

HOUSE BILL REPORT

ESHB 1676

As Passed House:
March 5, 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:

Committee Activity:

Labor & Workforce Development: 2/11/11, 2/16/11 [DPS].

Floor Activity:

Passed House: 3/5/11, 97-0.

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: The substitute bill be substituted therefor and the substitute bill 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 Engrossed Substitute 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 bill clamps down on repeated requests by some employers to get stays. Delays can be months to years. The bill only applies to serious violations. In one instance, an employer was cited for lead poisoning in 2006, and the problems were not corrected until 2010. At least two additional employees developed lead poisoning. An employer was cited for refusing to wash clothing with bodily fluid spills. (Water in homes is not hot enough.) During the 18 months before the matter was rectified, the fluids went into the sewer system.

Workplace safety is a serious issue, and this bill addresses one of the most vexing problems. Relief is needed in the petroleum industry. There were several dozen willful violations at the refinery explosion. These violations are under appeal and not being abated. Corporations are arrogant. When will the risk to lives be reduced? Twelve coworkers have died.

Employers receive due process because the Department would take a second look during the reassumption process, and an employer could also appeal directly to the Board. An employer would be entitled to reimbursement if no hazard is found to have existed. Forty-five days for the Board to make a decision will streamline the process. Nearly all of the citations issued, 88 percent of those appealed are ultimately upheld, but meanwhile the violations are not corrected. The order of immediate restraint is not a good alternative because it significantly disrupts business operations.

(Opposed) No other state goes this far, not even Oregon. This bill shifts the burden of proof to the employer. A compelling case has not been made. There has been no showing that employers have acted in bad faith. The Department should convene a meeting of the WISHA Advisory Committee and work in a collaborative manner. A better bill will result. This bill gives an incentive to make violations more serious. Citations are issued for serious violations when the violation is not serious. For example, several stores received serious citations for using diluted bleach. Abatements can be complex. Some abatements are not quick issues. Reimbursement will not take care of all the costs; the state could not afford this.

Persons Testifying: (In support) Representative Reykdal, prime sponsor; Michael Silverstein, Department of Labor and Industries; Randy Loomans, International Union of

Operating Engineers Local 302; Sharon Ness, United Food and Commercial Workers Washington State Council; and Steve Garey, United Steel Workers Local 12-591.

(Opposed) Grant Nelson, Association of Washington Business; Gary Smith, Independent Business Association; and Carolyn Logue, Washington Food Industry Association.

Persons Signed In To Testify But Not Testifying: None.