

# HOUSE BILL REPORT

## SB 5230

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**As Reported by House Committee On:**  
State Government, Elections & Information Technology

**Title:** An act relating to the licensing and regulatory requirements of small business owners.

**Brief Description:** Concerning licensing and regulatory requirements of small business owners.

**Sponsors:** Senators Wilson, Palumbo, Braun, Mullet, Baumgartner, Takko, Brown, Keiser, King, Miloscia, Chase, Walsh, Warnick, Hobbs, Angel, Becker, Hasegawa, Hawkins, Padden, O'Ban, Sheldon and Bailey.

**Brief History:**

**Committee Activity:**

State Government, Elections & Information Technology: 3/15/17, 3/22/17 [DP].

**Brief Summary of Bill**

- Directs the Attorney General to report to the Legislature with recommended changes to identify, clarify, and harmonize rights and protections, and improve notices of rights, afforded to small business owners selected for agency enforcement action.
- Requires specified agencies to review agency laws, rules, and other documents and provide information to the Attorney General for purposes of the report.

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### HOUSE COMMITTEE ON STATE GOVERNMENT, ELECTIONS & INFORMATION TECHNOLOGY

**Majority Report:** Do pass. Signed by 9 members: Representatives Hudgins, Chair; Dolan, Vice Chair; Koster, Ranking Minority Member; Volz, Assistant Ranking Minority Member; Appleton, Gregerson, Irwin, Kraft and Pellicciotti.

**Staff:** Joan Elgee (786-7106).

**Background:**

A number of programs and agency requirements apply specifically to small businesses.

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*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.*

Under the state Regulatory Fairness Act, agencies must prepare a small business economic impact statement (impact statement) if a proposed rule will impose more than minor costs to business in a particular industry, or when requested to do so by the Joint Administrative Rules Review Committee. An agency must, where legal and feasible in meeting the objectives of the underlying law, reduce disproportionate costs imposed on small business. The agency must consider a number of specified methods, including reducing or eliminating substantive regulatory requirements, simplifying recordkeeping, reducing frequency of inspections, delaying compliance timeframes, and reducing fines for noncompliance. Agencies must provide impact statements to any person who makes a request.

Under the Administrative Procedure Act (APA), agencies must provide a small business with a copy of the law or rule that a small business is violating and allow at least seven calendar days to correct the violation before the agency may impose a fine, civil penalty, or administrative sanction. Agencies must also waive any fines, civil penalties, or sanctions for first-time paperwork violations by a small business. Exceptions to the days to correct a violation and waiver requirements include when the agency head determines that the effect of the violation or waiver poses a direct danger to public health, results in a loss of income or benefits to an employee, or causes serious harm to the public interest; and when the requirements are in conflict with federal law. For purposes of the days to correct a violation and waiver requirements, a small business is a business with 250 or fewer employees or a gross revenue of less than \$7 million annually.

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### **Summary of Bill:**

The Attorney General (AG) must review the APA, related administrative rules, similar statutes, and case law to identify rights and protections afforded to small business owners selected for agency enforcement actions including audits, inspections, site visits, and record reviews.

The Departments of Agriculture, Ecology, Labor and Industries, and Revenue, and the Employment Security Department and State Fire Marshall must review their governing statutes, administrative rules, policy statements, guidance, and directives to identify current rights and protections for small business owners. Each agency must provide the AG with a list of the source documents for the rights and protections and a copy or electronic link to the documents. In addition, each agency must provide the AG with a copy or electronic link to any statements of rights or protections provided to small business owners at the time of any audit, inspection, or other enforcement action, and any statement of rights or protections provided to small business owners regarding the agency's administrative and appeal processes. The agencies must provide the information to the AG by August 31, 2017.

The AG must compile findings and submit a report to the relevant legislative committees by November 30, 2017. The report must include information submitted by agencies, as well as recommendations by the AG for statutory or other changes to identify, clarify, and harmonize, where practical, rights and protections afforded to small business owners and methods to improve notices of rights provided to small business owners. The AG must

provide agencies with the recommendations by October 30, 2017. Agencies may respond by providing written comments by November 13, 2017.

Criminal investigations or prosecutions are excluded from the provisions. "Small business" has the same meaning as in the APA.

The provisions expire on December 31, 2017.

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**Appropriation:** None.

**Fiscal Note:** Available.

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

**Staff Summary of Public Testimony:**

(In support) Small businesses make up 98 percent of all businesses and employ over 50 percent of the workforce in the state. The number one concern of small business is state agency enforcement, which can be intimidating. Small businesses don't know what their rights are when an agency shows up and assistance offered is just a fine. Administrative rules have a 36 percent greater impact on small businesses than on larger businesses. The bill will help provide interpretation and clarity to small businesses as the AG looks for improvements. It does not create new rights, but is a first step. This bill has bipartisan support and both this bill and the companion passed the respective chambers unanimously. The cost of the bill is small. The agencies listed are those responsible for 60 percent of the audits and inspections. The audits and inspections are costly for small businesses.

(Opposed) None.

**Persons Testifying:** Senator Wilson, prime sponsor; Senator Palumbo; Sheri Nelson, Association of Washington Business; Patrick Connor, National Federation of Independent Business Washington; and Gary Smith, Independent Business Association.

**Persons Signed In To Testify But Not Testifying:** Mark Johnson, Washington Retail Association.