

GENERAL ASSEMBLY OF NORTH CAROLINA

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HOUSE BILL 1386\*  
Senate Judiciary II Committee Substitute Adopted 7/10/92  
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Short Title: Public Agencies/OSHA Fines.

(Public)

Sponsors:

Referred to:

May 28, 1992

A BILL TO BE ENTITLED

AN ACT TO PERMIT THE COMMISSIONER OF LABOR TO IMPOSE  
PENALTIES AGAINST PUBLIC AGENCIES FOR OSHA VIOLATIONS AND  
TO HOLD A FINE AGAINST UNITS OF LOCAL GOVERNMENT IN  
ABEYANCE PENDING ABATEMENT OF THE VIOLATION.

The General Assembly of North Carolina enacts:

Section 1. G.S. 95-148 reads as rewritten:

**"§ 95-148. Safety and health programs of State agencies and local governments.**

It shall be the responsibility of each administrative department, commission, board, division or other agency of the State and of counties, cities, towns and subdivisions of government to establish and maintain an effective and comprehensive occupational safety and health program which is consistent with the standards and regulations promulgated under this Article. The head of each agency shall:

- (1) Provide safe and healthful places and conditions of employment, consistent with the standards and regulations promulgated by this Article;
- (2) Acquire, maintain, and require the use of safety equipment, personal protective equipment, and devices reasonably necessary to protect employees;
- (3) Consult with and encourage employees to cooperate in achieving safe and healthful working conditions;

- 1 (4) Keep adequate records of all occupational accidents and illnesses for  
2 proper evaluation and corrective action;
- 3 (5) Consult with the Commissioner as to the adequacy as to form and  
4 content of records kept pursuant to this section;
- 5 (6) Make an annual report to the Commissioner with respect to  
6 occupational accidents and injuries and the agency's program under  
7 this section.

8 The Commissioner shall transmit annually to the Governor and the General  
9 Assembly a report of the activities of the State agency and instrumentalities under this  
10 section. If the Commissioner has reason to believe that any local government program  
11 or program of any agency of the State is ineffective, he shall, after unsuccessfully  
12 seeking by negotiations to abate such failure, include this in his annual report to the  
13 Governor and the General Assembly, together with the reasons therefor, and may  
14 recommend legislation intended to correct such condition.

15 The Commissioner shall have access to the records and reports kept and filed by  
16 State agencies and instrumentalities pursuant to this section unless such records and  
17 reports are required to be kept secret in the interest of national defense, in which case  
18 the Commissioner shall have access to such information as will not jeopardize national  
19 defense.

20 ~~The Commissioner will not impose civil or criminal penalties against any State~~  
21 ~~agency or political subdivision for violations described and covered by this Article.~~

22 Employees of any agency or department covered under this section are afforded the  
23 same rights and protections as granted employees in the private sector.

24 This section shall not apply to volunteer fire departments not a part of any  
25 municipality.

26 Any municipality with a population of 10,000 or less may exclude its fire  
27 department from the operation of this section by a resolution of the governing body of  
28 the municipality, except that the resolution may not exclude those firefighters who are  
29 employees of the municipality.

30 The North Carolina Fire and Rescue Commission shall recommend regulations and  
31 standards for fire departments."

32 Sec. 2. G.S. 95-137(a) reads as rewritten:

33 "(a) If, upon inspection or investigation, the Director or his authorized  
34 representative has reasonable grounds to believe that an employer has not fulfilled his  
35 duties as prescribed in this Article, or has violated any standard, regulation, rule or order  
36 promulgated under this Article, he shall with reasonable promptness issue a citation to  
37 the employer. Each citation shall be in writing and shall describe with particularity the  
38 nature of the violation, including a reference to the provisions of the act, standards, rules  
39 and regulations, or orders alleged to have been violated. In addition, the citation shall  
40 fix a reasonable time for the abatement of the violation. The Director may prescribe  
41 procedures for the issuance of a notice in lieu of a citation with respect to de minimus  
42 violations which have no direct or immediate relationship to safety or ~~health, and~~  
43 ~~violations of State agencies or political subdivisions thereof~~ health. Each citation or notice in  
44 lieu of citation issued under this section, or a copy or copies thereof, shall be

1 prominently posted, as prescribed in regulations issued by the Director, at or near such  
2 place a violation referred to in the citation occurred."

3 Sec. 3. G.S. 95-137(b) is amended by adding a new subdivision to read:

4 "(6) A fine that would otherwise be assessed under the provisions of this  
5 Article against a unit of local government shall be held in abeyance  
6 pending abatement of the violation. If the Director finds that the  
7 violation has been abated within the prescribed period, the fine shall  
8 not be assessed. This subdivision does not apply to a citation issued  
9 for a second or subsequent violation occurring within 10 years of a  
10 citation issued for the same or a similar previous violation. Each local  
11 unit of government shall report each violation for which it is issued a  
12 citation to its local governing board at its next public meeting and to its  
13 workers' compensation insurance carrier or to the risk pool of which it  
14 is a member pursuant to Article 23 of Chapter 58 of the General  
15 Statutes."

16 Sec. 4. This act is effective upon ratification and applies to violations  
17 occurring on or after that date. Section 3 expires May 1, 1995.