

HOUSE BILL REPORT

ESSB 5068

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: Senate Committee on Labor, Commerce & Consumer Protection (originally sponsored by Senators Conway, Prentice and Kohl-Welles; by request of Department of Labor & Industries).

Brief History:

Committee Activity:

Labor & Workforce Development: 3/9/11, 3/23/11 [DP].

Brief Summary of Engrossed 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 and sets standards for granting or denying motions.

HOUSE COMMITTEE ON LABOR & WORKFORCE DEVELOPMENT

Majority Report: 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).

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.

Background:

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).

Summary of 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 redetermination decision must include the stay request. The Department must stay the abatement where the Department cannot determine that the preliminary evidence shows a substantial probability of death or serious physical harm to workers. 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. The Board must grant a stay where there is good cause for a stay unless based on preliminary evidence it is more likely than not that a stay would result in death or serious physical harm to a worker. Affected employees or their representatives must receive opportunity to participate as parties in the expedited review of a motion for a

stay of abatement. All abatement requirements are stayed as long as a motion to stay is pending.

If the Board denies a stay, the abatement process must be the same as the process required for abatement upon a final order.

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

Appropriation: None.

Fiscal Note: Available.

Effective Date: 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 is a very important bill that gives the Department tools to help prevent disasters such as occurred at the refinery. Eighty-six workers died in the state in 2010 and 65 in 2009. In 2009 Tesoro was cited for 159 serious hazards and in 2010 it was cited for 39 willful violations. Between 1999 and 2009, 33 workers in the nation died while hazards were under appeal; we do not need this to happen in Washington. Common sense says a practice should stop if a violation is serious. This is a simple bill requiring employers to fix hazards.

This bill will reduce delays in correcting workplace hazards during appeals. Due process is ensured by giving employers an opportunity to request that abatement be postponed. The original bill was not well worked out with stakeholders. As amended, the bill preserves the basic design, but strengthens the process and clarifies and simplifies the standards. It is explicitly stated that abatement is not required if a motion is pending. The trigger is narrowed.

The best way to protect workers and reduce workers' compensation costs is to keep workers safe. This bill will have a direct impact on workers' compensation costs. Allowing employees an opportunity to participate is good.

(Opposed) The bill is vastly superior to the original bill but it is not necessary. The Department has the tools to red tag and shut down a piece of equipment. We should work within the current system.

(Neutral) Discussions continue about whether the bill is necessary, but an association has participated in the negotiations and is comfortable with the current language.

(Opposed) None.

Persons Testifying: (In support) Senator Conway, prime sponsor; Michael Silverstein, Department of Labor and Industries; Rebecca Johnson, Washington State Labor Council; Randy Loomans, International Union of Operating Engineers Local 302; and Sharon Ness, United Food and Commercial Workers Washington State Council.

(Opposed) Scott Dilley, Washington Farm Bureau.

(Neutral) Greg Hanon, Western States Petroleum Association.

Persons Signed In To Testify But Not Testifying: None.