

HOUSE BILL REPORT

HB 2172

As Reported by House Committee On:
State Government & Tribal Affairs

Title: An act relating to changing agency regulatory practices.

Brief Description: Changing agency regulatory practices.

Sponsors: Representatives Probst, Kenney, Sells, Jinkins, Stanford, Ryu, Ladenburg, Hasegawa, Tharinger, Maxwell, McCoy, Springer, Appleton, Roberts, Kirby, Green, Wylie and Ormsby.

Brief History:

Committee Activity:

State Government & Tribal Affairs: 1/9/12, 1/26/12 [DPS].

Brief Summary of Substitute Bill

- Adds requirements to regulatory agencies regarding technical assistance visits and first-time small business violations.
- Requires the Office of Regulatory Assistance to develop customer service surveys for regulatory agencies and to coordinate an agency small business liaison team.

HOUSE COMMITTEE ON STATE GOVERNMENT & TRIBAL AFFAIRS

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 7 members: Representatives Hunt, Chair; Appleton, Vice Chair; Darneille, Dunshee, Hurst, McCoy and Miloscia.

Minority Report: Do not pass. Signed by 4 members: Representatives Taylor, Ranking Minority Member; Overstreet, Assistant Ranking Minority Member; Alexander and Condotta.

Staff: Marsha Reilly (786-7135).

Background:

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.

The Office of Regulatory Assistance (ORA) provides environmental permitting assistance in navigating the permit process, and provides assistance to small businesses by helping identify licensing and permitting requirements and providing other business assistance. The ORA also works to improve the regulatory process.

In 1995 the Legislature enacted the Technical Assistance Act (TAA). The TAA requires regulatory agencies, as defined in the Administrative Procedures Act, 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.

Under legislation enacted in 2010, before an agency may impose a fine, civil penalty, or administrative sanction on a small business for a violation of a law or rule, the agency must provide the small business with a copy of the law or rule being violated. With some exceptions, the agency must also allow the small business at least seven calendar days to correct the violation. If no correction is possible or the agency is acting in response to a complaint made by a third party who would be disadvantaged by an opportunity to correct, the opportunity to correct does not apply.

Summary of Substitute Bill:

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.

Substitute Bill Compared to Original Bill:

The substitute bill makes the following changes:

- Agencies must either provide a copy of the law or rule being violated or provide a link to the online information.
 - 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.
 - Beginning July 31, 2013, all agencies with inspection and enforcement programs affecting small business must file annual reports indicating the agency director's estimate of the percentage of small business regulatory cases that are not offered the benefits intended for small businesses in this act due to the exceptions allowed for waiver of fines.
 - The requirement for the ORA to appoint a small business advocate is removed; however, a requirement that the ORA will coordinate an agency small business liaison team is added.
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Appropriation: None.

Fiscal Note: Available.

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

Staff Summary of Public Testimony:

(In support) Forbes Magazine rated Washington fifth for purposes of a business friendly environment. Anything to make our state more friendly is important, including knowing when to expect the results of a technical assistance visit. Having a customer service survey presents an opportunity to give feedback.

It is clear that small businesses have problems with regulations. One-third of businesses do not go online, and perhaps there could be a survey that could be faxed. Businesses should be encouraged to use technical assistance as it is an opportunity to get things right. If you ask for a visit, regulators will provide good feedback. For follow-up visits, there should be recognition that the business did ask for assistance earlier.

(In support with concerns) There are concerns about the fiscal impacts, particularly the creation of a small business advocate. This policy crosses the line into lobbying and is not in line with the ORA mission. An ombudsman role would be a better approach.

(Information only) The single comprehensive statement of violations is a concern. There will be a cost to providing a paper copy and agencies can now provide this information online. The customer service survey is a concern in that it would cost money to do it right. The self assessments would cost money and staff time to conduct. The appointment of a small

business advocate also has a fiscal impact, and would result in an advocacy role, rather than the neutral role now served by the ORA.

(With concerns) The bill goes too far in tying the hands of our regulatory agencies. It is not the approach to have with business entities. Education and hand-holding is okay, but the intent is far beyond that. Regulation is done through enforcement and fines.

(Opposed) Many programs have taken significant cuts over the years, and adding the requirements in this bill will increase processes and costs.

Persons Testifying: (In support) Representative Probst, prime sponsor; and Gary Smith, Independent Business Association.

(In support with concerns) Bruce Colshart, People for Puget Sound.

(Information only) Alan Bogner, Governor's Office of Regulatory Assistance.

(With concerns) Arthur West, Northwest Poverty Law Center.

(Opposed) Darin Cramer, Department of Natural Resources.

Persons Signed In To Testify But Not Testifying: None.