

SENATE BILL REPORT

SB 5068

As Reported by Senate Committee On:
Labor, Commerce & Consumer Protection, February 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: Senators Conway, Prentice and Kohl-Welles; by request of Department of Labor & Industries.

Brief History:

Committee Activity: Labor, Commerce & Consumer Protection: 1/24/11, 2/01/11, 2/07/11, 2/15/11 [DPS, DNP].

SENATE COMMITTEE ON LABOR, COMMERCE & CONSUMER PROTECTION

Majority Report: That Substitute Senate Bill No. 5068 be substituted therefor, and the substitute bill do pass.

Signed by Senators Kohl-Welles, Chair; Conway, Vice Chair; Keiser and Kline.

Minority Report: Do not pass.

Signed by Senators Holmquist Newbry, Ranking Minority Member; King, Assistant Ranking Minority Member; Hewitt.

Staff: Edith Rice (786-7444)

Background: Under the Washington Industrial Health and Safety Act (WISHA), the Department of Labor and Industries (L&I) has authority to adopt rules and regulations of safety and health standards governing the conditions of employment in all work places. L&I sets occupational health and safety standards that are at least as effective as those standards adopted by the Occupational Safety and Health Act of 1970. The agency encourages employers and employees to provide safe and healthful working conditions. It also provides for appropriate reporting of working conditions, inspections, training, education, compliance, and input on rules. L&I has authority to inspect and investigate workplaces and can issue a citation if an employer has violated safety or health standards. Citations are in writing, specify the violation, and fix a reasonable time to correct the violation. If a citation has been

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issued L&I notifies the employer within a reasonable amount of time of the penalty to be assessed. An employer has 15-working days within which to notify L&I that the employer intends to appeal the citation or penalty. If no notification is made to L&I within the 15-day period, the citation and penalty are considered final and cannot be appealed.

If L&I determines that an employer has failed to correct a cited violation within the time permitted for correction, L&I notifies the employer of the failure to correct the violation and notifies the employer that it has 15 days to notify L&I of an intention to appeal the penalty. If no such notification is received by L&I the penalty is considered final and cannot be appealed. However, the period permitted in the citation for its correction does not begin to run until a final order is issued in the case of an appeal.

Summary of Bill (Recommended Substitute): In addition to serious and willful violations, abatement is not stayed for repeated serious violations or failures to abate serious violations. The Director of L&I can reassume jurisdiction of an appeal and will consider a request for a stay of abatement. If an employer appeals the director's decision on redetermination to the Board of Industrial Insurance Appeals (BOIIA) the employer can renew the request for a stay of abatement. The BOIIA must conduct an expedited review of a request for a stay of abatement. Affected employees must have an opportunity to participate in the expedited review. In the event that the BOIIA denies a stay of abatement during appeal, the abatement process must be the same as required for abatement upon a final order except: Abatement plans with estimates of cost and time must be submitted to L&I and approved; if a final order vacates an underlying violation for which a stay of abatement was denied, the employer may be reimbursed for the cost of the abatement if there is a finding of fact that no hazard exists. Only reasonable costs will be reimbursed for approved abatement plans, and reimbursement will be applied to offset outstanding penalties or debts owed to L&I. L&I is authorized to develop rules beginning in 2011.

EFFECT OF CHANGES MADE BY LABOR, COMMERCE & CONSUMER PROTECTION COMMITTEE (Recommended Substitute): In addition to serious and willful violations, it is clarified that abatement is not stayed for repeated "serious" violations or failures to abate "serious" violations. Instead of immediately filing a motion for appeal to the BOIIA the Director of L&I can reassume jurisdiction of an appeal and will consider a request for a stay of abatement. If an employer appeals the director's decision on redetermination to the BOIIA the employer can renew the request for a stay of abatement. The BOIIA must still conduct an expedited review of a request for a stay of abatement as in the original bill. Likewise, affected employees must have an opportunity to participate in the expedited review. In the event that the BOIIA denies a stay of abatement during appeal, the abatement process must be the same as required for abatement upon a final order except: now abatement plans with estimates of cost and time must be submitted to L&I and approved; a new procedure is added. If a final order vacates an underlying violation for which a stay of abatement was denied, the employer may be reimbursed for the cost of the abatement if there is a finding of fact that no hazard exists. Only reasonable costs will be reimbursed for approved abatement plans, and reimbursement will be applied to offset outstanding penalties or debts owed to L&I. L&I is authorized to develop rules beginning in 2011.

Appropriation: None.

Fiscal Note: Available.

Committee/Commission/Task Force Created: No.

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

Staff Summary of Public Testimony on Original Bill: PRO: When employers file appeals, abatement of the violation can take months, even years. Oregon has been using this process we're trying to implement, for 30 years. This bill will ensure that violations are corrected more quickly. If we could do more oil refinery inspections this bill would be even more effective. We are surprised to have to be here. Worker's Compensation costs would decrease if we could get to the root cause and prevent injuries from ever occurring. Workplace hazards affect more than workers. In hospitals they can affect patients as well as the general public. They often take many months to be corrected. Counteracting the loopholes is long overdue. People on the ground can make observations that save lives. Employees often try to work with employers before they are cited for violations. This often doesn't work. Appeals appear to be about wording of a citation rather than what should be fixed. Lengthy appeals endanger workers.

CON: This bill is onerous to employers who are deemed to be guilty before proven innocent. It has employers spending money to correct conditions before WISHA has been violated. This threatens farming and agriculture. The scope of the bill should be adjusted to just include willful and repeated violations. Employers should be reimbursed for abatement when found not guilty. This assumes that the agency is always right. It is an unnecessary burden on business. We would like the opportunity to provide additional information at the investigation stage. The oil refining industry is very risky as well as other industries, but it has invested heavily in safety improvements. This new process will have grave impact on small businesses. The department issues serious violations in a wide variety of cases. Low-level violations should not be brought into the process. We have serious concerns about underlying assumptions. This isn't the Oregon law. This law is missing balance. Employers will be forced to use attorneys early in the process. We would like to see the bill amended.

OTHER: The definition of serious violations should be reviewed. Workplace safety is always of paramount concern. We believe there will be some cost to the BOIIA and have some amendments to suggest.

Persons Testifying: PRO: Dr. Michael Silverstein, Assistant Director, Labor and Industries; Randy Loomans, IU Operating Engineers 302; Sharon Ness, UFCW Council; Dave Johnson, WSBCTC; Bob Guenther, IBEW 77; Joe Soloman, United Steel Workers Local 12-591; Brian Ricks, USW Local 12-59; Rebecca Johnson, Washington State Labor Council.

CON: Grant Nelson, Association of Washington Business; Scott Dilley, Washington Farm Bureau; Frank Holmes, Western States Petroleum; Gary Smith, Family Business Association; Rick Slunaker, Association of General Contractors of WA.

OTHER: Patrick Connor, National Federation of Small Businesses; Frank Fennery, Board of Industrial Insurance Appeals.