
**State Government & Tribal Affairs
Committee**

HB 1436

Brief Description: Providing limitations for the imposition of regulatory civil penalties.

Sponsors: Representatives Kristiansen, Pearson and McCune.

Brief Summary of Bill

- Prohibits an agency from imposing a fine or other sanction under the Administrative Procedure Act against a party whose actions were initially approved by the agency, but a rule violation is later discovered through subsequent reevaluation of the party's actions.
- Allows a party to remedy a rule violation where the violation was discovered by the agency only after a reevaluation of an earlier agency determination that the party was in compliance with the rule.
- Authorizes an agency to provide technical assistance to a regulated party in order to allow such party to remedy a violation.

Hearing Date: 2/17/11

Staff: Thamas Osborn (786-7129).

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

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follow specified procedures, including publishing notice in the state register and holding a hearing.

Under the APA, agencies have the authority to impose fines, civil penalties, or administrative sanctions for the violation of a state law or agency rule.

Violations of Agency Rule or State Law By Small Businesses.

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.

Summary of Bill:

Under the APA, an agency is prohibited from imposing a fine or other penalty upon a person if:

- an agency's inspection results in an initial determination that no violation has taken place, but a subsequent re-evaluation of the inspection identifies a violation by the regulated party; or
- an agency accepts and approves documentation submitted by a regulated party, but a subsequent re-evaluation reveals a violation of rules pertaining to such required documentation.

An administrative rule adopted pursuant to the APA may not authorize the imposition of a civil fine for a violation of the rule if:

- an agency's inspection results in an initial determination that no violation has taken place, but a subsequent re-evaluation of the inspection identifies a violation by the regulated party; or
- an agency accepts and approves documentation submitted by a regulated party, but a subsequent re-evaluation reveals a violation of rules pertaining to such required documentation.

Administrative rule violations identified after an inspection or after documentation has been approved by an agency may be remedied through technical assistance provided to the regulated party. This technical assistance process must allow for correction of the violation with respect to future reporting periods or inspections.

Appropriation: None.

Fiscal Note: Requested.

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