

SENATE BILL REPORT

SB 5042

As of January 27, 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: Senators Kilmer, Holmquist, Berkey, Schoesler, Kauffman, Marr, Rockefeller, Haugen, Eide, Kastama, Hatfield, Swecker, Tom, McAuliffe, Benton, Parlette and Roach.

Brief History:

Committee Activity: Economic Development, Trade & Innovation: 1/14/09.

SENATE COMMITTEE ON ECONOMIC DEVELOPMENT, TRADE & INNOVATION

Staff: Philip Brady (786-7460)

Background: The Technical Assistance Act was passed in 1995 and requires agencies to provide technical assistance to businesses in complying with state regulatory programs. It also provides that agencies cannot issue civil penalties to businesses for first-time violations discovered during a technical assistance visit, provided such violations are corrected within a reasonable period of time. Unless otherwise prohibited, agencies are allowed to issue civil penalties for first-time violations discovered outside of technical assistance visits.

Summary of Bill: Agencies must waive fines, civil penalties, or administrative sanctions for first-time paperwork violations by small businesses. A paperwork violation is defined as failure to comply with any statutory or regulatory requirement connected to a regulation mandating an agency to collect information. In the event of a second violation, the agency may reinstate the previously waived penalty and impose any new penalty stemming from the second violation. The waiver is not available to a small business whose owner or operator has previously committed a paperwork violation, and cannot reduce a requirement to apply for a permit or license.

The waiver requirement does not apply where the violation: 1) could potentially cause serious harm to the public interest; 2) involves knowing or willful conduct that may result in a felony conviction; 3) concerns assessment or collection of any tax, debt, revenue, or receipt; 4) presents direct danger to the public health or safety, could potentially cause loss of

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income or benefits of employees, or presents risk of severe economic harm; or 5) results from failure to comply with a federal requirement mandating imposition of a fine or civil penalty.

Appropriation: None.

Fiscal Note: Not requested.

Committee/Commission/Task Force Created: No.

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

Staff Summary of Public Testimony: PRO: Excessive regulations discourage business. This bill focuses agencies on desired outcomes rather than technical violations. It would send a message that the state doesn't want to be punitive in this struggling economy. The waiver should apply to annual research and development surveys for the Department of Revenue.

OTHER: This bill is a good concept, but might be unnecessary as few paperwork violations are presently penalized. Also, sometimes paperwork is important, particularly for underground storage tanks or hazardous waste tracking. Removing first-time penalties would increase the economic benefits of non-compliance.

This might apply to uniformed officers making traffic stops, and would be difficult to administer.

Persons Testifying: PRO: Senator Kilmer, prime sponsor; Troy Nichols, National Federation of Independent Business/Washington; Gary Smith, Independent Business Association of Washington.; Jim King, Washington State Heating, Ventilation and Air Conditioning Association; Amber Carter, Association of Washington Business; Amy Brackenburg, Building Industry Association of Washington.

OTHER: Darin Rice, Department of Ecology, Jeff DeVere, Washington State Patrol.