

ANALYSIS OF AMENDED BILL

Author: Medina & Fox Analyst: Janet Jennings Bill Number: AB 2723
 See Legislative
 Related Bills: History Telephone: 845-3495 Amended Date: May 1, 2014
 Attorney: Bruce Langston Sponsor _____

SUBJECT:	State Agency Regulations/Impact on Small Business
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SUMMARY

This bill would modify provisions of the Administrative Procedures Act (APA) relating to Economic Impact Assessments (EIA).

RECOMMENDATION

No position.

Summary of Amendments

The May 1, 2014, amendments added landscape architect, an architect, or a building designer with 50 or more employees to the list of businesses and entities that are excluded under the definition of “small business.”

This is the department’s first analysis of this bill. This analysis only addresses the provisions of the bill that impact the department’s programs and operations.

REASON FOR THE BILL

The reason for the bill is to ensure sole proprietorships and small businesses are considered when state agencies issue regulations.

EFFECTIVE/OPERATIVE DATE

This bill would be effective and operative January 1, 2015.

STATE LAW

In general, the Franchise Tax Board (FTB) must follow the APA’s rulemaking procedures and regulations adopted by the Office of Administrative Law (OAL).

The APA governs the adoption, amendment, or repeal of regulations by state agencies for purposes of ensuring that they are clear, necessary, legally valid, and available to the public. The APA requires the FTB to submit with the notice of the proposed adoption, amendment, or repeal of a regulation, an initial statement of reasons. The initial statement of reasons shall include among other things, a description of any reasonable alternatives to the regulation that would lessen any adverse impact on small business and the agency’s reasons for rejecting those alternatives.

Board Position:	Executive Officer	Date									
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The APA requires agencies, when submitting an Initial Statement of Reasons (ISOR) for a proposed regulation to identify the problem the agency intends to address, and enumerate the benefits anticipated from the regulatory action, including the benefits or goals provided in the authorizing statute. The benefits may include non-monetary benefits such as, but not limited to, the protection of public health and safety, worker safety, or an increase in openness and transparency in business and government.

Beginning on and after November 1, 2013, the APA requires an agency to include in its ISOR for a proposed major regulation a standardized regulation impact assessment prepared in the manner prescribed by the Department of Finance (DOF). The assessment must address:

- The creation or elimination of jobs within the state;
- The creation of new businesses or the elimination of existing businesses within the state;
- The competitive advantages or disadvantages for businesses currently doing business within the state;
- The increase or decrease of investment in the state;
- The incentives for innovation in products, material, or processes; and,
- The benefits of the regulations, including benefits to the health, safety, and welfare of California residents, worker safety, and the state's environment and quality of life, among any other benefits identified by the agency.

The APA requires DOF and OAL to periodically review standardized regulatory impact analyses for adherence to regulations adopted by DOF.

Additionally, the APA requires an EIA to be prepared for a proposed regulation that is not a major regulation, or a major regulation adopted prior to November 1, 2013.

THIS BILL

This bill would add sole proprietorships and small business to the required standardized regulatory impact analysis or EIA when a state agency proposes to adopt, amend, or repeal regulations as required under the APA.

This bill would revise the requirements for an EIA to include consideration of differing sizes of businesses. It would also revise the definition of small business to include an entity organized as a nonprofit institution with 100 or fewer employees and exclude a landscape architect, an architect, or a building designer with 50 or more employees.

IMPLEMENTATION CONSIDERATIONS

Implementing this bill would not significantly affect the department's programs and operations.

LEGISLATIVE HISTORY

AB 1711 (Cooley, 2013/2014), would require an EIA to be included in the ISOR that a state agency submits to the OAL when adopting, amending, or repealing a non-major regulation. AB 1711 is before the Senate Appropriations Committee.

AB 12 (Cooley, Vetoed, 2013), would have required the DOF and the OAL to review annually the standardized regulatory impact analyses for adherence to the regulations adopted by a state agency, and report back to the Legislature. Governor Brown vetoed AB 12 stating, "Two years ago, I signed legislation that significantly revised the regulatory review process. As a result, beginning this November the Department of Finance will review the economic impact of regulations before they are published. The annual review proposed by this bill would duplicate those efforts."

AB 273 (Valadao, et al., 2011/2012), would have required the DOF to develop methods for estimating costs and economic impact of proposed regulations and required agencies to follow those methods in determining the economic impact of future proposed regulatory actions. AB 273 failed to pass out of the house of origin by the Constitutional deadline.¹

AB 425 (Nestande, 2011/2012), would have required an agency to review their adopted regulations and repeal or report to the Legislature those regulations identified as duplicative, archaic, or inconsistent with state statute by December 31, 2012, or report regulations that are deemed to inhibit economic growth. AB 425 failed to pass out of the Assembly by the Constitutional deadline.²

ABX1 6 (Logue, 2011/2012), would have required the DOF to develop methods for estimating costs and economic impact of proposed regulations and required agencies to follow those methods in determining the economic impact of future proposed regulatory actions. This bill was held at the desk of the Assembly.

SB 196 (Cannella, et al., 2011/2012), among other things, would have revised the APA to require an agency to analyze proposed regulations with greater emphasis on the economic impact on businesses and individuals. SB 196 failed to pass out of the Senate by the Constitutional deadline.³

SB 617 (Calderon, Ch. 496, Stats of 2011), requires all state agencies that create, modify, or repeal a major regulation with an economic impact of \$50 million or more to issue a standardized economic impact report, and enacted requirements for regulatory impact reports to be completed by the DOF and the OAL.

¹ California Constitution, Article IV, Section 10, Subdivision (c).

² Ibid.

³ Ibid.

OTHER STATES' INFORMATION

Since this bill modifies provisions of the APA, a review of other states' tax information would not be relevant.

FISCAL IMPACT

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

ECONOMIC IMPACT

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

SUPPORT/OPPOSITION⁴

Support:

Air Conditioning Trade Association; American Institute of Architects, California Council
American Society of Landscape Architects, California Council
Associated Builders and Contractors of California
Associated Builders and Contractors – San Diego Chapter
Building Owners & Managers Association of California
California Asian Pacific Chamber of Commerce
California Association for Health Services at Home
California Association for Micro Enterprise Opportunity
California Association of Boutique & Breakfast Inns; California Business Properties Association
California Business Roundtable; California Chamber of Commerce
California Chapter of American Fence Association
California Construction and Industrial Materials Association
California Fence Contractors' Association; California Grocers Association
California Hispanic Chambers of Commerce; California Hotel & Lodging Association
California Manufacturers & Technology Association; California Restaurant Association
California Small Business Development Center; Leadership Council
Coalition of Small and Disabled Veteran Businesses
Commercial Real Estate Development Association, NAIOP of California
Family Business Association; Flasher Barricade Association
Industrial Environmental Association; International Council of Shopping Centers
Los Angeles County Economic Development Corp.; Marin Builders Association
National Federation of Independent Business
Plumbing-Heating-Cooling Contractors Association of California
San Jose Silicon Valley Chamber of Commerce; Small Business California
California Legislative Council; Star Milling Company
State of California Auto Dismantler's Association; United Contractors
Western Electrical Contractors Association

⁴ According to the 06-23-14 Senate Environmental Quality analysis

Opposition:

None on file.

ARGUMENTS

Proponents: Some may argue the inclusion of sole proprietorships and small business in the required standardized regulatory impact analysis or the EIA is the only way to determine the cost of these businesses' to comply with the regulations.

Opponents: Some may argue the additional expense to include sole proprietorships and small business in the required standardized regulatory impact analysis or the EIA is outweighed by the benefit of the knowledge of the effect.

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