

# SENATE BILL REPORT

## SB 6142

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As of January 17, 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.

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### SENATE COMMITTEE ON ECONOMIC DEVELOPMENT, TRADE & INNOVATION

**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.

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:** Regulatory agencies must provide small businesses with a copy of the state law or agency rule that is being violated, a comprehensive statement of the violations

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discovered, and the necessary corrective action that must be taken. Once that information has been provided, the agency may not compound such violations or corrective actions during that review period.

If violations are not identified during a technical assistance 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 address 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 the regulator's 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 also must appoint a small business advocate to perform the following duties:

- serve as an advocate for Washington small-business owners providing services that include advisory participation in the consideration of legislation and administrative rules affecting small business;
- represent the views and interests of small businesses before other state agencies and departments;
- investigate grievances and facilitate resolution to small business issues, including working in consultation with legislative staff to respond to small business issues fielded by legislators;
- receive results of the customer service surveys resulting from technical assistance visits and work with agency directors to improve results as needed;
- assist agencies with customer service surveys and self-assessment surveys; and
- attend and observe appeals hearings, as needed.

**Appropriation:** None.

**Fiscal Note:** Requested on January 13, 2012.

**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: 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.