

## **Have you Heard about AB 1127? “Proposed Safety & Health Violation Fines for Government Agencies”**

Now on its way to the Governor’s office, Assembly Bill 1127 would subject public agencies to civil penalties for safety and health standard violations. Dubbed the “Employer Guilty until Proven Innocent Act,” AB 1127 has received a great deal of public outcry. The most contentious issues were the proposed increases in penalties and fines for violations of safety and health regulations and its multi-employer worksite provisions. Although the last amendments on 9/7/99 significantly scaled back the proposed penalties and jail terms and amended the multi-employer worksite definition to simply codify current regulations, the Labor Code 6434 *penalty exclusion for public agencies remains repealed*.

### **So – what does this mean?**

If signed by Governor Gray Davis, government agencies will, for the first time, be subject to fines for safety and health code violations because Labor Code 6434 has been amended to repeal that exclusion. In its place, Labor Code 6434 has added language that allows *educational* entity fines and penalties to be deposited into the Workplace Health and Safety Revolving Fund and refunded back to the educational entity if all cited conditions are abated. Unfortunately, no such “refund” provisions have been provided for other government agencies such as water/wastewater entities.

### **What are the proposed fines and penalties?**

If passed, fines for knowingly, negligently or repeatedly violating safety standards or codes, failing or refusing to comply, or directly or indirectly inducing others to commit such violations have been increased to between \$5,000 and \$15,000 with jail terms between six months and one year. Corporations and limited liability companies could be fined up to \$150,000. If a violation results in death or permanent or prolonged impairment of an employee, penalties could include a state prison term of one year to 16 months and a fine of between \$100,000 and \$250,000 for an individual and up to \$1.5 million for a corporation or limited liability company. Repeat violations could result in prison terms of up to three years and fines of up to \$2.5 million, or more in certain circumstances.

Civil penalties have also been increased to a maximum of \$25,000 for serious violations and up to \$70,000 for willful or repeat violations. And employers who fail to correct a violation after the period specified by DOSH could be fined up to \$15,000 per day.

### **How does this affect multi-employer worksites?**

AB1127 would amend Labor Code 6400 to *codify* existing regulations with respect to the responsibility of employers at multi-employer worksites. Under the regulations, citations may be issued to the following categories of employers:

- The employer whose employees were exposed (the exposing employer)
- The employer who actually created the hazard (the creating employer)
- The employer who was responsible (by contract or through actual practice) for safety and health at the worksite, and who had the authority for ensuring that the hazardous condition is corrected (the controlling employer)
- The employer who was responsible for correcting the hazard (the correcting employer)

### **What now?**

If you are concerned about this issue, you may want to get a copy of the entire bill. AB1127 text and amendment history can be downloaded from the Internet at the following address:

**[http://www.leginfo.ca.gov/pub/bill/asm/ab\\_1101-1150/ab\\_1127\\_bill\\_19990909\\_enrolled.html](http://www.leginfo.ca.gov/pub/bill/asm/ab_1101-1150/ab_1127_bill_19990909_enrolled.html)**

Although there is a strong lobby effort against this bill by the California Manufacturers Association (CMA) and Associated General Contractors of California, other key opponents such as the California Chamber of Commerce have dropped their opposition with the September amendments. In other words – whether Governor Gray Davis will sign it is anybody's guess! In any event, CSRMA will continue to follow the outcome of this bill and will provide members with a status update, when known.