SB 213-FN - AS INTRODUCED

2012 SESSION

12-2822 05/09

SENATE BILL 213-FN

AN ACT relative to the authority of state agencies to assess fines and penalties.

SPONSORS: Sen. De Blois, Dist 18; Sen. Barnes, Jr., Dist 17; Sen. Boutin, Dist 16; Sen. Carson,

Dist 14; Sen. Forrester, Dist 2; Sen. Forsythe, Dist 4; Sen. Gallus, Dist 1; Sen. Groen, Dist 6; Sen. Lambert, Dist 13; Sen. Sanborn, Dist 7; Rep. Warden,

Hills 7; Rep. Manuse, Rock 5; Rep. Reagan, Rock 1

COMMITTEE: Executive Departments and Administration

ANALYSIS

This bill requires state agencies to issue a warning before imposing certain fines or penalties. The bill also requires agencies to waive first time paperwork violations.

Explanation: Matter added to current law appears in **bold italics**.

Matter removed from current law appears [in brackets and struckthrough.]

Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Twelve

AN ACT relative to the authority of state agencies to assess fines and penalties.

Be it Enacted by the Senate and House of Representatives in General Court convened: 1 1 New Chapter; Assessment of Fines and Penalties by State Agencies. Amend RSA by inserting 2 after chapter 21-T the following new chapter: 3 CHAPTER 21-U ASSESSMENT OF FINES AND PENALTIES BY STATE AGENCIES 4 21-U:1 Violations of State Law or Agency Rule; Notice Requirements; Waiver of Penalty for 5 6 First-Time Paperwork Violations. 7 I. Agencies shall provide a person alleged to have violated a state law or agency rule with a 8 copy of the relevant state law or agency rule and a period of at least 90 calendar days to correct the 9 violation before the agency may impose any fines, civil penalties, or administrative sanctions for 10 violation of a state law or agency rule. If no correction is possible or if an agency is acting in 11 response to a complaint made by a third party and the third party would be disadvantaged by the 12 application of this section, the requirements in this section shall not apply. 13 II. Except as provided in paragraph IV, agencies shall waive any fines, civil penalties, or 14 administrative sanctions for first-time paperwork violations. 15 III. When an agency waives a fine, penalty, or sanction under paragraph II, it shall when 16 possible require the person to correct the violation within a reasonable period of time, in a manner 17 specified by the agency. If correction is impossible, no correction shall be required and failure to 18 correct is not grounds for reinstatement of fines, penalties, or sanctions under paragraph V(b). 19 IV. Exceptions to the notice requirements of paragraph I and the waiver requirement in 20 paragraph II may be made for any of the following reasons: 21 (a) The agency head determines that the effect of the violation or waiver presents a direct 22 danger to the public health, results in a loss of income or benefits to an employee, poses a potentially 23significant threat to human health or the environment, or causes serious harm to the public interest. 24(b) The violation involves a knowing or willful violation. 25 The violation is of a requirement concerning the assessment, collection, or 26administration of any tax, tax program, debt, revenue, receipt, a regulated entity's financial filings, 27 or insurance rate or form filing.

The requirements of this section are in conflict with federal law or program

requirements, federal requirements that are a prescribed condition to the allocation of federal funds

to the state, or the requirements for eligibility of employers in this state for federal unemployment

tax credits, as determined by the agency head.

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1	(e) The person previously violated a substantially similar requirement.
2	V.(a) Nothing in this section prohibits an agency from waiving fines, civil penalties, or
3	administrative sanctions for a paperwork violation that is not a first-time offense.
4	(b) Any fine, civil penalty, or administrative sanction that is waived under this section
5	may be reinstated and imposed in addition to any additional fines, penalties, or administrative
6	sanctions associated with a subsequent violation for noncompliance with a substantially similar
7	paperwork requirement, or failure to correct the previous violation as required by the agency under
8	paragraph I.
9	VI. Nothing in this section may be construed to diminish the responsibility for any person to
10	apply for and obtain a permit, license, or authorizing document that is required to engage in a
11	regulated activity, or otherwise comply with state or federal law.
12	VII. Nothing in this section shall be construed to apply to a person required to provide
13	accurate and complete information and documentation in relation to any claim for payment of state
14	or federal funds or who are licensed or certified to provide care and services to vulnerable adults or
15	children.
16	VIII. Nothing in this section affects the attorney general's authority to impose fines, civil
17	penalties, or administrative sanctions as otherwise authorized by law; nor shall this section affect
18	the attorney general's authority to enforce the consumer protection act, RSA 358-A.
19	IX. In this section:
20	(a) "Paperwork violation" means the violation of any statutory or regulatory requirement
21	that mandates the collection of information by an agency, or the collection, posting, or retention of
22	information.
23	(b) "First-time paperwork violation" means the first instance of a particular or
24	substantially similar paperwork violation.

2 Effective Date. This act shall take effect January 1, 2013.

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SB 213-FN - FISCAL NOTE

AN ACT

relative to the authority of state agencies to assess fines and penalties.

FISCAL IMPACT:

The Department of Administrative Services states this bill would have an indeterminable impact on state revenues and expenditures in FY 2013 and each year thereafter. There will be no impact on county and local revenues or expenditures.

METHODOLOGY:

The Department of Administrative Services states this bill requires all state agencies to issue warnings before assessing certain fines, penalties, or administrative sanctions against individuals, and also requires state agencies to waive first time paperwork related violations. The Department states it is unable to predict the total amount of fines or penalties that may be waived under this bill. The Department also states it is unable to estimate costs agencies may incur as a result of this bill relative to the production and delivery of copies of relevant state laws and agency rules to individuals or administration costs relative to implementation of a new waiver process. Ultimately, the Department cannot estimate this bill's potential impact on state revenues or expenditures in FY 2013 and each year thereafter.