



COMMONWEALTH of VIRGINIA

DEPARTMENT OF LABOR AND INDUSTRY

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AGENDA

SAFETY AND HEALTH CODES BOARD

PUBLIC HEARING

**Main Street Centre
600 East Main Street
12th Floor Conference Room - South
Richmond, Virginia**

Thursday, October 26, 2017

10:00 a.m.

1. Call to Order
2. Items for Discussion:
 - a) Proposed Regulatory Action to Amend the Administrative Regulation for the Virginia Occupational Safety and Health (VOSH) Program – Procedures for the Application of Penalties for State and Local Government Employers, 16VAC 25-60
3. Opportunity for Public Comment on the Proposed Amendments
4. Comments from the Department
5. Adjournment



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VIRGINIA DEPARTMENT OF LABOR AND INDUSTRY
ON BEHALF OF THE
VIRGINIA SAFETY AND HEALTH CODES BOARD
PUBLIC HEARING BRIEFING PACKAGE
October 26, 2017

16VAC-25-60, et seq., Proposed Amendments to the Administrative Regulation for the Virginia Occupational Safety and Health (VOSH) Program; State and Local Government Penalties

I. Action

At the last meeting of the Board on February 16, 2017, the Virginia Occupational Safety and Health (VOSH) Program requested the Safety and Health Codes Board to consider for adoption, as a proposed regulation of the Board, the attached proposed language to amend 16VAC25-60, et seq., Administrative Regulation for the VOSH Program, State and Local Government Penalties. The Board approved the Department's request.

This public hearing is only to receive public comments on the proposed regulation in compliance with the Public Participation Guidelines of the Board. It is not a Q & A session.

II. Summary of the Issues Under Consideration for Amendment

The proposed amendment establishes procedures for the application of penalties for state and local government employers in accordance with §40.1-2.1 of the *Code of Virginia*. In 2016, the Virginia General Assembly passed and Governor Terry R. McAuliffe signed into law legislation that allows the Board to authorize the Commissioner to issue penalties to state and local government employers. During the legislative process, the Department represented to General Assembly members that it would pursue authorization from the Board to:

Allow VOSH to issue proposed penalties to state and local government employers for willful, repeat and failure-to-abate violations, as well as serious violations that cause a fatal accident or are classified as “high gravity”, i.e., a violation that is classified as “high severity” and “high probability”. An example of a “high gravity” serious violation would be one where a violation directly results in non-fatal but serious injuries such as broken bones or amputations. Violations that are classified as non-high gravity serious, and other-than-serious violations would not receive a penalty.

III. Basis, Purpose and Impact of the Proposed Rulemaking.

A. Basis

The Safety and Health Codes Board is authorized by Title 40.1-22(5) to:

“... adopt, alter, amend, or repeal rules and regulations to further, protect and promote the safety and health of employees in places of employment over which it has jurisdiction and to effect compliance with the federal OSH Act of 1970...as may be necessary to carry out its functions established under this title”.

“In making such rules and regulations to protect the occupational safety and health of employees, the Board shall adopt the standard which most adequately assures, to the extent feasible, on the basis of the best available evidence that no employee will suffer material impairment of health or functional capacity”.

“However, such standards shall be at least as stringent as the standards promulgated by the federal OSH Act of 1970 (P.L.91-596). In addition to the attainment of the highest degree of health and safety protection for the employee, other considerations shall be the latest available scientific data in the field, the feasibility of the standards, and experiences gained under this and other health and safety laws.”

Recent incidents which have resulted in the death of government employees, as well as other accident situations, have highlighted a need for an additional incentive for compliance with the safety and health laws and regulations. From January 1, 2007 to August 1, 2014, twenty-nine fatalities and catastrophes occurred in state and local government employment. The deterrent effect of a penalty can reduce this number by encouraging compliance. The Department introduced this legislation in 2007 based on what we viewed at the time as a high number of fatalities among government employees. Unfortunately, the rate of fatalities and catastrophes for state and local employees has increased from an average of 2.2 per year before the Department introduced the legislation to 3.9 per year since then.

Action by the General Assembly during the 2016 Session amended the language in the existing statute to allow the issuance of monetary penalties to state and local government

employers for certain occupational safety and health program violations. On March 29, 2016, a statutory change approved by the General Assembly was signed by Governor McAuliffe with an effective date of July 1, 2016. [Refer to Attachment-1 to this package.]

B. Purpose

The purpose of amending the Administrative Regulation is to establish procedures for the application of penalties for state and local government employers in accordance with §40.1-2.1 of the *Code of Virginia*.

C. Impact on Employers

An average of three (3) willful violations have been issued by VOSH per year in the public sector. Since 2007 there have been 24 willful violations, all of which have been issued to local government employers. An average of 1.4 repeated violations are issued per year to local government and 3.3 to state agencies.

Approximately five percent (5%) of the serious violations issued are classified as high gravity. VOSH estimates that 15 such violations in state and local government would be subject to penalty per year. The average penalty issued for high gravity serious items is \$6,300.

VOSH estimates up to three willful violations per year and up to five repeat violations per year. The average penalty for a "high gravity" willful violation is \$63,000 and for a repeat is \$12,600. VOSH estimates that total penalties on a per year basis could range from zero to \$346,500.¹ In 2015, the National Safety Council (NSC) reported that the average cost of a medically consulted occupational injury in 2013 was \$42,000. (*NSC Injury Facts, 2015 Edition, p. 69 - includes estimates of wage losses, medical expenses, administrative expenses, and employer costs; excludes property damage costs except to motor vehicles*). See reference at:

http://www.nsc.org/Membership%20Site%20Document%20Library/2015%20Injury%20Facts/NSC_InjuryFacts2015Ed.pdf

If the proposed imposition of penalties has the anticipated deterrent effect, pro-active steps to develop and implement injury and illness prevention programs can have a significant positive impact in reducing injury and illness rates and the significant associated costs for employers.

The Washington State Plan, which is tied directly into the states' workers' compensation system, conducted a study on "The Impact of DOSH Enforcement and Consultation Visits on Workers' Compensation Claims Rates and Costs, 1999-2008",² May, 2011. The study reviewed ten annual studies on the topic and found that:

¹ Va. Code §40.1-49.4.A.4(a) provides that the calculation of penalties shall take into account the size of the business of the employer being charged, the gravity of the violation, the good faith of the employer, and the history of previous violations.

² <http://www.lni.wa.gov/Safety/Research/Files/OccHealth/DoshEnforce19992008.pdf>

“...enforcement inspections conducted at fixed worksites ‘were associated with a 7.4% larger decrease in non-MSD [musculoskeletal disorder] compensable claims rates relative to employers with no DOSH activity. DOSH **consultation visits were associated with a 24.8% larger decrease** in non-MSD compensable claims rates relative to employers with no DOSH activity.’ *(Emphasis added)*.

and

“...enforcement inspections were associated with a **3.1% larger decrease** in compensable claims rates relative to employers with no DOSH activity. DOSH **consultation visits** were associated with an **8.5% larger decrease** in compensable claims rates relative to employers with no DOSH activity.” *(Emphasis added)*.

D. Impact on Employees

Employees will benefit from the identification and correction of workplace hazards as a result of cited violations and issued penalties, the development and implementation of injury and illness prevention programs, and the anticipated reduction in injuries and illnesses.

According to OSHA publication “Adding Inequality to Injury: The Costs of Failing to Protect Workers on the Job”, “the costs of workplace injury and illness are borne primarily by injured workers, their families, and tax-payer supported safety net programs....workers’ compensation payments cover only a small fraction (about 21%) of lost wages and medical costs of work injuries and illnesses, workers, their families and private health insurance pay for nearly 63 percent of these costs, with taxpayers shouldering the remaining 16%.”³

E. Impact on the Department of Labor and Industry

No significant impact on agency operations is anticipated. Adding penalties to citations issued does not significantly increase the workload for an individual VOSH Compliance Safety and Health Officer (CSHO). As referenced above, it is only anticipated that approximately 21 violations per year will carry a penalty for state and local government employers.

Contact Person:

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³ https://www.osha.gov/Publications/inequality_michaels_june2015.pdf

RECOMMENDED ACTION

At the February 16, 2017 meeting, staff of the Department of Labor and Industry recommended that the Safety and Health Codes Board consider for adoption, as a proposed regulation of the Board, the attached proposed amendments to 16VAC25-60, *et seq.*, Administrative Regulation for the Virginia Occupational Safety and Health (VOSH) Program; in accordance with the authority of the Board under §40.1-22(5) and the requirements of the Administrative Process Act §2.2-4000, *et seq.*

The Department also recommended that the Board state in any motion it may make that it will receive, consider, and respond to petitions by any interested person with respect to reconsideration or revision of any regulation under the purview of the Board.

**16VAC25-60, et seq., Administrative Regulation for the
Virginia Occupational Safety and Health (VOSH) Program**

As Adopted as a Proposed Regulation of the
Safety and Health Codes Board

Date: February 16, 2017



VIRGINIA OCCUPATIONAL SAFETY AND HEALTH PROGRAM

VIRGINIA DEPARTMENT OF LABOR AND INDUSTRY

**16VAC25-60, et seq., Administrative Regulation for the
Virginia Occupational Safety and Health (VOSH) Program**

Part I
Definitions

16VAC25-60-10. Definitions.

The following words and terms when used in this chapter shall have the following meanings unless the context clearly indicates otherwise:

"Abatement period" means the period of time defined or set out in the citation for correction of a violation.

"Board" means the Safety and Health Codes Board.

"Bureau of Labor Statistics" means the Bureau of Labor Statistics of the United States Department of Labor.

"Citation" means the notice to an employer that the commissioner has found a condition or conditions that violate Title 40.1 of the Code of Virginia or the standards, rules or regulations established by the commissioner or the board.

"Commissioner" means the Commissioner of Labor and Industry. Except where the context clearly indicates the contrary, any such reference shall include his authorized representatives.

"Commissioner of Labor and Industry" means only the individual who is Commissioner of Labor and Industry.

"Department" means the Virginia Department of Labor and Industry.

"De minimis violation" means a violation which has no direct or immediate relationship to safety and health.

"Employee" means an employee of an employer who is employed in a business of his employer.

"Employee representative" means a person specified by employees to serve as their representative.

"Employer" means any person or entity engaged in business who has employees but does not include the United States.

"Establishment" means, for the purpose of record keeping requirements, a single physical location where business is conducted or where services or industrial operations are performed, e.g., factory, mill, store, hotel, restaurant, movie theater, farm, ranch, bank, sales office, warehouse, or central administrative office. Where distinctly separate activities are performed at a single physical location, such as contract activities operated from the same physical location as a lumberyard; each activity is a separate establishment. In the public sector, an establishment is either (i) a single physical location

where a specific governmental function is performed; or (ii) that location which is the lowest level where attendance or payroll records are kept for a group of employees who are in the same specific organizational unit, even though the activities are carried on at more than a single physical location.

"Failure to abate" means that the employer has failed to correct a cited violation within the period permitted for its correction.

"FOIA" means the Freedom of Information Act.

"Gravity based penalty" means an unadjusted penalty that is calculated based on the severity of the hazard and the probability that an injury or illness would result from the hazard.

"High gravity violation" means a violation with a gravity based penalty calculated at the statutory maximums contained in §§40.1-49.4 H through J.

"Imminent danger condition" means any condition or practice in any place of employment such that a danger exists which could reasonably be expected to cause death or serious physical harm immediately or before the imminence of such danger can be eliminated through standard enforcement procedures provided by Title 40.1 of the Code of Virginia.

"OSHA" means the Occupational Safety and Health Administration of the United States Department of Labor.

"Other violation" means a violation which is not, by itself, a serious violation within the meaning of the law but which has a direct or immediate relationship to occupational safety or health.

"Person" means any individual, corporation, partnership, association, cooperative, limited liability company, trust, joint venture, government, political subdivision, or any other legal or commercial entity and any successor, representative, agent, agency, or instrumentality thereof.

"Public employer" means the Commonwealth of Virginia, including its agencies, authorities, or instrumentalities or any political subdivision or public body.

"Public employee" means any employee of a public employer. Volunteer members of volunteer fire departments, pursuant to § 27-42 of the Code of Virginia, members of volunteer rescue squads who serve without pay, and other volunteers pursuant to the Virginia State Government Volunteers Act are not public employees. Prisoners confined in jails controlled by any political subdivision of the Commonwealth and prisoners in institutions controlled by the Department of Corrections are not public employees unless employed by a public employer in a work-release program pursuant to § 53.1-60 or § 53.1-131 of the Code of Virginia.

"Recordable occupational injury and illness" means (i) a fatality, regardless of the time between the injury and death or the length of illness; (ii) a nonfatal case that results in lost work days; or (iii) a nonfatal case without lost work days which results in transfer to another job or termination of

employment, which requires medical treatment other than first aid, or involves loss of consciousness or restriction of work or motion. This category also includes any diagnosed occupational illness which is reported to the employer but is not otherwise classified as a fatality or lost work day case.

"Repeated violation" means a violation deemed to exist in a place of employment that is substantially similar to a previous violation of a law, standard or regulation that was the subject of a prior final order against the same employer. A repeated violation results from an inadvertent or accidental act, since a violation otherwise repeated would be willful.

"Serious violation" means a violation deemed to exist in a place of employment if there is a substantial probability that death or serious physical harm could result from a condition which exists, or from one or more practices, means, methods, operations, or processes which have been adopted or are in use, in such place of employment, unless the employer did not, and could not with the exercise of reasonable diligence, know of the presence of the violation. The term "substantial probability" does not refer to the likelihood that illness or injury will result from the violative condition but to the likelihood that, if illness or injury does occur, death or serious physical harm will be the result.

"Standard" means an occupational safety and health standard which requires conditions, or the adoption or use of one or more practices, means, methods, operations, or processes, reasonably necessary or appropriate to provide safe or healthful employment and places of employment.

"VOSH" means Virginia Occupational Safety and Health.

"Willful violation" means a violation deemed to exist in a place of employment where (i) the employer committed an intentional and knowing, as contrasted with inadvertent, violation and the employer was conscious that what he was doing constituted a violation; or (ii) the employer, even though not consciously committing a violation, was aware that a hazardous condition existed and made no reasonable effort to eliminate the condition.

"Working days" means Monday through Friday, excluding legal holidays, Saturday, and Sunday.

16VAC25-60-20. Jurisdiction.

All Virginia statutes, standards, and regulations pertaining to occupational safety and health shall apply to every employer, employee and place of employment in the Commonwealth of Virginia except where:

1. The United States is the employer or exercises exclusive jurisdiction;
2. The federal Occupational Safety and Health Act of 1970 does not apply by virtue of § 4(b)(1) of that Act. The commissioner shall consider federal OSHA case law in determining where jurisdiction over specific working conditions has been preempted by the regulations of a federal agency; or

3. The employer is a public employer, as that term is defined in this chapter. In such cases, the Virginia laws, standards and regulations governing occupational safety and health are applicable as stated including 16VAC25-60-10, 16VAC25-60-30, 16VAC25-60-260, 16VAC25-60-280, 16VAC25-60-290, and 16VAC25-60-300.

Part II

General Provisions

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16VAC25-60-30. Applicability to public employers.

A. All occupational safety and health standards adopted by the board shall apply to public employers and their employees in the same manner as to private employers.

B. All sections of this chapter shall apply to public employers and their employees. Where specific procedures are set out for the public sector, such procedures shall take precedence.

C. The following portions of Title 40.1 of the Code of Virginia shall apply to public employers: §§ 40.1-10, 40.1-49.4 A(1), 40.1-49.4 A(4), except that the reference to subsection G does not apply, 40.1-49.4 C, 40.1-49.4 D, 40.1-49.4 H through J, 40.1-49.8, 40.1-51, 40.1-51.1, 40.1-51.2, 40.1-51.2:1, 40.1-51.3, 40.1-51.3:2, and 40.1-51.4:2.

D. Section 40.1-51.2:2 A of the Code of Virginia shall apply to public employers except that the commissioner shall not bring action in circuit court in the event that a voluntary agreement cannot be obtained.

E. Sections 40.1-49.4 A(4), except that the reference to subsection G does not apply, 40.1-49.4 C, 40.1-49.4 D, 40.1-49.4 F, 40.1-49.4 H through J, 40.1-49.9, 40.1-49.10, 40.1-49.11, 40.1-49.12, and 40.1-51.2:2 of the Code of Virginia shall apply to public employers other than the Commonwealth and its agencies.

F. If the commissioner determines that an imminent danger situation, as defined in § 40.1-49.4 F of the Code of Virginia, exists for an employee of the Commonwealth or one of its agencies, and if the employer does not abate that imminent danger immediately upon request, the Commissioner of Labor and Industry shall forthwith petition the governor to direct that the imminent danger be abated.

G. If the commissioner is unable to obtain a voluntary agreement to resolve a violation of § 40.1-51.2:1 of the Code of Virginia by the Commonwealth or one of its agencies, the Commissioner of Labor and Industry shall petition for redress in the manner provided in this chapter.

....

Part VI
Citation and Penalty

16VAC25-60-260. Issuance of citation and proposed penalty.

A. Each citation shall be in writing and describe with particularity the nature of the violation or violations, including a reference to the appropriate safety or health provision of Title 40.1 of the Code of Virginia or the appropriate rule, regulation, or standard. In addition, the citation must fix a reasonable time for abatement of the violation. The commissioner shall have authority to propose penalties for cited violations in accordance with §40.1-49.4 of the Code of Virginia and this Chapter. The citation will contain substantially the following: "NOTICE: This citation will become a final order of the commissioner unless contested within fifteen working days from the date of receipt by the employer." The citation may be delivered to the employer or his agent by the commissioner or may be sent by certified mail or by personal service to an officer or agent of the employer or to the registered agent if the employer is a corporation.

1. No citation may be issued after the expiration of six months following the occurrence of any alleged violation. The six-month time frame is deemed to be tolled on the date the citation is issued by the commissioner, without regard for when the citation is received by the employer. For purposes of calculating the six-month time frame for citation issuance, the following requirements shall apply:

a. The six-month time frame begins to run on the day after the incident or event occurred or notice was received by the commissioner (as specified below), in accordance with § 1-210 A of the Code of Virginia. The word "month" shall be construed to mean one calendar month in accordance with § 1-223 of the Code of Virginia.

b. An alleged violation is deemed to have "occurred" on the day it was initially created by commission or omission on the part of the creating employer, and every day thereafter that it remains in existence uncorrected.

c. Notwithstanding subdivision 1 b of this subsection, if an employer fails to notify the commissioner of any work-related incident resulting in a fatality or in the in-patient hospitalization of three or more persons within eight hours of such occurrence as required by § 40.1-51.1 D of the Code of Virginia, the six-month time frame shall not be deemed to commence until the commissioner receives actual notice of the incident.

d. Notwithstanding subdivision 1 b of this subsection, if the commissioner is first notified of a work-related incident resulting in an injury or illness to an employee(s) through receipt of an Employer's Accident Report (EAR) form from the Virginia Workers' Compensation Commission as provided in § 65.2-900 of the Code of Virginia, the six-month time frame shall not be deemed to commence until the commissioner actually receives the EAR form.

e. Notwithstanding subdivision 1 b of this subsection, if the commissioner is first notified of a work-related hazard, or incident resulting in an injury or illness to an employee(s), through receipt of a

complaint in accordance with 16VAC25-60-100 or referral, the six-month time frame shall not be deemed to commence until the commissioner actually receives the complaint or referral.

B. A citation issued under subsection A to an employer who violates any VOSH law, standard, rule or regulation shall be vacated if such employer demonstrates that:

1. Employees of such employer have been provided with the proper training and equipment to prevent such a violation;
2. Work rules designed to prevent such a violation have been established and adequately communicated to employees by such employer and have been effectively enforced when such a violation has been discovered;
3. The failure of employees to observe work rules led to the violation; and
4. Reasonable steps have been taken by such employer to discover any such violation.

C. For the purposes of subsection B only, the term "employee" shall not include any officer, management official or supervisor having direction, management control or custody of any place of employment which was the subject of the violative condition cited.

D. The penalties as set forth in § 40.1-49.4 of the Code of Virginia shall also apply to violations relating to the requirements for record keeping, reports or other documents filed or required to be maintained and to posting requirements.

E. In determining the amount of the proposed penalty for a violation the commissioner will ordinarily be guided by the system of penalty adjustment set forth in the VOSH Field Operations Manual. In any event the commissioner shall consider the gravity of the violation, the size of the business, the good faith of the employer, and the employer's history of previous violations.

The commissioner shall have authority to propose civil penalties to public employers for willful, repeat and failure-to-abate violations in accordance with §§40.1-49.4 I and J; and for serious violation(s) that cause death to an employee or are classified as high gravity in accordance with §40.1-49.4 H.

F. On multi-employer worksites for all covered industries, citations shall normally be issued to an employer whose employee is exposed to an occupational hazard (the exposing employer). Additionally, the following employers shall normally be cited, whether or not their own employees are exposed:

1. The employer who actually creates the hazard (the creating employer);
2. The employer who is either:

a. Responsible, by contract or through actual practice, for safety and health conditions on the entire worksite, and has the authority for ensuring that the hazardous condition is corrected (the controlling employer); or

b. Responsible, by contract or through actual practice, for safety and health conditions for a specific area of the worksite, or specific work practice, or specific phase of a construction project, and has the authority for ensuring that the hazardous condition is corrected (the controlling employer); or

3. The employer who has the responsibility for actually correcting the hazard (the correcting employer).

G. A citation issued under subsection F of this section to an exposing employer who violates any VOSH law, standard, rule or regulation shall be vacated if such employer demonstrates that:

1. The employer did not create the hazard;

2. The employer did not have the responsibility or the authority to have the hazard corrected;

3. The employer did not have the ability to correct or remove the hazard;

4. The employer can demonstrate that the creating, the controlling and/or the correcting employers, as appropriate, have been specifically notified of the hazards to which his employees were exposed;

5. The employer has instructed his employees to recognize the hazard and, where necessary, informed them how to avoid the dangers associated with it;

6. Where feasible, an exposing employer must have taken appropriate alternative means of protecting employees from the hazard; and

7. When extreme circumstances justify it, the exposing employer shall have removed his employees from the job.

....

16VAC25-60-270. Contest of citation or proposed penalty; general proceedings.

A. An employer to whom a citation, **abatement order** or proposed penalty has been issued may contest the citation by notifying the commissioner in writing of the contest. The notice of contest must be mailed or delivered by hand within 15 working days from the receipt of the citation or proposed penalty. No mistake, inadvertence, or neglect on the part of the employer shall serve to extend the 15 working day period in which the employer must contest.

B. The notice of contest shall indicate whether the employer is contesting the alleged violation, the proposed penalty or the abatement time.

C. Employees may contest abatement orders by notifying the commissioner in the same manner as described at subsection A.

D E. The employer's contest of a citation or proposed penalty shall not affect the citation posting requirements of 16VAC25-60-40 unless and until the court ruling on the contest vacates the citation.

E D. When the commissioner has received written notification of a contest of citation or proposed penalty, he will attempt to resolve the matter by settlement, using the procedures of 16VAC25-60-330 and 16VAC25-60-340.

F E. If the matter is not settled or it is determined that settlement does not appear probable, the commissioner will initiate judicial proceedings by referring the contested issues to the appropriate Commonwealth's Attorney and arranging for the filing of a bill of complaint and issuance of a subpoena to the employer.

G F. A contest of the proposed penalty only shall not stay the time for abatement.

....

16VAC25-60-280. General contest proceedings applicable to the public sector.

A. The commissioner will not propose penalties for citations issued to public employers.

A B. Public employers may contest citations, or abatement orders or proposed penalties by notifying the commissioner in writing of the contest. The notice of contest must be mailed or delivered by hand within 15 working days from receipt of the citation or abatement order. No mistake, inadvertence, or neglect on the part of the employer shall serve to extend the 15 working day period during which the employer may contest.

B C. The notice of contest shall indicate whether the public employer is contesting the alleged violations, the proposed penalty or the abatement order.

C D. Public employees may contest abatement orders by notifying the commissioner in the same manner as described at subsection A B.

D E. The commissioner shall seek to resolve any controversies or issues rising from a citation issued to any public employer in an informal conference as described in 16VAC25-60-330.

E F. The contest by a public employer shall not affect the requirements to post the citation as required at 16VAC25-60-40 unless and until the commissioner's or the court ruling on the contest vacates the citation. A contest of a citation may stay the time permitted for abatement pursuant to § 40.1-49.4 C of the Code of Virginia.

F. A contest of the proposed penalty only shall not stay the time for abatement.

VIRGINIA ACTS OF ASSEMBLY -- 2016 SESSION

CHAPTER 526

An Act to amend and reenact § 40.1-2.1 of the Code of Virginia, relating to the occupational safety and health program applicable to employees of agencies of the Commonwealth, political subdivisions, and other public bodies.

[S 607]

Approved March 29, 2016

Be it enacted by the General Assembly of Virginia:

1. That § 40.1-2.1 of the Code of Virginia is amended and reenacted as follows:

§ 40.1-2.1. Application of title to Commonwealth and its agencies, etc.; safety and health program for public employees.

The provisions of this title and any rules and regulations promulgated pursuant thereto shall not apply to the Commonwealth or any of its agencies, institutions, or political subdivisions, or any public body, unless, and to the extent that, coverage is extended by specific regulation of the Commissioner or the Safety and Health Codes Board. The Commissioner is authorized to establish and maintain an effective and comprehensive occupational safety and health program applicable to employees of the Commonwealth, its agencies, institutions, political subdivisions, or any public body. Such program shall be subject to any State plan submitted to the federal government for State enforcement of the Federal Occupational Safety and Health Act of 1970 (P.L. 91-596), or any other regulation promulgated under Title 40.1. The Commissioner or the Board shall establish procedures and adopt regulations for enforcing the program which that shall include provisions for (i) the issuance of proposed penalties; (ii) the payment of such penalties or a negotiated sum in lieu of such penalties; (iii) the deposit of such payments into the general fund of the state treasury; (iv) fair hearings, including judicial review; and (v) other sanctions to be applied for violations.