

# HOUSE RESEARCH

## Bill Summary

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**Authors:** Westrom  
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**Analyst:** Matt Gehring, 651-296-5052

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### Overview

This bill establishes statutory factors for consideration and procedural requirements for imposition of fines or civil penalties by a state agency against persons alleged to have violated state law. The bill also modifies existing law related to awards of fees and expenses to non-state prevailing parties in civil actions involving the state.

- 1** **Factors.** (a) Adds to a list in existing law of factors that a state agency must consider in deciding how large a fine or civil penalty to impose for a violation of a law or rule. The additions are the fines or penalties that have been imposed in similar circumstances in the past and the cooperativeness and responsiveness of the person, but a person may not be penalized for contesting the alleged violation or for asserting a legal right or legal defense.
- (b) For subsequent violations, permits consideration of the similarity of past violations only if they are recent.
- (c) Requires the agency to provide the accused person, in its document that will start the proceeding, documentation of how it applied the considerations listed in paragraphs (a) and (b) in deciding the amount of the fine or penalty that the agency proposes, at least 30 days before initiating the proceeding, except where waiting that long would endanger public safety, public health, or the environment.
- (d) Prohibits a penalty or stipulation agreement that requires the defendant to make payments not related to efforts to mitigate or remediate harm caused by the violation, unless the defendant agrees to it.
- (e) Lists some affirmative defenses the party may offer.
- (f) Defines the term "party."
- (g) Excludes paragraphs (c) to (e) from civil penalties assessed by the Campaign Finance and Public Disclosure Board or for violation of fair campaign practices laws.

**2 Demand.** Defines the term "demand" for purposes of the sections of law related to awarding fees and expenses in actions involving the state. This term is used in new language established in later in the bill.

**3 Party.** Modifies a definition of the term "party" for purposes of the sections of law related to awarding fees and expenses in actions involving the state.

The modified definition would permit larger businesses and organizations to qualify for an award of fees and expenses if they prevail in an action involving the state. Currently, businesses and organizations can qualify for these awards if their annual revenues do not exceed \$7,000,000. This section would allow businesses and organizations to qualify if they have annual revenues of up to \$30,000,000.

**4 Fees and expenses; civil action or contested case proceeding involving state.** Provides that an administrative law judge or court must award a party fees and expenses related to defending an excessive civil penalty demand by the agency. This award is required where the demand by the agency is substantially in excess of the decision of the administrative law judge and is unreasonable considering the facts and circumstances of the case.

An exception is provided if the party committed a willful violation of the law, engaged in conduct that unduly and unreasonably protracted the final resolution of the matter, or where special circumstances make an award to the party unjust.

**5 Title.** Specifies a title for the bill: "Small Business Bill of Rights - Regulatory Fairness Act."

**6 Effective date.** Provides that the bill is effective August 1, 2011, and applies to administrative or civil actions commenced on or after that date.