

# SENATE BILL REPORT

## SB 5081

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As of February 2, 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.

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### 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,

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- 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:** 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:** PRO: When conflicts arise with a state agency, people are at a disadvantage to push back when they feel they are correct. State agencies have more resources and it may be cheaper to pay your fine rather than spend money to fight in court. Having the burden of proof on the agency will mean that agencies need to carefully vet their violations. While most regulatory agencies do good work, all it takes is one person to cause overzealous enforcement. It can be very expensive to prove a negative. This approach is fair and reasonable, and Labor and Industries should be added to the bill.

**Persons Testifying:** PRO: Senator Keith Wagoner, Prime Sponsor; Tom Davis, Washington Farm Bureau.

**Persons Signed In To Testify But Not Testifying:** No one.