

HB

121

<TARGET><BILL>HB 121</BILL><SUBJECT>HB
121</SUBJECT><COMM>HJUD30</COMM></TARGET>



Representative Sam Kito

Alaska State Legislature

House District 33

Downtown Juneau

Douglas

Haines

Klukwan

Skagway

Gustavus

Excursion Inlet

Chair
House Labor & Commerce

Chair
Legislative Council

Member
House Health &
Social Services

Member
House Rules

Contact

Rep. Sam Kito
Alaska State Capitol 403
120 4th St
Juneau, AK 99801

907-465-4766

Rep.Sam.Kito@akleg.gov

DATE: 27 February 2017

TO: Representative Matt Claman
Chair, House Judiciary Committee

FROM: Representative Sam Kito

RE: HB121 – Occupational Health and Safety Civil Penalties

I respectfully request that the House Labor & Commerce Committee schedule House Bill 121 – Occ. Health and Safety Civil Penalties for a hearing, pending referral. I anticipate this bill will pass out of House Labor & Commerce Committee on Wednesday, March 1.

Please find attached:

- House Bill 121 version O
- Sponsor Statement
- Sectional analysis
- Fiscal Note from DOLWD-OSH
- Supporting Document – Federal Memo to State Plans

Thank you for your consideration. If you have any questions, please do not hesitate to contact me or my staff Bianca Carpeneti at 465-4767.

Sincerely,

A handwritten signature in blue ink, appearing to read "Sam Kito".

Rep. Sam Kito III



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Sponsor Statement

House Bill 121

An Act relating to occupational safety and health enforcement penalties.

House Bill 121 brings Alaska's Occupational Safety and Health (AKOSH) state plan into compliance with federal requirements, ensuring continued eligibility for federal grant funds and helping to protect workers from workplace injuries, illnesses, and fatalities.

In 2015, Congress passed the Federal Civil Penalties Inflation Adjustment Act Improvements Act, requiring many federal agencies to adjust penalties for inflation going back to 1990, and requiring subsequent yearly adjustments according to changes in the Consumer Price Index. Occupational Safety and Health Administration complied by adjusting their maximum penalties in July 2016, including a six-month grace period for states to comply. In order to comply with federal program requirements, AKOSH must have at least equivalent maximum and minimum penalties. AKOSH fell out of compliance with this requirement on January 1, 2017, when the six-month buffer period expired.

Maximum and minimum penalties for violations of Alaska's occupational safety and health laws are specified in AS 18.60.095, the Penalties section of Prevention of Accident and Health Hazards. House Bill 121 allows the Department of Labor and Workforce Development to set penalty amounts by regulation, and limits the penalties to corresponding federal maximums for each violation type. This enables the department to adjust to federally required changes while placing a cap on increases.

Please join me in supporting House Bill 121 to maintain over \$2 million in yearly federal grant funds that serve working Alaskans by reducing workplace injuries, illnesses, and fatalities.



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Sectional Analysis

House Bill 121

An Act relating to occupational safety and health enforcement penalties.

Section 1 Amends AS 18.60.095 (a) to establish that the maximum and minimum civil penalties the commissioner may assess an employer for a willful or repeat violation of occupational safety and health provisions shall be set by regulation under a new section (i) added by this bill.

Section 2 Amends AS 18.60.095 (b) to establish that the maximum civil penalty the commissioner may assess an employer for a serious violation of occupational safety and health provisions shall be set by regulation under a new section (i) added by this bill.

Section 3 Amends AS 18.60.095 (c) to establish that the maximum civil penalty the commissioner may assess an employer for an other than serious violation of occupational safety and health provisions shall be set by regulation under a new section (i) added by this bill.

Section 4 Amends AS 18.60.095 (d) to establish that the maximum civil penalty the commissioner may assess an employer who fails to correct a violation of occupational safety and health provisions shall be set by regulation under a new section (i) added by this bill.

Section 5 Amends AS 18.60.095 (g) to establish that the maximum civil penalty the commissioner may assess an employer for violations of posting requirements shall be set by regulation under a new section (i) added by this bill.

Section 6 Amends AS 18.60.095 by adding a new subsection (i) that directs the commissioner to establish by regulation the maximum civil penalty amounts to be imposed under (a) – (d) and (g) of this section and the minimum imposed under (a). It stipulates that the maximum civil penalties may not be greater than the corresponding federal penalties and must include adjustments to correlate with inflation rates as specified under the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015.

Section 7 Establishes that this Act applies to violations occurring on or after the effective date of this Act.

Section 8 Allows the department to adopt regulations necessary to implement this Act.



JUL 01 2016

Ms. Heidi Drygas
Commissioner
Alaska Department of Labor
and Workforce Development
1111 West 8th Street, Room 308
Juneau, Alaska 99801-1149

Dear Commissioner Drygas:

In 2015, Congress passed the Bipartisan Budget Act of 2015, which amended the Federal Civil Penalties Adjustment Act of 1990 (FCPAA), and made the FCPAA applicable to the Occupational Safety and Health Administration (OSHA). The FCPAA requires OSHA to increase its maximum penalties by the cost-of-living adjustment (according to the CPI-U) since the penalty levels were last adjusted in 1990.

As directed, the Department of Labor, on July 1, 2016, published an Interim Final Rule in the Federal Register initiating implementation of this penalty increase. The new penalties will take effect after August 1, 2016. In each subsequent year, maximum penalties will be increased by the cost-of-living adjustment by January 15th. These penalties are the statutory maximum penalties, although OSHA often proposes penalties that are significantly lower after application of penalty adjustment factors for size, good faith, history and other factors.

OSHA-approved State Plans must have penalty levels that are at least as effective as federal OSHA's per Section 18 (c)(2) of the OSH Act; 29 C.F.R. 1902.37(b)(12). All State Plans will be expected to adopt OSHA's new maximum penalty levels and thereafter increase this maximum each year based on inflation.

We expect states to adopt the changes within six months as specified in 29CFR1953.4(b)(3). We recognize, however, that some State Plans have varied legislative calendars that may impact timely adoption. If you would like to discuss existing legal or legislative barriers that may prevent you from adopting this structure on the timeline specified above, please contact Douglas Kalinowski, Director, Directorate of Cooperative and State Programs at (202) 693-2200 as soon as possible.

As always, we will assist you any way that we can to make these statutorily required changes occur. We look forward to working with you on this very important issue.

Sincerely,

A handwritten signature in blue ink, appearing to read "David Michaels", written over a horizontal line.

David Michaels, PhD, MPH

OSHA[®] FactSheet

OSHA Penalty Adjustments To Take Effect After August 1, 2016

In November 2015, Congress enacted legislation requiring federal agencies to adjust their civil penalties to account for inflation. The Department of Labor is adjusting penalties for its agencies, including the Occupational Safety and Health Administration (OSHA).

OSHA's maximum penalties, which were last adjusted in 1990, will increase by 78%. Going forward, the agency will continue to adjust its penalties for inflation each year based on the Consumer Price Index.

The new penalties will take effect after August 1, 2016. Any citations issued by OSHA on or after that date will be subject to the new penalties if the related violations occurred after November 2, 2015.

Type of Violation	Current Maximum Penalty	New Maximum Penalty
Serious		
Other-Than-Serious	\$7,000 per violation	\$12,471 per violation
Posting Requirements		
Failure to Abate	\$7,000 per day beyond the abatement date	\$12,471 per day beyond the abatement date
Willful or Repeated	\$70,000 per violation	\$124,709 per violation

Adjustments to Penalties

To provide guidance to field staff on the implementation of the new penalties, OSHA will issue revisions to its *Field Operations Manual* by August 1. To address the impact of these penalty increases on smaller businesses, OSHA will continue to provide penalty reductions based on the size of the employer and other factors.

State Plan States

States that operate their own [Occupational Safety and Health Plans](#) are required to adopt maximum penalty levels that are at least as effective as Federal OSHA's.

Workers' Rights

Workers have the right to:

- Working conditions that do not pose a risk of serious harm.
- Receive information and training (in a language and vocabulary the worker understands) about workplace hazards, methods to prevent them, and the OSHA standards that apply to their workplace.
- Review records of work-related injuries and illnesses.

- File a complaint asking OSHA to inspect their workplace if they believe there is a serious hazard or that their employer is not following OSHA's rules. OSHA will keep all identities confidential.
- Exercise their rights under the law without retaliation, including reporting an injury or raising health and safety concerns with their employer or OSHA. If a worker has been retaliated against for using their rights, they must file a complaint with OSHA as soon as possible, but no later than 30 days.

For more information, see [OSHA's Workers page](#).

How to Contact OSHA

For questions or to get information or advice, to report an emergency, fatality, inpatient hospitalization, amputation, or loss of an eye, or to file a confidential complaint, contact your nearest OSHA office, visit www.osha.gov or call OSHA at 1-800-321-OSHA (6742), TTY 1-877-889-5627.

This is one in a series of informational fact sheets highlighting OSHA programs, policies or standards. It does not impose any new compliance requirements. For a comprehensive list of compliance requirements of OSHA standards or regulations, refer to Title 29 of the Code of Federal Regulations. This information will be made available to sensory-impaired individuals upon request. The voice phone is (202) 693-1999; teletypewriter (TTY) number: (877) 889-5627.

For assistance, contact us. We can help. It's confidential.



www.osha.gov (800) 321-OSHA (6742)



U.S. Department of Labor



THE STATE
of **ALASKA**

GOVERNOR BILL WALKER

**Department of Labor and
Workforce Development**

Office of the Commissioner

Post Office Box 111149
Juneau, Alaska 99811
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March 10, 2017

The Honorable Matt Claman
House Judiciary Chair
State Capitol, Room 118
Juneau, AK 99801

Dear Chair Claman:

Thank you for hearing House Bill 121 in the House Judiciary Committee on March 8. In response to committee members' outstanding questions, I am providing the following answers:

1. How many consultations does Alaska Occupational Safety and Health provide to employers?

Alaska Occupational Safety and Health (AKOSH) provided 360 consultation visits to private employers and 160 consultation visits to public employers in FY 2016. These visits provide confidential occupational safety and health advice to small and medium-sized businesses in Alaska with priority given to high-hazard worksites. On-site consultation services are separate from enforcement and do not result in penalties or citations. The department's safety and health professionals work with employers to identify workplace hazards, provide advice on compliance with AKOSH standards, and assist in establishing injury and illness prevention programs.

AKOSH also provides training services to employees and to the public. Consultants provide safety training to an average of 2500 employees every year. Subjects include occupational safety and health recordkeeping regulations, workplace violence awareness training, fall prevention, excavation hazards, electrical hazards, OSHA 10-hour for Construction, OSHA-10 hour for General Industry, respiratory protection, occupational noise, asbestos awareness, construction hazards, and hazard communication requirements. This program has contributed to cutting Alaska's workplace lost time incident rate in half over the last ten years.

2. How much would the state save if Alaska's occupational safety and health jurisdiction were returned to federal OSHA?

In order to provide a timely answer, we developed a rough estimate based on elimination of Alaska Occupational Safety and Health jurisdiction and associated funding. This would result in a cost savings of \$619.0 in state funds. However, penalty revenue would go to the federal treasury instead of the state general fund, totaling \$1,031.0. This would result in a net loss to the state of \$412.0.

There are other, more difficult costs to predict in such a scenario. State and local public employees would lose occupational safety and health protections, since federal OSHA does not cover these workers. Further, several studies show that OSHA inspections have a measurable impact on lowering illness and injury rates.¹ Losing the benefit of those inspections, as well as public sector consultation services, would result in higher workers' compensation expenses. The State of Alaska's preliminary numbers for workers' compensation benefits in calendar year 2016 showed \$13,037.2 in medical and \$6,021.3 in indemnity costs. Even a small percentage increase could quickly dwarf any savings realized by a jurisdictional change.

The costs associated with eliminating AKOSH would not be confined to Alaska's government—private employers would be negatively affected by a federal takeover. Industries across the state would lose the safety and health standards developed by Alaskan employers, employees, and the public specific to our state's unique environment. Certain oil and gas, logging, and labor camp standards would no longer be enforced. Strategic targeting plans built to help Alaska's far-flung, highly hazardous industries would also disappear. Furthermore, small businesses would face the burden of lengthy out-of-state proceedings when they disagree with citations instead of the current local appeals process. AKOSH programs have served Alaskans for decades with proven results, such as the reduced illness and injury rate referenced previously. This progress would be replaced by the one-size fits-all enforcement of the federal government. The department cannot place a dollar amount on all the estimated impacts of a federal OSH takeover, but it is clear that such a drastic change to administering occupational safety and health enforcement would affect all Alaskans—workers, employers, and families alike.

Please contact me if you have any additional questions.

Sincerely,



Heidi Drygas
Commissioner

¹ https://www.osha.gov/as/opa/michaels_commentary.html

Fiscal Note

State of Alaska
2017 Legislative Session

Bill Version: HB 121
Fiscal Note Number: _____
() Publish Date: _____

Identifier: HB121-DOLWD-OSH-02-24-17
Title: OCC. HEALTH AND SAFETY CIVIL PENALTIES
Sponsor: LABOR & COMMERCE
Requester: House Labor & Commerce

Department: Department of Labor and Workforce Development
Appropriation: Labor Standards and Safety
Allocation: Occupational Safety and Health
OMB Component Number: 970

Expenditures/Revenues

Note: Amounts do not include inflation unless otherwise noted below. (Thousands of Dollars)

	FY2018	Included in	Out-Year Cost Estimates				
	Appropriation Requested	Governor's FY2018 Request	FY 2019	FY 2020	FY 2021	FY 2022	FY 2023
OPERATING EXPENDITURES	FY 2018	FY 2018	FY 2019	FY 2020	FY 2021	FY 2022	FY 2023
Personal Services							
Travel							
Services							
Commodities							
Capital Outlay							
Grants & Benefits							
Miscellaneous							
Total Operating	0.0	0.0	0.0	0.0	0.0	0.0	0.0

Fund Source (Operating Only)

None							
Total	0.0	0.0	0.0	0.0	0.0	0.0	0.0

Positions

Full-time							
Part-time							
Temporary							

Change in Revenues

1004 Gen Fund (UGF)	217.5		435.0	435.0	435.0	435.0	435.0
Total	217.5	0.0	435.0	435.0	435.0	435.0	435.0

Estimated SUPPLEMENTAL (FY2017) cost: 0.0 *(separate supplemental appropriation required)*
(discuss reasons and fund source(s) in analysis section)

Estimated CAPITAL (FY2018) cost: 0.0 *(separate capital appropriation required)*
(discuss reasons and fund source(s) in analysis section)

ASSOCIATED REGULATIONS

Does the bill direct, or will the bill result in, regulation changes adopted by your agency? Yes
If yes, by what date are the regulations to be adopted, amended or repealed? 01/01/18

Why this fiscal note differs from previous version:

Not applicable, initial version.

Prepared By: Deborah Kelly, Director
Division: Labor Standards and Safety
Approved By: Heidi Drygas, Commissioner
Agency: Department of Labor and Workforce Development

Phone: (907)269-4961
Date: 02/24/2017 12:00 PM
Date: 02/24/17

FISCAL NOTE ANALYSIS

STATE OF ALASKA
2017 LEGISLATIVE SESSION

BILL NO. HB 121

Analysis

This legislation requires the department to set maximum and minimum civil penalties for occupational safety and health violations by regulation, and requires those penalties conform to the Federal Civil Penalties Inflation Adjustments Act Improvements Act of 2015.

The Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 raised federal maximum penalties and tied future penalty amounts to the Consumer Price Index (CPI). The regulations resulting from this legislation will initially adjust maximum and minimum civil penalties for inflation going back to 1990, and then adjust penalties yearly according to changes in the CPI. It is anticipated that this change will result in an additional \$435.0 in penalty revenue per year. The regulations are anticipated to go into effect halfway into FY18, so that revenue is half of the yearly calculated amount: $\$435.0/2 = \217.5 .

\$596.0 (FY16 penalties collected by Alaska Occupational Safety and Health)
x 1.73 (initial adjustment)

\$1,031.0 (estimated penalties collected per fiscal year after adjustment)
- \$596.0 (current penalties collected per fiscal year)

\$435.0 in additional revenue per fiscal year