

SENATE BILL REPORT

SB 6408

As of February 6, 2020

Title: An act relating to agency responsibilities to regulated businesses and professions.

Brief Description: Concerning agency responsibilities to regulated businesses and professions.

Sponsors: Senators Wilson, L., Mullet, Short, Becker, Takko, King, Zeiger, Brown, Schoesler, Frockt, Hasegawa, Rolfes, Honeyford, Walsh, Van De Wege and Braun.

Brief History:

Committee Activity: Financial Institutions, Economic Development & Trade: 1/28/20, 1/30/20 [DPS-WM].

Ways & Means: 2/05/20.

<p style="text-align: center;">Brief Summary of First Substitute Bill</p> <ul style="list-style-type: none">• Requires state regulatory agencies to provide certain information at each audit, inspection, or examination.

SENATE COMMITTEE ON FINANCIAL INSTITUTIONS, ECONOMIC DEVELOPMENT & TRADE

Majority Report: That Substitute Senate Bill No. 6408 be substituted therefor, and the substitute bill do pass and be referred to Committee on Ways & Means.

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

Staff: Clint McCarthy (786-7319)

SENATE COMMITTEE ON WAYS & MEANS

Staff: Alia Kennedy (786-7405)

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 the report, 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 (First Substitute): Requirements of Agency Personnel. By December 31, 2020, state government agency personnel must provide the following information at each audit, inspection, or examination:

- the purpose and legal authority for conducting the regulatory action;
- whether advance notice for a regulatory action will be provided, and the basis for not providing notice;
- the identification of the regulator, along with contact information;
- whether the business may cure or correct a potential or actual violation during or after an investigation to avoid or mitigate an administrative sanction;
- information on how the business may provide past agency advice or interpretations it relied upon for consideration in a regulatory decision;
- whether the business may designate one or more company representatives to have certain company representatives participate in a regulatory investigation; and
- how businesses may respond to the outcome of the regulatory action.

These requirements do not apply to emergency situations, criminal investigations, or if they would create a conflict between federal or state law.

Requirement of Agencies. State regulatory agencies must post a general description of their responsibilities on their website.

Joint Legislative Audit and Review Committee. The Joint Legislative Audit and Review Committee must review agencies performance and compliance with the requirements of agency personnel by December 31, 2023.

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

- Clarifies how auditors, inspectors, or examiners must present identification and contact information at the beginning of a visit.

- Clarifies the statute under which a criminal justice agency exercises its law enforcement authority.
- Adds site visits that are not related to verifying compliance with regulatory compliance as exempt from the requirements that state regulatory agencies must follow.

Appropriation: None.

Fiscal Note: Available.

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 Original Bill (Financial Institutions, Economic Development & Trade): *The committee recommended a different version of the bill than what was heard.* PRO: This bill has been well worked with stakeholders and the Governor's Office. Small businesses do not always have the resources that know everything right away when it comes to state regulatory compliance. This bill helps businesses understand how they can fix or mitigate an issue to prevent a fine. This bill affects 27 different regulatory issues. This bill includes eight best practices that an agency must follow when interfacing with a small business facing a regulatory action, and provides more transparency for small businesses. This will improve compliance by improving communication.

Persons Testifying (Financial Institutions, Economic Development & Trade): PRO: Senator Lynda Wilson, Prime Sponsor; Patrick Connor, NFIB; Sheri Sawyer, Office of the Governor.

Persons Signed In To Testify But Not Testifying (Financial Institutions, Economic Development & Trade): No one.

Staff Summary of Public Testimony on First Substitute (Ways & Means): PRO: This is an agreement between small businesses and 27 state agencies; setting out eight best practices for how audits, inspections, and examinations can be improved and run more smoothly. The fiscal impacts associated with the Joint Legislative Audit and Review Committee study can be reduced and handled within existing resources depending on the amount of additional reviews imposed on the committee this session. This bill is a small and important show of good faith to the small business community. The bill is a reasonable investment by the state.

Persons Testifying (Ways & Means): PRO: Mark Johnson, Washington Retail Association; Patrick Connor, National Federation of Independent Business.

Persons Signed In To Testify But Not Testifying (Ways & Means): No one.