b), also requires the department to establish and enforce standards that are as effective as those promulgated by federal OSHA. Accordingly, the penalty increases set out in Sections 2,3,4,5,6, and 8 of the bill reflect federal increases and must be enacted to insure State compliance with federal and state statutes.

The department requests that Section 9, line 6 of page 2, be deleted in order to reinstate AS 18.60.095(e) as it is currently set out in statutes. AS 18.60.095(e) establishes the criminal penalties for an employer who willfully or repeatedly violations a provision of the Alaska Occupational Safety and Health law and the violation causes death to an employee. Upon conviction, the employer is punishable by a fine or not more than \$10,000 and/or by imprisonment for not more than six months. The penalty was not increased at the federal level, consequently, AS 18.60.095(e) does not need to be amended, however, federal OSHA has strongly recommended that the criminal provision be reinstated in the state OSH Act.

Specifically, the provisions of this bill relating to penalties will:

- (1) Increase the maximum penalty for willful or repeat violations from \$10,000 to \$70,000, and require that a minimum penalty of \$5,000 be imposed for these violations;
- (2) Increase the maximum penalty for serious violations or non-serious violations from \$1,000 to \$7,000;
- (3) Increase the maximum daily penalty for not correcting a violation from \$1,000 to \$7,000;
- (4) Classify a violation of the prohibition of a person knowingly making a false statement, representation or certification as an "unsworn falsification" rather than a violation that is punishable by a fine of not more than \$10,000 or by imprisonment for not more than six month, or by both; and

**POSITION PAPER/ Department of Labor**

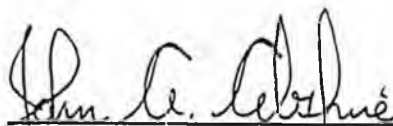
Position Paper Continued  
CSSS HB 33 (JUD) am  
February 3, 1992

- (5) Increase the maximum penalty for a violation of occupational safety and health posting requirements from \$1,000 to \$7,000.

This bill also proposes that employers who fail to appear without good cause at an OSH Review Board hearing may be ordered by the Board to pay all reasonable expenses incurred by the Board at the hearing. In this regard 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.

The Department supports this bill, with the deletion of Section 9 of CSSSHB (Jud)am, to bring the state program into conformity with federal requirements.

APPROVED



John A. Abshire, Acting Commissioner  
Department of Labor

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\***  
**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.

# U.S. Department of Labor Program Highlights

Fact Sheet No. OSHA 91-36

## NEW OSHA CIVIL PENALTIES POLICY

A seven-fold increase in the maximum limits for OSHA civil monetary penalties was stipulated in the Budget Reconciliation Act passed by the 101st Congress.

The maximum allowable penalty is now \$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.

The amounts are ceilings—not floors. However, in order 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.

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

The new policy also applies 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 period to implement the new penalty structure which takes into account the states' legislative calendars.

The basic penalty process will not change—it still follows the criteria set forth in the Occupational Safety and Health Act, which is to determine penalties based on the gravity of the violation and the size, good faith and history of the employer. Gravity determines the base amount; the other factors determine appropriate reductions.

As in the past, all penalty amounts are proposed penalties issued with the citation. The employer may contest the penalty amount as well as the citation within the statutory 15-day contest period. Thereafter,

the penalty may be adjudicated by the independent Occupational Safety and Health Review Commission, or OSHA may negotiate with the employer to settle for a reduced penalty amount if this will lead to speedy abatement of the hazard.

Here is how the new system for proposing penalties will operate.

### ADJUSTMENT FACTORS:

The size adjustment factor is as follows: For an employer with only one to 25 workers, the penalty will be reduced 60 percent; 26 to 100 workers, the reduction will be 40 percent; 101 to 250 workers, a 20 percent reduction; and more than 250 workers, there will be no reduction in the penalty.

There may be up to an additional 25 percent reduction for evidence that the employer is making a good faith effort to provide good workplace safety and health, and an additional 10 percent reduction if the employer has not been cited by OSHA for any serious, willful or repeat violations in the past three years.

In order to qualify for the full 25 percent 'good faith' reduction, an employer must have a written and implemented safety and health program such as given in OSHA's voluntary 'Safety and Health Management Guidelines' (Federal Register, Vol. 54, No. 16, Jan. 26, 1989, pp. 3904-3916) and that includes programs required under the OSHA standards, such as Hazard Communication, Lockout/Tagout or safety and health programs for construction required in 1926.20.

### SERIOUS VIOLATIONS:

The typical range of proposed penalties for serious violations, before adjustment factors are applied, will be \$1,500 to \$5,000, although the Regional Administrator may propose up to \$7,000 for a serious violation when warranted.

A serious violation is defined as one in which there is substantial probability that death or serious physical harm could result, and the employer knew or should have known of the hazard.

Serious violations will be categorized in terms of severity—high, medium or low—and the probability of an injury or illness occurring—greater or lesser.

Base penalties for serious violations will be assessed as follows:

<u>Severity</u>	<u>Probability</u>	<u>Penalty</u>
High	Greater	\$5,000
Medium	Greater	\$3,500
Low	Greater	\$2,500
High	Lesser	\$2,500
Medium	Lesser	\$2,000
Low	Lesser	\$1,500

Penalties for serious violations that are classified as high in both severity and greater in probability will only be adjusted for size and history.

#### OTHER-THAN-SERIOUS VIOLATIONS:

If an employer is cited for an other-than-serious violation which has a low probability of resulting in an injury or illness, there will be no proposed penalty. However, the violation must still be corrected. If the other-than-serious violation has a greater probability of resulting in an injury or illness, then a base penalty of \$1,000 will be used, to which appropriate adjustment factors will be applied.

The OSHA Regional Administrator may use a base penalty of up to \$7,000 if circumstances warrant.

#### REGULATORY VIOLATIONS:

Regulatory violations involve violations of posting, injury and illness reporting and recordkeeping requirements, and not telling employees about advance notice of an inspection. OSHA will be applying adjustments only for the size and history of the establishment.

Here are the base penalties, before adjustments, to be proposed for posting requirement violations: OSHA notice, \$1,000; annual summary, \$1,000; and failure to post citations, \$3,000.

Base reporting and recordkeeping penalties are as follows: Failure to maintain OSHA 200 and OSHA 101 forms, \$1,000; failure to report a fatality or catastrophe within 48 hours, \$5,000 (with a provision that the OSHA Regional Administrator could adjust that up to \$7,000, in exceptional circumstances); denying access to records, \$1,000; and not telling employees about advance notice of an inspection, \$2,000.

#### WILLFUL VIOLATIONS:

In the case of willful serious violations, the initial

proposed penalty has to be between \$5,000 and \$70,000. OSHA calculates the penalty for the underlying serious violation, adjusts it for size and history and multiplies it by 7. The multiplier of 7 can be adjusted upward or down at the OSHA Regional Administrator's discretion, if circumstances warrant. The minimum willful serious penalty is \$5,000.

Willful violations are those committed with an intentional disregard of, or plain indifference to, the requirements of the OSH Act and regulations.

#### REPEAT VIOLATIONS:

A repeat violation is a violation of any standard, regulation, rule or order where, upon reinspection, a substantially similar violation is found.

Repeat violations will only be adjusted for size, and the adjusted penalties will then be multiplied by 2, 5, or 10. The multiplier for small employers—250 employees or fewer—is 2 for the first instance of a repeat violation, and 5 for the second repeat. However, the OSHA Regional Administrator has the authority to use a multiplication factor of up to 10 on a case involving a repeat violation by a small employer to achieve the necessary deterrent effect.

The multiplier for large employers—250 or more employees—is 5 for the first instance of a repeat violation, and 10 for the second repeat.

If the initial violation was other-than-serious, without a penalty being assessed, then the penalty will be \$200 for the first repetition of that violation, \$500 for the second repeat, and \$1,000 for the third repeat.

#### FAILURE TO ABATE:

Failure to correct a prior violation within the prescribed abatement period could result in a penalty for each day the violation continues beyond the abatement date.

In these failure to abate cases the daily penalty will be equal to the amount of the initial penalty (up to \$7,000) with an adjustment for size only.

This failure to abate penalty may be assessed for a maximum of 30 days by the OSHA Area office. In cases of partial abatement of the violation, the OSHA Regional Administrator has authority to reduce the penalty by 25 percent to 75 percent.

If the failure to abate is more than 30 days, it may be referred to the OSHA national office in Washington where a determination may be made to assess a daily penalty beyond the initial 30 days.

\*\*\*

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

February 11, 1992

Dear Colleagues:

Alaska has 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.

In November of 1990, Congress passed legislation requiring the Federal Occupational Safety and Health Administration to increase penalties for OSHA violations. Alaska is now required to update its statutes .

Sponsor Substitute for HB 33 will raise our current penalties to Federal OSHA mandated levels.

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

Workers and the public are entitled to a safe worksite. There is no reason why an employer cannot meet the standards established by federal and state statutes. In fact, a number of Alaskan businesses have safety records much better than those Outside. Others do not, and as a result of their poor safety record, drastically increase Workers Compensation costs for every other business. This bill would encourage greater attention to safety.

I invite your co-sponsorship of this bill. Please let me or Shari Paul of my staff know of your interest.



Niilo Koponen

# News

United States  
Department  
of Labor

Office of Information

Washington, D.C. 20210

NBY ✓

Director	
Sp Asst	
So Asst	
Info Off	
Adm Asst	
Int Bus	
ESD	
LS&S	
W/C	
CC: <i>Rep. Koyanen</i>	
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.

-more-

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.

###

# STATE OF ALASKA

WALTER J. HICKEL, GOVERNOR

## DEPARTMENT OF LABOR

### OFFICE OF THE COMMISSIONER

May 8, 1991

P.O. BOX 21149  
JUNEAU, ALASKA 99802-1149  
PHONE: (907) 465-2700

FAX: (907) 465-2784

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

Dear Representative Koponen:

This is to reaffirm the Department of Labor's strong support for CSSS HB 33 (Jud), which increases the penalties for occupational safety and health violations.

As you know, the federal Occupational Safety and Health Administration's civil penalties were increased in late 1990, and Alaska is required to bring its penalties into line with them. Accordingly, passage of the civil penalty provisions in House Bill 33 (Sections 3, 4, 5, 6, and 9) is needed to assure that our state-operated safety and health program is not jeopardized.

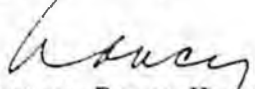
Although the criminal penalty provisions in the bill (Sections 2, 7, and 8) are not required to conform to federal law, they, too, are intended to serve as a deterrent to workplace safety and health hazards. Alaska's civil and criminal penalties have not changed since enactment of the occupational safety and health law in 1973.

Section 1 of the bill provides that employers who fail to appear without good cause at an OSH Review Board hearing may be ordered by the Board to pay all reasonable expenses incurred by the Board. Since a hearing before the Board is scheduled at an employer's specific request, it is appropriate for the employer to appear at the hearing.

I urge your continued effort to secure passage of House Bill 33 this year.

Thank you.

(Sincerely,

  
Nancy Bear Usara  
Commissioner

FISCAL NOTE

STATE OF ALASKA  
1992 LEGISLATIVE SESSION

BILL NO : CSSSHB 33(Jud) am

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	

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  
Division: Labor Standards & Safety

Phone : 465-4855

Date : 1/10/92

Approved by Commissioner: John Abshire, Acting Commissioner  
Agency: Department of Labor

Date: 1/10/92

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.

DEPARTMENT OF LABOR  
RESPONSE TO QUESTIONS RELATED TO  
SPONSOR SUBSTITUTE FOR HOUSE BILL NO.33  
HOUSE LABOR AND COMMERCE COMMITTEE

1. What are the funding sources for the Alaska Occupational Safety and Health Program?

The Alaska Occupational Safety and Health program is funded by three sources of monies: a federal grant that provides 50 percent matching funds for enforcement and training activities; a federal contract that provides 90 percent matching funds for private consultation activities; and state general fund monies for a portion of enforcement and consultation activities and for worker certification programs.

In Fiscal year 1991, the Alaska Occupational Safety and Health budget is as follows:

Federal 23(g) grant: \$1,138,500 which requires \$1,138,500 in state matching monies. Federal 7(c)(1) contract: \$308,100 which requires \$32,900 in state matching monies. State General fund monies:\$705,800. Total: Federal funds \$1,446,600 and state monies \$1,877,200. Total budget: \$3,323,800.

In Fiscal Year 1992, the Alaska Occupational Safety and Health budget is requesting the following:

Federal 23(g) grant: \$ 1,159,300; federal 7(c)(1), \$336,600; (total federal monies \$1,495,900) and state matching and general funds \$1,910,500. Total request: \$ 3,406,400.

2. What would be the social impact of transferring the state's occupational safety and health jurisdiction back to the federal Occupational Safety and Health Administration?

The major social impact will be less protection for Alaska workers from occupational safety and health hazards. The State has a staff of 16 enforcement compliance officers and nine safety and health consultants. Federal OSHA's staffing benchmark for Alaska is for 9 enforcement compliance officers. Federal OSHA does not offer any consultative and training services and therefore, the consultative and training services currently available to employers would be greatly diminished. Also Federal OSHA does not have jurisdiction over State and local government employment and therefore, approximately 50,000 Alaskan workers (almost 20 percent of the Alaskan workforce) would be without any occupational safety and health protection.

There will also be less sensitivity to occupational safety and health issues that are unique to Alaska's work sites. For example, the Alaska Occupational Safety and Health agency has worked closely with the logging industry to develop safety and health standards that address the hazards of working in the rugged terrain of Southeast Alaska and is providing safety training programs specifically geared to the needs of the Alaskan

logging industry. A program run from Washington D.C. would be unlikely to provide such assistance as they must cover industry on a nationwide basis and would not fit their programs to meet the different needs of each State.

**3. What type of administrative procedures will be used by the Alaska Occupational Safety and Health Program to adjust penalties?**

The Department of Labor uses an administrative procedure to adjust penalties of violations so that there is a sliding scale depending on the gravity of the violation, the size of the employer's business, the good faith of the employer in correcting violations, and the history of the employer's previous violations.

If SSHB 33 is enacted, the Department would use the same or similar procedures that federal OSHA uses to adjust penalties. The following are examples of how the penalties would be adjusted:

Example # 1: An employer with five employees is cited for a serious violation for allowing employees to be exposed to an unguarded chain and sprocket. As this violation would be considered to result in a low probability of death or broken bones, the agency would start by cutting the maximum \$7,000 penalty by 50%. This would result in an unadjusted penalty of \$3,500. The agency would then adjust this penalty further by providing a reduction of 60 percent for the size of the employer; a reduction of 25 percent for good faith if the employer corrects the hazard immediately; and a reduction of 10 percent if the employer has not been previously cited for a serious, willful or repeated violation. The "unadjusted" penalty of \$3,500 would, therefore, be lowered by 95% to a final penalty of \$175.

Example # 2: Employees are working in a 10 feet deep trench, laying a sewer line. The trench is unshored and there is no sloping. As this hazard will result in a high probability of death due to suffocation, asphyxiation, or broken bones should a cave-in occur, the Department would not provide any reduction for the gravity of the violation and would start with a \$7,000 unadjusted penalty. The employer employs 50 employees. The Department would provide a 40 percent reduction for size of the employer but would not provide any reduction for good faith or for history because the employer had been cited for several other violations on an inspection six months prior to this inspection. The "unadjusted" penalty of \$7,000 would, therefore, be lowered by 40% to a final penalty of \$4,200.

The above are two examples of the penalty calculation procedures that would be used for "serious" violations. If the department found a willful violation that caused the death of one or more employees, no penalty reduction would be provided and a penalty of \$70,000 would be assessed.

# DIVISION OF LEGAL SERVICES

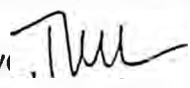
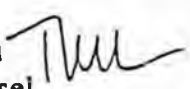
## LEGISLATIVE AFFAIRS AGENCY STATE OF ALASKA

P.O. Box Y, Juneau, Alaska 99811  
(907) 465-3867 or 465-2450  
FAX (907) 465-2029

Deliveries to: 240 Main Street  
Court Plaza, Room 500  
Mail Stop 3101

### MEMORANDUM

March 1, 1991

**SUBJECT:** Workplace Safety Laws (CSSSHB 33( ))  
**TO:** Representative Davi   
**FROM:** Terri Lauterbach   
Legislative Counsel

Enclosed is a draft CS for SSHB 33. It incorporates a couple of changes suggested by Laurie Otto and fixes some errors we have discovered in previous versions of the bill. The changes, when compared to the CS passed out by the Labor & Commerce Committee, are as follows:

- (1) This draft uses specific dollar maximums in each penalty subsection rather than relying on a reference to maximums under federal OSHA laws. The federal maximums were not changed for 20 years before the change in 1990, so it does not appear that the burden of changing the state law whenever the federal law changes is a great one. In contrast, there may be significant disadvantages to such a tie-in: possibly improper delegation of legislative power, lack of notice to potential violators, and lack of access to federal laws by rural judges.
- (2) Section 2 has been added to raise a penalty overlooked in previous versions of the bill.
- (3) Toward the beginning of section 7, the phrase "with criminal negligence" has been added so that there is at least a minimal mens rea required for the criminal sanctions that may be imposed under this subsection. The Alaska Supreme Court has repeatedly expressed its aversion to the imposition of criminal sanctions for violations that may have been inadvertent or committed with simple negligence. Reynolds v. State, 655 P.2d 1313, (Alaska App. 1982); Speidel v. State, 460 P.2d 77 (Alaska 1969); Alex v. State, 484 P.2d 677 (Alaska 1971). While there may be some slight room for strict liability in this area, a legally "safer" course of action would be to add the mens rea standard of criminal negligence (gross negligence).

Representative Dave Donley

March 1, 1991

Page 2

(3) Toward the middle of section 7, "second conviction" has been changed to "subsequent conviction" so that third, fourth, fifth, etc. convictions are clearly covered by the increased penalty.

(4) At the end of section 7, a new sentence has been added to clarify that there could be a prosecution under the criminal laws of the state for a violation involving death. Otherwise, the argument could be made that prosecution under this OSHA law is the only prosecution allowed in the case of a death.

(5) A new section 10 has been added to clarify the applicability of the new penalty provisions.

(6) Most of the new material in AS 18.65.095(h) that was added in the Labor and Commerce CS is unnecessary in this draft because of the change explained in (1) above. Other aspects of (h) were errors because they improperly "confused" civil and criminal penalties. Therefore, this new draft makes no amendments to AS 18.65.095(h). The only change salvaged from (h) in the other CS is the "\$5,000 minimum" language that appears in its proper place at the end of sec. 3 of this new draft.

I wish to raise one other point. For your information, the recent federal law that raised OSHA penalties did not raise the maximum fine amounts for criminal violations. (These are the violations covered by secs. 2,7, and 8 of the new draft.) There is no reason I can think of for why the state could not raise these penalties on its own. I just wanted you to be aware that these particular increases are not required for compliance with federal law.

I hope you find this memo helpful in explaining the attached CS. If you have further questions, please let me know.

TML:lmb  
91-064.lmb

Enclosure

**DEPARTMENT OF LABOR**  
**OFFICE OF THE COMMISSIONER**

P.O. BOX 21149  
JUNEAU, ALASKA 99802-1149  
PHONE: (907) 465-2700  
FAX: (907) 465-2784

February 7, 1991

The Honorable Niilo Koponen  
House of Representatives  
Alaska State Legislature  
P.O. Box V  
Juneau, AK 99811

Dear Representative Koponen:

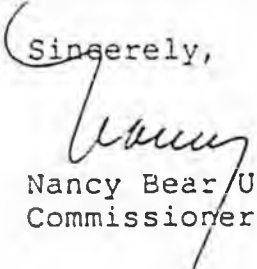
This is to follow up on our conversation concerning amendments to House Bill No. 33 to align Alaska's occupational safety and health penalty structure with that mandated by the U.S. Department of Labor.

Briefly, in 1990 Congress passed legislation requiring the federal Occupational Safety and Health Administration to increase penalties for OSHA violations. As you know, under our State occupational safety and health plan, Alaska is required to prescribe standards and enforcement of standards which are at least as effective as those provided by federal OSHA.

Consequently, it would seem prudent to go ahead and bring the penalties in your bill in line with the federal standard now, as opposed to having to make a two-step approach. To that end, enclosed is a listing of the specific amendments needed, along with some background information on the federal requirements.

Thank you for your help; and if you have any questions or need additional information; please let me know.

Sincerely,

  
Nancy Bear Usera  
Commissioner

NBU:kh

Enclosure

100  
2417

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 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 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, 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

Crosstabulation: AREA

E

YEAR->	Count	84	85	86	87	Row Total
AREA						
	10	247	337	382	410	1376 3.2
Aleutians						
	20	4917	5020	3932	3606	17475 40.9
Anchorage						
	50	118	86	92	90	386 .9
Bethel						
	60	46	62	63	58	229 .5
Bristol Bay						
	70	119	119	112	104	454 1.1
Dillingham						
	90	1162	1173	932	900	4167 9.7
Fairbanks						
	100	28	20	15	23	86 .2
Haines						
	110	417	419	282	335	1453 3.4
Juneau						
	122	590	721	623	682	2616 6.1
Kenai						
	130	401	385	406	462	1654 3.9
Ketchikan						
	140	44	33	28	32	137 .3
Northwest Arctic						
	150	245	223	263	342	1073 2.5
Kodiak						
	170	516	464	357	294	1631 3.8
Mac-Su						
	180	87	85	75	70	317 .7
Nome						
	185	1231	1247	872	631	3981 1.3
North Slope						
	201	192	229	249	319	989 2.3
Pr of Wales						
Column Total		11398	11747	9945	9661	42751
(Continued)		26.7	27.5	23.3	22.6	100.0

Crosstabulation: AREA

YEAR->	Count	84	85	86	87	Row Total
AREA						
Sitka	220	180	188	232	231	831 1.9
Skagway	231	131	206	269	319	925 2.2
S E Fairbanks	240	60	45	62	32	199 .5
Valdez-Cordova	261	204	199	203	269	875 2.0
Wade Hampton	270	39	33	30	41	143 .3
Wrang-Ptrsbrg	280	164	270	300	253	987 2.3
Yukon-Koyuk	290	168	145	121	119	553 1.3
Milti-Area	996		6	4	2	12 .0
Out of State	998		29	38	25	92 .2
Unknown	999	92	3	3	12	110 .3
Column Total		11398	11747	9945	9661	42751
		26.7	27.5	23.3	22.6	100.0

Number of Missing Observations = 0

Crosstabulation: NATURE2

B

YEAR->	Count	84	85	86	87	Row Total
NATURE2						
10	Amputation / Enu	44	31	28	35	138 .3
11	Asphyxia, Strang	7	3	4	5	19 .0
12	Burn (Heat)	214	248	192	191	845 2.0
13	Burn (Chemical)	60	79	47	66	252 .6
14	Concussion	49	78	98	121	346 .8
15	Infective / Para	11	20	17	11	59 .1
16	Contusion, Crush	1303	1513	1145	1024	4985 11.7
17	Cut, Laceration,	1137	1142	909	1041	4229 9.9
18	Dermatitis	41	42	47	42	172 .4
19	Dislocation	170	188	241	196	795 1.9
20	Electric Shock	7	15	8	8	38 .1
21	Fracture	1014	1053	847	792	3706 8.7
22	Exposure to Low	33	25	17	13	88 .2
23	Hearing Loss / I	3	7	4	11	25 .1
24	Environmental He		2	2	1	5 .0
25	Hernia, Rupture	173	164	130	132	599 1.4
Column Total		11398	11747	9945	9661	42751
(Continued)		26.7	27.5	23.7	22.6	100.0

Crosstabulation: NATURE2

E

YEAR->	Count	84	85	86	87	Row Total
NATURE2						
26	Inflammation	169	108	136	187	600 1.4
27	Poisoning	109	114	107	78	408 1.0
28	Pneumoconiosis	2	2	3		7 .0
29	Radiation Effect	37	34	23	16	110 .3
30	Scratches, Abras	359	318	306	322	1305 3.1
31	Sprains, Strains	5507	5725	4970	4859	21061 49.3
32	Hemorrhoids	11	10	3	2	26 .1
33	Hepatitis	4	6	1	5	16 .0
40	Multiple Injurie	541	503	223	118	1385 3.2
50	Changes in Atmos	7	2	4	1	14 .0
51	Cerebrovascular	5	7	12	10	34 .1
52	Complications -	1		1	1	3 .0
53	Eye Diseases	37	20	22	12	91 .2
54	Mental Disorders	17	17	36	30	100 .2
55	Neoplasm			2	3	5 .0
56	Nervous System	55	87	105	93	340 .8
Column Total		11398	11747	9945	9661	42751
(Continued)	Total	26.7	27.5	23.3	22.6	100.0

Crosstabulation: NATURE2

YEAR->	Count	84	85	86	87	Row Total
NATURE2						
57 Respiratory Syst	14	23	23	25	85	.2
58 Symptoms & Ill-D	21	20	29	19	89	.2
90 No Injury or Ill	1	1	1	1	4	.0
95 Damage to Prosth	3	1	4	2	10	.0
99 Other Dis/Inj Ne	232	139	198	188	757	1.8
Column Total	11398	11747	9945	9661	42751	
	26.7	27.5	23.3	22.6	100.0	

Number of Missing Observations = 0

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.

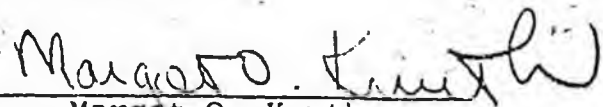
If the defendant is an organization, the bill makes available the criminal penalties already set out for organizations in AS 12.55. AS 12.55.035(c), relating to fines, was amended by the legislature last year to give sentencing judges greater discretion in setting fines for organizations. That amendment 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

ANCHORAGE OFFICE

THE ENSERCH CENTER  
550 WEST SEVENTH AVENUE SUITE 1200  
ANCHORAGE, ALASKA 99501  
PHONE: (907) 277-6693  
FACSIMILE: (907) 279-1959

\*ROBERT B. BAKER  
LEROY J. BARKER  
\*LG BERRY  
HAROLD E. SNOW, JR.  
SUSAN M. WEST  
\*JULIA B. BOCKMON  
\*JOSEPH D. DARNELL  
GREGORY G. SILVEY  
CHARLES T. HUGUELET

WASHINGTON, D.C. AND VIRGINIA OFFICE

ARLINGTON COURTHOUSE PLAZA II  
2300 CLARENDON BOULEVARD, SUITE 1010  
ARLINGTON, VIRGINIA 22201  
PHONE: (703) 527-4414  
FACSIMILE: (703) 527-0421

\*MICHAEL T. THOMAS  
\*STEVEN W. SILVER  
\*CARI W. WINNER  
\*BRADLEY D. GILMAN

ROBERTSON, MONAGLE & EASTAUGH

A PROFESSIONAL CORPORATION  
ATTORNEYS AT LAW  
JUNEAU, ALASKA 99902

JUNEAU OFFICE

COURT PLAZA BUILDING, SUITE 800  
240 MAIN STREET  
P.O. BOX 21211  
JUNEAU, ALASKA 99802  
PHONE: (907) 580-3340  
FACSIMILE: (907) 586-6310

ROYAL ARCH GUNNISON (1873-1918)  
R.E. ROBERTSON (1885-1961)  
M.E. MONAGLE (1902-1995)

F.C. EASTAUGH (RETIRED)

JAMES F. CLARK  
PAUL M. HOFFMAN  
D. ELIZABETH CUADRA  
MARY A. NORDAI E  
ROBERT P. BLASCO

ADMITTED IN WASHINGTON, D.C.  
AND ALASKA

ADMITTED IN VIRGINIA,  
WASHINGTON, D.C. AND ALASKA

ALL OTHERS ADMITTED  
IN ALASKA

M E M O R A N D U M

TO: Charles Cole  
Attorney General

FROM: Jim Clark

DATE: May 9, 1991

RE: House Bill 33

\*\*\*\*\*

Section 3 and Section 7 of House Bill 33 would change the standard for employer civil and criminal conduct respectively from "willful" violations to "knowing" violations. Proponents argue that there is no difference between the words "willful" and "knowing," stating that the latter word is used in the bill because it is defined in Alaska statutes while the former word is not defined.

While it is true that the word "knowingly" is defined in Alaska law and the word "willfully" is not defined, the two words do not connote the same standard. A willful violation requires a higher standard of proof:

"Knowingly," as used in Section 1001, requires only that the defendant acted "with knowledge." United States v. Mekjian, 5 Cir. 1975, 505 F.2d 1320, 1324; McBride v. United States, 5 Cir. 1324, 225 F.2d 249. "Willfully" means the defendant acted "deliberately and with knowledge." United States v. Mekjian, supra; United States v. Parton, 5 Cir. 1972, 462 F.2d 430, McBride v. United States, supra.

United States v. Smith, 523 F.2d 771, at 773, 774 (5th Cir. 1975).

Charles Cole  
May 9, 1991  
Page 2

"Knowingly" and "willfully" are different concepts of mens rea. In "knowingly," the essential element is one of knowledge; in "willfully," there is the additional requirement of acting with deliberation. United States v. Mekjian, 505 F.2d 1320 (5th Cir. 1974). As a general rule an act is done willfully if it is done voluntarily and intentionally and with the specific intent to do something that the law forbids. Devitt & Blackmore, supra § 14.06. To establish specific intent, the prosecution must prove the defendant knowingly did an act which law forbids, purposely intending to violate the law.

(emphasis added) Record Revolution No. 6, Inc. v. City of Parma, Ohio, 492 F. Supp. 1157, at 1175 n.10. (N.D. Ohio 1980).

Since "willfully" connotes purpose and intent, the correct substitution for it among those words which are defined in the Alaska criminal code is "intentionally," not "knowingly."

(1) A person acts "intentionally" with respect to a result described by a provision of law defining an offense when the person's conscious objective is to cause that result; when intentionally causing a particular result is an element of an offense, that intent need not be the person's only objective;

AS 11.81.900(a)(1). Substituting the defined word "intentionally" for the undefined word "willfully," instead of substituting the defined word "knowingly" for the undefined word "willfully" (as is done in HB 33) makes sense when one considers how "intentionally" and "knowingly" are used in the law:

Modern penal codes have consistently followed the lead of the Model Penal Code by utilizing only four culpable mental states and by defining them in a substantially similar way.

The basic distinction between a person who acts "purposely" ("intentionally") and one who acts "knowingly" is that the former actor desires to engage in a given conduct (which happens to amount to a crime), or desires by his conduct to cause a prohibited harmful result, while the latter actor is merely aware that he is engaging in a given conduct (which happens to amount to a crime), or is aware again and is practically certain that his

Charles Cole  
May 9, 1991  
Page 3

conduct will cause a prohibited, harmful  
result.

(emphasis added) State v. Pinero, 778 P.2d 704, at 713 n.7 (HA  
1989).

In short, if the word "willfully" is to be substituted  
for a defined word in the Alaska Statutes without changing its  
essential meaning, then the word "willfully" should be changed to  
"intentionally"; it should not be changed to "knowingly," which  
requires a lesser standard of intent and, therefore, a lesser  
standard of proof.

WALTER J. HICKEL, GOVERNOR

**DEPARTMENT OF LAW**

CRIMINAL DIVISION

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 10, 1991

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

Re: CSSSHB 33 (Violation of workplace safety laws)

Dear Representative Koponen:

As you recall, on May 6, 1991, we wrote a letter to you about the above-referenced bill, "An Act relating to penalties for violation of workplace safety laws." This is to clarify that at that time we understood from your staff that the amendments in sections 3, 7 and 8, changing the necessary culpable mental state to "knowingly" were expected to be deleted. Please be advised that the Department of Law supports this deletion.

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  
Margot O. Knuth  
Assistant Attorney General