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**SUBSTITUTE SENATE BILL 6282**

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**State of Washington**

**53rd Legislature**

**1994 Regular Session**

**By** Senate Committee on Labor & Commerce (originally sponsored by Senators Wojahn and Winsley; by request of Department of Labor & Industries)

Read first time 01/26/94.

1 AN ACT Relating to industrial safety and health appeals; and  
2 amending RCW 49.17.140.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

4 **Sec. 1.** RCW 49.17.140 and 1986 c 20 s 1 are each amended to read  
5 as follows:

6 (1) If after an inspection or investigation the director or (~~his~~)  
7 the director's authorized representative issues a citation under the  
8 authority of RCW 49.17.120 or 49.17.130, the department, within a  
9 reasonable time after the termination of such inspection or  
10 investigation, shall notify the employer by certified mail of the  
11 penalty to be assessed under the authority of RCW 49.17.180 and shall  
12 state that the employer has fifteen working days within which to notify  
13 the director that (~~he~~) the employer wishes to appeal the citation or  
14 assessment of penalty. If, within fifteen working days from the  
15 communication of the notice issued by the director the employer fails  
16 to notify the director that (~~he~~) the employer intends to appeal the  
17 citation or assessment penalty, and no notice is filed by any employee  
18 or representative of employees under subsection (3) of this section  
19 within such time, the citation and the assessment shall be deemed a

1 final order of the department and not subject to review by any court or  
2 agency.

3 (2) If the director has reason to believe that an employer has  
4 failed to correct a violation for which a citation has been issued  
5 within the period permitted in the citation for its correction, which  
6 period shall not begin to run until the entry of a final order in the  
7 case of any appeal proceedings under this section initiated by the  
8 employer in good faith and not solely for delay or avoidance of  
9 penalties, the director shall notify the employer by certified mail of  
10 such failure to correct the violation and of the penalty to be assessed  
11 under RCW 49.17.180 by reason of such failure, and shall state that the  
12 employer has fifteen working days from the communication of such  
13 notification and assessment of penalty to notify the director that  
14 ((he)) the employer wishes to appeal the director's notification of the  
15 assessment of penalty. If, within fifteen working days from the  
16 receipt of notification issued by the director the employer fails to  
17 notify the director that ((he)) the employer intends to appeal the  
18 notification of assessment of penalty, the notification and assessment  
19 of penalty shall be deemed a final order of the department and not  
20 subject to review by any court or agency.

21 (3) If any employer notifies the director that ((he)) the employer  
22 intends to appeal the citation issued under either RCW 49.17.120 or  
23 49.17.130 or notification of the assessment of a penalty issued under  
24 subsections (1) or (2) of this section, or if, within fifteen working  
25 days from the issuance of a citation under either RCW 49.17.120 or  
26 49.17.130 any employee or representative of employees files a notice  
27 with the director alleging that the period of time fixed in the  
28 citation for the abatement of the violation is unreasonable, the  
29 director may reassume jurisdiction over the entire matter, or any  
30 portion thereof upon which notice of intention to appeal has been filed  
31 with the director pursuant to this subsection. If the director  
32 reassumes jurisdiction of all or any portion of the matter upon which  
33 notice of appeal has been filed with the director, any redetermination  
34 shall be completed and corrective notices of assessment of penalty,  
35 citations, or revised periods of abatement completed within a period of  
36 thirty working days(~~(, which)~~). The thirty-working-day redetermination  
37 period may be extended up to fifteen additional working days upon  
38 agreement of all parties to the appeal. The redetermination shall then  
39 become final subject to direct appeal to the board of industrial

1 insurance appeals within fifteen working days of such redetermination  
2 with service of notice of appeal upon the director. In the event that  
3 the director does not reassume jurisdiction as provided in this  
4 subsection, ((he)) the director shall promptly notify the state board  
5 of industrial insurance appeals of all notifications of intention to  
6 appeal any such citations, any such notices of assessment of penalty  
7 and any employee or representative of employees notice of intention to  
8 appeal the period of time fixed for abatement of a violation and in  
9 addition certify a full copy of the record in such appeal matters to  
10 the board. The director shall adopt rules of procedure for the  
11 reassumption of jurisdiction under this subsection affording employers,  
12 employees, and employee representatives notice of the reassumption of  
13 jurisdiction by the director, and an opportunity to object or support  
14 the reassumption of jurisdiction, either in writing or orally at an  
15 informal conference to be held prior to the expiration of the ((~~thirty-~~  
16 ~~day~~)) redetermination period. A notice of appeal filed under this  
17 section shall stay the effectiveness of any citation or notice of the  
18 assessment of a penalty pending review by the board of industrial  
19 insurance appeals, but such appeal shall not stay the effectiveness of  
20 any order of immediate restraint issued by the director under the  
21 authority of RCW 49.17.130. The board of industrial insurance appeals  
22 shall afford an opportunity for a hearing in the case of each such  
23 appellant and the department shall be represented in such hearing by  
24 the attorney general and the board shall in addition provide affected  
25 employees or authorized representatives of affected employees an  
26 opportunity to participate as parties to hearings under this  
27 subsection. The board shall thereafter make disposition of the issues  
28 in accordance with procedures relative to contested cases appealed to  
29 the state board of industrial insurance appeals.

30 Upon application by an employer showing that a good faith effort to  
31 comply with the abatement requirements of a citation has been made and  
32 that the abatement has not been completed because of factors beyond  
33 ((his)) the employer's control, the director after affording an  
34 opportunity for a hearing shall issue an order affirming or modifying  
35 the abatement requirements in such citation.

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