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HOUSE BILL 2172

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State of Washington                      62nd Legislature                      2011 2nd Special Session

By Representatives Probst, Kenney, Sells, Jenkins, Stanford, Ryu, Ladenburg, Hasegawa, Tharinger, Maxwell, McCoy, Springer, Appleton, Roberts, Kirby, Green, Wylie, and Ormsby

Read first time 12/12/11. Referred to Committee on State Government & Tribal Affairs.

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

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

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

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

13            (1) Agencies must (~~provide to~~) allow a small business (~~a copy of~~  
14 ~~the state law or agency rule that a small business is violating and~~)  
15 a period of at least seven calendar days to correct (~~the~~) a violation  
16 of a state law or agency rule before the agency may impose any fines,  
17 civil penalties, or administrative sanctions (~~for a violation of a~~  
18 ~~state law or agency rule by a small business~~). If no correction is

1 possible or if an agency is acting in response to a complaint made by  
2 a third party and the third party would be disadvantaged by the  
3 application of this subsection, the requirements in this subsection do  
4 not apply.

5 (2) Agencies must provide to a small business a copy of the state  
6 law or agency rule that the small business is violating, as well as a  
7 comprehensive statement of the violations discovered during the review  
8 and the required corrective action or actions. Once the small business  
9 has been provided with a copy of the state law or agency rule violated  
10 and the comprehensive statement of corrective action or actions, the  
11 agency may not add more violations or corrective actions during that  
12 review period.

13 (3) Except as provided in subsection ~~((4))~~ (5) of this section,  
14 agencies shall waive any fines, civil penalties, or administrative  
15 sanctions for first-time paperwork violations by a small business.

16 ~~((3))~~ (4) When an agency waives a fine, penalty, or sanction  
17 under this section, when possible it shall require the small business  
18 to correct the violation within a reasonable period of time, in a  
19 manner specified by the agency. If correction is impossible, no  
20 correction may be required and failure to correct is not grounds for  
21 reinstatement of fines, penalties, or sanctions under subsection  
22 ~~((5))~~ (6)(b) of this section.

23 ~~((4))~~ (5) Exceptions to requirements of subsection (1) of this  
24 section and the waiver requirement in subsection ~~((2))~~ (3) of this  
25 section may be made for any of the following reasons:

26 (a) The agency head determines that the effect of the violation or  
27 waiver presents a direct danger to the public health, results in a loss  
28 of income or benefits to an employee, poses a potentially significant  
29 threat to human health or the environment, or causes serious harm to  
30 the public interest;

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

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

36 (d) The requirements of this section are in conflict with federal  
37 law or program requirements, federal requirements that are a prescribed

1 condition to the allocation of federal funds to the state, or the  
2 requirements for eligibility of employers in this state for federal  
3 unemployment tax credits, as determined by the agency head;

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

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

9 ~~((+5))~~ (6)(a) Nothing in this section prohibits an agency from  
10 waiving fines, civil penalties, or administrative sanctions incurred by  
11 a small business for a paperwork violation that is not a first-time  
12 offense.

13 (b) Any fine, civil penalty, or administrative sanction that is  
14 waived under this section may be reinstated and imposed in addition to  
15 any additional fines, penalties, or administrative sanctions associated  
16 with a subsequent violation for noncompliance with a substantially  
17 similar paperwork requirement, or failure to correct the previous  
18 violation as required by the agency under subsection ~~((+3))~~ (4) of  
19 this section.

20 ~~((+6))~~ (7) Nothing in this section may be construed to diminish  
21 the responsibility for any citizen or business to apply for and obtain  
22 a permit, license, or authorizing document that is required to engage  
23 in a regulated activity, or otherwise comply with state or federal law.

24 ~~((+7))~~ (8) Nothing in this section shall be construed to apply to  
25 small businesses required to provide accurate and complete information  
26 and documentation in relation to any claim for payment of state or  
27 federal funds or who are licensed or certified to provide care and  
28 services to vulnerable adults or children.

29 ~~((+8))~~ (9) Nothing in this section affects the attorney general's  
30 authority to impose fines, civil penalties, or administrative sanctions  
31 as otherwise authorized by law; nor shall this section affect the  
32 attorney general's authority to enforce the consumer protection act,  
33 chapter 19.86 RCW.

34 ~~((+9))~~ (10) As used in this section:

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

1 (b) "Paperwork violation" means the violation of any statutory or  
2 regulatory requirement that mandates the collection of information by  
3 an agency, or the collection, posting, or retention of information by  
4 a small business. This includes but is not limited to requirements in  
5 the Revised Code of Washington, the Washington Administrative Code, the  
6 Washington State Register, or any other agency directive.

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

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

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

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

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

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

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

23 ~~((a))~~ (i) A description of the condition that is not in  
24 compliance and the text of the specific section or subsection of the  
25 applicable state or federal law or rule;

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

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

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

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

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

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

6       NEW SECTION. Sec. 4. A new section is added to chapter 43.42 RCW  
7 to read as follows:

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

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

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

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

22       (b) Was the visit conducted in a professional and respectful  
23 manner;

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

26       (d) If cited with a violation during the visit, was a copy of the  
27 violated rule or law provided;

28       (e) Were you informed of a seven-day grace period for complying  
29 with regulations in order to avoid fees and penalties;

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

32       (g) Was anything added to the list of violations after you were  
33 presented with the list;

34       (h) If the result of the visit was not indicated during the visit,  
35 was an approximate time provided in which the owner or operator would  
36 be notified of the results; and

1 (i) If cited with a violation, was the owner or operator provided  
2 with information that would assist him or her with compliance.

3 (2) The survey must be available on the office web site. The  
4 results of the surveys must be summarized, by agency, in a report and  
5 forwarded to the agency director, the governor, and the appropriate  
6 committees of the legislature in December of each year. Each agency  
7 shall receive a copy of all surveys completed for any of its  
8 regulators. No identifying information may be included that would  
9 reveal the identity of the respondent.

10 NEW SECTION. **Sec. 6.** A new section is added to chapter 43.42 RCW  
11 to read as follows:

12 The office must appoint a small business advocate. The small  
13 business advocate has the following duties:

14 (1) Serves as an advocate for Washington small business owners,  
15 providing services that include advisory participation in the  
16 consideration of legislation and administrative rules that affect  
17 statewide small businesses;

18 (2) Represents the views and interests of small businesses before  
19 other state agencies and departments;

20 (3) Investigates grievances and facilitates resolution to small  
21 business issues, including working in consultation with legislative  
22 staff to respond to small business issues fielded by legislators;

23 (4) Receives the aggregate customer service survey responses for  
24 each regulator and the aggregate self-assessment data from each  
25 regulator, ensuring that appropriate confidentiality with such  
26 information is maintained, and works with agency directors to improve  
27 results as needed;

28 (5) Assists agencies to incorporate the use of customer service  
29 surveys and self-assessment surveys into their professional development  
30 and/or personnel evaluation systems; and

31 (6) As needed, attends and observes appeals hearings.

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