

HOUSE BILL REPORT

SSB 5042

As Passed House - Amended:

April 13, 2009

Title: An act relating to first-time paperwork violations by small businesses.

Brief Description: Providing a waiver of penalties for first-time paperwork violations by small businesses.

Sponsors: Senate Committee on Economic Development, Trade & Innovation (originally sponsored by Senators Kilmer, Holmquist, Berkey, Schoesler, Kauffman, Marr, Rockefeller, Haugen, Eide, Kastama, Hatfield, Swecker, Tom, McAuliffe, Benton, Parlette and Roach).

Brief History:

Committee Activity:

State Government & Tribal Affairs: 3/5/09, 3/26/09 [DPA];

Ways & Means: 4/2/09, 4/4/09 [DPA(SGTA)].

Floor Activity

Passed House - Amended: 4/13/09, 97-0.

Brief Summary of Substitute Bill (As Amended by House)

- Requires agencies to waive fines, civil penalties, or administrative sanctions for first-time paperwork violations by small businesses.

HOUSE COMMITTEE ON STATE GOVERNMENT & TRIBAL AFFAIRS

Majority Report: Do pass as amended. Signed by 7 members: Representatives Hunt, Chair; Appleton, Vice Chair; Armstrong, Ranking Minority Member; Alexander, Flannigan, Hurst and Miloscia.

Staff: Tracey O'Brien (786-7196)

HOUSE COMMITTEE ON WAYS & MEANS

Majority Report: Do pass as amended by Committee on State Government & Tribal Affairs. Signed by 22 members: Representatives Linville, Chair; Ericks, Vice Chair;

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.

Alexander, Ranking Minority Member; Bailey, Assistant Ranking Minority Member; Dammeier, Assistant Ranking Minority Member; Chandler, Cody, Conway, Darneille, Haigh, Hinkle, Hunt, Hunter, Kagi, Kenney, Kessler, Pettigrew, Priest, Ross, Schmick, Seaquist and Sullivan.

Staff: Sarah Stetson (786-7109)

Background:

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 in complying 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.

Summary of Amended Bill:

Agencies shall waive any 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.

This act does not diminish any responsibility to apply for and obtain a permit, license or authorizing document that is required to engage in a regulated activity, or otherwise comply with state or federal law. In addition, this act does not authorize the waiver of fines, civil penalties or administrative sanctions for first-time paperwork violations if the small business fails to provide accurate or complete information and documentation for a claim for payment or small businesses that are licensed to provide care and services to vulnerable adults or children.

An agency may also waive fines, civil penalties, or administrative sanctions incurred for a paperwork violation that is not a first time offense.

Any waiver that occurs under this act may be reinstated and imposed in addition to any additional fines, penalties or administrative sanctions associated with any subsequent violation for noncompliance with a substantially similar paperwork requirement or the failure to correct the previous violation, if required.

A "paperwork violation" is defined as the 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. A "first time paperwork violation" is defined as the first instance of a particular or substantially similar paperwork violation.

Appropriation: None.

Fiscal Note: Available.

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

Staff Summary of Public Testimony (State Government & Tribal Affairs):

(In support) This bill is about the importance of small businesses in Washington, especially during these difficult economic times. During a downturn, many more small businesses open. We need to ensure their success. Fines can be an issue for small businesses, especially for minor violations. In addition, this bill is about changing how Washington is perceived as a place to do business. The imposition of minor fines feeds the perception that Washington is not business-friendly. This bill simply eliminates the "gotcha" for first-time minor paperwork violations. It does not harm the environment or put public safety at risk.

(In support with concerns) These changes would be more appropriate in the Technical Assistance Act (Chapter 43.05 RCW) with all the other assistance provisions. In addition, other laws, including the Regulatory Fairness Act, use the commonly accepted definition of "small business:" a business with 50 or fewer employees. Such businesses still constitute more than 97 percent of all Washington businesses. Since this bill is intended to focus on "small businesses," utilizing the common definition would be more appropriate. Also, a clarification is needed to the definition of "paperwork violation." A business's failure to submit information to an agency may be a paperwork violation; however the underlying requirement may not be. Finally, there are thousands of insurance businesses that would be exempted under this bill. The filing of financial reports is critical to ensure adequate funds and proper business practices are occurring. The failure to file a financial report is often the first sign of a much greater problem.

(In support with amendment) There may also be a need to clarify that the provisions do not change the requirements for federal funds or licensing requirements.

(With concerns) Minor paperwork violations can impact natural resources. For example, the failure to file the proper paperwork could result in an egregious violation of an environmental regulation. The current language forgiving paperwork violations is too broad and vague. This bill needs to exempt Title 77 (Fish and Wildlife) entirely.

(Opposed) None.

Staff Summary of Public Testimony (Ways & Means):

(In support) Fines and sanctions for minimal non-threatening paperwork issues cause concern for businesses. This bill is very similar to legislation passed in another state. The goal is that, particularly in tough economic times, the state should work with businesses to help them weather the storm instead of hitting them with little fines and penalties. This is a good idea for the State of Washington. There are enough exceptions built in now for agencies that raised concerns.

This legislation has both practical and symbolic value. Practically, there is not a single business owner who knows all of the requirements that apply to his or her business. One of the ways that they find out about these requirements is through these first-time fines and sanctions. This legislation will give them a free pass that first time. Symbolically, the bill demonstrates that Washington feels that small businesses are important. They were important in previous economic downturns and will be equally important in this one.

(Opposed) None.

Persons Testifying (State Government & Tribal Affairs): (In support) Senator Kilmer, prime sponsor; Amber Carter, Association of Washington Business; Mark Johnson, Washington Retail Association; Troy Nichols, National Federation of Independent Business; and Gary Smith, Independent Business Association.

(In support with concerns) Drew Bouton, Office of the Insurance Commissioner; and K. Seiler, Department of Ecology.

(In support with amendment) Roger Gantz, Department of Social and Health Services.

(With concerns) Tom Davis and Bruce Bjork, Department of Fish and Wildlife.

Persons Testifying (Ways & Means): Senator Kilmer, prime sponsor; Mark Johnson, Washington Retail Association; and Troy Nichols, National Federation of Independent Business.

Persons Signed In To Testify But Not Testifying (State Government & Tribal Affairs): None.

Persons Signed In To Testify But Not Testifying (Ways & Means): None.