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HOUSE BILL 2219

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State of Washington

57th Legislature

2001 Regular Session

By Representatives Clements, Hankins, Woods, Skinner, B. Chandler,  
Pflug and Delvin

Read first time . Referred to Committee on .

1 AN ACT Relating to appeal of industrial safety and health  
2 citations; and amending RCW 49.17.140.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

4 **Sec. 1.** RCW 49.17.140 and 1994 c 61 s 1 are each amended to read  
5 as follows:

6 (1) If after an inspection or investigation the director or the  
7 director's authorized representative issues a citation under the  
8 authority of RCW 49.17.120 or 49.17.130, the department, within a  
9 reasonable time after the termination of such inspection or  
10 investigation, shall notify the employer by certified mail of the  
11 penalty to be assessed under the authority of RCW 49.17.180 and shall  
12 state that the employer has ((fifteen)) ninety working days within  
13 which to notify the director that the employer wishes to appeal the  
14 citation or assessment of penalty. If, within ((fifteen)) ninety  
15 working days from the communication of the notice issued by the  
16 director the employer fails to notify the director that the employer  
17 intends to appeal the citation or assessment penalty, and no notice is  
18 filed by any employee or representative of employees under subsection  
19 (3) of this section within such time, the citation and the assessment

1 shall be deemed a final order of the department and not subject to  
2 review by any court or agency.

3 (2) If the director has reason to believe that an employer has  
4 failed to correct a violation for which a citation has been issued  
5 within the period permitted in the citation for its correction, which  
6 period shall not begin to run until the entry of a final order in the  
7 case of any appeal proceedings under this section initiated by the  
8 employer in good faith and not solely for delay or avoidance of  
9 penalties, the director shall notify the employer by certified mail of  
10 such failure to correct the violation and of the penalty to be assessed  
11 under RCW 49.17.180 by reason of such failure, and shall state that the  
12 employer has fifteen working days from the communication of such  
13 notification and assessment of penalty to notify the director that the  
14 employer wishes to appeal the director's notification of the assessment  
15 of penalty. If, within fifteen working days from the receipt of  
16 notification issued by the director the employer fails to notify the  
17 director that the employer intends to appeal the notification of  
18 assessment of penalty, the notification and assessment of penalty shall  
19 be deemed a final order of the department and not subject to review by  
20 any court or agency.

21 (3) If any employer notifies the director that the employer intends  
22 to appeal the citation issued under either RCW 49.17.120 or 49.17.130  
23 or notification of the assessment of a penalty issued under subsections  
24 (1) or (2) of this section, or if, within fifteen working days from the  
25 issuance of a citation under either RCW 49.17.120 or 49.17.130 any  
26 employee or representative of employees files a notice with the  
27 director alleging that the period of time fixed in the citation for the  
28 abatement of the violation is unreasonable, the director may reassume  
29 jurisdiction over the entire matter, or any portion thereof upon which  
30 notice of intention to appeal has been filed with the director pursuant  
31 to this subsection. If the director reassumes jurisdiction of all or  
32 any portion of the matter upon which notice of appeal has been filed  
33 with the director, any redetermination shall be completed and  
34 corrective notices of assessment of penalty, citations, or revised  
35 periods of abatement completed within a period of thirty working days.  
36 The thirty-working-day redetermination period may be extended up to  
37 fifteen additional working days upon agreement of all parties to the  
38 appeal. The redetermination shall then become final subject to direct  
39 appeal to the board of industrial insurance appeals within fifteen

1 working days of such redetermination with service of notice of appeal  
2 upon the director. In the event that the director does not reassume  
3 jurisdiction as provided in this subsection, the director shall  
4 promptly notify the state board of industrial insurance appeals of all  
5 notifications of intention to appeal any such citations, any such  
6 notices of assessment of penalty and any employee or representative of  
7 employees notice of intention to appeal the period of time fixed for  
8 abatement of a violation and in addition certify a full copy of the  
9 record in such appeal matters to the board. The director shall adopt  
10 rules of procedure for the reassumption of jurisdiction under this  
11 subsection affording employers, employees, and employee representatives  
12 notice of the reassumption of jurisdiction by the director, and an  
13 opportunity to object or support the reassumption of jurisdiction,  
14 either in writing or orally at an informal conference to be held prior  
15 to the expiration of the redetermination period. A notice of appeal  
16 filed under this section shall stay the effectiveness of any citation  
17 or notice of the assessment of a penalty pending review by the board of  
18 industrial insurance appeals, but such appeal shall not stay the  
19 effectiveness of any order of immediate restraint issued by the  
20 director under the authority of RCW 49.17.130. The board of industrial  
21 insurance appeals shall afford an opportunity for a hearing in the case  
22 of each such appellant and the department shall be represented in such  
23 hearing by the attorney general and the board shall in addition provide  
24 affected employees or authorized representatives of affected employees  
25 an opportunity to participate as parties to hearings under this  
26 subsection. The board shall thereafter make disposition of the issues  
27 in accordance with procedures relative to contested cases appealed to  
28 the state board of industrial insurance appeals.

29 Upon application by an employer showing that a good faith effort to  
30 comply with the abatement requirements of a citation has been made and  
31 that the abatement has not been completed because of factors beyond the  
32 employer's control, the director after affording an opportunity for a  
33 hearing shall issue an order affirming or modifying the abatement  
34 requirements in such citation.

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