

HOUSE BILL REPORT

HB 2538

As Reported by House Committee On: Commerce & Labor

Title: An act relating to authorizing the department to request and superior court to grant warrants pursuant to chapter 49.17 RCW.

Brief Description: Authorizing the department to request and superior court to grant warrants pursuant to chapter 49.17 RCW.

Sponsors: Representatives Conway, Hudgins and McCoy; by request of Department of Labor & Industries.

Brief History:

Committee Activity:

Commerce & Labor: 1/18/06, 1/23/06 [DPS].

Brief Summary of Substitute Bill

- Provides that the Department of Labor and Industries (Department) must obtain consent when entering a worksite under the Washington Industrial Safety and Health Act.
- Authorizes the Department to request a court to issue and authorizes a court to grant a search warrant for inspection under the Washington Industrial Safety and Health Act.

HOUSE COMMITTEE ON COMMERCE & LABOR

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 8 members: Representatives Conway, Chair; Wood, Vice Chair; Condotta, Ranking Minority Member; Chandler, Assistant Ranking Minority Member; Holmquist, Hudgins, Kenney and McCoy.

Staff: Sarah Dylag (786-7109).

Background:

Under the federal Occupational Safety and Health Act (OSHA), Washington is authorized to assume responsibility for occupational safety and health (the "state plan state" concept). The Washington Industrial Safety and Health Act (WISHA) applies to most workplaces in Washington. The WISHA is administered and enforced by the Department of Labor and

Industries (Department), which adopts rules governing safety and health standards for covered workplaces. The state's industrial safety and health standards must be at least as effective as those adopted under the OSHA for the state to maintain its status as a state plan state.

To insure compliance with WISHA, the Department representatives inspect workplaces and cite employers for violations. Upon presenting appropriate credentials to the owner, manager, operator or agent in charge of a worksite, the Department representatives have the authority to enter a worksite at all reasonable times and conduct an inspection.

Summary of Substitute Bill:

The Legislature intends that inspections ensure safe and healthful working conditions for every person working in Washington and that inspections follow the mandates of the federal and state constitutions and the OSHA.

A Department representative must obtain consent from the owner, manager, operator, or on-site person in charge of the worksite when entering a worksite located on private property. Entry must be at an entry point designated by the employer or, if there is no designated entry point, at a reasonably recognizable entry point. In both cases, the entry must be done in a safe manner and must be solely for the purpose of requesting consent. Advance notice of the inspection is not required.

A Department representative is not prevented from taking action consistent with a recognized exception to the warrant requirements of federal and state law.

The Director of the Department (Director) may apply to the court of competent jurisdiction for a search warrant authorizing access. The court is authorized to issue a search warrant.

Substitute Bill Compared to Original Bill:

Includes language clarifying that the Department's right to inspect a worksite is subject to additional requirements.

Clarifies that the Department must obtain consent from the employer when entering a worksite except when the Department requests a court to grant a warrant or an exception to the warrant requirements of federal or state law applies.

Provides that entry to a worksite must be at an entry point designated by the employer or, if there is no designated entry point, at a reasonably recognizable entry point. In both cases, the entry must be done in a safe manner and must be solely for the purpose of requesting consent.

Removes language related to the Department making observations of evidence in open view.

Grants the Director the authority to request a court to grant a search warrant regardless of whether the Director or Department representative is denied access or reasonably believes that he or she will be denied access to a worksite.

Appropriation: None.

Fiscal Note: Not requested.

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

Testimony For: (In support) The proposed substitute clarifies the Department's right of entry authority. The Department does approximately 7,000 inspections a year. The Safety and Health Program is premised on the fact that the Department can enter a workplace and determine whether the workplace is safe and healthy. For the most part, employers work with the Department and the Department is rarely denied entry.

However, there are people who will deny entry. In these cases, the Department has historically gone to superior court, asked for a warrant, received a warrant, and returned for inspection. The process has become clouded by a Washington Supreme Court decision in 2005, Bosteder v. the City of Renton. The Department's understanding is that in a part of that decision, the Washington Supreme Court advised the lower courts that unless there is statutory authority for a superior court to issue a warrant to an agency for the purpose of inspections, there is not legal authority to do so. The Department feels this will make it more difficult to get warrants and impossible to conduct inspections when an employer denies entry.

This Department-request legislation has been worked on for months by all involved. It clarifies the Department's ability to go on the property and provides that the Department will seek permission. It provides that the Department will enter property at a safe place. The notion is that the Department will go in at a place where most people would enter the property. The bill also clarifies that the Department can seek a warrant.

There is support for the language of the proposed substitute because it unambiguously gives the Department a right to get a warrant and simplifies the consent process without preventing Department inspectors from doing their jobs.

One technical amendment is needed. Overall, the bill fixes two problems with the underlying statute. Some believe that underlying law allows entry without a search warrant, which is unconstitutional. The bill also adds the statutory authority for the Department to get a search warrant. Past court cases have said that unless statutory language exists granting warrant authority, the Department does not have authority. There is a lawsuit regarding these issues with the underlying statute.

(With concerns) The original language of Section 3 is preferable because it specifically stated that the Department had to be denied or reasonably believe it would be denied entry before requesting a warrant.

The language is not completely finalized and needs some additional work.

Testimony Against: None.

Persons Testifying: (In support) Gary Weeks and Steve Cant, Department of Labor and Industries; Rick Slunaker, Associated General Contractors; Gary Smith, Independent Business Association; Dan Fazio, Farm Bureau; and Jeff Johnson, Washington State Labor Council

(With concerns) Carolyn Logue, National Federation of Independent Business.

Persons Signed In To Testify But Not Testifying: None.