

SENATE BILL REPORT

ESHB 1676

As of March 15, 2011

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: House Committee on Labor & Workforce Development (originally sponsored by Representatives Reykdal, Kenney, Green, McCoy, Ormsby, Hudgins and Hunt; by request of Department of Labor & Industries).

Brief History: Passed House: 3/05/11, 97-0.

Committee Activity: Labor, Commerce & Consumer Protection: 3/15/11.

SENATE COMMITTEE ON LABOR, COMMERCE & CONSUMER PROTECTION

Staff: Edith Rice (786-7444)

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 who then 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

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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: Requested on March 9, 2011.

Committee/Commission/Task Force Created: No.

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

Staff Summary of Public Testimony: PRO: It is important to protect the financial health of the worker's compensation system by having everyone who should pay into it do so, by avoiding injury and by having workers return to work as soon as possible. This will reduce delays in correcting workplace hazards. We need to prevent injuries before they happen. There have been deaths throughout the U.S. that have occurred in work places while they were under citation. This is common sense. This will make a difference in work place safety.

CON: This bill isn't necessary, L&I has the tools it needs and can already red tag businesses. In the rush to get this bill through, we didn't get to where we needed to with the agreed upon changes.

OTHER: We are concerned about development of regulations. We don't oppose this bill but believe the implementation and rulemaking will be key.

Persons Testifying: PRO: Representative Reykdahl, prime sponsor; Dr. Michael Silverstein, L&I; Rebecca Johnson, WA State Labor Council; Sharon Ness, UFCWS Council; Randy Loomans, IUOE 302; Dave Johnson, WA State Building Trades.

CON: Scott Dilley, Washington Farm Bureau; Patrick Connor, National Federation of Independent Business.

OTHER: Grant Nelson, Assoc. of WA. Business; Greg Hanon, WA State Petroleum Assoc.