

**HB 176 – Labor and Employment – Occupational Safety and Health – Revisions (Davis
Martinez Public Employee Safety and Health Act)
Appropriations Committee
FAVORABLE**

Jordan Barab

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Good afternoon. My name is Jordan Barab. I served as Deputy Assistant secretary at OSHA during the Obama administration, 16 years running the safety and health program of the American Federal of State County and Municipal Employees (AFSCME) which represents most of the workers we're talking about today. I also spent four years as Senior Labor Policy Advisor for the House Education and Labor Committee.

I am speaking here today in strong support of the Davis Martinez Public Employee Safety and Health Act which would create a public employee division in MOSH, establish penalties for public employers who are in violation of the law, and direct MOSH to issue a workplace violence standard.

Public employees are at high risk. In 2022, state and local public sector employers reported a combined injury rate of 4.9 per 100 workers, 81% higher than the reported rate of 2.7 per 100 workers in the private sector.

As we have seen over the past few months with three preventable fatalities and reports of abysmal working conditions in the Baltimore Department of Public Works, just having OSHA coverage doesn't automatically make public employee workplaces safer.

More must be done. That's why Maryland public employees need you to pass this legislation.

Establishing a separate office for public employee safety will focus more MOSH attention on safety in the public sector.

The bill also allows MOSH to issue penalties to public employers who violate the law.

Let me say a couple of things about penalties. In the 29 jurisdictions that have OSHA state plans, 25 of the 29 jurisdictions levy some form of penalty, whether civil, criminal, or both against state and local government employers for violations of their state occupational safety and health laws.

Penalties serve to incentivize violators to comply with the law.

If you get caught for speeding, are you more likely to correct your future actions if you just get a warning, or if you get a fine that will impact your budget and insurance premiums?

Penalties are meant to shape behavior, not drive companies or government agencies into bankruptcy. Maximum federal OSHA penalties for a serious violation are around \$16,000, but average penalties are much lower because OSHA rarely issue the maximum penalty.

In FY 2023, the average penalty for a serious violation was \$4,597 for federal OSHA and only \$2,406 for OSHA state plans. From spot checking, most public employer penalties are even lower, usually only a few hundred dollars.

MOSH is required to consider the size, history and good faith efforts of the employer when determining the penalty, and employers have the opportunity to engage in informal settlement talks to reduce penalties, and can contest penalties if the settlement talks aren't satisfactory.

Willful violations carry a penalty ten times greater than "serious" violations, but willful violations are relatively rare and only when the employer has demonstrated **an intentional disregard** for the requirements of the law or a **plain indifference** to employee safety and health.

I also want to stress the importance of a workplace violence standard mandated by this legislation. I encourage you to study the written testimony of Dr. Jane Lipscomb who has spent her career working in this field.

As Dr. Lipscomb testifies,

workplace violence is one of the most dangerous occupational hazards facing public health employees, especially those who work in the health care, social service, and corrections (including parole); in both the institutional and community settings.

A 2018 report by the House Education and Labor Committee cited federal Bureau of Labor Statistics data showing that state government health care and social service workers were almost 9 times more likely to be injured by an assault than private sector health care workers.

The US House of Representative has twice passed legislation, on a bipartisan basis, that would have directed federal OSHA to develop a standard. The Senate has never taken up the bill, and it's unlikely that the Trump administration will move forward on the standard that OSHA has been working on for more than eight years.

Thank you for this opportunity to testify and I will be happy to answer your questions.