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**Labor & Workforce Development  
Committee**

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**HB 1676**

**Brief Description:** Addressing the abatement of violations of the Washington industrial safety and health act during an appeal.

**Sponsors:** Representatives Reykdal, Kenney, Green, McCoy, Ormsby, Hudgins and Hunt; by request of Department of Labor & Industries.

**Brief Summary of 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.

**Hearing Date:** 2/11/11

**Staff:** Joan Elgee (786-7106).

**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 may 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 may issue an order immediately restraining any such condition, practice, method, process, or means in the workplace.

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*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.*

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, or failure to abate violation under the WISHA does not stay abatement dates or requirements unless:

- The employer files a motion with the Board to stay abatement of a violation in part or in full within 15 working days of receipt of a citation.
- The Board must develop a process, and may adopt necessary rules, for conducting an expedited review of a motion for a stay.
- The Board must issue a final decision within 45 working days following receipt of the employer's motion for a stay, and
- Affected employees or their representatives must be afforded an opportunity to participate as parties in the review of a motion for stay of an abatement period.

The Board must consider each of the following factors before rendering a decision on the stay motion:

- has the employer demonstrated a substantial likelihood of success on its appeal of the citation on the facts as they existed at the time the citation was issued;
- will the employer suffer irreparable harm absent a stay; or
- will a stay adversely affect the health and safety of workers.

**Appropriation:** None.

**Fiscal Note:** Available.

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