

SENATE BILL REPORT

SB 5948

As Reported by Senate Committee On:
Financial Institutions, Economic Development & Trade, February 21, 2019

Title: An act relating to creating a small business bill of rights.

Brief Description: Creating a small business bill of rights.

Sponsors: Senators Palumbo, Wilson, L., Becker, Brown, Warnick, Rolfes, Bailey, Mullet, Braun, Honeyford, Van De Wege and Short.

Brief History:

Committee Activity: Financial Institutions, Economic Development & Trade: 2/21/19, 2/21/19 [DPS-WM, w/oRec].

Brief Summary of First Substitute Bill

- Requires state agencies of all sizes to publish a small business bill of rights that details rights and expectations that exist between small business owners and state government agency personnel.

SENATE COMMITTEE ON FINANCIAL INSTITUTIONS, ECONOMIC DEVELOPMENT & TRADE

Majority Report: That Substitute Senate Bill No. 5948 be substituted therefor, and the substitute bill do pass and be referred to Committee on Ways & Means.

Signed by Senators Mullet, Chair; Wilson, L., Ranking Member; Braun, Das, Ericksen and Hobbs.

Minority Report: That it be referred without recommendation.

Signed by Senator Hasegawa, Vice Chair.

Staff: Clint McCarthy (786-7319)

Background: In 2017, the Legislature directed the attorney general (AG) to review the Administrative Procedures Act, related administrative rules, statutes, and case law to identify rights and protections afforded to small business owners selected for agency enforcement actions, such as audits, inspections, site visits, and record reviews. For the same reason, the

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.

departments of Agriculture, Ecology, Employment Security, Labor and Industries, and Revenue, and the State Fire Marshall must review respective governing statutes, administrative rules, policy statements, guidance, and directives identified as sources for rights and protections. Each agency must provide the AG with specified materials and copies of statements of rights provided to small businesses for the AG's review no later than August 31, 2017.

The AG was directed to compile findings in a report to relevant legislative committees by November 30, 2017. In its report to the Legislature, the AG recommended steps be taken to:

- improve efforts to provide transparent, accessible information and assistance to operating businesses early in the process;
- improve efforts to share effective practices among agencies;
- expand the role of business associations and other groups to coordinate sharing information between small business owners and agencies;
- be deliberate about how small business is defined; and
- consider targeted expansion using special advocates or ombuds to help disseminate information and resolve noncompliance issues or disputes.

Summary of Bill: The bill as referred to committee not considered.

Summary of Bill (First Substitute): A small business bill of rights is created.

Requirements of Agency Personnel. State government agency personnel must:

- obtain a small business owner's consent before making any type of recording;
- take reasonable precautions to avoid disrupting ongoing operations, unless the purpose of the visit is to revoke business registrations or seize property;
- review and consider any relevant written advice or other materials previously provided to the business owner or representatives;
- notify small business owners of the opportunity to correct violations within a specific time period to avoid or mitigate penalties;
- provide a split sample at the request of the small business owner or representative;
- provide a copy of the inspection report either at the time of the report, or within 30 days of the report, and provide a list of any documents or materials used in determining compliance.
- update the small business owner monthly on the status of any action resulting from the visit;
- make written materials available in the small business owner's primary language upon request;
- provide agency issued photo identification, disclose fees, and ask to speak to the owner or the owner's designee; and
- provide contact information with the agency small business liaison, ombuds, or other staff authorized to review, investigate, answer, or otherwise assist regulated entities with questions or concerns about the visit.

Rights of Small Business Owners. A small business owner may immediately correct any deficiencies identified during the visits, and have those corrections notified by agency personnel.

Written notice of an audit, interview, or other site visit must be provided at least three days in advance, whenever possible. The written notice must describe the reason for the visit and identify the areas where access is requested, documents requested, and individuals to be interviewed in addition to the owner's representative.

If emergency entry to a small business is required, agency personnel must take reasonable efforts to notify the small business owner of the entry and disclose what actions agency personnel expect based on the information at the time.

Expectations for Small Business Owners. If applicable, a small business owner may request information about the agency's appeal process.

An owner may request a warrant be issued, and reasonable opportunity for legal counsel to review the warrant before granting entry to the premises, to the extent allowed by law.

A small business owner may request that the visit occur on a specific time and day. Visits should occur during normal business hours during the week. If agencies have to cancel or change a visit, they must do so with as much advance notice as possible.

The small business owner may designate one or more individuals with technical expertise to participate in any agency visits. The owner or designee may accompany inspectors or agency personnel. The small business owner may designate one or more individuals with technical expertise to participate in any agency visits.

Small Business Bill of Rights Website Requirements. Each state agency, board, commission, or other entity that conducts audits, inspections, or other enforcement actions are directed create and clearly post a small business bill of rights on its website. The publication due date of the small business bill of rights is dependent on the size of the agency as follows:

- 1000 or more employees—December 31, 2019;
- 500-999 employees—July 1, 2020;
- less than 500 employees—December 31, 2020; and
- agencies established after the bill's effective date—within 12 months of their creation.

EFFECT OF CHANGES MADE BY FINANCIAL INSTITUTIONS, ECONOMIC DEVELOPMENT & TRADE COMMITTEE (First Substitute):

- Removes the requirement to make written materials available in the small business owner's primary language upon request.

Appropriation: None.

Fiscal Note: Requested on February 18, 2019.

Creates Committee/Commission/Task Force that includes Legislative members: No.

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

Staff Summary of Public Testimony on Proposed Substitute: *The committee recommended a different version of the bill than what was heard.* PRO: Small businessmen wear many hats. Sometimes you are cleaning toilets, sometimes you are interpreting RCW's. This bill is a good step forward for small businesses that want to do the right thing. This will let them know what rights are available to them. This is not a statement of new rights, just a restatement of rights that came from the work done in 2017. The bill is not too prescriptive. No rulemaking required.

OTHER: Many of the rights in this bill are already supported by current statute. The support of small businesses should not come at the expense of vulnerable adults that are served by the businesses that serve vulnerable adults. DSHS needs to be able to do surprise inspections. With all the carve outs, it is hard for an agency to have a small business bill of rights because there are so many nuances that make it confusing. DFI does investigations at times where they can not and do not give notice to small business owners.

Persons Testifying: PRO: Patrick Connor, National Federation of Independent Business.

OTHER: Candace Goehring, DSHS/Aging and Long Term Support Administration; Tammy Fellin, Labor & Industries; Drew Bouton, Department of Financial Institutions.

Persons Signed In To Testify But Not Testifying: No one.