

Date of Hearing: April 21, 2015

ASSEMBLY COMMITTEE ON JOBS, ECONOMIC DEVELOPMENT, AND THE ECONOMY

Eduardo Garcia, Chair

AB 582 Calderon – As Amended March 26, 2015

**SUBJECT:** Professionals in Public Service

**SUMMARY:** Establishes the Professionals in Public Service (PPS) Program, under the administrative oversight of the Board of Equalization (BOE), for the purpose of utilizing the expertise of private sector professionals to help make BOE practices more accessible to small businesses. Specifically, **this bill:**

- 1) Expresses legislative intent that California is home to some of the most innovative and resourceful entrepreneurs in the world, making it the leader in technology and related industries and that the state should harness this innovation in order to provide the best possible customer service to all of its citizens in the most cost-effective, efficient, and creative manner.
- 2) Establishes the PPS Program within the BOE, which includes the annual appointment by the Secretary of the BOE of one to five private sector professionals who will assist the BOE in making state government activities and practices more streamlined and accessible to small businesses.
- 3) Sets the following goals for the program:
  - a) Making board-administered programs simpler, easier to access, more efficient, and more responsive to the needs and concerns of small businesses and entrepreneurs.
  - b) Providing for better outreach by the board to the private sector.
  - c) Strengthening coordination and interaction between the board and the private sector on issues relevant to entrepreneurs and small business concerns.
- 4) Requires an individual selected for the program to meet one of the following criteria:
  - a) The individual shall have demonstrated success in working with small business concerns and entrepreneurs; or
  - b) The individual shall have successfully developed, invented, or created a product and brought the product to the marketplace.
- 5) Prohibits an individual who is participating in the program from having any conflicts of interest, including, but not limited to, having business before the BOE.
- 6) Requires the Secretary of the BOE to establish procedures for the appointment and placement of individuals to the PPS Program by March 1, 2016. These procedures are exempt from the Administrative Procedures Act, as specified. Among other requirements, the procedures are to include:
  - a) A process for screening prospective appointees including background checks and references.
  - b) A standard memorandum of understanding that stipulates the responsibilities of each party including, but not limited to, duties, goals, expected outcomes, administrative support, and office participation.
  - c) A reporting process that provides sufficient information for the Secretary of the BOE to prepare an annual report to the Legislature, as specified.

- 7) Requires the BOE to approve the PPS Program procedures prior to the appointment of any individual.
- 8) Requires every individual to have entered into an MOU with the BOE prior to starting their appointment to the PPS Program. The contents of the MOU are to be specific to individual placement including the individuals duties, goals, expected outcomes, administrative support, and office participation. The MOU shall also include benchmarks and metrics for evaluating the success of the placement.
- 9) Specifies that an individual participating in the PPS Program reports directly to the Secretary of the BOE
- 10) Authorizes an individual to serve in the PPS Program for the life of the program.
- 11) Sets the following duties for an individual appointed to the PPS Program:
  - a) Provide recommendations on how to streamline, eliminate, or modify potentially inefficient or duplicative activities, processes, and programs;
  - b) Provide recommendations on methods to improve program efficiency or establish new programs that address the needs of small businesses and entrepreneurs.
  - c) Assist the BOE in improving outreach and service to small business concerns and entrepreneurs including, but not limited to;
    - i) Facilitating meetings and forums to educate small businesses and entrepreneurs on programs or initiatives of the BOE.
    - ii) Facilitating in-service sessions with employees of the BOE on issues of concern to entrepreneurs and small businesses.
    - iii) Providing technical assistance or mentorship to small businesses and entrepreneurs in accessing BOE programs.
- 12) Provides that the scope of the duties (listed above) are subject to specified the confidentiality requirements applicable to the BOE.
- 13) Requires appointees of the PPS Program to serve on a project-based, voluntary basis with a specific timeline for completion. At the discretion of the Secretary of the BOE, an individual participating in the PPS Program may have access to an office, computer, and other related support services and equipment, as specified.
- 14) Authorizes the Secretary of the BOE to establish an informal working group of PPS appointees to discuss best practices, experiences, obstacles, opportunities, and recommendations.
- 15) Requires the Secretary of the BOE to annually prepare and submit a report, as specified, on the progress of the activities of each of the appointees and a general summary of how the overall program is meeting the program goals. The final annual report on the program is to be filed by January 1, 2019.
- 16) Specifies that program impacts will not be fully measurable until recommended changes are fully implemented. The bill directs the Secretary of the BOE to continue measuring and reporting the impact of the activities of the program following each placement.

17) Sunsets the provisions of the bill on January 1, 2021.

18) Includes a crimes and infractions disclaimer.

**EXISTING LAW:**

- 1) Finds and declares that it is in the public interest to aid, counsel, assist, and protect the interests of small business concerns in order to maintain a healthy state economy.
- 2) Establishes the five-member BOE as a publicly elected tax board with oversight on a number of taxation issues including sales and use tax. The BOE also acts as the appellate body for franchise and personal income tax appeals, and serves a significant role in the assessment and administration of property taxes.

**FISCAL EFFECT:** Unknown

**POLICY ISSUE FRAME:**

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 are often unable to assess the cost and complexity of the proposed implementation model on varying size businesses. An intrinsic challenge to California's rule making process is that those businesses that 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 rule making proceedings.

Without practical experience with the limited administrative capacity in which many small businesses operate or a realistic method for small businesses to participate in the regulatory process, it is difficult for state agencies to adopt rules that are considerate of needs of these smaller size businesses while still meeting the intended policy requirements.

Given that nearly 3 million firms in California have no employees and 90% of firms with employees have less than 20, having implementation methods that are appropriate for small businesses in terms of time, money, and expertise are a relevant state economic development issue.

This bill establishes a process for imbedding small business professionals with the BOE in order to help facilitate change from within the government organization. It is a process that has been used by the private sector to create leaner administrative processes and is more recently being adopted by local, state, and federal governments. These types of programs are more commonly referred to as entrepreneur-in-residence (EIR) programs.

The analysis provides background on California's small business economy, previous legislative actions on regulatory reform, other examples of EIR programs, and related legislation. Amendments are discussed in Comment 7.

**COMMENTS:**

- 1) **Author's Purpose:** According to the author's statement, "California is home to the largest, richest and most diverse economy in the United States. In fact, according to Bloomberg, California is

overtaking Brazil as the 7th largest economy to the world. A significant reason being the ingenuity of the citizens in our extraordinary state.

Small businesses make up 99.2% of all businesses in the state and create two-thirds of all net new jobs. Subsequently, the entrepreneurs and local business owners responsible for California’s economic prosperity are some of the best and brightest in the world. Still, entrepreneurs face many obstacles in today’s economy, such as access to capital and access to different markets, however, the biggest obstacle to success is often times government itself.

Our representative government is designed to give a voice to citizens with different views to debate in a public platform in hopes that consensus can be achieved. Sometimes, legislators pursue policies that can be out-of-touch with the public’s interest, or behind the times due to the rapid growth of technological advances. More to the point, governmental processes are highly bureaucratic which leads to slow decision making that can have a direct impact on the private sector.

Incorporating a private citizen who has a diverse technical background in business, financial and governmental processes into a governmental entity (e.g. BOE) can provide government employees direct access to an expert who is knowledgeable of the various challenges facing businesses in California today. The result can potentially give California’s business leaders an edge on the world competition to ensure the continued growth of our economy."

- 2) **California's Small Business Economy:** Small businesses form the core of California's \$2.2 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 if you exclude 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 about the challenges small businesses face 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 that have testified before the Committee have repeatedly stated that their goal is to achieve a regulatory environment that encourages small businesses development, while still maintaining public health and safety standards. AB 582 does not authorize the lowering of any regulatory standard. The bill proposes to reduce the regulatory burden on small businesses by providing the BOE with expert advice on the operation and administrative structures of small businesses.

- 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 cost 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 more targeted review pre- or post-adoption. Recommendations for systemic change have included:
- a) ***Dynamic Fiscal Analysis in Appropriations Committee:*** These bills required an analysis of bills before the Legislature on their impact on business and the economy. Currently, the Legislature's fiscal committee reviews focus on the bill's direct impact on state funds, and most specifically on the General Fund. The fiscal committee's analysis is not intended to include legislations' potential economic impact on the state.
  - b) ***Substantive Administrative Review:*** These bills shifted the review of the Office of Administrative Law from a procedural review of the regulation package to a substantive review of its impact on business and the economy, including the sufficiency of the assessment of alternatives. Alternatively, legislation has suggested that another state entity, such as the State Auditor or Legislative Analyst's Office, could be designated to undertake an expanded review of proposed regulations.
  - c) ***Enhanced Analysis of Alternatives:*** These bills required a more meaningful consideration of alternative implementation models, which could lower costs or reduce the implementation burden on small businesses.
  - d) ***Post Implementation Analysis:*** These bills required a review of a regulation's impact five-years after its implementation. Alternatively, legislation has been suggested that all regulations have a sunset date, which would allow for full review once the actual impacts could be identified.

Until now, the first approach has been the most successful, although by its nature it has had very limited overall impact on California's regulatory business climate. Due to their potential implementation costs, a majority of the bills advancing the systemic approach to regulatory reform have failed to move from the 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 economic impact analysis for regulations anticipated to have an impact of \$50 million or more. The SB 617 process follows the federal regulatory model (described below), however, it should be noted that the state process is silent as to the assessment of costs based on size of business.

The Legislature heard several bills to refine the SB 617 process in 2013-14 session including AB 2723 (Medina), which would have required rulemaking entities to consider the specific impact of major regulations on sole proprietorships, and AB 1711 (Cooley) which moved up the economic impact assessment to the initial statement of reasons for all regulations. Ultimately, the Governor signed AB 1711 (Cooley), Chapter 779, Statutes of 2014 and vetoed AB 2723 (veto message below).

- 5) **Similar Programs:** The PPS Program is not necessarily a new idea. The EIR model has been used in the investment and business world for decades. According to Dell, a supporter of this and prior EIR legislation, the high tech sector began using EIR model in the 1980's in order to bring experienced professionals into the startup process.

The use of EIR Programs to help government agencies is more recently gaining traction. As an example, in 2012, the Federal Drug Administration (FDA) established an EIR Program to attract seasoned entrepreneurs in the medical industry that had successfully navigated the FDA's regulatory process. The six to seven month program is designed to help the FDA and small businesses work together to introduce new products in the marketplace both quickly and safely. The FDA not only improved processes, FDA staff also gained a better understanding of the challenges small businesses face and how to better network with entrepreneurs in the future. The goal of one of first EIR placements deliver "transformational change by combining the best internal and external talent, applying the principles of lean engineering in rapidly testing, validating, and scaling new approaches." EIR Programs are a key component of President Obama's Strategy for American Innovation.

In another example, U.S. Citizenship and Immigration Services (USCIS) established an EIR initiative with the goal of recruiting a small "tactical team" of business experts to work with USCIS staff to help streamline operations and enhance pathways within existing immigration law to help immigrant entrepreneurs start and grow businesses in the U.S. This was a 90-day project, which also included the other entities within the Department of Homeland Security and was a component of the White House Startup America initiative.

In March 2014, Virginia enacted an EIR Program (HB 32, Chapter 63, Statutes of 2014) and several other states are reported to also be considering EIR Programs. AB 1675 (Calderon), which failed to move from the Assembly Appropriations Committee in 2014, was patterned after the Texas and Virginia legislation. AB 582 is a single department focus on last year's bill.

- 6) **EIR Case Study:** In March 2014, San Francisco (SF) Mayor Edwin M. Lee announced that the City had selected six startup companies to participate in its new EIR Program. The start-up businesses were selected from nearly 200 applications to participate in the 16-week collaboration. Under the program, the selected businesses will meet with SF government offices for the purpose of exploring innovative solutions to civic challenges that can lower costs, increase revenue, and enhance productivity.

Applicants came from 25 cities and countries including businesses in such areas as education, healthcare, transportation, public utilities, public safety, infrastructure, and the environment. The diverse group of applicants ranged from seed-stage startups to later stage startups and across software, hardware, and services – including serial entrepreneurs, NASA engineers, employees of leading technology companies, and several patent holders including some that have been granted more than 100 patents.

SF departments and agencies selected the finalists through a competitive process based on their needs and priorities. All businesses will be participating on a voluntary basis. SF believes that the six selected companies, "are at the forefront of developing innovative solutions to improve government efficiencies, enhance productivity, and provide better experiences to the public." Two examples of the six selected participants are:

- a) Synthicity (synthicity.com) will work with the San Francisco Planning Department on new simulation, planning, and urban development tools and technologies. Synthicity is a software startup that builds simulation tools and solutions for urban development and planning.

- b) BuildingEye (buildingeye.com) will work with the San Francisco Municipal Transportation Agency to engage residents and communities. BuildingEye is a software startup that makes permit and noticing information easier to discover through a mapping interface.
- 7) **Proposed Amendments:** Below is a list of amendments staff understands the author will be present for Committee approval at the hearing.
- a) Add legislative intent relative to the BOE serving as a model for other state agencies and that the EIR model is not a new model, rather it has been successfully used by a variety of public and private entities.
  - b) Provide that applications can be made in paper form and through an online application process.
  - c) Clarify that the nomination process is open to everyone.
  - d) Set August 1, 2017 as the date of the last appointment and December 31, 2017 as the final day an appointee may be of service.
  - e) Modify the final reporting requirements to reflect the date of final service.
- 8) **Related Legislation:** Below is a list of bills from the current and prior sessions.
- a) **AB 19 (Chang) Review of Regulations by Advocate:** This bill requires the Governor's Office of Business and Economic Development, under the direction of the Small Business Advocate, to review all regulations affecting small businesses adopted on or after January 1, 2016, in order to determine whether the regulations need to be amended in order to become more effective, less burdensome, or to decrease the cost impact to affected sectors. Status: scheduled to be heard on April 21, 2015, in the Assembly Committee on Jobs, Economic Development, and the Economy.
  - b) **AB 419 (Kim) Compilation of Regulations:** This bill requires the Governor's Office of Business and Economic Development to annually compile all regulations adopted by the state that affect small businesses and report this information to the Legislature, as specified. Status: scheduled to be heard on April 21, 2015, in the Assembly Committee on Jobs, Economic Development, and the Economy.
  - c) **AB 866 (E. Garcia) Small Business Impact Data:** This bill expands the duties of the Small Business Advocate to include assisting state rulemaking agencies in identifying the aggregate number and size of business which may be affected by a proposed new or amended regulation. Status: scheduled to be heard on April 21, 2015, in the Assembly Committee on Jobs, Economic Development, and the Economy.
  - d) **AB 1286 (Mayes) California Regulatory Reform Council:** This bill establishes the California Regulatory Reform Council for the purpose of analyzing the holistic impact of all levels of state and local regulations on specific industries operating within the state. The Council's recommendations may be made to the Governor and the Legislature, as appropriate. Status: scheduled to be heard on April 21, 2015, in the Assembly Committee on Jobs, Economic Development, and the Economy.
  - e) **AB 1675 (Calderon) Entrepreneurship-in-Residence:** This bill would have established the entrepreneur-in-residence program within the Governor's Office of Business and Economic Development for the purpose of improving outreach and strengthening coordination with the entrepreneur and small business community. Status: Died on the Suspense File in the Senate Committee on Appropriations, 2014.



- f) **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."
- g) **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.
- 9) **Double Referral:** The Assembly Rules Committee has referred this measure to the Assembly Committee on Jobs, Economic Development, and the Economy and to the Assembly Committee on Revenue and Taxation (R&T). Should this measure pass the Committee, it will be referred to R&T for further policy consideration.

#### **REGISTERED SUPPORT / OPPOSITION:**

##### **Support**

Dell  
TechNet

##### **Opposition**

None received

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