

Department of Planning and Budget 2017 Fiscal Impact Statement

1. Bill Number: HB1883

House of Origin ☐ Introduced ☐ Substitute ☐ Engrossed
Second House ☐ In Committee ☐ Substitute ☒ Enrolled

2. Patron: Kilgore

3. Committee: Passed Both Houses

4. Title: Occupational health and safety laws; amount of civil penalties.

5. Summary: Increases the maximum amount of civil penalties that may be assessed by the Commissioner of Labor and Industry for certain violations of occupational safety and health laws from \$7,000 to \$12,471 and for willful or repeated violations of such laws from \$70,000 to \$124,709. The measure also requires the Commissioner to increase the maximum civil penalty amounts annually, starting in 2018, by an amount that reflects the percentage increase, if any, in the consumer price index from the previous calendar year.

6. Budget Amendment Necessary: No. The anticipated general fund revenue associated with this bill is reflected on the Front Page of HB1500/SB900.

7. Fiscal Impact Estimates: Final. See Item 8, below.

7b. Revenue Impact:

<i>Fiscal Year</i>	<i>Dollars</i>	<i>Fund</i>
2017	\$0	GF
2018	\$700,998	GF
2019	\$1,437,959	GF
2020	\$1,510,661	GF
2021	\$1,584,938	GF
2022	\$1,660,822	GF
2023	\$1,738,350	GF

8. Fiscal Implications: Revenue generated from civil penalties imposed on employers for workplace safety violations is deposited to the general fund, as provided for in §40.1-49.4, Code of Virginia. The anticipated additional revenue that increasing the maximum amount of civil penalties the Commissioner may assess an employer for a violation will also be deposited to the general fund.

Under the 2015 federal Civil Penalties Inflation Adjustment Act Improvements Act, Congress required the federal Occupational Safety and Health Administration (OSHA) to increase its maximum penalty amounts to reflect inflation changes that have occurred since the last time its penalties were increased in 1990 – an approximate 78 percent increase. State Occupational Safety and Health (OSH) programs, such as the Virginia Occupational Safety

and Health (VOSH) program, are required by the Occupational Safety Health Act of 1970 to remain “at least as effective as” the federal OSHA program. Federal OSHA considers statutory maximum penalties to be a core component of the enforcement program, and the failure of Virginia to adopt the maximum penalties could ultimately result in the revocation of the VOSH program and direct federal OSHA enforcement in Virginia.

The proposed increases in this bill are consistent with the increases provided for under the 2015 federal Civil Penalties Inflation Adjustment Act Improvements Act and increase the maximum penalty amounts for violations of the Commonwealth’s occupational safety and health laws and regulations by 78 percent. Current maximum penalties for OSHA serious and other-than-serious violations will increase from \$7,000 to \$12,471; while repeated and willful violation penalties will increase from \$70,000 to \$124,709.

In developing the estimated maximum amount of revenue this bill will generate, DOLI made the following assumptions:

The penalties increased in this bill will take effect for workplace inspections begun on or after August 1, 2017. The Code establishes the maximum penalty amount an employer may be assessed for a workplace safety or health violation. Small employers, or those with one to 10 employees, represent 28 percent of violation citations and penalty collections; large employers, or those with more than 11 employees, represent 72 percent of violation citations and penalty collections. It is anticipated that this split between large and small employers will continue into the future. Currently, small employers receive a 60 percent reduction to their proposed penalty; this reduction will increase by 10 percent, from 60 percent to 70 percent, on August 1, 2017.

To develop the baseline for the revenue estimate, DOLI used the average of the last five years of penalty collections, \$1.92 million, as the baseline. Small employers represent 28 percent of violation citations and penalty collections, or represent \$537,634 of the baseline total. Employers with 11 or more employees represent 72 percent of violation citations and penalty collections, or \$1.38 million of the baseline total. DOLI then multiplied each number by the 78 percent that penalties will increase.

Because the penalty reduction for small business will increase by 10 percent, from a 60 percent reduction to a 70 percent reduction, DOLI reduced the subtotal for small business by the additional 10 percent reduction they will receive. The subtotal for small businesses and the subtotal for businesses with 11 or more employees were totaled and divided by one-half. This represents the additional penalty revenue the agency anticipates collecting in FY 2018. While DOLI would apply the increased fee structure to inspections begun on August 1, 2017, there is a lag between the time an inspection is completed and a citation issued, and penalty revenue is collected. DOLI anticipates the increased revenue will be collected in the last six months of FY 2018.

In subsequent years, DOLI used the average Consumer Price Index for Urban Households (CPI-U) increase for the years from 2000-2015 to get the estimated amount maximum penalties will increase. It is anticipated, as for FY 2018, the first year the increased fee

structure will be effective, that the collections will be at the increased rate for six months of each fiscal year.

9. Specific Agency or Political Subdivisions Affected: Department of Labor and Industry.

10. Technical Amendment Necessary: No.

11. Other Comments: None.