

FINAL BILL REPORT

2SHB 2603

C 194 L 10
Synopsis as Enacted

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

Sponsors: House Committee on Ways & Means (originally sponsored by 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).

House Committee on State Government & Tribal Affairs
House Committee on Finance
House Committee on Ways & Means
Senate Committee on Government Operations & Elections
Senate Committee on Economic Development, Trade & Innovation

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.

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

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.

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 a law was enacted 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:

Agencies must provide a small business with a copy of the state law or agency rule being violated and must allow a period of at least two business days for the small business to correct the violation before the agency imposes a fine, a civil penalty, or an administrative sanction. If no correction is possible, or if an agency is acting in response to a complaint made by a third party who would be disadvantaged by correction of the violation, then no correction shall be required. Exceptions to this requirement include:

- a determination that the effect of the violation or waiver 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 requirement for a notification or 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 requirements of the act do not affect the Attorney General's authority to impose fines, civil penalties, or administrative sanctions or to enforce the Consumer Protection Act.

The definition of a small business is changed to include a business with a gross revenue of less than \$7 million annually as well as a business with 250 or fewer employees.

Votes on Final Passage:

House	98	0	
Senate	48	0	(Senate amended)
House	94	0	(House concurred)

Effective: June 10, 2010