

BILL ANALYSIS

Department, Board, Or Commission Franchise Tax Board	Author Medina & Fox	Bill Number AB2723
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SUBJECT

State Agency Regulations/Impact on Small Business

SUMMARY

This bill would modify provisions of the Administrative Procedures Act (APA).

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 (Office).

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.

The APA requires agencies, when submitting an initial statement of reasons for a proposed regulation to identify the problem the agency intends to address, to 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.

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In addition, the APA requires state agencies to analyze the impact on small businesses and to notify a representative number of small businesses for public comment regarding the regulatory action. "Small business" means a business activity in agriculture, general construction, special trade construction, retail trade, wholesale trade, services, transportation and warehousing, manufacturing, generation and transmission of electric power, or a health care facility that is independently owned and operated and not dominant in its field of operation. "Small business" specifically excludes the following professional and business activities:

- A financial institution,
- An insurance company,
- A mineral, oil, or gas broker,
- A subdivider or developer,
- A landscape architect, an architect, or a building designer,
- An entity organized as a nonprofit institution,
- An entertainment activity or production,
- A utility, a water company, or a power transmission company,
- A petroleum producer, a natural gas producer, a refiner, or a pipeline,
- A manufacturing enterprise exceeding 250 employees, and
- A health care facility exceeding 150 beds or \$1.5 million in annual gross receipts.

Beginning on and after November 1, 2013, the APA requires an agency to include in its initial statement of reason 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.

Every state agency is required to deliver to the Office a copy of the notice of proposed action (adoption, amendment, or repeal of a regulation), which includes, a description of all cost impacts, known to the agency. "Cost impact" is defined as the amount of reasonable range of direct costs, or a description of the type and extent of the direct costs, that a representative private person or business necessarily incurs in reasonable compliance with the proposed action.

THIS BILL

This bill would modify the definition of “cost impact” by adding “sole proprietorship, small business,” and the definition of “small business” to include an entity organized as a nonprofit institution with 100 or fewer employees and a landscape architect, an architect, or a building designer with fewer than 50 employees.

In addition, this bill would provide that the initial statement of reason’s information related to the creation of new businesses or the elimination of existing businesses within the state would include the impact on sole proprietorships and small businesses.

This bill and AB 1711 (Cooley) would modify Section 11346.3 of the Government Code, therefore, double-jointing¹ language has been added.

LEGISLATIVE HISTORY

AB 1711 (Cooley, 2013/2014), would require an environmental impact analysis to be included in the initial statement of reasons that a state agency submits to the Office when adopting, amending, or repealing a non-major regulation. AB 1711 is to engrossing and enrolling.

AB 12 (Cooley, Vetoed, 2013), would have required the DOF and the Office 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 DOF 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.²

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.³

¹ Double jointing refers to technical amendments necessary when two or more bills propose to amend the same code section (i.e., are in conflict). Double jointing prevents the problem of chaptering out.

² California Constitution, Article IV, Section 10, Subdivision (c).

³ Ibid.

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.⁴

SB 617 (Calderon, Chapter 496 of the Statutes 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 Office.

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.

APPOINTMENTS

None.

SUPPORT/OPPOSITION⁵

Support:

Air Conditioning Trade Association; American Institute of 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

⁴ Ibid.

⁵ According to the Senate Floor Analyses [sic] dated August 22, 2014.

California Chapter American Fence Association
 California Construction and Industrial Materials Association
 California Council/American Society of Landscape Architects
 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
 Southwest California Legislative Council; Star Milling Company
 State of California Auto Dismantler's Association; United Contractors
 Western Electrical Contractors Association

Opposition:

Department of Finance

VOTES

	Date	Yes	No
Concurrence	08/26/14	79	0
Assembly Floor	05/23/14	73	0
Senate Floor	08/25/14	34	0

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