
**State Government & Tribal Relations
Committee**

HB 2093

Brief Description: Creating a small business bill of rights.

Sponsors: Representatives Barkis, Chapman, Chambers, Jinkins, McCaslin, Walsh, Van Werven, Shea, Smith, Caldier, Orcutt, Irwin, Kirby, Schmick, Stokesbary, Blake, Kraft, Hoff, Harris, Dye, Corry, Cody, Tarleton, Maycumber, Reeves, Dent, Gildon, Goehner, Griffey, MacEwen, Mosbrucker, Pellicciotti, Shewmake, Steele, Vick, Eslick, Sutherland, Frame and Leavitt.

Brief Summary of Bill

- Provides small business owners with certain rights and protections in their interactions with certain government entities during an audit, inspection, or other enforcement action.
- Requires certain government entities to create and post a Small Business Bill of Rights that may include more or fewer rights and protections for small businesses.

Hearing Date: 3/7/19

Staff: Jason Zolle (786-7124).

Background:

A 2011 report by the State Auditor's Office (SAO) identified 1377 business permit, license, and inspection requirements administered by 26 state regulatory agencies. The processes for, and protections associated with, enforcement of these regulatory requirements vary widely.

The Due Process Clause of the Fourteenth Amendment to the United States Constitution precludes the government from depriving anyone of property without due process of law. Property generally includes state-conferred licenses, permits, and certifications. The Due Process Clause also applies to the imposition of fines or other monetary penalties. Due process,

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generally speaking, includes notice and a chance to be heard before a neutral arbiter. The Administrative Procedures Act also codifies certain minimum requirements for due process when someone contests an agency audit or a licensing, permitting, or enforcement decision.

Small businesses in Washington—i.e., businesses with 250 or fewer employees or a gross annual revenue of less than \$7 million—are afforded additional protections before they may be fined, penalized, or sanctioned for violating a state law or agency rule. First, agencies must provide the small business with a copy of the law or rule being violated, and the business is given seven days to correct the violation. Second, fines, penalties, or sanctions are waived for first-time violations of requirements to report or collect information (subject to certain exceptions, including enforcement actions taken by the Attorney General).

In 2017 the Legislature directed the Office of the Attorney General (OAG) and a number of state agencies to review the Administrative Procedures Act and related rules, statutes, and case law to identify rights and protections that small business owners possess when subject to agency enforcement actions, such as inspections, audits, site visits, and record reviews. The Departments of Agriculture, Ecology, Employment Security, Labor and Industries, and Revenue and the State Fire Marshall were instructed to review their own governing statutes, rules, and policies as well. Those agencies were instructed to provide the OAG with certain information about the rights and protections that small business owners enjoy when being audited, inspected, or subject to another enforcement action.

The OAG submitted a report to the Legislature on November 30, 2017, that:

- summarized the legal rights and protections that small business owners enjoy;
- provided an overview of the laws and policies that govern selected agencies' audits, inspections, and enforcement actions; and
- recommended improvements to protect the rights of small businesses when subject to enforcement action.

Washington has several legislative enactments known as a "bill of rights," including the Victim Bill of Rights; Gasoline Dealer Bill of Rights; Hunger-Free Students' Bill of Rights; Washington Student Education Loan Bill of Rights; and Health Care Patient Bill of Rights.

Summary of Bill:

Rights Granted to Small Businesses. Small businesses in Washington—again defined as businesses with 250 or fewer employees or a gross annual revenue of less than \$7 million—are granted certain rights and protections in their interactions with certain government entities during an audit, inspection, or other enforcement action. Those rights include:

- the right to:
 - receive written notice of a site visit at least three business days in advance, and a phone call or email 24 hours in advance, that provides a reason for the visit and identifies areas where access is requested, documents to be inspected, and individuals to be interviewed. Written notice must be made available in the small business owner's primary language, and interpretation services must be available during a visit;
 - request and review a warrant, to the extent allowed by law;

- request a particular time and date for a visit, as well as a guarantee that visits should occur during normal business hours Monday through Friday, subject to certain exceptions;
- receive advance notice to the extent possible if a visit is cancelled;
- receive prompt notice to the extent possible if emergency entry is required;
- designate official company representatives and have legal or other professionals participate in the visit;
- receive prompt identification of government personnel and notification of inspection fees upon arrival;
- refuse to allow audio or video recordings;
- immediately correct any deficiencies identified during the visit, and a guarantee that those corrections will be noted in the government report;
- receive a split sample of any samples collected for laboratory analysis, and copies of any analyses performed;
- receive a copy of an inspection or audit report within 30 business days, and a copy of any documents or materials relied on;
- receive monthly updates of the status of any action resulting from the visit;
- a guarantee that:
 - government personnel must take reasonable precautions to avoid disrupting ongoing operations;
 - government personnel will consider relevant advice or other materials on which the small business owner relied in attempting to implement and comply with state laws or rules applicable to the visit;
 - the owner will be given contact information for the small business liaison or other staff authorized to assist regulated entities with questions or concerns about the visit or other matters within the government entities' jurisdiction; and
- notification of:
 - the ability to avoid fines or sanctions by correcting any deficiencies within the time allotted by statute or rule; and
 - the right to appeal, if applicable.

These rights do not apply:

- in emergency situations where environmental quality or worker or public safety or health are in imminent danger;
- in criminal investigations or proceedings; and
- in undercover, surveillance, or seizure activities.

Creation and Posting of a Bill of Rights. Certain government entities must create and clearly post on their website a Small Business Bill of Rights (SBBR) that generally includes the rights identified above, as well as rights listed in any other entity-specific statutes and rules. Entities may create additional SBBRs specific to certain divisions or programs within the entity. Entities may modify or omit rights that would create a conflict with federal or state law, unreasonably limit or prevent the performance of statutorily authorized duties, or do not apply to the entities' scope of work. Any omitted rights must be identified, along with a reason for the omission (including a citation to the conflicting law, if applicable), in a publicly available document maintained by the entity.

The SBBR must be completed and posted by:

- December 31, 2019, for entities with 1,000 or more full-time equivalent employees (FTEs);
- July 1, 2020, for entities with 500–999 FTEs;
- December 31, 2020, for entities with fewer than 500 FTEs; and
- within 12 months of creation, for entities that are established after the effective date.

Appropriation: None.

Fiscal Note: Available.

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