

ANALYSIS OF AMENDED BILL

Author: J. Horton Analyst: Kristina E. North Bill Number: AB 1302
 Related Bills: See Legislative History Telephone: 845-6978 Amended Date: May 2, 2005
 Attorney: Patrick Kusiak Sponsor: _____

SUBJECT:	State Agency Regulations/Adopting Agency Determine That No Alternative Considered Would Be As Effective & Less Burdensome To Private Individuals, Businesses, & Small Businesses
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SUMMARY

This bill would make various changes to the laws governing regulatory procedures that would impact small businesses.

This analysis addresses only those provisions applicable to rulemaking procedures that impact the department's programs and operations.

SUMMARY OF AMENDMENTS

The May 2, 2005, amendments would make changes to the regulatory process that impact small businesses, replacing the legislative intent language regarding economic development.

This is the department's first analysis of this bill.

PURPOSE OF THE BILL

According to the author's staff, the purpose of this bill is to ensure that state agencies and the Office of Administrative Law (OAL) carefully consider the impact on small business when taking regulatory action.

EFFECTIVE/OPERATIVE DATE

This bill would be effective and operative January 1, 2006.

POSITION

Pending.

Board Position:

_____ S	_____ NA	_____ NP
_____ SA	_____ O	_____ NAR
_____ N	_____ OUA	<u> X </u> PENDING

Department Director

Date

Will Bush

6/2/05

ANALYSIS

STATE LAW

Current state law generally allows a state agency to adopt, amend, or repeal regulations and provides a formal adoption procedure by which the agency may adopt, amend, or repeal regulations, including provisions mandating OAL review.

Current state law requires OAL to base its review of proposed regulatory actions using the following six standards: 1) necessity, 2) authority, 3) clarity, 4) consistency, 5) reference, and 6) nonduplication. Any proposed regulatory action is required to meet these standards to be approved.

Current state law requires a state agency to make certain findings and provide supporting information in the rulemaking file to substantiate that the six standards listed above have been met. For example, supporting information to meet the “necessity” standard would include an economic and fiscal impact statement to assess whether and to what extent a proposed regulatory action would affect the creation or elimination of jobs or businesses and the expansion of businesses currently doing business within the state.

Current state tax law requires that, in areas where federal and state income tax laws are the same, federal income tax regulations are to be applied to the extent they do not conflict with state law or state regulations.

THIS BILL

This bill would make the following changes to the existing law governing the adoption, amendment, and repeal of state agency regulations:

- ◆ Add “burden” as another standard that OAL must use to make determinations about proposed regulatory action,
- ◆ Require a state agency to include in its proposed regulatory action a finding that the proposed action is more effective and less burdensome to affected individuals, businesses, and small businesses than any alternative considered,
- ◆ Define “burden” as no alternative being more effective in carrying out the purpose for which the regulation is proposed or as effective and less burdensome to affected private individuals, businesses, and small businesses than the adopted regulation, and
- ◆ Make other technical or nonsubstantive changes.

IMPLEMENTATION CONSIDERATIONS

The provisions discussed in this analysis are essentially consistent with the department’s current procedures; thus, implementing this bill would not significantly impact the department’s programs and operations.

LEGISLATIVE HISTORY

SB 505 (Wright, Stats. 2000, Ch. 1059) required that agencies that significantly impact or regulate small businesses designate one person to serve as a small business ombudsman to respond to small business complaints, provide technical advice, and assist small businesses in resolving problems and concerns. This act also created the Governor's Small Business Reform Task Force to solicit input and conduct public hearings for advice and recommendations related to problems affecting the small business community.

AB 1822 (Frusetta, Stats. 2000, Ch. 1060) required that if a state agency made an initial determination that a proposed regulatory action may have a significant adverse economic impact on business, the agency provide a statement based on that determination, not agency belief. This act also required a state agency to assess the potential for adverse economic impact on California businesses and individuals of the proposed *repeal* of a regulation and provide certain information if an adverse impact is determined.

FISCAL IMPACT

This bill would not significantly impact the department since the bill's provisions are consistent with this department's current practice.

ECONOMIC IMPACT

This bill would not impact the state's income tax revenue or the department's current programs or practices.

LEGISLATIVE STAFF CONTACT

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