

Date of Hearing: April 20, 2010

ASSEMBLY COMMITTEE ON JOBS, ECONOMIC DEVELOPMENT AND THE
ECONOMY

V. Manuel Perez, Chair

AB 2196 (Smyth) – As Introduced: February 18, 2010

SUBJECT: Small Business Advocate: report on regulations.

SUMMARY: Requires the Office of Small Business Advocate (OSBA) to commission a study of the costs of specific state regulations on small businesses, and identify the 10 costliest regulations on small businesses. Specifically, this bill:

- 1) Requires the Office of the OSBA to commission a study of the costs of specific state regulations on small businesses, which shall identify the 10 costliest regulations on California small businesses and, among other things, do all of the following:
 - a) Parallel, to the extent feasible, the scope and study prepared by the federal Small Business Administration on the impact of regulatory costs on small firms conducted by the federal Small Business Administration, with particular focus on the 10 costliest regulations for California small businesses;
 - b) Examine successful models from other states on identifying regulatory costs and develop alternative approaches that are less burdensome on small businesses.
 - c) Make recommendations on how California's regulatory process can more effectively assess the impact on small businesses including its cumulative impact, and methods for developing policy-appropriate alternatives.
 - d) Avoid recommendations that could diminish wage and hour, social insurance, or health and safety protections for California workers.
- 2) Requires OSBA to convene a small business advisory committee (SBAC) to provide advice on the study. The SBAC shall include representatives from small business associations representing a cross section of the small business community.
- 3) Requires the report to be submitted no later than October 1, 2011, with recommendations to the Department of Finance, the Legislature and specific policy committees.

EXISTING LAW:

- 1) Establishes the OSBA, within the OPR, for the purpose of advocating for small business causes. Among other duties, the OSBA maintains a website to provide key information for small businesses, advocates the small business position on legislation and regulations being considered by the Administration, and serves as the state's primary liaison on small business issues.

- 2) Finds and declares that it is in the public interest to aid, counsel, assist, and protect, insofar as is possible, the interests of small business concerns in order to maintain a healthy state economy.
- 3) Requires the OSBA to report to the Legislature, every two years, on the efforts of the state in assisting minority and other small business enterprises, and make recommendations on how to strengthen minority and other small business enterprises.
- 4) 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 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.
- 5) 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:
 - a) Base decisions on adequate information;
 - b) Consider its impact on an industry's ability to compete with businesses in other states; and
 - c) Assess its impact on the creation or elimination of jobs and new and expanding businesses.

Further, no regulation adopted after January 1, 1993 may apply to a business unless the state agency makes a finding that it is necessary for the health, safety or welfare of the people of the state.

- 6) Establishes the Office of Administrative Law (OAL) as the entity with the purview of the state's regulatory process, including assessing the impact of proposed regulations on small businesses and consideration of reasonable alternatives that would lessen identified adverse impacts.
- 7) Defines, for the purpose of state regulations, that a small business means a business that is independently owned and operated, not dominant in its field of operation and has businesses activities in:
 - a) Agriculture with under \$1 million in gross receipts;
 - b) General construction with under \$9.5 million in gross receipts;
 - c) Special trade construction with under \$5 million in gross receipts;
 - d) Retail trade with under \$2 million in gross receipts;

- e) Wholesale trade with under \$9.5 million in gross receipts;
- f) Services with under \$2 million in gross receipts;
- g) Transportation and warehousing with under \$1.5 million in gross receipts;
- h) Power transmission company generating and transmitting with less than 4.5 million kilowatt hours annually;
- i) A manufacturing enterprise with less than 250 employees; or
- j) A health care facility with less than 150 beds or \$1.5 million in annual gross receipts.

FISCAL EFFECT: Unknown

COMMENTS:

- 1) Author's purpose: Small businesses are the backbone of California's economy, accounting for the vast majority of businesses in the state, and employing more than half of the state's workforce. Unfortunately, the recent economic downturn, coupled with costly and burdensome overregulation, has led many small businesses to close their doors or leave the state.

While the "Cost of State Regulations on California Small Businesses" study painted a striking picture of the total regulatory costs in California, it was light on details and stopped short of identifying the specific regulations that impose the greatest financial burden on California's economy. This bill builds on that study by requiring the Office of the Small Business Advocate to complete a study and report to the Legislature on the ten regulations that impose the greatest costs on small businesses in California.

- 2) Small business studies: Due to their importance in the state economy, small business issues have been a particular focus of the Assembly Committee on Jobs, Economic Development and the Economy (JEDE) for the past several years. In March 2009, JEDE produced a state economic recovery strategy that included several key recommendations on the needs of small business, including helping small businesses meet their short term capital needs, the need for regulatory reforms, and workforce development programs that more directly link to the needs of businesses.

Later in the year, JEDE held a number of hearings specifically to receive testimony from small businesses and manufacturers about their economic recovery needs. During these hearings small business prioritized two areas: increasing access to capital and reducing the costs associated with doing business in California, including costs related to business permits, licenses and other areas of regulatory compliance.

There are two major sources of data on the cost of regulatory compliance on businesses, the federal Small Business Administration and the state OSBA. For the last 10 years, the federal Small Business Administration has conducted a peer reviewed study that analyzes the cost of federal government regulations on different sizes of 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 impact of California regulations on small businesses was unknown until last year, when the study required by AB 2330 (Arambula), Chapter 232, Statutes of 2006, was published by the OSBA. Although state agencies have been required to consider the costs of adopted regulations on the California economy, in general, and on small business, specifically, state agencies have historically failed to meaningfully undertake such an analysis, and instead, have checked the box indicating that the need for the regulation was an overriding state concern. This first state study found that total cost of regulations to the State of California was \$493 billion. Since small businesses constitute 99.2 % of all employer businesses in California and all of non-employer business, the regulatory cost, according to the report, is shouldered substantially by small business (averaging \$134,123.00 per small business in 2007).

AB 2330 also required that state agencies examine the cumulative impact of regulations. Due, in part, to the difficult economic times, state agencies have done a poor job in meeting this new requirement when developing and amending regulations.

- 3) Better defining outcomes: While the report developed pursuant to AB 2330 was helpful, it lacked sufficient detail to assist policy makers take the next step and mitigate some of the cost pressures on business, in general, and small businesses, specifically. Further, both the federal and state studies focused on assessing cost and not on identifying why the regulations are costly.

Sometimes regulations are costly because they protect a worker undertaking a high risk job, such as mining. Other times regulations are costly because they are designed to be most convenient to the bureaucracy rather than the public. In designing a new study, it may be useful to narrow the scope of the study and to be more specific about what is the expected outcome.

- 4) Adoption of regulations in California: Existing law sets forth an extensive process for the development and adoption of regulations including requiring the identification of potential adverse impacts of regulations on California businesses and individuals. Statute states that the purpose of the rulemaking process is to avoid the imposition of unreasonable and unnecessary regulations, reporting, recordkeeping, or compliance requirements. Businesses, however, have repeatedly testified before this policy committee that they believe that California's regulatory process is expensive, overly burdensome, and that compliance has not necessarily provided a better quality of life for people in the state.

One of the criticisms of the process has been that OAL has no real authority to ensure that the intent of the law is enforced because their oversight is limited to a procedural review. Legislative intent specifically states that neither the OAL nor the courts may substitute its "judgment for that of the rulemaking agency as expressed in the substantive content" of the regulation.

This means that while the rulemaking entity is required to consider the impact of a regulation on businesses and consider alternatives, the OAL may only check to be sure that an

assessment has been done. Rulemaking agencies may even decline to consider alternatives and may limit their assessment of a regulations impact to only information supplied by interested parties.

- 5) California Small Business: California's dominance in many economic areas is based, in part, on the significant role small businesses play in the state's \$1.8 trillion economy. Businesses with fewer than 100 employees comprise nearly 98% of all businesses, and are responsible for employing more than 37% of all workers in the state.

As an example, small- and medium-sized businesses are crucial to the state's international competitiveness and are an important means for dispersing the positive economic impacts of trade within the California economy. Of the over 52,000 companies that exported goods from California in 2006, 95% were small- and medium-sized enterprises (SME) with fewer than 500 employees. These SMEs generated nearly half (44%) of California's exports in 2006. Nationally, SMEs generated only 29% of total exports.

Historically, small businesses have functioned as economic engines, especially in challenging economic times. During the nation's economic downturn from 1999 to 2003, microenterprises (businesses with less than five employees) created 318,183 new jobs or 77% of all employment growth, while larger businesses with more than 50 employees lost over 444,000 jobs. From 2000 to 2001, microenterprises created 62,731 jobs in the state, accounting for nearly 64% of all new employment growth. Unfortunately during the current recession, small business have been especially hard hit with small business bankruptcies up 81% for the 12 months ending September 2009, as compared to the same period in the previous year. Nationally, bankruptcy filings were up 44%, according to Equifax Inc.

Because of their importance in the state economy, small business issues have been a particular focus of the Assembly Committee on Jobs, Economic Development and the Economy (JEDE) for the past several years. In March 2009, JEDE produced a state economic recovery strategy that included several key recommendations on the needs of small business, including helping small businesses meet their short term capital needs. In May 2009, JEDE held a special hearing to learn more about how the recession was impacting small businesses and in October, JEDE's review of the California Enterprise Zone Program included a panel on how the program responds to needs of small business.

- 6) The Small Business Act: The Small Business Act, administered through DGS, was implemented more than 30 years ago to establish a small business preference within the state's procurement process for the purpose of increasing the number of contracts between the state and small businesses.

In 1989, a DVBE component was established with the Small Business Act to address the special needs of disabled veterans seeking rehabilitation and training through entrepreneurship and to recognize the sacrifices of Californians disabled during military service. Under the requirements of the DVBE program, each state agency is required, in awarding contracts throughout the year, to honor California's disabled veterans by taking all practical actions necessary to meet or exceed an annual 3% DVBE participation goal.

Since 2001, there have been four Executive Orders (EOs) and a number of statutory advancements made to strengthen the Small Business Act, including SB 115 (Florez),

Chapter 451, Statutes of 2005, which required DGS to establish a DVBE incentive program for state contracts; and AB 761 (Coto), Chapter 611, Statutes of 2007, which specifically codified the 25% small business participation goal for contracts related to revenues expended from the 2006 infrastructure bonds.

Despite the longstanding existence of the Small Business Act, statutory upgrades, and EOs, the state's success in obtaining small business and DVBE participation goals in state procurement contracts has been inconsistent.

Only twice since the small business participation target was established in 2001 through EO, has DGS reported that the state achieved its 25% goal. In fiscal year 2007-08 the state did not achieve its small business target, as it only awarded 23.84%, or \$2.62 billion, of the value of all contracts to small businesses. Although, procurement contract awards were down in 2007-08 there was an increase in the amount of contract dollars awarded. The state also did not achieve its 3% DVBE participation goal in 2006-07, the most recent numbers show a decrease from the 2.8% to only 2.39% DVBE contracts awarded in 2007-08 and the state again, saw an increase in awarded contract DVBE dollars to more than \$194 million.

- 7) Related legislation: Below is a list of related legislation:
- a) SB 356 (Wright) – Cost of Regulation: This bill clarifies the term “any interested person” to include “a small business or organization or trade association whose members are affected by a regulation,” as it relates to obtaining a judicial declaration as to the validity of any regulation or order of repeal by bringing action for declaratory relief in Superior Court pursuant to current law Status: This bill is pending in the Assembly Committee on Business Professions and Consumer Protection.
 - b) SB 942 (Dutton) -State Auditor: Analysis of Regulations: The bill establishes a process whereby the State Auditor would perform a cost-benefit analysis of specified regulations to determine whether any of the regulations impose a cost on private persons or business that exceeds its benefit. The bill requires an adopting agency to respond to the State Auditor's determinations by either amending or repealing the regulation or formally declining to take any action to address the Auditor's determination. Should the State Auditor find that an adopting agency's response sufficient, the Auditor is authorized to recommend to the Legislature that it enact legislation that will function to amend or repeal the regulation. Status: The bill is pending in the Senate Committee on Governmental Organization.
 - c) SB 960 (Dutton) -State Air Resources Board: Regulations: Office of Administrative Law: This bill imposes various functions and duties on the State Air Resources Board relating to reducing emissions of air pollutants. Existing law authorizes the state board to adopt standards, rules, and regulations necessary for the proper execution of those duties. Existing law, the Administrative Procedure Act, governs the procedure for the adoption, amendment, or repeal of regulations by state agencies. Existing law requires the Office of Administrative Law to review specified regulations and make determinations using prescribed standards. This bill would require the State Air Resources Board to submit a major regulation to the Office of Administrative Law for the purpose of have an analysis prepared as to the costs and benefits of the regulation and whether the regulation is

technologically feasible. Status: The bill is pending in Senate Committee on Environmental Quality.

- g) AB 978 (V. Manuel Pérez and Logue) - Streamlined State Licensing: This bill requires the State Chief Information Officer (CIO), in collaboration with other relevant agencies, to develop an online master application for businesses to file for state permits and licenses. This bill will provide guidance to a \$30 million information technology project, which has been approved in a prior budget year. Status: Pending in Senate Governmental Organization.
- d) AB 1787 (Swanson) –Administrative Procedure: Regulations: Narrative Description: This bill requires the agency to include a narrative description of the additions to, and deletions from, the California Code of Regulations. Status: The bill is pending in Assembly Committee on Business, Professions and Consumer Protection.
- c) AB 1833 (Logue) – Regulations and Economic Impact Analysis: This bill would require the California Environmental Protection Agency, the Division of Occupational Safety and Health, and the State Air Resources Board, when proposing to adopt, amend, or repeal an administrative regulation, to complete an economic impact analysis of that action prior to the adoption, amendment, or repeal. Status: The bill is pending in the Assembly Committee on Business Professions and Consumer Protection.
- d) AB 1949 (Logue) -Regulations: Five-Year Review and Report: This bill would require the California Environmental Protection Agency, the Division of Occupational Safety and Health in the Department of Industrial Relations, and the State Air Resources Board to review and report on regulations that it adopts or amends on and after January 1, 2011, five years after adoption, as specified. Status: The bill is pending in Assembly Committee on Business, Professions and Consumer Protection.
- e) AB 2529 (Fuentes) -State Agencies: Regulations: Review: This bill calls on the state to adopt the regulatory philosophy and the principles of regulation, as outlined in Presidential Executive Order 12866, in order to achieve the same regulatory benefits within the state. This bill would require the Department of Finance to assist state agencies with the review of new and existing regulations for compliance and consistency with these requirements, and to review analyses performed by agencies in promulgating new regulations or in reviewing existing regulations. Status: The bill is pending in the Assembly Committee on Business, Professions and Consumer Protection.
- f) AB 2603(Gaines) Administrative Regulations: Reductions: This bill requires, on or before July 1, 2011, that a state agency determine how many regulations it imposes and, on or before December 31, 2012, to reduce the total number of regulations it has identified by 33%. The bill would also require, until December 31, 2021, that any new regulation proposed by an agency also eliminate another regulation. Status: The bill is pending in the Assembly Committee on Business, Professions and Consumer Protection.
- h) AB 2692 (Tran) -Small Business Regulatory Reform Commission: This bill creates the Small Business Regulatory Reform Commission, consisting of 7 members appointed by Governor, the Senate Committee on Rules, and the Speaker of the Assembly, and authorize the commission to recommend reforms to state regulations that will encourage

the development and expansion of small businesses operating within the state by submitting an annual report to the Governor and Legislature. Status: Pending in the Assembly Committee on Jobs, Economic Development and the Economy, set for hearing April 20, 2010.

- i) AB 2330 (Arambula) - Small Business Costs Study: This bill requires the OSBA to commission a study of the costs of state regulations on small businesses that is parallel to the study on the impact of regulatory costs on small firms conducted by the federal Small Business Administration. The OSBA is required to make recommendations on how to reduce the cost of existing and future regulations on small businesses while achieving the same policy and regulatory objectives. This bill also convenes a small business advisory committee to provide advice based on the study and recommendations. Status: Signed by the Governor, Chapter 232, Statutes of 2006

- j) SB 1436 (Figueroa) - Small Business Regulatory Standards: This bill requires the Department of Technology Services to create a link to state agency web sites at the State of California Internet Portal so small businesses can access information regarding startup requirements and regulatory compliance. It requires each state agency that significantly regulates or impacts small business, to designate at least one individual to serve as a small business liaison for the agency. It also requires each agency to ensure that the state's procurement and contracting processes are administered in order to meet or exceed the 25-percent small business participation goal. Status: Signed by the Governor, Chapter 234, Statutes of 2006

REGISTERED SUPPORT / OPPOSITION:

Support

American Council on Engineering Companies
California Grocers Association

Opposition

California Teamsters Public Affairs Council
California Conference Board of the Amalgamated Transit Union
California Conference of Machinists
Engineers & Scientists of California IFPTE, Local 21
International Longshore & Warehouse Union
Jockey's Guild
Professional and Technical Engineers, IFPTE Local 21
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