

SENATE BILL REPORT

SB 6142

As Reported by Senate Committee On:
Economic Development, Trade & Innovation, January 30, 2012

Title: An act relating to changing agency regulatory practices.

Brief Description: Changing agency regulatory practices.

Sponsors: Senators Kilmer, Becker, Rolfes, Hatfield, Kastama, Baumgartner, Eide, Fain, Hobbs, Shin, Parlette, Chase and Frockt.

Brief History:

Committee Activity: Economic Development, Trade & Innovation: 1/16/12, 1/26/12, 1/30/12 [DPS, w/oRec].

SENATE COMMITTEE ON ECONOMIC DEVELOPMENT, TRADE & INNOVATION

Majority Report: That Substitute Senate Bill No. 6142 be substituted therefor, and the substitute bill do pass.

Signed by Senators Kastama, Chair; Chase, Vice Chair; Ericksen, Hatfield, Holmquist Newbry, Kilmer, Shin and Zarelli.

Minority Report: That it be referred without recommendation.

Signed by Senator Baumgartner, Ranking Minority Member.

Staff: Edward Redmond (786-7471)

Background: The Office of Regulatory Assistance (ORA) provides assistance to citizens, businesses and local governments to improve the environmental and business regulatory processes including permitting, licensing, and agency rule-making.

The Legislature enacted the Technical Assistance Act (TAA) in 1995 requiring regulatory agencies to provide technical assistance to businesses that comply with state regulatory programs. These technical assistance programs must include technical assistance visits, printed information, information and assistance by telephone, and training meetings. Under the TAA, an agency cannot issue a civil penalty to a business for a first-time violation discovered during a technical assistance visit, so long as the violation is corrected within a reasonable time. Unless otherwise prohibited, agencies are allowed to issue civil penalties for first-time violations discovered outside of technical assistance visits.

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.

In 2010 the Legislature passed 2SHB 2603 requiring agencies to provide small businesses with a copy of the law or rule being violated before imposing a fine, civil penalty, or administrative sanction. With limited exceptions, the agency must allow small businesses at least seven days to correct the violation. This window to correct does not apply when the violation cannot be resolved or the agency is responding to a third-party complainant that would be disadvantaged by such opportunity to correct.

Summary of Bill (Recommended Substitute): Regulatory agencies must provide to a small business a copy of the state law or agency rule that is being violated, as well as a list of correct actions necessary for compliance. Once that information has been provided, the agency may not add more violations or corrective actions during that review period, unless generated by complaints from a third party.

For purposes of technical assistance visits, if violations are not identified during the visit, the agency must let the owner or operator of the facility know when to expect the results of the visit. During the technical assistance visit, the person conducting the visit must provide the owner or operator with a website where the owner or operator may complete an anonymous customer service survey. Regulatory agencies must also require their regulators to complete a self assessment for each technical assistance visit. The self assessment must be comparable to the customer service survey. Each individual regulator must receive the aggregate results of customer service surveys relating to his or her visits to compare with the regulator's self assessment.

The ORA must work with regulatory agencies to develop a customer service survey that regulated entities may complete after a technical assistance visit. The ORA must coordinate an agency small business liaison team, and provide information and assistance to legislators in responding to constituent inquiries regarding small business relation, permitting, or other regulatory issues.

EFFECT OF CHANGES MADE BY ECONOMIC DEVELOPMENT, TRADE & INNOVATION COMMITTEE (Recommended Substitute):

- Requires agencies to either provide a copy of the law or rule being violated or provide a link to the online information;
- provides that agencies must make every effort to avoid adding more violations or corrective actions that could have been noted in the original violation or correction notice, unless allowed by exemptions or by a complaint from a third party;
- provides that beginning July 31, 2013, all agencies with inspection and enforcement programs affecting small businesses must file annual reports indicating the percentage of small business not given the benefits of this act due to the exceptions allowed for waiver of fines; and
- removes the requirement to appoint a small business advocate and instead requires the ORA to coordinate an agency small business liaison team to provide assistance to small businesses and recommend system improvements.

Appropriation: None.

Fiscal Note: Available.

Committee/Commission/Task Force Created: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony on Original Bill: PRO: While working for the Economic Development Board in Pierce County, I meet with approximately 200 businesses a year. From those meetings, I realize that we must constantly be working to improve our state's customer service approach to employers. Forbes Magazine recently rated Washington as the number five place to do business in the United States. This bill would institutionalize basic business practices when there is a regulatory visit. It would help employers know what to expect and when to expect results from that visit. Having an anonymous customer-service survey that addresses professionalism and timelines would help. The concern amongst many businesses are with the interactions they have with the regulators not the compliance with the rules. Sometimes the interaction is positive, but sometimes it less positive. Business do not feel they can give direct feedback without upsetting the regulators. The anonymous survey could be a way to improve customer service. Having a regulators do a short self review after each visit, would also help to improve the regulatory environment. This is really about trying to make our regulatory environment even more professional. I understand that there are some agencies that have some suggestions for improvement and that there are some amendments underway. I look forward to reviewing those, and I am willing to work with them. This bill is a way to continuously improve our business environment, so that our economy can continue to grow.

OTHER: ORA is interested in the bill, but have a few concerns. Agencies are a little worried about language in the bill that would prohibit agencies from being able to issue additional violations during the review period. Several agencies have multiple programs with different inspectors. Under this law, if an agency were conducting an elevator inspection and found a violation, it could not also address a health or safety concern at the location until after the review period. ORA is looking for language that ensures inspectors will do a good job. Many different agencies do different inspections; looking for language that would make sure that inspectors will do a good job at what they're doing. Agencies do have to respond to concern and violations that effect public health and the environment. If these issues are not resolved, you will continue to hear concerns from agencies. Agencies are worried about the cost associated with the self-assessment survey and question the value of the information they will receive from the self analysis. This may be something worth deleting from the bill. If not, some funding should be given to ORA to help put together the survey and sort out the feedback the office will receive. Appointing a small business advocate is also concerning because the office is quite neutral.

Department of Natural Resources (DNR) supports the intent, but also has some concerns. DNR provides support to small family foresters. They often come to DNR for assistance with understanding complex forest regulations. Due to budget reductions, those programs and staff have been reduced dramatically. DNR is concerned that sections three through six would increase administrative costs and be a burden to the agency. It would force DNR to distract from providing technical assistance to focusing on very prescriptive surveys. Section two would hamper DNR from being able to take swift action on a forest practice violation

while conducting different at-site evaluation. DNR would like to work with the prime sponsor on some of the improvements recommended for the bill.

Persons Testifying: PRO: Senator Kilmer, prime sponsor.

OTHER: Faith Lumsden, Office of Regulatory Assistance; Heath Packard, DNR.