
SUBSTITUTE HOUSE BILL 2172

State of Washington

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By House State Government & Tribal Affairs (originally sponsored by Representatives Probst, Kenney, Sells, Jenkins, Stanford, Ryu, Ladenburg, Hasegawa, Tharinger, Maxwell, McCoy, Springer, Appleton, Roberts, Kirby, Green, Wylie, and Ormsby)

READ FIRST TIME 01/31/12.

1 AN ACT Relating to changing agency regulatory practices; amending
2 RCW 34.05.110, 43.05.030, and 43.42.010; adding a new section to
3 chapter 43.05 RCW; adding a new section to chapter 43.42 RCW; and
4 creating a new section.

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

6 NEW SECTION. **Sec. 1.** The legislature recognizes the importance of
7 small businesses to the economy and the need to provide them with
8 assistance to ensure their success. It is, therefore, the intent of
9 the legislature that regulating agencies contribute to a culture of
10 professionalism and cooperation by providing assistance in complying
11 with state and federal laws, rules, and regulations.

12 **Sec. 2.** RCW 34.05.110 and 2011 c 18 s 1 are each amended to read
13 as follows:

14 (1) Agencies must (~~provide to~~) allow a small business (~~a copy of~~
15 ~~the state law or agency rule that a small business is violating and~~)
16 a period of at least seven calendar days to correct (~~the~~) a violation
17 of a state law or agency rule before the agency may impose any fines,
18 civil penalties, or administrative sanctions (~~for a violation of a~~

1 ~~state law or agency rule by a small business~~). If no correction is
2 possible or if an agency is acting in response to a complaint made by
3 a third party and the third party would be disadvantaged by the
4 application of this subsection, the requirements in this subsection do
5 not apply.

6 (2) Agencies must provide to a small business a copy of the state
7 law or agency rule that the small business is alleged to be violating,
8 or a link to an online copy.

9 (3) Agencies must make every effort to avoid adding on violations
10 or corrective actions that could have been discovered and noted in the
11 original violation or correction notice, and shall provide a single
12 list of the violations discovered during the review and the required
13 corrective action or actions. Once the small business has been
14 provided with the single list of corrective action or actions, the
15 agency shall not add more violations or corrective actions during that
16 review period, provided that exceptions to this policy are allowed
17 pursuant to subsection (6) of this section and in response to
18 inspections generated by complaints from a third party.

19 (4) Except as provided in subsection ((+4+)) (6) of this section,
20 agencies shall waive any fines, civil penalties, or administrative
21 sanctions for first-time paperwork violations by a small business.

22 ((+3+)) (5) When an agency waives a fine, penalty, or sanction
23 under this section, when possible it shall require the small business
24 to correct the violation within a reasonable period of time, in a
25 manner specified by the agency. If correction is impossible, no
26 correction may be required and failure to correct is not grounds for
27 reinstatement of fines, penalties, or sanctions under subsection
28 ((+5+)) (7)(b) of this section.

29 ((+4+)) (6) Exceptions to requirements of subsections (1) and (3)
30 of this section and the waiver requirement in subsection ((+2+)) (4) of
31 this section may be made for any of the following reasons:

32 (a) The agency head determines that the effect of the violation or
33 waiver presents a direct danger to the public health, results in a loss
34 of income or benefits to an employee, poses a potentially significant
35 threat to human health or the environment, or causes serious harm to
36 the public interest;

37 (b) The violation involves a knowing or willful violation;

1 (c) The violation is of a requirement concerning the assessment,
2 collection, or administration of any tax, tax program, debt, revenue,
3 receipt, a regulated entity's financial filings, or insurance rate or
4 form filing;

5 (d) The requirements of this section are in conflict with federal
6 law or program requirements, federal requirements that are a prescribed
7 condition to the allocation of federal funds to the state, or the
8 requirements for eligibility of employers in this state for federal
9 unemployment tax credits, as determined by the agency head;

10 (e) The small business committing the violation previously violated
11 a substantially similar requirement; or

12 (f) The owner or operator of the small business committing the
13 violation owns or operates, or owned or operated a different small
14 business which previously violated a substantially similar requirement.

15 ~~((+5))~~ (7)(a) Nothing in this section prohibits an agency from
16 waiving fines, civil penalties, or administrative sanctions incurred by
17 a small business for a paperwork violation that is not a first-time
18 offense.

19 (b) Any fine, civil penalty, or administrative sanction that is
20 waived under this section may be reinstated and imposed in addition to
21 any additional fines, penalties, or administrative sanctions associated
22 with a subsequent violation for noncompliance with a substantially
23 similar paperwork requirement, or failure to correct the previous
24 violation as required by the agency under subsection ~~((+3))~~ (5) of
25 this section.

26 ~~((+6))~~ (8) Nothing in this section may be construed to diminish
27 the responsibility for any citizen or business to apply for and obtain
28 a permit, license, or authorizing document that is required to engage
29 in a regulated activity, or otherwise comply with state or federal law.

30 ~~((+7))~~ (9) Nothing in this section shall be construed to apply to
31 small businesses required to provide accurate and complete information
32 and documentation in relation to any claim for payment of state or
33 federal funds or who are licensed or certified to provide care and
34 services to vulnerable adults or children.

35 ~~((+8))~~ (10) Nothing in this section affects the attorney general's
36 authority to impose fines, civil penalties, or administrative sanctions
37 as otherwise authorized by law; nor shall this section affect the

1 attorney general's authority to enforce the consumer protection act,
2 chapter 19.86 RCW.

3 ((+9+)) (11) As used in this section:

4 (a) "Small business" means a business with two hundred fifty or
5 fewer employees or a gross revenue of less than seven million dollars
6 annually as reported on its most recent federal income tax return or
7 its most recent return filed with the department of revenue.

8 (b) "Paperwork violation" means the violation of any statutory or
9 regulatory requirement that mandates the collection of information by
10 an agency, or the collection, posting, or retention of information by
11 a small business. This includes but is not limited to requirements in
12 the Revised Code of Washington, the Washington Administrative Code, the
13 Washington State Register, or any other agency directive.

14 (c) "First-time paperwork violation" means the first instance of a
15 particular or substantially similar paperwork violation.

16 (12) Beginning July 31, 2013, all agencies with inspection and
17 enforcement programs affecting small businesses must file annual
18 reports indicating the agency director's estimate of the percentage of
19 small business regulatory cases that are not offered the benefits
20 intended for small businesses in this section and RCW 43.05.030 due to
21 the exceptions in subsection (6) of this section.

22 **Sec. 3.** RCW 43.05.030 and 1996 c 206 s 2 are each amended to read
23 as follows:

24 (1) For the purposes of this chapter, a technical assistance visit
25 is a visit by a regulatory agency to a facility, business, or other
26 location that:

27 (a) Has been requested or is voluntarily accepted; and

28 (b) Is declared by the regulatory agency at the beginning of the
29 visit to be a technical assistance visit.

30 (2) A technical assistance visit also includes a consultative visit
31 pursuant to RCW 49.17.250.

32 (3)(a) During a technical assistance visit, or within a reasonable
33 time thereafter, a regulatory agency shall inform the owner or operator
34 of the facility of any violations of law or agency rules identified by
35 the agency as follows:

36 ((+a+)) (i) A description of the condition that is not in

1 compliance and the text of the specific section or subsection of the
2 applicable state or federal law or rule;

3 ~~((b))~~ (ii) A statement of what is required to achieve compliance;

4 ~~((c))~~ (iii) The date by which the agency requires compliance to
5 be achieved;

6 ~~((d))~~ (iv) Notice of the means to contact any technical
7 assistance services provided by the agency or others; and

8 ~~((e))~~ (v) Notice of when, where, and to whom a request to extend
9 the time to achieve compliance for good cause may be filed with the
10 agency.

11 (b) If violations are not identified during the visit, the agency
12 must let the owner or operator of the facility know when to expect the
13 results of the visit.

14 (4) At the time of the visit, the person conducting the technical
15 assistance visit must provide the owner or operator of the facility
16 with a web site address where the owner or operator may complete an
17 anonymous customer service survey, pursuant to section 5 of this act,
18 regarding the visit.

19 NEW SECTION. Sec. 4. A new section is added to chapter 43.05 RCW
20 to read as follows:

21 Each regulatory agency must require its regulators to complete a
22 self-assessment for each technical assistance visit that contains, at
23 a minimum, the same survey information developed by the office of
24 regulatory assistance under section 5 of this act. Each individual
25 regulator shall receive from his or her respective agency the aggregate
26 results of customer service surveys completed for that regulator to
27 compare with the regulator's self-assessments.

28 NEW SECTION. Sec. 5. A new section is added to chapter 43.42 RCW
29 to read as follows:

30 (1) In coordination with regulatory agencies, the office must
31 develop a customer service survey that regulated entities may complete
32 after a technical assistance visit under chapter 43.05 RCW. The survey
33 must include, but is not limited to, the questions:

34 (a) The name of the regulator and his or her agency;

35 (b) Was the visit conducted in a professional and respectful
36 manner;

1 (c) Did the regulator provide assistance to help your business
2 succeed while also enforcing compliance with state regulations;

3 (d) If cited with a violation during the visit, was a copy of the
4 violated rule or law, or a link to an online copy, provided;

5 (e) Were you informed of a seven-day grace period for complying
6 with regulations in order to avoid fees and penalties, or informed
7 about why the grace period did not apply;

8 (f) Were you given a single comprehensive list of violations and
9 the corrective actions required;

10 (g) If cited with a violation, was the owner or operator provided
11 with information that would assist him or her with compliance; and

12 (h) What could have been improved about your inspection or
13 compliance experience.

14 (2) The survey must be available on the office web site. The
15 results of the surveys must be summarized, by agency, in a report and
16 forwarded to the agency director, the governor, and the appropriate
17 committees of the legislature in December of each year. Each agency
18 shall receive a copy of all surveys completed for any of its
19 regulators. No identifying information may be included that would
20 reveal the identity of the respondent.

21 **Sec. 6.** RCW 43.42.010 and 2011 c 149 s 2 are each amended to read
22 as follows:

23 (1) The office of regulatory assistance is created in the office of
24 financial management and must be administered by the office of the
25 governor to help improve the regulatory system and assist citizens,
26 businesses, and project proponents.

27 (2) The governor must appoint a director. The director may employ
28 a deputy director and a confidential secretary and such staff as are
29 necessary, or contract with another state agency pursuant to chapter
30 39.34 RCW for support in carrying out the purposes of this chapter.

31 (3) The office must offer to:

32 (a) Act as the central point of contact for the project proponent
33 in communicating about defined issues;

34 (b) Conduct project scoping as provided in RCW 43.42.050;

35 (c) Verify that the project proponent has all the information
36 needed to correctly apply for all necessary permits;

37 (d) Provide general coordination services;

1 (e) Coordinate the efficient completion among participating
2 agencies of administrative procedures, such as collecting fees or
3 providing public notice;

4 (f) Maintain contact with the project proponent and the permit
5 agencies to promote adherence to agreed schedules;

6 (g) Assist in resolving any conflict or inconsistency among permit
7 requirements and conditions;

8 (h) Coordinate, to the extent practicable, with relevant federal
9 permit agencies and tribal governments;

10 (i) Facilitate meetings;

11 (j) Manage a fully coordinated permit process, as provided in RCW
12 43.42.060; and

13 (k) Provide information and assistance to legislators in responding
14 to constituent inquiries regarding small business regulation,
15 permitting, or other regulatory issues.

16 (4) The office must also:

17 (a) Help local jurisdictions comply with the requirements of
18 chapter 36.70B RCW by providing information about best permitting
19 practices methods to improve communication with, and solicit early
20 involvement of, state agencies when needed; (~~and~~

21 ~~(+)~~) (b) Maintain and furnish information as provided in RCW
22 43.42.040; and

23 (c) Coordinate an agency small business liaison team.

24 (~~(+4)~~) (5) The office must provide the following by September 1,
25 2009, and biennially thereafter, to the governor and the appropriate
26 committees of the legislature:

27 (a) A performance report including:

28 (i) Information regarding use of the office's voluntary cost-
29 reimbursement services as provided in RCW 43.42.070;

30 (ii) The number and type of projects or initiatives where the
31 office provided services (~~and the resolution provided by the office on~~
32 ~~any conflicts that arose on such projects~~), including the key agencies
33 with which the office partnered;

34 (iii) The (~~agencies involved on specific projects~~) activities of
35 the small business liaison team and other efforts directed toward small
36 business;

37 (iv) Specific information on any difficulty encountered in

1 ((~~provision of~~)) providing services, ((~~implementation of~~)) implementing
2 programs or processes, or ((~~use of~~)) assistance tools; and

3 (v) Trend reporting that allows comparisons between statements of
4 goals and performance targets and the achievement of those goals and
5 targets; and

6 (b) Recommendations on system improvements including
7 recommendations ((~~regarding~~;

8 ~~(i) Measurement of overall system performance;~~

9 ~~(ii) Changes needed to make cost reimbursement, a fully coordinated~~
10 ~~permit process, multiagency permitting teams, and other processes~~
11 ~~effective; and~~

12 ~~(iii) Resolving any conflicts or inconsistencies arising from~~
13 ~~differing statutory or regulatory authorities, roles and missions of~~
14 ~~agencies, timing and sequencing of permitting and procedural~~
15 ~~requirements as identified by the office in the course of its duties))~~
16 from the small business liaison team and ideas for improving the
17 environmental permitting system.

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