

# HOUSE BILL REPORT

## HB 1676

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**As Reported by House Committee On:**  
Labor & Workforce Development

**Title:** An act relating to the abatement of violations of the Washington industrial safety and health act during an appeal.

**Brief Description:** Addressing the abatement of violations of the Washington industrial safety and health act during an appeal.

**Sponsors:** Representatives Reykdal, Kenney, Green, McCoy, Ormsby, Hudgins and Hunt; by request of Department of Labor & Industries.

**Brief History:**

**Committee Activity:**

Labor & Workforce Development: 2/11/11, 2/16/11 [DPS].

**Brief Summary of Substitute Bill**

- Provides that an appeal of certain Washington Industrial Health and Safety Act violations does not stay abatement dates or requirements.
- Allows an employer to file a motion for a stay of abatement with the Board of Industrial Insurance Appeals.

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### HOUSE COMMITTEE ON LABOR & WORKFORCE DEVELOPMENT

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 8 members: Representatives Sells, Chair; Reykdal, Vice Chair; Green, Kenney, Miloscia, Moeller, Ormsby and Roberts.

**Minority Report:** Do not pass. Signed by 5 members: Representatives Condotta, Ranking Minority Member; Shea, Assistant Ranking Minority Member; Fagan, Taylor and Warnick.

**Staff:** Joan Elgee (786-7106).

**Background:**

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*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.*

Under the Washington Industrial Health and Safety Act (WISHA), the Department of Labor and Industries (Department) has authority to adopt safety and health standards governing the conditions of employment in all workplaces.

The Department may inspect and investigate workplaces and must issue a citation if an employer has violated safety or health standards. The citation must fix a reasonable time for the abatement of the violation. If a violation is such that a danger exists from which there is a substantial probability that death or serious physical harm could result to any employee, the Director of the Department (Director) may issue an order immediately restraining any such condition, practice, method, process, or means in the workplace.

If a citation has been issued, the Department must notify the employer within a reasonable amount of time of the penalty to be assessed. Penalties depend on the nature of the violation. An employer has 15 working days to notify the Department that the employer intends to appeal the citation or penalty. If the Department determines that an employer has failed to correct the violation within the time permitted, the Department must notify the employer of the failure to correct and that it has 15 days to notify the Department of an intention to appeal. Citations and penalties not appealed within the stated time frames are final. Appeals are heard by the Board of Industrial Insurance Appeals (Board); however, the Director may reassume jurisdiction for the purposes of a redetermination.

The time period to correct a violation does not begin to run until a final order is entered in any appeal proceedings that were initiated by the employer in good faith and not solely for delay or avoidance of penalties. A notice of appeal stays any citation or notice of the assessment of a penalty pending review by the Board (except of an order of immediate restraint).

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### **Summary of Substitute Bill:**

An appeal of a serious, willful, repeated serious, or failure to abate a serious violation under the WISHA does not stay abatement dates or requirements, subject to an employer's stay motion.

An employer may request a stay of abatement in a notice of appeal. When the Director reassumes jurisdiction, the Director must consider the abatement request. The Director's decision is final unless the employer renews the request for a stay in an appeal to the Board. The Board must conduct an expedited review and issue a final decision within 45 working days. Affected employees or their representatives must receive opportunity to participate as parties in the review of a motion for a stay of abatement.

The Board must consider each of the following factors before rendering a decision on the stay motion:

- has the employer shown good cause for the stay;
- will the employer suffer irreparable harm absent a stay; or
- will a stay adversely affect the health and safety of workers.

If the Board denies a stay, the abatement process must be the same as the process required for abatement upon a final order except that all abatement plans must be submitted to the Department with the best available cost estimates, and the Director must approve the plans and timelines.

If a final order vacates an underlying violation for which the Board denied a stay and the final order vacating the violation contains a finding of fact that no hazard exists, the Department must reimburse the employer for the reasonable costs for implementing approved abatement plans and timelines. Reimbursement is applied first to offset any outstanding penalties for the citation, with any remaining reimbursement applied solely to offset any outstanding debt the employer owes the Department.

The Board and the Department must develop rules to implement the provisions, and must initiate the rule-making in 2011.

**Substitute Bill Compared to Original Bill:**

The substitute bill: (1) limits the abatement requirements for repeated and failure to abate violations to repeated serious violations and failure to abate a serious violation; (2) strikes the requirement the Board consider whether the employer has demonstrated a substantial likelihood of success in its appeal and adds the requirement that the Board consider whether the employer has shown good cause for the stay; (3) adds the provision that if abatement is required, the employer must submit plans and the Director must approve the plans and timelines; (4) adds the reimbursement provisions; and (5) requires rule-making to be initiated in 2011, by the Department as well as the Board.

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**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date of Substitute Bill:** The bill takes effect 90 days after adjournment of the session in which the bill is passed.

**Staff Summary of Public Testimony:**

(In support) This bill clamps down on repeated requests by some employers to get stays. Delays can be months to years. The bill only applies to serious violations. In one instance, an employer was cited for lead poisoning in 2006, and the problems were not corrected until 2010. At least two additional employees developed lead poisoning. An employer was cited for refusing to wash clothing with bodily fluid spills. (Water in homes is not hot enough.) During the 18 months before the matter was rectified, the fluids went into the sewer system.

Workplace safety is a serious issue, and this bill addresses one of the most vexing problems. Relief is needed in the petroleum industry. There were several dozen willful violations at the refinery explosion. These violations are under appeal and not being abated. Corporations are arrogant. When will the risk to lives be reduced? Twelve coworkers have died.

Employers receive due process because the Department would take a second look during the reassumption process, and an employer could also appeal directly to the Board. An employer would be entitled to reimbursement if no hazard is found to have existed. Forty-five days for the Board to make a decision will streamline the process. Nearly all of the citations issued, 88 percent of those appealed are ultimately upheld, but meanwhile the violations are not corrected. The order of immediate restraint is not a good alternative because it significantly disrupts business operations.

(Opposed) No other state goes this far, not even Oregon. This bill shifts the burden of proof to the employer. A compelling case has not been made. There has been no showing that employers have acted in bad faith. The Department should convene a meeting of the WISHA Advisory Committee and work in a collaborative manner. A better bill will result. This bill gives an incentive to make violations more serious. Citations are issued for serious violations when the violation is not serious. For example, several stores received serious citations for using diluted bleach. Abatements can be complex. Some abatements are not quick issues. Reimbursement will not take care of all the costs; the state could not afford this.

**Persons Testifying:** (In support) Representative Reykdal, prime sponsor; Michael Silverstein, Department of Labor and Industries; Randy Loomans, International Union of Operating Engineers Local 302; Sharon Ness, United Food and Commercial Workers Washington State Council; and Steve Garey, United Steel Workers Local 12-591.

(Opposed) Grant Nelson, Association of Washington Business; Gary Smith, Independent Business Association; and Carolyn Logue, Washington Food Industry Association.

**Persons Signed In To Testify But Not Testifying:** None.