

Date of Hearing: March 28, 2017

ASSEMBLY COMMITTEE ON JOBS, ECONOMIC DEVELOPMENT, AND THE ECONOMY

Sharon Quirk-Silva, Chair

AB 657 (Cunningham) – As Introduced February 14, 2017

SUBJECT: State government: small business liaisons

SUMMARY: Requires certain state agencies to prominently display the name and contact information of the small business liaison on the agency's website and to notify the Governor's Office of Business and Economic Development (GO-Biz) and the Department of General Services (DGS) of liaison position vacancies, as specified. Specifically, **this bill:**

- 1) Requires a state agency that significantly regulates or impacts small businesses to have prominently displayed the name and contact information of the small business liaison on the agency's website.
- 2) Requires a state agency that significantly regulates or impacts small business to notify the Office of the Small Business Advocate (OSBA) within GO-Biz and DGS within 72 hours of a vacancy occurring to the position of the small business liaison.
- 3) Corrects an incorrect cross reference for the term "agency head."

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 OSBA within 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) Requires a state agency that significantly regulates small business or that significantly impacts small business to designate at least one person to serve as a small business liaison. The position of the small business liaison is required to be widely publicized, including within appropriate agency publications and on its website.

- 4) Specifies that the duties of the small business liaison include all of the following:
 - 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 in Section 11405.50
 - d) Reviewing and updating, on a semiannual basis, content on the agency web site that is accessible through the small business link provided on the State of California Internet portal pursuant to Section 11541.5.
 - e) Assisting the agency secretary, department director, or executive officer, as applicable, in ensuring that the procurement and contracting processes of the state entity are administered in a manner that supports the entity meet or exceed the 25% small business participation goal, as well as developing and sharing innovative procurement and contracting practices from the public and private sectors to increase opportunities for small businesses.
- 5) Prohibits the small business liaison from advocating for or against the adoption or amendment or repeal of any regulation or intervene in any pending investigation or enforcement action.
- 6) Requires the Office of Technology Services to create a link to state agency Internet Web sites at the State of California Internet portal specifically for the use of small businesses, designed to assist entrepreneurs and small business owners in accessing information regarding startup requirements and regulatory compliance applicable to the particular business.

FISCAL EFFECT: Unknown

POLICY FRAMEWORK:

This measure updates procedural elements of the Small Business Liaison, which are mandated by law to assist small businesses in meeting state regulatory requirements. The analysis includes information on the California small business economy, studies on the cost of regulations to small businesses, and a list of previous legislation. Amendments are discussed in Comment 4.

COMMENTS:

- 1) **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 \$2.4 trillion economy. Two separate studies, one by the U.S. 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 positive economic impacts of trade within the California economy.

Sole proprietorships comprise the single largest component of businesses in California, 3.1 million out of an estimated 4 million firms in 2014, representing over \$162 billion in revenues with the highest

number of businesses (over 539,000) in the professional, scientific, and technical services industry sector.

Excluding sole proprietorships, businesses with less than 20 employees comprise over 86% of all businesses and employ approximately 24% of all workers. Businesses with less than 100 employees represent 97% of all businesses and employ 54% of the workforce. These non-employer and small employer firms create jobs, generate taxes, support important industry sectors, and revitalize communities. Since the recession, these businesses have become increasingly important because of their ability to adapt to niche foreign and domestic market needs.

Reflective of their important role within the economy, 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.

- 2) **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 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.

- 3) **State Small Business Liaison:** The role of the Small Business Liaison 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 to small businesses in resolving problems, and answering questions regarding compliance with the agency's regulations.

While outreach and technical assistance is encouraged, the state Small Business Liaison is prohibited from advocating for or against any regulation or intervening in any pending investigation or enforcement action.

Existing law does not provide an official connection between the Small Business Liaisons the OSBA. AB 657 makes this connection and helps to ensure that state agencies which significantly impact small business have a liaison in place.

- 4) **Proposed Amendments:** The author may wish to consider the following implementation and technical amendments:
- a) Require the state agency to notify GO-Biz and DGS of their current Small Business Liaison by March 1, 2018.
 - b) Extend the period of time that a state agency has to notify GO-Biz and DGS that the designated position of the Small Business Liaison is vacant from 72 hours to 15 working days.
 - c) Reduce the period of time a state agency has to designate a new Small Business Advocate from six months to three months.
 - d) Correct two cross references for the definition of a small business. The current bill cites the small business definition used in state contracting rather than the definition used in state rulemaking.
 - e) Makes other related technical changes.
- 5) **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 establishes 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: Pending in the Assembly Committee on Jobs, Economic Development, and the Economy.
 - 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 Web site to include information about the state rulemaking process and a web-link to relevant information on the Internet site 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 are being implemented administratively.
 - d) **AB 505 (Wright) Small Business Liaisons:** This bill established the Business Regulatory Reform Act of 2000, which made several changes to the Administrative Procedures Act in the Government Code that were intended to make the regulatory process more user friendly and to improve the communication by regulatory agencies to affected businesses, particularly small businesses. It

- also required each state agency to designate a "small business liaison" and recast provisions for the California Small Business Advocate, placing that office in the Governor's Office of Planning and Research. Status: Signed by the Governor, Chapter 1059, Statutes of 2000.
- e) **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.
- f) **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.
- g) **AB 912 (Oberholte) California Small Business Regulatory Fairness Act:** This bill establishes 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 implementing a policy to allow the reduction of certain penalties and fees. Status: Pending in the Assembly Committee on Jobs, Economic Development, and the Economy.
- h) **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.
- i) **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.
- j) **AB 1757 (Committee on Budget) Eliminate Trade and Commerce Agency:** This bill repeals the provision for the small business liaisons at state agencies. It was included in the sections of the Government Code that were deleted for purposes of abolishing the Technology, Trade and Commerce Agency. Status: Signed by the Governor, Chapter 229, Statutes of 2003.
- k) **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."

- l) ***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.
- m) ***SB 1228 (Runner) California Small Business Regulatory Fairness Act:*** This bill establishes 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 implementing a policy to allow the reduction of certain penalties and fees. Status: Held on Senate Appropriations, 2016.
- n) ***SB 1436 (Figueroa) Small Business Liaison:*** This bill re-establishes the position of the Small Business Liaison which has been eliminated when all the codes sections related to the California Trade, Commerce, and technology Agency was eliminated in 2003. The liaisons were initially authorized in AB 505, Chapter 1059, Statutes of 2000. Status: Signed by the Governor, Chapter 234, Statutes of 2006.

REGISTERED SUPPORT / OPPOSITION:

Support

California Chamber of Commerce
California Manufacturers & Technology Association
National Federation of Independent Business

Opposition

None on File

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