

ANALYSIS OF ORIGINAL BILL

Franchise Tax Board

Author: McClintock Analyst: Kristina E. North Bill Number: SB 1505
Related Bills: See Legislative History Telephone: 845-6978 Introduced Date: February 19, 2004
Attorney: Patrick Kusiak Sponsor: California Chamber of Commerce, et al.

SUBJECT: Administrative Procedure Act/California Small Business Regulatory Flexibility Act of 2004/State Agencies Adopting New Regulations Assess Impact On Small Businesses

SUMMARY

This bill would require state agencies to assess the impact of regulatory changes on small businesses.

PURPOSE OF THE BILL

The purpose of this bill, as stated in the legislative findings in the bill, is to create a healthy business environment in California by relieving the regulatory burden on small business owners to stimulate job creation, innovation, and success.

EFFECTIVE/OPERATIVE DATE

This bill would be effective and operative on January 1, 2005, and apply to any proposed adoption, amendment, or repeal of a regulation after that date.

POSITION

Pending.

ANALYSIS

STATE LAW

The Administrative Procedure Act (APA) sets forth the procedures that state agencies must follow when adopting, amending, or repealing regulations. (Government Code Section 11340, et al.) Among other requirements, it requires state agencies to give public notice, receive and consider public comments, submit regulations and rulemaking files to the Office of Administrative Law for review to ensure compliance with the requirements of the APA, and have the regulations published in the California Code of Regulations.

Current law defines a "small business" as being independently owned and operated, being secondary in its line of work, and having annual gross receipts of less than one million dollars (\$1,000,000).

Current law requires a state agency to include with the notice of proposed rulemaking action a description of reasonable alternatives to their proposed regulation that would reduce any adverse impact on small business. The state agency also must include its reasons for rejecting the alternatives.

Board Position:

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Department Director

Date

Gerald H. Goldberg

5/27/04

THIS BILL

This bill would establish the California Small Business Regulatory Flexibility Act of 2004. This bill would require a state agency to consider the impact on a small business when considering a proposal to adopt, amend, or repeal a regulation.

This bill would redefine "small business" as a business entity that is independently owned, employs fewer than 100 full-time employees, or has gross annual sales of less than \$10 million.

This bill would require a state agency to prepare a small business economic business impact statement. The statement would include 1) the identification of and an estimate of the number of small businesses that would be subject to the proposed regulation; 2) the projected cost for small business compliance with the proposed regulation; 3) a statement of the probable effect to small businesses; and 4) a description of any less burdensome or alternative methods to achieve the same purpose as the proposed regulation. The statement would be required early in the rulemaking process.

Upon a state agency's determination that a proposed regulatory action would have a significant impact on small business, it would be required to include in its notice of proposed action information similar to what would be included in the economic business impact statement.

A state agency would be required to mail a copy of their notice of proposed action, prior to publication of the original notice of proposed rulemaking, to the California Small Business Advocate (CSBA).

Any comments regarding the proposed regulation impacting small business would be set forth separately in the state agency's final statement of reasons.

This bill would allow any person, small business, organization, or trade association whose members would be affected by the bill to obtain a judicial declaration regarding the validity of a regulation.

IMPLEMENTATION CONSIDERATIONS

The majority of Franchise Tax Board's regulations are interpretive of statutes; the statute itself generally would impose any burden on small business rather than the regulation imposing any additional burden. Thus, implementing this bill should not significantly impact the department's programs and operations.

LEGISLATIVE HISTORY

AB 1857 (Wayne, Stats. 2002, Ch. 389) increased the amount of information that a state agency must place on its web site when proposing a regulation.

AB 1822 (Wayne, Stats. 2000, Ch. 1060) and AB 505 (Wright, Stats. 2000, Ch. 1059) made various changes to the rulemaking process, including changes to the reasonable alternatives and the substantive inquiry provisions.

AB 2439 (Wright, 1999/2000) would have established the Small Business Reform Act of 2000. This bill was held in submission in the Assembly Appropriations Committee.

OTHER STATES' INFORMATION

Because of the specific nature of this bill, a comparison to the tax laws of other states would not be meaningful for this bill.

FISCAL IMPACT

This bill would not significantly impact the department's costs.

ECONOMIC IMPACT

Revenue Estimate

This bill would not impact the state's income tax revenue.

POLICY CONCERN

The current regulatory process allows the public, including other state agencies, at least 45 days to submit comments on an agency's proposed rulemaking action after OAL publication of the agency's notice of proposed rulemaking. This bill requires an agency to submit a proposed rulemaking action to the CSBA *prior* to the publication of its notice of proposed action. Since the bill is silent whether an agency must delay publishing their proposed action until after CSBA's 30-day review period, the department would publish the notice of proposed action *after* submitting the proposed action with CSBA. Thus, the 45-day and the 30-day comment periods would run concurrently, at least in part. Also, although the bill does not expressly so require, if CSBA comments were received on the 31st day or thereafter, the department would treat them like any other public comments by commenting on and including them with other public comments in the final statement of reasons.

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