

SENATE BILL REPORT

SB 6263

As Reported By Senate Committee On:
Labor, Commerce, Research & Development, January 23, 2006

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: Senators Kohl-Welles, Prentice and Keiser; by request of Department of Labor & Industries.

Brief History:

Committee Activity: Labor, Commerce, Research & Development: 1/23/06. [DPS]

SENATE COMMITTEE ON LABOR, COMMERCE, RESEARCH & DEVELOPMENT

Majority Report: That Substitute Senate Bill No. 6263 be substituted therefor, and the substitute bill do pass.

Signed by Senators Kohl-Welles, Chair; Franklin, Vice Chair; Parlette, Ranking Minority Member; Honeyford, Keiser and Prentice.

Staff: John Dziedzic (786-7784)

Background: The Department of Labor and Industries (L&I) is required by the State Constitution, the Washington Industrial Safety and Health Act (WISHA), and related federal laws (OSHA) to assure that employers in Washington provide workers with safe workplaces. As part of this responsibility, L&I officials frequently seek to enter private property to inspect work sites for consultative or enforcement purposes.

Until recently, L&I policy and practice generally provided that if an employer did not consent to allow an L&I inspector to enter a work site, an inspector has the discretion to seek a search warrant from a Superior Court. Litigation was commenced in 2003 challenging the authority of Superior Courts to issue warrants pursuant to WISHA.

Summary of Substitute Bill: As a general rule, L&I is required to obtain consent from the owner, manager, operator or on-site person in charge of a workplace prior to conducting a WISHA inspection, and may enter worksite grounds, in a safe manner, to request such consent at a reasonably recognizable entry point, unless the employer has designated an entry point. L&I may apply to a court of competent jurisdiction for a search warrant to conduct a WISHA inspection, and the court is authorized to issue a warrant for such purpose.

Substitute Bill Compared to Original Bill: Limitations on how and where an L&I inspector may enter a worksite are added. A reference to "open view," and restrictions on when L&I is authorized to apply for a search warrant" are eliminated.

Appropriation: None.

Fiscal Note: Available.

Committee/Commission/Task Force Created: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Testimony For: In its June 2005 opinion in *Bosteder v. City of Renton*, the Washington Supreme Court stated that, in the absence of an authorizing court rule or statute, noncriminal administrative search warrants are invalid under the state constitution. This bill clarifies statutory authority with respect to WISHA warrants, and establishes the policy concerning how WISHA inspectors are to initiate interactions with employers. The United States Occupational Safety and Health Administration has indicated that without clarifying legislation in this regard, it may re-institute concurrent federal jurisdiction in situations where entry is denied.

Testimony Against: Although clarification of a court's authority to issue a WISHA warrant is needed, the bill disregards potential safety and privacy issues in allowing an inspector to enter a work site at undesignated points of entry. The bill unnecessarily adds "open view" to the section that allows inspectors to make observations that are consistent with a recognized exception to the warrant requirements of the state and federal constitution. An inspector should not be authorized to seek a WISHA warrant based only on a reasonable belief that access will be denied.

Who Testified: PRO: Gary Weeks, Steve Cant, Department of Labor and Industries; Jeff Johnson, Washington State Labor Council; Rick Slunaker, Associated General Contractors.

CON: Carolyn Logue, National Federation of Independent Business; Gary Smith, Independent Business Association; Dan Fazio, Washington Farm Bureau.