

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1991

H

2

HOUSE BILL 1386*
Senate Judiciary II Committee Substitute Adopted 7/10/92

Short Title: Public Agencies/OSHA Fines.

(Public)

Sponsors:

Referred to:

May 28, 1992

1 A BILL TO BE ENTITLED
2 AN ACT TO PERMIT THE COMMISSIONER OF LABOR TO IMPOSE
3 PENALTIES AGAINST PUBLIC AGENCIES FOR OSHA VIOLATIONS AND
4 TO HOLD A FINE AGAINST UNITS OF LOCAL GOVERNMENT IN
5 ABEYANCE PENDING ABATEMENT OF THE VIOLATION.

6 The General Assembly of North Carolina enacts:

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

8 "**§ 95-148. Safety and health programs of State agencies and local governments.**

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

- 14 (1) Provide safe and healthful places and conditions of employment,
15 consistent with the standards and regulations promulgated by this
16 Article;
- 17 (2) Acquire, maintain, and require the use of safety equipment, personal
18 protective equipment, and devices reasonably necessary to protect
19 employees;
- 20 (3) Consult with and encourage employees to cooperate in achieving safe
21 and healthful working conditions;
- 22 (4) Keep adequate records of all occupational accidents and illnesses for
23 proper evaluation and corrective action;

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

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

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

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

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

22 This section shall not apply to volunteer fire departments not a part of any
23 municipality.

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

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

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

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

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

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

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