
SUBSTITUTE SENATE BILL 5948

State of Washington

66th Legislature

2019 Regular Session

By Senate Financial Institutions, Economic Development & Trade (originally sponsored by Senators Palumbo, Wilson, L., Becker, Brown, Warnick, Rolfes, Bailey, Mullet, Braun, Honeyford, Van De Wege, and Short)

READ FIRST TIME 02/22/19.

1 AN ACT Relating to creating a small business bill of rights;
2 adding new sections to chapter 34.05 RCW; and creating new sections.

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

4 NEW SECTION. **Sec. 1.** The legislature reaffirms its findings
5 that the licensing and regulation of businesses and professions
6 requires periodic inspections, audits, interviews, site visits, or
7 other oversight measures to verify that licensing, permit, and other
8 regulatory requirements are met, and that unnecessary costs and
9 delays may occur when small business owners must seek outside counsel
10 or other professional assistance to prepare for and participate in
11 review and enforcement actions such as audits and inspections of
12 their records, facilities, or job sites.

13 The legislature finds that some state agencies and programs
14 already inform regulated entities of their rights and protections in
15 conjunction with licensing, permitting, audits, inspections, and
16 other regulatory and enforcement related interactions, but this is
17 not consistent among agencies or programs, nor are these rights or
18 protections easily identified by regulated entities, including small
19 businesses. The legislature commends those agencies and programs that
20 have taken a proactive approach to communicating the rights and

1 protections available to the entities they regulate, including small
2 businesses.

3 The legislature further finds that while there are well defined
4 constitutional and statutory provisions limiting state action and
5 protecting the rights of regulated entities, including small
6 businesses, to challenge unlawful or unauthorized state action, these
7 rights are not clearly defined or listed in statute or rule.

8 Therefore, the legislature intends to codify a partial list of
9 rights and protections guaranteed to small business owners when
10 interacting with state agencies, boards, commissions, or other
11 entities with regulatory authority over small businesses. The
12 legislature further intends that state regulators communicate these
13 rights and protections to small business owners in advance or at the
14 time of any audit, inspection, interview, site visit, or similar
15 oversight or enforcement activity.

16 NEW SECTION. **Sec. 2.** A new section is added to chapter 34.05
17 RCW to read as follows:

18 (1) Each state agency, board, commission, or other entity that
19 conducts audits, inspections, or other enforcement actions within its
20 regulatory authority over small businesses must create and clearly
21 post on its web site a small business bill of rights.

22 (a) The agency shall create the small business bill of rights
23 utilizing the rights listed in subsection (2) of this section, as
24 well as any other applicable agency-specific statutes and rules.

25 (b) Agencies may modify or omit rights listed in subsection (2)
26 of this section that would create a conflict with federal or state
27 law, such as prior notice for industrial health and safety
28 inspections, unreasonably limit or prevent an agency from performing
29 its statutorily authorized duties, or that do not apply to that
30 agency's scope of work. In cases where such a conflict with other
31 laws would occur, agencies should first attempt to modify the listed
32 right to avoid the conflict, omitting a right only when modification
33 to avoid the conflict is not possible.

34 (c) These rights may not apply in emergency situations where
35 environmental quality, or worker or public safety and health are in
36 imminent danger.

37 (d) These rights do not apply in any criminal investigations or
38 proceedings, or to an agency's undercover, surveillance, or seizure
39 activities.

1 (e) Any omitted rights from the list in subsection (2) of this
2 section must be identified, along with a reference to the federal or
3 state law creating the conflict or short statement that the right
4 does not apply to the agency's scope of work, in a document
5 maintained by the agency or entity's small business liaison, public
6 records officer, director, or equivalent executive officer. The
7 document must be made available for public review. Posting the
8 document online or making a paper copy available during normal
9 business hours satisfies this requirement.

10 (f) Agencies may create a small business bill of rights specific
11 to certain divisions or programs within the agency, such as the
12 department of labor and industries' division of occupational safety
13 and health, that may differ from other divisions or programs within
14 the same agency.

15 (g) The agency must include an electronic link to or printed copy
16 of the small business bill of rights in its notice of an audit,
17 inspection, interview, or other site visit.

18 (h) For the purposes of this section, "agency personnel" includes
19 any auditor, inspector, employee, agent, contractor, or other person
20 authorized to conduct or participate in an agency regulatory or
21 enforcement action involving a small business.

22 (i) For the purposes of this section, "small business" has the
23 same meaning as in RCW 34.05.110(9)(a).

24 (2) The state of Washington provides small business owners with a
25 bill of rights relating to their interactions with state agencies,
26 boards, commissions, and other entities with authority to license,
27 permit, register, inspect, or otherwise regulate the activities of
28 small businesses. These rights and protections include, but are not
29 limited to:

30 (a) Written notice of an audit, inspection, interview, or other
31 site visit must be provided at least three business days in advance,
32 whenever possible. This notice should be followed by a telephone call
33 or email twenty-four hours in advance of the visit, or on the
34 business day preceding the visit in the case of holidays or Monday
35 appointments. This notice requirement does not apply for visits made
36 at the request of the small business owner or owner's representative.

37 (b) The written notice must describe the reason for the visit and
38 identify, so far as practical, the areas where access is requested,
39 documents or other records to be inspected, and individuals to be

1 interviewed in addition to the owner or the owner's designated
2 representative.

3 (c) To the extent allowed by law, a small business owner may
4 request a warrant be issued, and reasonable opportunity for legal
5 counsel to review the warrant, before granting entry to the premises.
6 If federal or state law permits entry without a warrant, the agency
7 shall provide the small business owner with an electronic link to or
8 printed copy of the relevant law.

9 (d) Visits should occur during normal business hours Monday
10 through Friday, unless otherwise requested by the business owner or
11 owner's representative, or at such other times the business is open
12 to the public. Visits will not be scheduled on federal holidays. This
13 does not apply to:

14 (i) Emergency situations;

15 (ii) Special or one-time events such as, but not limited to,
16 sporting events, concerts, or trade shows occurring on weekends or
17 holidays; or

18 (iii) Instances where work is occurring outside normal business
19 hours and agency personnel have reason to believe a violation may be
20 occurring.

21 (e) The small business owner may request the visit occur on a
22 particular day or date, and at a particular start time. They may also
23 request an alternative date if the visit would otherwise occur on a
24 religious holiday the small business owner or owner's representative
25 observes.

26 (f) If agency personnel must cancel or change a scheduled visit,
27 notice of the cancellation or change must be provided with as much
28 advance notice to the small business owner as possible.

29 (g) If emergency entry to a small business or its premises is
30 required, agency personnel must make reasonable efforts to promptly
31 notify the small business owner or owner's representative of the
32 entry, and disclose what actions agency personnel expect to take
33 based on the information available at the time.

34 (h) The small business owner may designate one or more
35 individuals as official company representatives and have legal,
36 accounting, safety, or other technical professionals participate in
37 any agency visits.

38 (i) On arrival, agency personnel will provide agency-issued photo
39 identification and contact information, disclose any inspection fees,
40 and ask for the small business owner, or owner's representative if

1 one has been designated by the owner. Unless previously provided in
2 accordance with subsection (1)(g) of this section, a copy of the
3 small business bill of rights must be presented to the owner or
4 owner's representative at the time of the visit.

5 (j) The small business owner or owner's representative may
6 accompany the inspector or other agency personnel during the visit,
7 except during confidential interviews. Agency personnel must obtain
8 the small business owner's consent before making any audio or video
9 recordings. If agency personnel make audio or video recordings, the
10 small business owner or owner's representative may either request a
11 copy of those recordings or record the same activities, except
12 confidential interviews. If confidential interviews are to be
13 recorded, agency personnel must obtain consent from the individuals
14 interviewed.

15 (k) Unless the purpose or result of the visit is to revoke
16 business registrations or seize property, agency personnel must take
17 reasonable precautions to avoid disrupting ongoing operations, and
18 must comply with all applicable federal and state safety and health
19 requirements.

20 (l) Agency personnel must review and consider any relevant
21 written advice or other materials previously provided to the small
22 business owner or owner's representative, and notes or other records
23 of telephone or in-person conversations with agency staff, in the
24 small business owner's possession, on which the small business owner
25 relied in his or her efforts to implement and comply with state laws
26 or rules applicable to the inspection, audit, or other purpose of the
27 visit.

28 (m) The small business owner, owner's representative, employee,
29 or agent may immediately correct any deficiencies identified during
30 the visit, and have those corrections noted by the agency personnel
31 in the inspection report, audit, notice, or other finding.

32 (n) Agency personnel must notify the small business owner or
33 owner's representative of the opportunity to correct violations
34 within the time period allowed in RCW 34.05.110, or as authorized by
35 other agency-specific statutes or rules, to avoid or mitigate
36 penalties.

37 (o) If agency personnel collect samples for laboratory analysis
38 during the visit, a split sample must be immediately provided on
39 request to the small business owner or owner's representative for
40 independent testing or analysis. Copies of analysis performed by or

1 for the agency on samples taken during the visit must be provided to
2 the small business owner or owner's representative as soon as the
3 results are available.

4 (p) The agency shall provide the small business owner or owner's
5 representative a copy of the inspection report either at the time of
6 inspection, or within thirty business days. The agency shall provide
7 a list of any documents or other materials relied upon in determining
8 compliance or issuing a citation, notice, assessment, or other
9 finding, if applicable. The agency shall provide a copy of those
10 documents to the small business owner or owner's representative upon
11 request.

12 (q) The agency shall update the small business owner or owner's
13 representative at least monthly about the status of any action
14 resulting from the visit. If no action is to be taken, the agency is
15 not required to provide additional notification.

16 (r) If applicable, the small business owner or owner's
17 representative must be provided information about the agency's appeal
18 process.

19 (s) The small business owner or owner's representative must be
20 given contact information for the agency small business liaison,
21 ombuds, or other staff authorized to review, investigate, answer, or
22 otherwise assist regulated entities with questions or concerns about
23 the visit or other matters within the agency's jurisdiction.

24 NEW SECTION. **Sec. 3.** A new section is added to chapter 34.05
25 RCW to read as follows:

26 Agencies with one thousand or more full-time equivalent employees
27 must complete and post online a small business bill of rights
28 required by this act by December 31, 2019. Agencies with five hundred
29 to nine hundred ninety-nine full-time equivalent employees must
30 complete and post online a small business bill of rights required by
31 this act by July 1, 2020. Agencies with fewer than five hundred full-
32 time equivalent employees must complete and post online a small
33 business bill of rights required by this act by December 31, 2020.
34 New agencies or programs established after the effective date of this
35 section must complete and post online a small business bill of rights
36 required by this act within twelve months of their creation.

1 NEW SECTION. **Sec. 4.** This act may be known and cited as the
2 small business bill of rights.

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