

Date of Hearing: January 13, 2016

**ASSEMBLY COMMITTEE ON JOBS, ECONOMIC DEVELOPMENT, AND THE
ECONOMY**

Eduardo Garcia, Chair

AB 1033 (Eduardo Garcia) – As Amended: January 4, 2016

SUBJECT: Small Business Regulatory Impact Analysis

SUMMARY: Authorizes a state agency to use a consolidated definition of small business when preparing the economic impact assessment for administrative regulations proposed for adoption, amendment, or repeal. Specifically, the bill:

- 1) Specifies that for the exclusive purpose of conducting an economic impact assessment on a regulation having a business impact of less than \$50 million, a state agency may use a consolidated definition of small business, as defined.
- 2) Defines a small business as being independently owned and operated, not dominant in its field, and having less than 100 employees.
- 3) Provides that the consolidated small business definition may be used in determining the number of small businesses impacted within the overall economy, a specific industry sector, or geographic region.
- 4) Requires that the use of the consolidated definition be clearly identified by the state agency.

EXISTING LAW:

- 1) Finds and declares that it is in the public interest to aid, counsel, assist, and protect the interests of small businesses in order to maintain a healthy state economy.
- 2) Finds and declares that there has been an unprecedented growth in the number of administrative regulations in recent years and that correcting the problems requires the direct involvement of the Legislature, as well as that of the executive branch of the state government. Further, statute finds and declares that the complexity and lack of clarity in many regulations put small businesses, which do not have the resources to hire experts to assist them, at a distinct disadvantage.
- 3) Establishes basic minimum procedural requirements for the adoption, amendment, or repeal of administrative regulations, including assessing the potential adverse impact of an action on California businesses and individuals with the purpose of avoiding the imposition of unreasonable and unnecessary regulations, reporting, recordkeeping, or compliance requirements. Among other requirements, an agency is required to prepare an economic impact assessment that evaluates the following:
 - a) The creation or elimination of jobs within the state;
 - b) The creation of new businesses or the elimination of existing businesses within the state;
 - c) The expansion of businesses currently doing business within the state; and

- d) The benefits of the regulation on the health and welfare of California residents, worker safety, and the state's environment.
- 4) Defines a small business as:
- a) Being independently owned and operated;
 - b) Not dominant in its field; and
 - c) Undertaking 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, unless specifically excluded.
- 5) Excludes from the definition of a small business 18 professional and business activities, including:
- a) All financial institutions, investment advisors, and security broker-dealers, as specified;
 - b) All insurance companies;
 - c) All mineral, oil, or gas brokers;
 - d) All land developers;
 - e) All architects and building designers;
 - f) All nonprofit institutions;
 - g) All entertainment companies, including those engaged in activities related to motion picture production, stage performance, or a television or radio station;
 - h) All petroleum producers, natural gas producers, refiners, or pipeline operators;
 - i) A utility, a water company, or a power transmission company generating and transmitting more than 4.5 million kilowatt hours annually;
 - j) A manufacturing enterprise exceeding 250 employees;
 - k) A health care facility exceeding 150 beds or \$1,500,000 in annual gross receipts;
 - l) Agriculture, where the annual gross receipts exceed \$1,000,000;
 - m) General construction, where the annual gross receipts exceed \$9,500,000;
 - n) Special trade construction, where the annual gross receipts exceed \$5,000,000;
 - o) Retail trade, where the annual gross receipts exceed \$2,000,000;

- p) Wholesale trade, where the annual gross receipts exceed \$9,500,000;
- q) Services, where the annual gross receipts exceed \$2,000,000; and
- r) Transportation and warehousing, where the annual gross receipts exceed \$1,500,000.

FISCAL EFFECT: None

POLICY ISSUE FRAME: Nearly 3 million firms in California have no employees and 90% of firms with employees have less than 20. Existing law requires state agencies adopting and amending administrative rules to undertake an assessment of those rules' impact on businesses, including small businesses. The statutory definition of small business, however, hasn't been updated in over a decade and includes 18 special exclusions and/or modifications, making the overall assessment framework overly complex and a de facto barrier to soliciting public comments from potentially affected small businesses.

Given that the state's rulemaking process places the burden for suggesting alternative implementation methods on the affected businesses rather than the rulemaking state agency, it is important that the economic impact assessment be clearly understandable to a majority of California businesses.

This measure proposes the use of a more standardized definition of small business, which could be utilized by a rulemaking entity when developing the economic impact assessment. The analysis includes information on the California small business economy, state rulemaking practices, and studies on the cost of regulations to small businesses. Technical amendments are discussed in Comment 6.

COMMENTS:

- 1) **Author's Statement:** According to the author, "Although the state has a vigorous public process that is designed to allow the rulemaking agency to fully consider the comments, suggestions, and economic impacts of proposed regulations on all business – especially small businesses - state agencies rarely hear from the broad range of small businesses that are potentially affected. An intrinsic conflict within California's rulemaking process is that businesses who may be most affected have the least ability to monitor the broad range of state rulemaking entities, recommend appropriate alternative implementation models, or engage meaningfully in the often complex and highly technical rulemaking proceedings.

AB 1033 tries to streamline the economic assessment process by providing greater transparency and accessibility to potentially impacted small businesses. Without having a realistic process for small businesses to participate, it is difficult for state agencies to develop and adopt regulations that have flexible implementation methods reflecting the limited administrative capacity of small businesses, while still meeting the intended policy standards.

Given that nearly 3 million firms in California have no employees and 90% of firms with employees have less than 20, finding a means to address this challenge is important to the state's economic growth."

- 2) **California's Small Business Economy:** Small businesses form the core of California's \$2.3 trillion economy. Research shows that net new job creation is strongest among businesses with less than 20 employees, that small businesses have historically led the state's local and regional economies out of recessions, and that these businesses are essential to the state's global competitiveness by meeting niche industry needs.

Businesses with no employees make up the single largest component of businesses in California, 2.9 million out of an estimated 3.6 million firms in 2012, representing over \$149 billion in revenues with the highest number of businesses in the professional, scientific, and technical services industry sector. As these non-employer businesses grow, they continue to serve as an important component of California's dynamic economy. Even when excluding non-employer firms, businesses with less than 20 employees comprise nearly 90% of all businesses and employ approximately 18% of all workers. Businesses with less than 100 employees represent 97% of all businesses and employ 36% of the workforce. These non-employer and small employer firms create jobs, generate taxes, and revitalize communities.

2011 Business Profile By Size (excludes non-employer firms)						
Area Description	Employment Size	Number of Firms	Percent of Firms	Employees	Percent of Jobs	Annual Payroll (\$1,000)
United States	Total	5,684,424		113,425,965		\$5,164,897,905
California	Total	689,568	12% of U.S. Firms	12,698,427	11% of all U.S. Jobs	\$663,570,657
United States	0-4	3,532,058	62% of U.S. Firms	5,857,662	5% of U.S. Jobs	\$230,422,086
California	0-4	429,139	62% of CA Firms	702,508	5.5% of CA Jobs	\$35,472,447
United States	<20	5,104,014	89.7% of U.S. Firms	20,250,874	17.8% of U.S. Jobs	\$732,759,369
California	<20	614,538	89.1% of CA Firms	2,386,296	18.7% of CA Jobs	\$99,417,066
United States	0-99	5,585,510	98.2% of U.S. Firms	39,130,875	34% of U.S. Jobs	1,478,844,420
California	0-99	672,360	97% of CA Firms	4,587,628	36.1% of CA Jobs	194,611,832
United States	<500	5,666,753	99.6% of U.S. Firms	54,998,312	48.4% of U.S. Jobs	\$2,169,353,973
California	<500	683,999	99.1% of CA Firms	6,331,871	49.8% of CA Jobs	\$280,857,823
United States	500+	17,671	0.3% of U.S. Firms	58,427,653	51.5% of U.S. Jobs	\$2,995,543,932
California	500+	5,569	0.8% of CA Firms	6,366,556	50.1% of CA Jobs	\$382,712,834

Source: U.S. Census <http://www.census.gov/econ/susb/index.html>

Reflective of their important role, the JEDE Committee members regularly hear testimony regarding the challenges small businesses face when meeting the implementation requirements of state, local, and federal regulations. While opponents of regulatory reform accuse small businesses of trying to avert their responsibilities, businesses owners who have testified before the Committee have consistently stated that their goal is to achieve a regulatory environment that encourages small business development, while still maintaining public health and safety standards. AB 1033 does not authorize the lowering of any regulatory standard. The bill provides for a simplified assessment of the economic impact of a proposed new, amended, or repealed administrative regulation.

- 3) **Cost of Regulations on Business:** There are two major sources of data on the cost of regulatory compliance on businesses, the federal SBA and the Office of the Small Business Advocate (OSBA). For the last 10 years, the federal SBA has conducted a peer reviewed study that analyzes the cost of federal government regulations on different size businesses. This research shows that small businesses continue to bear a disproportionate share of the federal regulatory burden. On a per employee basis, it costs about \$2,400, or 45% more, for small firms to comply with federal regulations than their larger counterparts.

The first study on the impact of California regulations on small businesses was released by the OSBA in 2009. This first-in-the-nation study found that the total cost of regulations to small businesses averaged about \$134,000 per business in 2007. Of course, no one would advocate that there should be no regulations in the state. The report, however, importantly identifies that the cost of regulations can provide a significant impediment to the everyday operations of California businesses and should therefore be a consideration among the state's economic development policies.

Regulatory costs are driven by a number of factors including multiple definitions of small business in state and federal law, the lack of e-commerce solutions to address outdated paperwork requirements, procurement requirements that favor larger size bidders, and the lack of technical assistance to alleviate such obstacles that inhibit small business success.

- 4) **Different Approaches to Regulatory Reform:** In general, the Legislature's engagement on regulatory reforms has taken two basic approaches. One set of policies have addressed specific regulatory challenges on a case-by-case basis. The other approach makes systemic change to the way in which rules are adopted, often adding a supplemental and more targeted review pre- or post-adoption. Recommendations for systemic change have included:
- a) Inclusion of a Dynamic Fiscal Analysis by the Appropriations Committee or the legislative Analyst Office, or the Office of the State Auditor;
 - b) Substantive rather than a Procedural Review by the Office of Administrative Law;
 - c) Heightened Focus on Small Business Impacts of Proposed Regulation;
 - d) Enhanced Consideration of Alternative Implementation Methods that meet similar Regulatory Standards; and
 - e) Review of Regulatory Impacts Post Implementation.

Historically, the first one-off legislative approach has been the most successful, although by its nature it has had very limited overall impact on California's regulatory business climate. Bills proposing systemic changes have generally failed to move from legislative fiscal committees - as illustrated in the comment on related legislation.

The most significant systemic change in recent years was approved in SB 617 (Calderon), Chapter 496, Statutes of 2011, which required an enhanced and standardized economic impact analysis for regulations with an impact of \$50 million or more. In 2015, six major regulations were initiated. AB 1033 tries to bring greater clarity to rules for the majority of other regulations that are adopted, amended, or eliminated during the year.

- 6) **Technical Amendments:** Staff understands that the author will be requesting the Committee's approval of technical amendments to correct a cross reference. The amendments will clarify that AB 1033 only applies to *non-major* amendments.
- 7) **Related Legislation:** Below is a list of bills from the current and prior sessions.
 - a) Current Session
 - i) **AB 12 (Cooley) State Government Administrative Review***: This bill would have required state agencies and departments to review, adopt, amend, or repeal any applicable regulations that are duplicative, overlapping, inconsistent, or out of date, as part of a "look-back mechanism" during a two-year window. Status: Held on Suspense in the Senate Committee on Appropriations, 2015.
 - ii) **AB 19 (Chang) Review of Regulations by the Governor's Office of Business and Economic Development**: This bill would have required the Governor's Office of Business and Economic Development, in consultation with state Small Business Advocate, to review regulations affecting small businesses for the purpose of determining whether there is an alternative implementation method that is less burdensome or costly to small business, while still meeting the same policy objectives. Status: Held on Suspense in the Assembly Committee on Appropriations, 2015.
 - iii) **AB 184 (E. Garcia) Small Business Technical Assistance Act of 2015**: This bill would have designated the Governor's Office of Business and Economic Development as the lead state entity for overseeing the state's participation and collaboration with the federal small business technical assistance programs. Status: Held on Suspense in the Assembly Committee on Appropriations, 2015.
 - iv) **AB 419 (Kim) Web-Based Access to Small Business Regulations**: This bill requires the Governor's Office of Business and Economic Development to establish a web-access point for small businesses seeking information about pending and current regulations affecting small businesses. Status: Pending in the Senate Committee on Business, Professions, and Economic Development, two-year bill.
 - v) **AB 582 (Calderon) Entrepreneur Partnership Pilot Projects**: This bill calls on the Legislative Analyst and the California State Auditor to convene a work group to determine the most appropriate state agency to house a pilot program with the goal of

- making state government more streamlined and accessible to small businesses.
Status: Pending in the Senate Rules Committee, two-year bill.
- vi) ***AB 1286 (Mayes) California Regulatory Reform Council***: This bill establishes the California Regulatory Reform Council (Council) for the purpose of analyzing the holistic impact of all levels of state and local regulations on specific industries operating within the state. Status: Pending in the Assembly Committee on Appropriations, two-year bill.
- b) Prior Sessions
- i) ***AB 393 (Cooley) GO-Biz Website***: This bill requires the Director of GO-Biz to ensure that the GO-Biz website contains information on the fee requirements and fee schedules of state agencies. Status: Signed by the Governor, Chapter 124, Statutes of 2013.
- ii) ***AB 1098 (Quirk-Silva) Small Business Regulation Report***: As passed by JEDE, this bill would have directed the Office of the Small Business Advocate within GO-Biz to commission a study of the costs of state regulations on small businesses every five years. Amendments taken in the Senate deleted the content of the bill and added language relating to legal documents provided over the internet with Assemblymember Gray as the author. Status: Died in the Senate Committee on Rules, 2014.
- iii) ***AB 1400 (Assembly Committee on Jobs, Economic Development, and the Economy) Export Document Certificates***: This bill modifies the state's Export Document Program to accept requests electronically, expedite approval of existing labels, and extend the term of the export labels from 180 days to 365 days, in order to alleviate backlog of exports of food, drug, and medical devices. Status: Signed by the Governor, Chapter 539, Statutes of 2013.
- iv) ***AB 1711 (Cooley) Economic Impact Assessment***: This bill requires an economic impact assessment to be included in the Initial Statement of Reasons that a state agency submits to the Office of Administrative Law when adopting, amending, or repealing a non-major regulation. Status: Signed by the Governor, Chapter 779, Statutes of 2014.
- v) ***AB 2723 (Medina) Small Businesses and Major Regulations***: This bill would have added statutory protections to ensure that the costs of major regulations on the state's smallest size businesses are considered when state agencies undertake their economic impact assessment for major regulations. Status: Vetoed by the Governor, 2014. The veto message reads: "*This bill would require the economic analysis for major regulations to include a separate assessment of the impact on sole proprietorships and small businesses. I signed legislation in 2011 to require a comprehensive economic analysis of proposed major regulations. The analysis must assess whether, and to what extent, the proposed regulations will affect all California jobs and businesses. Agencies must also identify alternatives that would lessen any adverse impact on small businesses. I am not convinced that an additional layer of specificity based solely on the legal structure of a business would add value to the comprehensive economic analysis already required.*"

- vi) ***SB 176 (Galgiani) Outreach on Administrative Procedures***: This bill would have amended the Administrative Procedure Act by requiring state agencies to make a reasonable effort to outreach and provide notice to affected entities when developing regulations. Statutes: Held on the Suspense File of the Assembly Committee on Appropriations, 2013.
- vii) ***SB 560 (Wright) Small Business Regulations***: This bill would have made a number of reforms to help small businesses grow, encouraging more realistic regulations and a real assessment of the actual costs of regulations to the business community. The bill would have: (1) authorized a state agency to consult with “parties who would be subject to the proposed regulations” rather than “interested persons.” It also would have required the agency to notify in writing the Office of Small Business Advocate and the Department of Finance (DOF) if the agency does not, or is unable to, consult with parties subject to the regulation and reasons for not consulting the impacted businesses; (2) revised the economic impact assessment to include a small business economic impact statement as specified; (3) required the notice of proposed adoption, amendment, or repeal of a regulation to also include the small business impact statement and removes the requirement for an agency to make a specified statement in the notice of proposed adoption, amendment, or repeal of a regulation if the agency is not aware of any cost impacts that a representative private person or business would incur in compliance with the regulation, and instead required the agency to include a statement describing how a private person or business could comply with the proposed regulation without incurring a cost; (4) required Office of Administrative Law to also return any regulation to the adopting agency if the adopting agency has not provided the above cost estimate and small business economic statement; and (5) added restrictions for regulations relating to a new or emerging technology, as specified. Status: Held in the Senate Committee on Environmental Quality, 2012.
- viii) ***SB 617 (Calderon) State Government and Financial and Administrative Accountability***: This bill revises the state Administrative Procedure Act to require each state agency adopting a major regulation to prepare an economic impact analysis and requires state agencies to implement ongoing monitoring of internal auditing and financial controls and other best practices in financial accounting. Status: Signed by the Governor, Chapter 496, Statutes of 2011.
- ix) ***SB 981 (Huff) Review of Prior Regulations***: This bill would have required each state agency to review each regulation adopted prior to January 1, 2014, and to develop a report to the Legislature containing prescribed information. Among other information, the report would have included the regulations purpose, identification of impacted sectors, direct costs by sector, and an assessment as to whether the regulation needs updating. Status: Died in Senate Committee on Governmental Organization, 2014.
- x) ***SB 1099 (Wright) Streamline Implementation of Regulations***: This bill requires new regulations to become effective on one of four dates in any given year. This limitation is designed to create a regulatory environment that is more predictable. In addition, the bill requires regulations to be posted on the internet website in an easily identifiable location for a minimum of six months. Status: Signed by the Governor, Chapter 295, Statutes of 2012.

REGISTERED SUPPORT / OPPOSITION:

Support

None Received

Opposition

None received

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