

# SENATE BILL REPORT

## SB 5081

---

---

As of February 1, 2021

**Title:** An act relating to the burden of proof in disputes involving enforcement actions by certain regulatory agencies.

**Brief Description:** Concerning the burden of proof in disputes involving enforcement actions by certain regulatory agencies.

**Sponsors:** Senators Wagoner and Holy.

**Brief History:**

**Committee Activity:** Agriculture, Water, Natural Resources & Parks: 2/02/21.

**Brief Summary of Bill**

- Places the burden of proof on the agency in any dispute involving an enforcement action undertaken by the agency.

---

### SENATE COMMITTEE ON AGRICULTURE, WATER, NATURAL RESOURCES & PARKS

**Staff:** Jeff Olsen (786-7428)

**Background:** The State Auditor's Office's compiled an inventory of state regulations in 2011, identifying the permits, licenses, and inspections administered by state agencies. The inventory reported the following total permits, licenses, and inspections for these agencies:

- Washington State Department of Agriculture (WSDA)—166, including for regulation of food safety, fertilizer, and pesticides;
- Department of Ecology (DOE)—199, including for air quality, stormwater, oil spills, water quality, toxins, and solid waste;
- Department of Health (DOH)—284, including for health professions, drinking water, and shellfish sanitation;
- Department of Fish and Wildlife (DFW)—92, including for hydraulic permits,

---

*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.*

- hunting, fishing, and aquatic farming; and
- Department of Natural Resources (DNR)—53, including for regulation of forest practices, silvicultural burning, and surface mining.

Under the state administrative procedures act, generally, the burden of demonstrating the invalidity of an agency action is on the party asserting invalidity. An agency action includes licensing, the implementation or enforcement of a statute, the adoption or application of an agency rule or order, the imposition of sanctions, or the granting or withholding of benefits.

**Summary of Bill:** For WSDA, DOE, DOH, DNR, or DFW, the burden of proof is on the department in any dispute involving an enforcement action undertaken by the department, unless otherwise provided by law. Enforcement actions include, issuance of a notice, determination, citation, order, fine, penalty, or other similar enforcement instrument.

**Appropriation:** None.

**Fiscal Note:** Requested on January 26, 2021.

**Creates Committee/Commission/Task Force that includes Legislative members:** No.

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