

HB

121

<TARGET><BILL>HB 121</BILL><SUBJECT>HB
121</SUBJECT><COMM>HL&C30</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

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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.

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 2018	FY 2019	FY 2020	FY 2021	FY 2022	FY 2023
OPERATING EXPENDITURES	FY 2018	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	0.0

Fund Source (Operating Only)

None								
Total	0.0	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	435.0
Total	217.5	0.0	435.0	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: <u>Deborah Kelly, Director</u>	Phone: <u>(907)269-4961</u>
Division: <u>Labor Standards and Safety</u>	Date: <u>02/24/2017 12:00 PM</u>
Approved By: <u>Heidi Drygas, Commissioner</u>	Date: <u>02/24/17</u>
Agency: <u>Department of Labor and Workforce Development</u>	

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

U.S. Department of Labor

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



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.

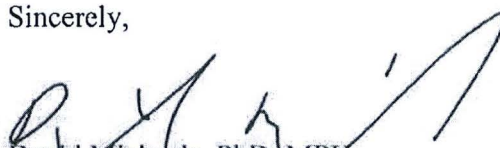
As directed, the Department of Labor, on July 1, 2016, published an Interim Final Rule in the Federal Register initiating implementation of this penalty increase. The new penalties will take effect after August 1, 2016. In each subsequent year, maximum penalties will be increased by the cost-of-living 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,



David Michaels, PhD, MPH