

# SENATE BILL REPORT

## SB 5743

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As of February 14, 2017

**Title:** An act relating to maximum penalties under the Washington industrial safety and health act.

**Brief Description:** Addressing maximum penalties under the Washington industrial safety and health act.

**Sponsors:** Senators Conway, Keiser and Hasegawa; by request of Department of Labor & Industries.

**Brief History:**

**Committee Activity:** Commerce, Labor & Sports: 2/09/17.

**Brief Summary of Bill**

- Requires that for all maximum Department of Labor and Industries penalties, if the state is required to have a higher maximum penalty to qualify a state plan under the occupational safety and health administration, then the maximum civil penalty is the higher maximum penalty required under the Occupational Safety Health Administration (OSHA).

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### SENATE COMMITTEE ON COMMERCE, LABOR & SPORTS

**Staff:** Susan Jones (786-7404)

**Background:** Washington is a state plan state under the federal Occupational Safety and Health Act, which is administered by OSHA. As a state plan state, Washington assumes responsibility for occupational safety and health in the state under the Washington Industrial Safety and Health Act (WISHA). To maintain its status, Washington's safety and health standards must be at least as effective as those standards adopted or recognized by the OSHA. The Department of Labor and Industries (L&I) administers the WISHA.

L&I may inspect and investigate work places. Maximum, and in some cases, minimum civil penalties for various types of violations are established in statute. By rule, L&I has

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established base penalties depending on the gravity of the violation and adjustments to those base penalties for good faith, size of the employer, and other reasons.

Appeals of citations and penalty assessments are heard by the Board of Industrial Insurance Appeals (Board). However, the L&I Director may reassume jurisdiction for a redetermination before the Board hears the matter. Employees and employee representatives have an opportunity to participate in the Board hearing and object to or support the L&I Director's reassumption of jurisdiction.

Increased Penalties Under OSHA. In November 2015, Congress enacted legislation requiring federal agencies to adjust their civil penalties to account for inflation. The federal Department of Labor is adjusting penalties for its agencies, including the OSHA.

OSHA's maximum penalties, which were last adjusted in 1990, increased on August 1, 2016. The new penalties took 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. Going forward, the agency will continue to adjust its penalties for inflation each year based on the Consumer Price Index. The maximum penalties increased again as of January 13, 2017.

<b>Type of Violation</b>	<b>Current Maximum Penalty</b>	<b>Maximum Penalty as of May 8, 2016</b>	<b>New Maximum Penalty at January 13, 2017</b>
Serious Other-Than-Serious Posting Requirements	\$7,000 per violation	\$12,471 per violation	\$12,675 per violation
Failure to Abate	\$7,000 per day beyond the abatement date	\$12,471 per day beyond the abatement date	\$12,675 per day beyond the abatement date
Willful or Repeated	\$70,000 per violation	\$124,709 per violation	\$126,749 per violation

States that operate their own plans are required to adopt maximum penalty levels that are at least as effective as the federal OSHA's.

**Summary of Bill:** For all maximum L&I penalties, if the state is required to have a higher maximum penalty to qualify a state plan under OSHA, then the maximum civil penalty is the higher maximum penalty required under the OSHA.

**Appropriation:** None.

**Fiscal Note:** Available.

**Creates Committee/Commission/Task Force that includes Legislative members:** No.

**Effective Date:** The bill takes effect on January 1, 2018.

**Staff Summary of Public Testimony:** PRO: This is a compliance bill; one that we need to pass. WISHA penalties cannot be below those for OSHA. OSHA raised their maximum penalties. In 2016, Congress passed a bill requiring OSHA to do a one time catch up and then apply an annual inflator. In order to stay in compliance with OSHA, L&I does need to make this change in the statute. L&I looked at penalties and found that about 1 percent of the penalties that L&I issues bump up against the maximum and about 1 percent are lower than the minimum. Therefore, the net impact, while giving L&I more authority, is very small on the actual penalty amounts. This adjusts only the maximum penalties. There is a method in rule that L&I uses to determine penalties, including looking at the gravity of situation, the severity, and the frequency. They would still write the penalties at the same amounts. This would just raise the maximum. OSHA has established an average state penalties, apart from the maximums. OSHA requires that state write penalties within 25 percent, plus or minus, the national average. L&I believes they are approaching but are still below the national average. If the state program is out of compliance, the state could lose the federal funding it receives and OSHA could take over enforcement in the state.

OTHER: L&I has implemented the program to increase the penalties to keep the state certified and in place. L&I has worked with small businesses to have a matrix that takes into account business size, good faith efforts, and to provide technical assistance and pre-inspection walk-throughs so businesses know if they are meeting safety standards. Small business owners ask that L&I continue to increase the technical assistance to small businesses to understand the rules.

**Persons Testifying:** PRO: Senator Steve Conway, Prime Sponsor; Tammy Fellin, Labor & Industries.

OTHER: Patrick Connor, NFIB/Washington.

**Persons Signed In To Testify But Not Testifying:** No one.