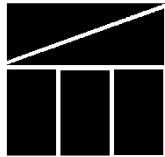


Adverse impact notification sent to Joint Commission on Administrative Rules, House Committee on Appropriations, and Senate Committee on Finance (COV § 2.2-4007.04.C): Yes Not Needed

If/when this economic impact analysis (EIA) is published in the *Virginia Register of Regulations*, notification will be sent to each member of the General Assembly (COV § 2.2-4007.04.B).



Virginia Department of Planning and Budget Economic Impact Analysis

16 VAC 25-60 – Administrative Regulation for the Virginia Occupational Safety and Health Program
Department of Labor and Industry
Town Hall Action/Stage: 4681/7841
May 11, 2017

Summary of the Proposed Amendments to Regulation

Pursuant to Chapter 526 of the 2016 Acts of the Assembly,¹ the Safety and Health Codes Board (Board) proposes to amend the Administrative Regulation for the Virginia Occupational Safety and Health Program (VOSH program regulation) to allow the assessment of monetary penalties against public sector employers² for willful, repeat or failure-to-abate health and safety violations, as well as serious health and safety violations that cause a fatality or are classified as “high gravity”³.

Result of Analysis

There is insufficient information to ascertain whether benefits will outweigh costs for this proposed regulation.

¹ <http://leg1.state.va.us/cgi-bin/legp504.exe?161+ful+CHAP0526>

² Such employers include Virginia state agencies and Virginia localities as well as other independent public sector entities, like the Metropolitan Washington Transit Authority and the Metropolitan Washington Airports Authority, that conduct work within Virginia’s jurisdiction.

³ High gravity violations are those that result in non-fatal but serious injuries like broken bones or amputations.

Estimated Economic Impact

Current regulation, and state law before Chapter 526 was passed, allows the Board's VOSH program to inspect the workplaces of public sector employers and issue notices of health and safety violation to them, but does not allow the issuance of monetary penalties to these entities. In accordance with Chapter 526, the Board now proposes to amend this regulation so that the Commissioner of Labor and Industry (Commissioner) may issue civil (monetary) penalties for willful, repeat or failure-to-abate health and safety violations. The Commissioner may also issue civil penalties for serious violations that result in a fatality or that are classified as "high gravity" violations. The Board also, as required by Chapter 526, proposes to add language to this regulation that allows public sector employers to contest proposed penalties to the Commissioner. The Commissioner can then initiate judicial proceedings if agreement on citations or penalties cannot be reached.

Board staff reports that the maximum penalty for a serious violation that results in a fatality or that is classified as "high gravity" is currently \$7,000 and the maximum penalty for a willful, repeat or failure-to-abate violation is currently \$70,000. A bill was passed in the 2017 General Assembly session,⁴ however, that will increase these maximum penalties to \$12,471 and \$124,709 respectively.⁵ Board staff reports that they compiled information on public sector employer incidences between 2007 and 2014 and found approximately 20 cases that involved either a fatality or a catastrophe where three or more employees were hospitalized or were considered willful violations. Of those cases, Board staff estimates that 15 involved one or more violations⁶ that would have resulted in monetary penalties if these employers had been private businesses. Of these cases, one involved a state agency and 19 involved a locality; proposed penalties would have ranged between approximately \$5,250 and \$280,000. As these possible penalties were calculated under current maximum statutory penalty language, proposed penalties for cases decided after this proposed regulation goes into effect would likely be about 80% higher than these numbers (between approximately \$9,300 and \$498,000). Board staff estimates

⁴ <http://leg1.state.va.us/cgi-bin/legp504.exe?171+ful+CHAP0263>. This Chapter also requires, beginning in 2018, the Commissioner to annually adjust maximum penalties by the percentage increase of the Consumer Price Index for all Urban Consumers.

⁵ Penalties will increase on July 1, 2017 for private employers and will be instituted at the higher rate for public employers when this proposed regulation becomes effective.

⁶ The range of the number of violations was one to eight.

that there may be approximately three willful violations and five repeat violations, as well as 15 serious violations resulting in a fatality or serious injury, each year that would be subject to penalties on account of this proposed regulation.

Board staff reports that these regulatory changes, and the law change that allowed them, are being pursued in order to induce public sector employers to better comply with rules aimed at protecting the health and safety of their employees. Monetary penalties issued against private sector employers are likely an effective means of focusing those employers on safety and reducing the number and severity of violations. Such penalties are a cost that lowers total profit for those businesses. To the extent that those costs can be avoided (in a way that costs less than the penalties would) companies can increase their profits by better protecting the safety of their employees.

This profit motive does not exist in the public sector and so monetary penalties may not induce public sector employers in the same way, or as effectively, as they do private businesses. Large state agencies and localities with larger budgets in particular would likely be less motivated to change their behavior as a result of VOSH program penalties. Monetary penalties may be somewhat more effective in focusing smaller agencies and localities on safety, because the people managing deficient employee areas or projects are more likely to be aware of the effects of any additional costs on total agency or locality budgets, and because any penalty would likely represent a larger part of that total budget. Board staff reports, for instance, that even a penalty as relatively small as \$15,000 would completely eliminate the Department of Labor and Industry's annual conference budget for training VOSH inspectors. Board staff also reports that all penalties would likely be paid out of state general fund or non-general fund monies (or local tax revenues) as it is unlikely that the federal government would allow federal funds to be used for such a purpose even for public programs where there are traditionally federal matching funds. To the extent that penalties are very large, they may impact the ability of state agencies to carry out their other duties and may require localities to curtail some services (even ones that may affect the health and safety of local citizens).

Businesses and Entities Affected

These proposed regulatory changes will affect all 133 localities, all state agencies and any other independent public sector employers who have employees in the Commonwealth.

Localities Particularly Affected

Localities that have a greater number of building projects may be particularly affected.

Projected Impact on Employment

There may be some (likely very) small decrease in public sector employment if VOSH penalties prove large enough to cause localities to curtail some services.

Effects on the Use and Value of Private Property

This proposed regulation is unlikely to affect the use or value of private property in the Commonwealth.

Real Estate Development Costs

These proposed regulatory changes are unlikely to affect real estate development costs in the Commonwealth.

Small Businesses:**Definition**

Pursuant to § 2.2-4007.04 of the Code of Virginia, small business is defined as “a business entity, including its affiliates, that (i) is independently owned and operated and (ii) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.”

Costs and Other Effects

These proposed regulatory changes are unlikely to affect small businesses.

Alternative Method that Minimizes Adverse Impact

These proposed regulatory changes are unlikely to affect small businesses.

Adverse Impacts:**Businesses:**

These proposed regulatory changes are unlikely to affect any private business in the Commonwealth.

Localities:

Localities will be subject to monetary VOSH program penalties after this proposed regulation becomes effective.

Other Entities:

State agencies, and any other independent public sector employers who have employees in the Commonwealth, will be subject to monetary VOSH program penalties after this proposed regulation becomes effective.

Legal Mandates

General: The Department of Planning and Budget has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007.04 of the Code of Virginia (Code) and Executive Order Number 17 (2014). Code § 2.2-4007.04 requires that such economic impact analyses determine the public benefits and costs of the proposed amendments. Further the report should include but not be limited to: (1) the projected number of businesses or other entities to whom the proposed regulatory action would apply, (2) the identity of any localities and types of businesses or other entities particularly affected, (3) the projected number of persons and employment positions to be affected, (4) the projected costs to affected businesses or entities to implement or comply with the regulation, and (5) the impact on the use and value of private property.

Adverse impacts: Pursuant to Code § 2.2-4007.04(C): In the event this economic impact analysis reveals that the proposed regulation would have an adverse economic impact on businesses or would impose a significant adverse economic impact on a locality, business, or entity particularly affected, the Department of Planning and Budget shall advise the Joint Commission on Administrative Rules, the House Committee on Appropriations, and the Senate Committee on Finance within the 45-day period.

If the proposed regulatory action may have an adverse effect on small businesses, Code § 2.2-4007.04 requires that such economic impact analyses include: (1) an identification and estimate of the number of small businesses subject to the proposed regulation, (2) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the proposed regulation, including the type of professional skills necessary for preparing required reports and other documents, (3) a statement of the probable effect of the proposed regulation on affected small businesses, and (4) a description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed regulation. Additionally, pursuant to Code § 2.2-4007.1, if there is a finding that a proposed regulation may have an adverse impact on small business, the Joint Commission on Administrative Rules shall be notified.

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