

SSB 5068 - S AMD 175

By Senators Conway, Holmquist Newbry

ADOPTED 03/05/2011

1 Strike everything after the enacting clause and insert the  
2 following:

3 "Sec. 1. RCW 49.17.140 and 1994 c 61 s 1 are each amended to read  
4 as follows:

5 (1) If after an inspection or investigation the director or the  
6 director's authorized representative issues a citation under the  
7 authority of RCW 49.17.120 or 49.17.130, the department, within a  
8 reasonable time after the termination of such inspection or  
9 investigation, shall notify the employer by certified mail of the  
10 penalty to be assessed under the authority of RCW 49.17.180 and shall  
11 state that the employer has fifteen working days within which to notify  
12 the director that the employer wishes to appeal the citation or  
13 assessment of penalty. If, within fifteen working days from the  
14 communication of the notice issued by the director the employer fails  
15 to notify the director that the employer intends to appeal the citation  
16 or assessment penalty, and no notice is filed by any employee or  
17 representative of employees under subsection (3) of this section within  
18 such time, the citation and the assessment shall be deemed a final  
19 order of the department and not subject to review by any court or  
20 agency.

21 (2) If the director has reason to believe that an employer has  
22 failed to correct a violation for which ~~((a citation has been issued  
23 within the period permitted in the citation for its correction, which  
24 period shall not begin to run until the entry of a final order in the  
25 case of any appeal proceedings under this section initiated by the  
26 employer in good faith and not solely for delay or avoidance of  
27 penalties))~~ the employer was previously cited and which has become a  
28 final order, the director shall notify the employer by certified mail  
29 of such failure to correct the violation and of the penalty to be  
30 assessed under RCW 49.17.180 by reason of such failure, and shall state

1 that the employer has fifteen working days from the communication of  
2 such notification and assessment of penalty to notify the director that  
3 the employer wishes to appeal the director's notification of the  
4 assessment of penalty. If, within fifteen working days from the  
5 receipt of notification issued by the director the employer fails to  
6 notify the director that the employer intends to appeal the  
7 notification of assessment of penalty, the notification and assessment  
8 of penalty shall be deemed a final order of the department and not  
9 subject to review by any court or agency.

10 (3) If any employer notifies the director that the employer intends  
11 to appeal the citation issued under either RCW 49.17.120 or 49.17.130  
12 or notification of the assessment of a penalty issued under subsections  
13 (1) or (2) of this section, or if, within fifteen working days from the  
14 issuance of a citation under either RCW 49.17.120 or 49.17.130 any  
15 employee or representative of employees files a notice with the  
16 director alleging that the period of time fixed in the citation for the  
17 abatement of the violation is unreasonable, the director may reassume  
18 jurisdiction over the entire matter, or any portion thereof upon which  
19 notice of intention to appeal has been filed with the director pursuant  
20 to this subsection. If the director reassumes jurisdiction of all or  
21 any portion of the matter upon which notice of appeal has been filed  
22 with the director, any redetermination shall be completed and  
23 corrective notices of assessment of penalty, citations, or revised  
24 periods of abatement completed within a period of thirty working days.  
25 The thirty-working-day redetermination period may be extended up to  
26 fifteen additional working days upon agreement of all parties to the  
27 appeal. The redetermination shall then become final subject to direct  
28 appeal to the board of industrial insurance appeals within fifteen  
29 working days of such redetermination with service of notice of appeal  
30 upon the director. In the event that the director does not reassume  
31 jurisdiction as provided in this subsection, the director shall  
32 promptly notify the state board of industrial insurance appeals of all  
33 notifications of intention to appeal any such citations, any such  
34 notices of assessment of penalty and any employee or representative of  
35 employees notice of intention to appeal the period of time fixed for  
36 abatement of a violation and in addition certify a full copy of the  
37 record in such appeal matters to the board. The director shall adopt  
38 rules of procedure for the reassumption of jurisdiction under this

1 subsection affording employers, employees, and employee representatives  
2 notice of the reassumption of jurisdiction by the director, and an  
3 opportunity to object or support the reassumption of jurisdiction,  
4 either in writing or orally at an informal conference to be held prior  
5 to the expiration of the redetermination period. Except as otherwise  
6 provided under subsection (4) of this section, a notice of appeal filed  
7 under this section shall stay the effectiveness of any citation or  
8 notice of the assessment of a penalty pending review by the board of  
9 industrial insurance appeals, but such appeal shall not stay the  
10 effectiveness of any order of immediate restraint issued by the  
11 director under the authority of RCW 49.17.130. The board of industrial  
12 insurance appeals shall afford an opportunity for a hearing in the case  
13 of each such appellant and the department shall be represented in such  
14 hearing by the attorney general and the board shall in addition provide  
15 affected employees or authorized representatives of affected employees  
16 an opportunity to participate as parties to hearings under this  
17 subsection. The board shall thereafter make disposition of the issues  
18 in accordance with procedures relative to contested cases appealed to  
19 the state board of industrial insurance appeals.

20 Upon application by an employer showing that a good faith effort to  
21 comply with the abatement requirements of a citation has been made and  
22 that the abatement has not been completed because of factors beyond the  
23 employer's control, the director after affording an opportunity for a  
24 hearing shall issue an order affirming or modifying the abatement  
25 requirements in such citation.

26 (4) An appeal of any violation classified and cited as serious,  
27 willful, repeated serious violation, or failure to abate a serious  
28 violation does not stay abatement dates and requirements except as  
29 follows:

30 (a) An employer may request a stay of abatement for any serious,  
31 willful, repeated serious violation, or failure to abate a serious  
32 violation in a notice of appeal under subsection (3) of this section;

33 (b) When the director reassumes jurisdiction of an appeal under  
34 subsection (3) of this section, it will include the stay of abatement  
35 request. The issued redetermination decision will include a decision  
36 on the stay of abatement request. The department shall stay the  
37 abatement for any serious, willful, repeated serious violation, or  
38 failure to abate a serious violation where the department cannot

1 determine that the preliminary evidence shows a substantial probability  
2 of death or serious physical harm to workers. The decision on stay of  
3 abatement will be final unless the employer renews the request for a  
4 stay of abatement in any direct appeal of the redetermination to the  
5 board of industrial insurance appeals under subsection (3) of this  
6 section;

7 (c) The board of industrial insurance appeals shall adopt rules  
8 necessary for conducting an expedited review on any stay of abatement  
9 requests identified in the employer's notice of appeal, and shall issue  
10 a final decision within forty-five working days of the board's notice  
11 of filing of appeal. This rule making shall be initiated in 2011;

12 (d) Affected employees or their representatives must be afforded an  
13 opportunity to participate as parties in an expedited review for stay  
14 of abatement;

15 (e) The board shall grant a stay of an abatement for a serious,  
16 willful, repeated serious violation, or failure to abate a serious  
17 violation where there is good cause for a stay unless based on the  
18 preliminary evidence it is more likely than not that a stay would  
19 result in death or serious physical harm to a worker;

20 (f) As long as a motion to stay abatement is pending all abatement  
21 requirements will be stayed.

22 (5) When the board of industrial insurance appeals denies a stay of  
23 abatement and abatement is required while the appeal is adjudicated,  
24 the abatement process must be the same process as the process required  
25 for abatement upon a final order.

26 (6) The department shall develop rules necessary to implement  
27 subsections (4) and (5) of this section. In an application for a stay  
28 of abatement, the department will not grant a stay when it can  
29 determine that the preliminary evidence shows a substantial probability  
30 of death or serious physical harm to workers. The board will not grant  
31 a stay where based on the preliminary evidence it is more likely than  
32 not that a stay would result in death or serious physical harm to a  
33 worker. This rule making shall be initiated in 2011."

**ADOPTED 03/05/2011**

1        On page 1, line 2 of the title, after "appeal;" strike the  
2 remainder of the title and insert "and amending RCW 49.17.140."

EFFECT: In an application for a stay of abatement, the department will not grant a stay when it can determine that the preliminary evidence shows a substantial probability of death or serious physical harm to workers. The board will not grant a stay where based on the preliminary evidence it is more likely than not that a stay would result in death or serious physical harm to a worker.

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