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**State Government & Tribal Affairs  
Committee**

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**HB 2603**

**Brief Description:** Requiring agencies to give small businesses an opportunity to comply with a state law or agency rule before imposing a penalty.

**Sponsors:** Representatives Smith, Kenney, Bailey, Quall, Morris, Blake, Anderson, Chase, Kelley, Short, Appleton, Sullivan, Dammeier, Upthegrove, Klippert, Chandler, Kristiansen, Rolfes, Pearson, Roach, Parker, Morrell, Haler, Walsh, Orcutt, Johnson, Liias, Hunt, Probst, Ericksen, Moeller, Kretz, Sells, Hope, Herrera and Warnick.

**Brief Summary of Bill**

- Requires agencies to provide small businesses with a copy of the state law or agency rule being violated and to allow a 48 hour period for the small business to correct the violation before a fine, a civil penalty, or an administrative sanction is imposed.

**Hearing Date:** 1/22/10

**Staff:** Marsha Reilly (786-7135).

**Background:**

Administrative Procedure Act.

Washington's Administrative Procedure Act (APA) establishes procedures under which state agencies adopt rules and conduct adjudicative proceedings. The APA also sets out procedures for judicial and legislative review. Generally, a rule is any agency order, directive, or regulation of general applicability which: (1) subjects a person to a sanction if violated; or (2) establishes or changes any procedure or qualification relating to agency hearings, benefits or privileges conferred by law; licenses to pursue any commercial activity, trade, or profession; or standards for the sale or distribution of products or materials. Before adopting a rule, an agency must follow specified procedures, including publishing notice in the state register and holding a hearing.

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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.*

Under the APA, the validity of any rule adopted by an agency may be challenged by a petition for declaratory judgment when it appears the rule or application of the rule interferes with or impairs the legal rights or privileges of the petitioner. The petitioner has the burden of demonstrating the invalidity of the rule. The court may declare a rule invalid only if it finds that the rule: (1) violates the constitution; (2) exceeds the statutory authority of the agency; (3) was adopted without compliance with rule-making procedures; or (4) is arbitrary and capricious. The petition for declaratory judgment on the validity of an agency rule must be filed in Thurston County Superior Court.

#### Small Business Paperwork Violations.

In 2009 the Legislature enacted a law authorizing agencies to waive paperwork violations made by small businesses. Under that law, agencies must waive fines, civil penalties or administrative sanctions for first-time paperwork violations by a small business. A "small business" is defined as a business with 250 or fewer employees. When an agency issues a waiver, it may require the small business to correct the violation within a reasonable period of time and in a manner specified by the agency. If a correction is impossible, no correction may be required and failure to correct is not grounds for reinstatement of fines, penalties or sanctions.

A waiver may not be granted if the violation: presents a direct danger to public health, results in a loss of income or benefits to an employee, poses a potentially significant threat to human health or the environment, or causes serious harm to the public interest; involves knowing or willful conduct that may result in a felony conviction; concerns assessment or collection of any tax, debt, revenue or receipt; concerns a regulated entity's financial filings, or insurance rate or form filing; is by a business owner who previously committed a substantially similar paperwork violation; or conflicts with federal law or programs.

A paperwork violation is defined as a violation of any statutory or regulatory requirement that mandates the collection of information by an agency, or the collection, posting, or retention of information by a small business.

#### **Summary of Bill:**

Agencies must provide a small business with a copy of the state law or agency rule being violated and must allow a 48-hour period for the small business to correct the violation before the agency imposes a fine, a civil penalty, or an administrative sanction. Exceptions to this requirement include:

- A determination that the effect of the violation presents a direct danger to the public health, results in a loss of income or benefits to an employee, poses a potentially significant threat to human health or the environment, or causes serious harm to the public interest;
- The violation involves a small business that knowingly or willfully engaged in conduct that may result in a felony conviction;
- The waiver conflicts with federal law or program requirements, federal requirements that are a prescribed condition to the allocation of federal funds, or requirements for eligibility of employers in this state for federal unemployment tax credits;

- The small business committing the violation previously violated the same or a similar law or agency rule; or
- The owner or operator of the small business previously violated the same or similar law or rule under a different small business.

The Department of Revenue may satisfy the requirements of the act by providing a taxpayer with notice of an impending violation of state law or agency rule at least 48 hours before the date on which such violation would occur.

A small business is defined as a business with 250 or fewer employees.

**Appropriation:** None.

**Fiscal Note:** Available.

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