

HOUSE BILL REPORT

HB 2488

As Reported By House Committee On:
Commerce & Labor

Title: An act relating to investigations, inspections, or reviews by the department of labor and industries.

Brief Description: Establishing the standard of review for certain investigations.

Sponsors: Representatives Thompson, Koster, D. Schmidt, Cairnes, McMahan, Cooke, Reams, Crouse, Chandler, Buck, Fuhrman, McMorris, Hatfield, Sheldon, Kessler and Mulliken.

Brief History:

Committee Activity:

Commerce & Labor: 1/22/96, 1/30/96 [DPS].

HOUSE COMMITTEE ON COMMERCE & LABOR

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 7 members: Representatives McMorris, Chairman; Hargrove, Vice Chairman; Thompson, Vice Chairman; Cairnes; Fuhrman; Goldsmith and Horn.

Minority Report: Do not pass. Signed by 4 members: Representatives Romero, Ranking Minority Member; Conway, Assistant Ranking Minority Member; Cody and Cole.

Staff: Chris Cordes (786-7117).

Background: The Department of Labor and Industries administers and enforces the Washington Industrial Safety and Health Act (WISHA). The act directs the department to adopt rules governing safety and health standards for workplaces covered by the act. "Safety and health standards" means a standard requiring the adoption of practices or operations that are reasonably necessary or appropriate to provide safe and healthful employment.

Washington is a "state plan state" under the federal Occupational Safety and Health Act (OSH Act). As a state plan state, Washington is authorized to assume responsibility for occupational safety and health in the state. To maintain its status,

Washington's safety and health standards must be at least as effective as those standards adopted or recognized under the OSH Act.

WISHA applies to substantially all employment performed at workplaces in Washington, including both private and public employment. Covered employers are obligated to furnish employees with a place of employment free of recognized hazards likely to cause serious injury or death and to comply with the safety and health rules adopted by the department. Under specific standards for fire fighting, fire service employers are to achieve the safest workplaces reasonably attainable under the conditions to which employees will be exposed.

Appropriately credentialed department representatives are authorized to inspect and investigate workplaces at reasonable times and in a reasonable manner. If the department representative believes, after an investigation, that a requirement of WISHA, the rules adopted under WISHA, or the conditions of an order granting a variance have been violated, the department will issue a citation to the employer. Employers receiving citations are subject to the civil penalties provided in WISHA.

Summary of Substitute Bill: Under the Washington Industrial Safety and Health Act, public fire department employers have a duty to provide the safest workplace reasonably attainable under the conditions to which employees will be exposed, instead of a duty to furnish a workplace free of recognized hazards that are causing or likely to cause serious injury or death. When the Department of Labor and Industries conducts an investigation or review, a public fire department workplace meets the standard of the safest workplace reasonably attainable if the employer's action is found to be reasonable under the circumstances existing at the time of an alleged violation, as measured by a reasonable and prudent person with similar training, experience, responsibility, and authority as the employer.

Substitute Bill Compared to Original Bill: The original bill's language applying a reasonable person standard to all employers is deleted. The substitute bill defines a reasonable person standard for public fire department employers under their duty to provide the safest workplace reasonably attainable. This workplace standard is met when the employer's action is reasonable under the circumstances existing at the time of an alleged violation, as measured by a reasonable person standard.

Appropriation: None.

Fiscal Note: Not requested.

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

Testimony For: It is necessary to define "reasonableness" because public fire departments range from small volunteer departments to large full-time departments. Each one has a different level of expertise, training, and experience. The Department of Labor and Industries should not be second-guessing the fire departments based on the experience of the inspector.

Testimony Against: Having a prudent person rule would result in appeals on every citation. This would divert the focus from safety to litigation. There is a satisfactory appeal process now that employers can use if they feel that citations are just second-guessing their decisions. The bill should not be allowed to weaken the department's authority to cite employers for violation of their general duty for safe workplaces. The department already uses a reasonableness standard for fire fighting workplaces that is unique to their situation.

Testified: (In favor) Representative Bill Thompson, prime sponsor; and Duane Malo and Otto Jensen, Washington State Association of Fire Chiefs. (Opposed) Jim Cason, Washington State Council of Fire Fighters; Jon Gillis, Seattle Fire Fighters Union; Rodney Jones; and Ken High. (With concerns) Mark Brown, Department of Labor and Industries.