

Date of Hearing: April 13, 2021

ASSEMBLY COMMITTEE ON JOBS, ECONOMIC DEVELOPMENT, AND THE ECONOMY
Sabrina Cervantes, Chair

AB 1571 (Committee on Jobs, Economic Development, and the Economy) – As Amend April 6, 2021

SUBJECT: Administrative Procedure Act: small businesses

POLICY FRAME: Economic developers, finance professionals, and even the Office of the Legislative Analyst agree that small businesses have been particularly impacted by the coronavirus pandemic. One estimate is that more than 19,200 businesses have permanently closed in the state, many of which were owned by women and people of color. AB 1571, authored by the Assembly Committee on Jobs, Economic Development, and the Economy (JEDE), provides an innovative framework for evaluating the adoption and amendment of regulations that impact small businesses during a Governor-declared state of emergency, such as the COVID-19 pandemic.

Disasters and other states of emergency often disrupt or impede the efficiency of communication outlets, supply chains, and normal business operations. While existing law provides for emergency regulation authority, it does not specifically address how emergencies may impact the ability of small businesses to learn about new regulations, purchase equipment, and implement new processes- let alone meaningfully participate in the rulemaking process.

This bill, based on the committee's long-term engagement with stakeholders, establishes a two-part test to determine how small businesses will be included in new and modified state regulations. First, the bill requires the rulemaking agency to assess whether the bill is needed to address the state of emergency or a serious and immediate health and safety threat. If the bill is needed, the rulemaking agency is required to include specific provisions that ensure small businesses will be made aware of the rule and have time to implement. This may mean that rulemaking agencies will need to implement emergency-appropriate outreach and education strategies, facilitate acquisition of essential but scarce equipment, and/or enter into training agreements with small business technical assistance centers, such as Small Business Development Centers or local governments. Other key resources that could be called upon include, the California Small Business Advocate and the agency-level small business liaisons, who are designated to assist small businesses with understanding and complying with agency rules and regulations.

If the rulemaking agency determines that the proposed rule or amendments does not address the state of emergency or a serious and immediate health and safety issue, the full application of the small business provisions will need postponement. Nothing in the bill prohibits the rulemaking agency from using this interim period for education, training, and technical assistance.

The analysis includes information on the California small business economy, state rulemaking practices, and studies on the cost of regulations to small businesses. There is no known opposition to this bill. There is no known opposition to this bill. Should this bill pass the Committee, AB 1571 will be referred to the Assembly Committee on Accountability and Administrative Review for further policy consideration.

SUMMARY: AB 1571 delivers regulatory relief to small businesses during a state of disaster by either exempting them from compliance until after the state of emergency or, in the case the regulation is necessary to address the emergency or a serious and immediate health and safety issue, providing small businesses with sufficient time to learn about and implement the new regulation. Specifically, **this bill:**

- 1) Makes legislative findings:
 - a) Small businesses, especially women- and BIPOC-owned businesses, must be a priority in the state's recovery efforts. Data continues to suggest these businesses are having the greatest challenges in accessing technical and financial assistance.
 - b) Small businesses face many challenges in accessing sufficient amounts of personal protective equipment, and in paying for higher and ongoing additional costs of operation during the pandemic.
- 2) Places additional requirements on a state rulemaking entity that proposes the adoption, amendment, or repeal of a regulation that applies to a small business, as defined, located within an area in which the Governor has declared a state of emergency. The bill requires the state rulemaking entity to do one of the following:
 - a) Postpone the effective date of the requirements on small businesses to the termination of the state of emergency;
 - b) Make a finding that the proposed regulation is necessary to address the state of emergency, and that the regulation provides sufficient time to provide reasonable notice to affected small businesses, as to the content of the regulation and the time to meet the new requirements. The Office of Emergency Services is required to confirm the necessity of the regulation to address the state of emergency.
 - c) Make a finding that the proposed regulation is necessary to address a serious and immediate health and safety issue, and that the regulation provides sufficient time to provide reasonable notice to affected small businesses, as to the content of the regulation and the time to meet the new requirements. The California Department of Public Health or the California Labor Agency is required to confirm the necessity of the regulation to address a serious and immediate health and safety issue.
- 3) Requires that the information related to the rulemaking entity's decision to postpone the regulation's application to small businesses, or make one of the specified findings, be included in the rulemaking entity's initial statement of reasons to adopt, amend, or repeal a regulation.
- 4) Defines a "small business" to mean a business that is all of the following:
 - a) Independently owned and operated.
 - b) Not dominant in its field of operation.
 - c) Has fewer than 100 employees.
- 5) Includes an urgency clause, based on the immediate need to readdress the potential economic impacts caused by government actions, necessary to protect the health and safety needs of persons at risk of being infected by the COVID-19 virus by postponing the implementation of new regulatory requirements that are not directly required to address the COVID-19 emergency

EXISTING LAW:

- 1) Finds and declares that there has been an unprecedented growth in the number of administrative regulations in recent years, and that correcting the resulting 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.

- 2) The Administrative Procedure Act sets forth the requirements for the adoption, publication, review, and implementation of regulations by state agencies, with the Office of Administrative Law having the assignment to review of those regulatory actions.
- 3) Requires a state agency proposing to adopt, amend, or repeal an administrative regulation to assess the potential for adverse economic impact on California business enterprises and individuals- avoiding the imposition of unnecessary or unreasonable regulations or reporting, recordkeeping, or compliance requirements. Existing law includes two methodologies for undertaking this evaluation: one for major regulations and one for nonmajor regulations.
- 4) Requires a state agency, when preparing to adopt, amend, or repeal, a regulation, to prepare a specified set of documents. These documents are available to the public upon request there must be a submission of these documents to the Office of Administrative Law to perform its mandatory review. These documents include:
 - a) A copy of the express terms of the proposed regulation, with the inclusion of a cross reference to related statutory authority.
 - b) An initial statement of reasons for proposing the adoption, amendment, or repeal of a regulation. The statement is required to include:
 - i) Identification of the problem the agency intends to address, and the rationale for the determination by the agency that each adoption, amendment, or repeal is reasonably necessary to carry out the purpose and address the problem for which it is proposed.
 - ii) An identification of each technical, theoretical, and empirical study, report, or similar document, if any, upon which the agency relies in proposing the adoption, amendment, or repeal of a regulation.
 - iii) An economic impact analysis for a regulation that is not a major regulation, as specified, or a standardized regulatory impact analysis for a major regulation, as specified. Facts, evidence, documents, testimony, or other evidence on which the agency is reliant on to support an initial determination that the action will not have a significant adverse economic impact on business is also required to be included.
 - iv) A description of reasonable alternatives to the regulation, and the agency's reasons for rejecting those alternatives; however, an agency is not required to artificially construct alternatives or describe unreasonable alternatives.
 - v) Certain departments have additional documentation requirements, including, but not limited to, a department, board, or commission within the Environmental Protection Agency, the Natural Resources Agency, or the Office of the State Fire Marshal. These departments are required to describe how the proposed adoptions or amendments are not unnecessary duplication or conflict with federal regulations contained in the Code of Federal Regulations.
- 5) Establishes the Office of the Small Business Advocate within the Governor's Office of Business (OSBA) and Economic Development (GO-Biz), to serve, among other things, as the principal advocate in the state on behalf of small businesses, including, but not limited to, advisory participation

in the consideration of all legislation and administrative regulations that affect small businesses. The OSBA is also charged with, among other duties:

- a) Representing the views and interests of small businesses before other state agencies whose policies and activities may affect small business.
 - b) Receiving and responding to complaints from small businesses concerning the actions of state agencies and the operative effects of state laws and regulations adversely affecting those businesses.
 - c) Counseling small businesses on how to resolve questions and problems concerning the relationship of small business to state government.
- 6) Establishes the position of the small business liaison within each state agency that significantly regulates small business or that significantly affects small business. The small business liaison's role is to assist small businesses in understanding and complying with agency rules and regulations. The small business liaison is, however, prohibited from intervening in any pending investigations, or enforcement action, or advocating for or against the adoption, amendment, or repeal of any regulation.

FISCAL EFFECT: Unknown

COMMENTS & CONTEXT:

- 1) **Small Businesses and Coronavirus:** Economic developers, finance professionals, and even the Office of the Legislative Analyst agree that small businesses have been particularly impacted by the coronavirus pandemic. According to a national survey and separate report on the impacts of COVID-19 on small and medium size businesses, both published by McKinsey in April 2020:
 - a) 70% of businesses are delaying purchases, reducing current spending, and holding back on making major investments. [*While not an unexpected outcome, this level of delayed spending has significant multiplier effects as its impacts move throughout the economy.*]
 - b) 50% of workers at small businesses with less than 100 employees are at risk of losing their jobs due to the pandemic. This represents over 2.2 million workers. This is a higher percentage of job losses than those projected for larger private sector employers.
 - c) 40% of the vulnerable small business jobs fall within two occupational categories: food service and customer service and sales.
 - d) 60% of the vulnerable small business jobs do not require a four-year degree, meaning that displaced workers will likely not have formally recognized skills to help them get their next job.
 - e) 55% of businesses felt that the economic impacts of the coronavirus were going to last over one year, with 29% responding the impacts were going to be felt for three years.
 - f) 25% of businesses said they would be filing for bankruptcy within six months.

The McKinsey report ranks California among the top states in which small businesses are and will be impacted by the COVID-19 emergency. The report finds that 92% of workers in small businesses that engage in the accommodation and food sectors are at risk. For workers at small construction firms, the report states that 54% are vulnerable, which is still a significant impact. Regulatory relief is one piece of a broader set of policies to support small businesses.

AB 1571, a committee bill, provides a framework for state agencies to take an in-depth assessment of the how implementation of a regulation would impact small businesses during a Governor-declared state of emergency.

- 2) **The Role of Small Businesses within the California Economy:** California’s dominance in many economic areas is based, in part, on the significant role small businesses play in the state’s \$3.1 trillion economy. Two separate studies, one by the US Census Bureau and another by the Kaufman Foundation, found that net job growth was strongest among businesses with less than 20 employees. Among other advantages, small businesses are crucial in the state’s international competitiveness, and they are an important means for dispersing the economic positive impacts of trade within the California economy.
- In 2017 (most recent full set of data), of the 4.1 million firms in California, there were 3.3 million nonemployer firms as compared to 763,803 employer firms.
 - Total revenues for nonemployer sole proprietorships, across all industry sectors, were \$118 billion in receipts in 2017.
 - Businesses with less than five employees are classified as microenterprises. In 2017, there were 473,641 microenterprises which had one or more employees.
 - Microenterprises, including both nonemployer and up-to-5-employee businesses, comprise the single largest segment of the California business community, and they represent 92.9% (3.8 million) of all businesses in the state.

The chart below displays 2017 data (most recent full set of data) on California employer businesses, including payrolls, employment, and number of firms, which may comprise of one or more establishments.

California Employer Businesses by Size (2017)				
Enterprise Employment Size	Number of Firms	Number of Establishments	Employment	Annual Payroll
0-4	473,641	474,301	737,168	\$45.0 billion
<20	676,913	682,756	2,605,213	\$125.5 billion
0-99	743,830	768,456	5,143,522	\$250.5 billion
100-499	13,628	39,757	2,081,423	\$125.0 billion
<500	757,458	808,213	7,224,945	\$375.6 billion
500+	6,345	133,164	7,671,680	\$579.4 billion
Total All Employers	763,803	941,377	14,896,625	\$955.0 billion
<ul style="list-style-type: none"> ▪ An establishment is a single physical location at which business is conducted or performed by one or more paid employees. ▪ A company or enterprise may consist of one or more establishments. ▪ An establishment with 0 employment is an establishment with no paid employees in the mid-March pay period but with paid employees at some time during the year. ▪ This series excludes government establishments except for wholesale liquor establishments (NAICS 4248), retail liquor stores (NAICS 44531), federally-chartered savings institutions (NAICS 522120), federally-chartered credit unions (NAICS 522130), and hospitals (NAICS 622). 				
Source: US Census, SUSB Series				

Excluding sole proprietorships, businesses with less than 20 employees comprise over 88.6% of all businesses and employ approximately 17.4% of all workers. Businesses with less than 100 employees represent 97.3% of all businesses and employ 34.5% of the workforce.

Microenterprises have many unique features and provide important benefits to local communities, according to a recent study from the Microenterprise Fund for Innovation, Effectiveness, Learning, and Dissemination (FIELD) at the Aspen Institute. These benefits include:

- Providing products and services tailored to meet local and neighborhood needs.
- Stimulating an inflow of revenues to and within local communities.
- Serving as catalysts for neighborhood reengagement.
- Revitalizing neighborhoods that may otherwise have vacant storefronts.
- Providing role models and support for future entrepreneurs.

These non-employer and small employer firms create jobs, generate taxes, support important industry sectors, and revitalize communities. While their small size allows them to be more flexible in meeting niche foreign and domestic market needs, it also results in certain market challenges. These challenges include having difficulty in meeting the procedural requirements of the state's complex regulatory structure and the traditional credit and collateral requirements of mainstream financial institutions. Specialized technical assistance, access to credit enhancements, and targeting of state procurement activities help many small businesses overcome or at least minimize these difficulties.

- 3) **Cost of Regulations on Business:** There are two major sources of data on the cost of regulatory compliance on businesses: the federal Small Business Administration (SBA) and the OSBA. While their work was conducted several years ago, the information is still illustrative of the financial disparity regulations place on small businesses versus large businesses.

The federal SBA has conducted a number of peer reviewed studies that analyze the cost of federal government regulations on businesses of different sizes. This research consistently 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 and only 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 the significant cost regulations add to the everyday operations of California businesses and should therefore be a consideration among the state's economic development policies.

Many small businesses in California will need to make extreme changes to survive the economic impact of the COVID-19 pandemic. These changes range from fundamentally changing business models, protecting the health and safety of employees and customers, and investing in ecommerce online technologies, to name only a few. Achieving all of this will come at a much larger relative cost to small businesses and will be especially difficult for small businesses that were already operating on thin profit margins.

State rulemaking during a state of emergency needs to carefully consider the need of small business compliance on issues that do not related to the emergency or represent a threat to public health and safety. In instances where regulations are appropriate, special provisions should be included to ensure

small businesses are aware of the changes and have the ability to purchase, install, or modify their operations. The provisions in AB 1571 were developed through conversations between the Assembly Jobs Committee and stakeholder groups about the difficulties in accessing accurate information, purchasing needed equipment, and understanding how the rules will impact the businesses' operation.

- 4) **Related Legislation:** Below is a list of bills from the current and prior sessions.
- a) **AB 19 (Chang) Small Business Regulatory Review:** This bill would have required the Governor's Office of Business and Economic Development, in consultation with the Office of the Small Business Advocate, to establish a process for the ongoing review of existing regulations. The bill would have required the review to be primarily focused on regulations affecting small businesses adopted prior to January 1, 2016, to determine whether the regulations could be less administratively burdensome or costly to affected sectors. Status: Held on the Suspense File of the Assembly Committee on Appropriations, 2015.
 - b) **AB 86 (Calderon) Entrepreneurship in Residence:** This bill would have established the Entrepreneurs in Residence Act of 2017 for the purpose of utilizing the expertise of private-sector entrepreneurs to help make state government activities and practices more streamlined and accessible. Status: Held on the Suspense File of the Senate Committee on Appropriations, 2017.
 - c) **AB 419 (Kim) Online Regulatory Access:** This bill would have required the Governor's Office of Business and Economic Development to create a web-access point on its Internet website to include information about the state rulemaking process, and a web-link to relevant information on the website of the Office of Administrative Law, including, but not limited to, information found in the California Code of Regulations, the California Regulatory Notice Register, and the California Code of Regulations Supplement. Status: Held under submission in the Senate Committee on Business, Professions, and Economic Development. These provisions were implemented administratively.
 - d) **AB 582 (Calderon) Entrepreneur-in-Residence Act of 2016:** This bill would have enacted the Entrepreneur-in-Residence (EIR) Act of 2016, including the establishment of a state EIR program within the Government Operations Agency (GOA) for the purpose of utilizing the expertise of private-sector entrepreneurs to help make state governmental activities and practices more streamlined and accessible. Status: Held under submission in the Senate Committee on Appropriations, 2016.
 - e) **AB 657 (Cunningham) State Government Small Business Liaisons:** This bill requires certain state agencies to prominently display the name and contact information of the small business liaison on the agencies' websites and to notify the Governor's Office of Business and Economic Development and the Department of General Services of liaison position vacancies, as specified. Status: Signed by the Governor, Chapter 81, Statutes of 2017.
 - f) **AB 767 (Quirk-Silva) California Business License Center:** This bill would have formalized the role of the Information Technology Unit within the Governor's Office of Business and Economic Development (GO-Biz), which is responsible for the design and maintenance of an online Internet platform, called the California Business Development Portal. In addition, the bill would have rebranded the state's permit and licensing application as the California Business License Center and provided dedicated staff to update and expand the California Business Portal. Status: Vetoed by the Governor, 2018.
 - g) **AB 866 (E. Garcia) Small Business Regulatory Fairness Act of 1996:** As passed by JEDE, this bill would have expanded the duties of the Small Business Advocate to include the provision of

known information to state rulemaking agencies on small business stakeholder groups, which the rulemaking agency could use when disseminating information about proposed new or amended rules. This bill would have also required a state agency that develops a small business compliance guide in partnership with federal agencies, under the federal Small Business Regulatory Fairness Act of 1996 (Public Law 104-121), to notify and provide specified information to the Small Business Advocate within 45 days after the guide becomes available to the public. Status: Used for another policy purpose. The measure failed to move from the Senate Floor, 2016.

- h) **AB 912 (Obernolte) California Small Business Regulatory Fairness Act:** This bill would have established the California Small Business Regulatory Fairness Act for the purpose of setting the framework by which a small business could be provided with an opportunity to implement a policy to allow the reduction of certain penalties and fees. Status: Died in the Assembly Committee on Appropriations, 2017.
- i) **AB 1286 (Mayes) California Regulatory Reform Council:** This bill would have established the California Regulatory Reform Council to make reports and recommendations to the Legislature and the Governor related to the structure, organization, operation, and impact of all levels of state and local regulations on industries operating within the state. Status: Held without further action by the Assembly Committee on Appropriations, 2016.
- j) **AB 1545 (Obernolte) California Small Business Regulatory Fairness Act:** This bill would have established the California Small Business Regulatory Fairness Act for the purpose of setting the framework by which a small business could be provided with an opportunity to implement a policy to allow the reduction of certain penalties and fees. Status: Died on the Suspense File of the Assembly Committee on Appropriations, 2019.
- k) **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 of the Senate Committee on Appropriations, 2014.
- l) **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 states: *"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."*
- m) **AB 3368 (JEDE) Petitions to Amend Regulations by Small Businesses:** This bill would have authorized the California Small Business Advocate and the agency-level Small Business Regulatory Liaisons to issue written comments as to the validity of the petition submitted by a small business to a state agency requesting the adoption, amendment, or repeal of a regulation. Status: Died on the Suspense File of the Assembly Committee on Appropriations, 2020.

- n) ***SB 430 (Borgeas) California Small Business Regulatory Fairness Act***: This bill would have required a state agency, as defined, to assist small businesses in complying with statutes and regulations and to establish a policy that sets the parameters under which the agency can reduce or waive certain civil penalties conferred on a small business, as defined. Status: Pending in the Senate Committee on Appropriations.
- o) ***SB 606 (Neilson) Small Business Appeals Board***: This bill would have established the Small Business Appeals Board and authorized the board to grant a hearing and review the order, ruling, action, or failure to act of any state agency upon petition of any small business affected; moreover, the ability to grant any remedy or impose any penalty would have been authorized under existing law governing administrative procedures. Status: Died in the Senate Committee on Governmental Organization, 2015.
- p) ***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.
- q) ***SB 828 (Runner) Small Business Appeals Board***: This bill would have established the Small Business Appeals Board and authorized the board to grant a hearing and review the order, ruling, action, or failure to act of any state agency upon petition of any small business affected; moreover, the ability to grant any remedy or impose any penalty would have been authorized under existing law governing administrative procedures. Status: Died in the Senate Committee on Business, Professions, and Economic Development, 2011.
- r) ***SB 1228 (Runner) California Small Business Regulatory Fairness Act***: This bill would have established the California Small Business Regulatory Fairness Act for the purpose of setting the framework by which a small business could be provided with an opportunity to implement a policy to allow the reduction of certain penalties and fees. Status: Died on the Suspense File of the Senate Committee on Appropriations, 2016.
- s) ***SB 1457 (Borgeas) California Small Business Regulatory Fairness Act***: This bill would have required a state agency, as defined, to assist small businesses in complying with statutes and regulations; moreover, they are required to establish a policy that sets the parameters under which the agency can reduce or waive certain civil penalties conferred on a small business, as defined. Status: Held in the Assembly Committee on Appropriations, 2020.
- 5) **Double Referral**: The Assembly Committee on Rules has referred this measure the Assembly Committee on Jobs, Economic Development, and the Economy and to the Assembly Committee on Accountability and Administrative Review (AAR). Should this measure pass the committee, it will be referred to AAR for further policy consideration.

REGISTERED SUPPORT / OPPOSITION:

Support

California Asian Pacific Chamber of Commerce
Coalition for Small and Disabled Veteran Businesses
Flasher Barricade Association

Opposition - None on File

Analysis Prepared by: Toni Symonds / J., E.D., & E. / (916) 319-2090