

Date of Hearing: May 12, 2020

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

AB 3368 (Committee on Jobs, Economic Development, and the Economy) – As Introduced March 5, 2020

SUBJECT: 2020 Small Business Reform Act: petitions to adopt, amend, or repeal regulations

POLICY FRAME: Although the state has a vigorous public process designed to allow a rulemaking agency to fully consider the comments, suggestions, and economic impacts of proposed regulations on all businesses – especially small businesses – these same agencies are often unable to assess the cost and complexity of the proposed implementation method on businesses of different sizes. 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.

As a backstop to the regulatory adoption and approval process, existing law allows any individual to file a petition with a rulemaking agency to adopt, amend, or repeal a regulation. This authority, however, is rarely used.

AB 3368 complements this existing petition authority by providing practical assistance to small businesses who want to file petitions. In instances where a small business has already filed a petition, the bill directs the California Small Business Advocate and the small business regulatory liaison to meet with the business to learn more about the problem that prompted the filing of the petition and possibly help resolve this issue without the necessity of changing the law.

The bill further provides explicit authority for the California Small Business Advocate and the small business regulatory liaisons to submit written comments to the agency discussing the merits of the petition. As many businesses face closure due to the economic impact of the coronavirus emergency, providing new tools for regulatory relief is essential. The policy analysis includes information on the California small business economy, reforms to state rulemaking practices, studies on the cost of federal and state regulations, and background on the federal small business regulatory programs. Technical amendments are recommended in Comment 5. Specifically, this bill:

SUMMARY: Authorizes 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.

1) Makes the following legislative findings and declarations:

- a) California’s dominance in many economic areas is based, in part, on the significant role small businesses play in the state’s \$2.9 trillion economy.
- b) Two separate studies, one by the United States Census Bureau and another by the Kaufman Foundation, found that net job growth was strongest among businesses with less than 20 employees.
- c) Supporting small business development has shown to be a successful inclusive economic growth strategy advantaging business throughout the state, including historically underserved business

groups, including minority-, woman-, and veteran-owned businesses, and hard to serve areas of the state, including low-wealth, rural, and disaster-impacted communities.

- d) In order for the state to fully leverage the economic opportunities represented by supporting small businesses, it is the intent of the Legislature that the Department of General Services and the Office of the Small Business Advocate actively promote small business certification, help small businesses market their products, goods, and services to the state, and promote the use of technologies and other innovative solutions for notifying small businesses of state contracting opportunities.
- 2) Requires an agency receiving a petition to adopt, amend, or repeal a regulation from a small business to forward a copy of the petition to the California Small Business Advocate and their agency-level small business regulatory liaison.
 - 3) Expands the duties of an agency-level small business regulatory liaison to include providing technical advice and assistance to small businesses in filing petitions to adopt, repeal, or modify a regulation, as specified.
 - 4) Requires the California Small Business Advocate and the agency-level small business regulatory liaison to offer to meet at least once with each small business that files a petition to adopt, repeal, or modify a regulation.
 - 5) Requires each agency that adopts regulations that significantly impact small businesses to post information on its website about how to petition the agency to adopt, amend, or repeal a regulation, as specified.
 - 6) Authorizes the agency-level small business regulatory liaison to issue written comments as to the validity of the petition, or recommend alternative actions to resolve or mitigate issues identified in the petition. The California Small Business Advocate already has general authority to represent the interests of small businesses before agencies; this bill provides specificity as to one element of that authority.
 - 7) Expands the articulated duties and responsibilities of the California Small Business Advocate to include:
 - a) Providing technical advice and assistance to small businesses in filing petitions with a state agency to adopt, amend, or repeal a regulation.
 - b) Counseling and offering recommendations to state agencies who receive petitions from small businesses to adopt, amend, or repeal a regulation.
 - 8) Expands the mandatory contents of the previously mandated annual report of the Office of the Small Business Advocate to include:
 - a) The number and the nature of complaints filed with or referred to the Office of the Small Business Advocate, the agency-level small business regulatory liaisons, and the agency-level small business advocates that support state contracting opportunities for small businesses.
 - b) The number and nature of regulatory petitions filed with a state agency and subsequently copied to the Office of the Small Business Advocate.

- 9) Makes a technical correction to a cross reference in a code section related to the California Small Business Advocate.

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) Establishes the Office of the Small Business Advocate (OSBA) within the Governor's Office of Business 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.
- 3) Establishes the position of the small business liaison within each state agency that significantly regulates small business or that significantly impacts small business. The small business liaison's duties include:
 - a) Receiving and responding to complaints received by the agency from small businesses.
 - b) Providing technical advice and assisting small businesses in resolving problems and questions regarding compliance with the agency's regulations and relevant statutes.
 - c) Reporting small business concerns and, if appropriate, reporting recommendations to the agency secretary or to the agency head, as defined.
 - d) Reviewing and updating, on a semiannual basis, the mandated small business content on the agency website, as specified.
 - e) Assisting the agency secretary, department director, or executive officer, as applicable, in ensuring that the procurement and contracting processes of the applicable entity are administered in order to meet or exceed the 25% small business participation goal, and developing and sharing innovative procurement and contracting practices from the public and private sectors to increase opportunities for small businesses.
- 4) Prohibits a small business liaison from advocating for or against the adoption, amendment, or repeal of any regulation or intervening in any pending investigation or enforcement action.

FISCAL EFFECT: Unknown

COMMENTS & CONTEXT:

- 1) **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. For the last 10 years, the federal SBA has conducted a peer reviewed study that analyzes the cost of federal government regulations on businesses of different sizes. 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.

- 2) **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 moves 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 degrees, 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 last 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 engaged in the accommodation and food sectors are at risk. For workers at small construction firms, the report states that 54% are vulnerable. Regulatory relief is one piece of a broader set of policies to support small businesses. AB 3368 leverages an existing state law to support small businesses as they

petition for regulatory changes better suited for their size. Nothing in the bill lowers any regulatory standard or lessens the authority of the rulemaking agency.

- 3) **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 are an important means for dispersing the economic positive impacts of trade within the California economy.
- In 2016 (most recent full set of data), of the 4.2 million establishments in California, there were 3.2 million nonemployer establishments as compared to 922,477 employer establishments.
 - In 2017, there were 3.3 million nonemployer firms, and 3 million of these were sole proprietorships. The top three industry sectors in 2017 with the largest numbers of nonemployer sole proprietorships included professional, scientific, and technical services (516,883 establishments); transportation and warehousing (347,600); and other services, excluding public administration (476,818).
 - Total revenues for nonemployer sole proprietorships, across all industry sectors, were \$118 billion in receipts in 2017.

The chart below displays 2016 data (most recent full set of data) on California businesses with employees, including payrolls, employment, and number of firms, which may be comprised of one or more establishments.

California Businesses by Size (2016)				
Enterprise Employment Size	Number of Firms	Number of Establishments	Employment	Annual Payroll (\$1,000)
0-4	465,078	465,846	731,400	43,110,073
5-9	124,595	125,830	819,252	33,834,977
10-19	76,973	80,213	1,028,048	43,740,209
<20	666,646	671,889	2,578,700	120,685,259
20-99	65,829	81,348	2,509,428	120,108,727
100-499	13,316	38,031	2,041,076	117,356,679
<500	745,791	791,268	7,129,204	358,150,665
500+	6,191	131,209	7,471,145	528,493,258
<ul style="list-style-type: none"> • 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 21.4% of all workers. Businesses with less than 100 employees represent 97.4% of all businesses and employ 42.3% of the workforce.

Businesses with less than five employees are classified as microenterprises. In 2016, California is reported to have had over 465,000 microenterprises which had one or more employees.

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.

- 4) **State Small Business Liaison:** The small business liaison position was established in 2006 to assist small businesses in complying with state regulations. Existing state law requires each agency that significantly regulates or impacts small businesses to designate a small business liaison, who is responsible for receiving and responding to complaints submitted by small businesses, providing technical assistance, and assisting small businesses in resolving problems and questions regarding compliance with the agency's regulations.

While outreach and technical assistance is useful, the state small business liaison is, however, currently prohibited from advocating for or against any regulation being considered by the agency. The small business regulatory liaison is also prohibited from intervening in any pending investigation or enforcement action. Once an enforcement action is initiated by an agency, the small business is left to their own devices.

Business Terms Defined

An establishment is a single physical location at which business is conducted or services or industrial operations are performed.

A company or enterprise may consist of one or more establishments.

When two or more activities are carried on at a single location, all activities generally are grouped together as a single establishment, which is classified on the basis of its major activity.

Establishment counts represent the number of locations with paid employees any time during the year.

At the federal level, a small business involved in regulatory investigation may call on the Small Business Administration's Ombudsman or ask for relief from a regional Small Business Regulatory Fairness Board. AB 3368 takes a modest step forward in supporting California small businesses as they access their authority to petition a state agency to adopt, amend, or repeal a regulation.

- 5) **Proposed Amendments:** There are two technical issues that should be addressed if the committee passes this measure.
 - a) Existing law prohibits a small business liaison from advocating for or against the adoption, amendment, or repeal of any regulation. This provision needs to be modified in Section 3 of the bill to allow liaisons to engage with small businesses who file, or who are considering filing, petitions pursuant to the changes proposed in this bill.
 - b) There is an incorrect cross reference in Section 7 relating to the tracking of petitions filed by small businesses.
 - c) Delete one provision in the legislative intent relating to state contracting.
- 6) **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, 2018.
- 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 in 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 in 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) **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 and to grant any remedy or impose any penalty authorized under existing law governing administrative procedures. Status: Died in the Senate Committee on Governmental Organization, 2015.
- n) **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.
- o) **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 and to grant any remedy or impose any penalty authorized under existing law governing administrative procedures. Status: Died in the Senate Committee on Business, Professions, and Economic Development, 2011.
- p) **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: Held on the Suspense File of the Senate Committee on Appropriations, 2016.

REGISTERED SUPPORT / OPPOSITION:

Support

None on File

Opposition

None on File

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