Date of Hearing: March 28, 2017

ASSEMBLY COMMITTEE ON JOBS, ECONOMIC DEVELOPMENT, AND THE ECONOMY
Sharon Quirk-Silva, Chair
AB 86 (Calderon) – As Introduced January 5, 2017

SUBJECT: Entrepreneur-in-Residence Act of 2017

SUMMARY: 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 to small businesses. Specifically, **this bill**:

1) Makes the following findings and declarations:

    a) California is home to some of the most innovative and resourceful entrepreneurs in the world, making it the nation's leader in technology and related industries.

    b) The state should harness this innovation and leverage it to provide the best possible customer service to all of its citizens in the most cost-effective, efficient, and creative manner.

    c) Creativity and efficiency should not be limited to the private sector, but rather should be embraced and developed to further the public interest.

    d) Allowing the most creative private sector professionals to volunteer their time and expertise to make government work better and be more streamlined for its citizens would permit the state to utilize this creativity for the benefit of all its citizens.

    e) Establishing a professionals-in-public-service program within a California state agency would permit implementation of a model that has been applied successfully by a variety of public and private entities and has proven to be a useful tool to help various processes become more efficient.

2) Implements the Entrepreneur in Residence Act of 2017, which establishes the state entrepreneurship-in-residence program (EIR Program) within the Government Operations Agency (GOVOPs) for the purpose of utilizing the expertise of private-sector entrepreneurs to help make state government activities and practices more streamlined and accessible.

3) Authorizes GOVOP to appoint one, but not more than 10, entrepreneurs-in-residence under the program during each calendar year. To the extent practical, no more than two placements can be made within the same agency in the same calendar year. Final placement is contingent upon the approval of the state agency where the private sector would be assigned and documented by a memorandum of understanding containing specific requirements and conditions.

4) Requires an entrepreneur-in-residence to have either (a) demonstrated success in working with California small businesses and entrepreneurs or (b) have successfully developed, invented, or created a product and brought the product to the marketplace.

5) Requires an entrepreneur-in-residence to serve on a voluntary basis, and to commit to serving at least 16 hours per week to the program, unless a greater number of hours per week is otherwise agreed upon.

6) Prohibits an entrepreneur to participate in the EIR Program for more than two years.

7) Prohibits the appointment of any person with a conflict of interest with the activities of the state agency where he or she is placed, including, but not limited to, having any existing business before the state agency in which he or she is proposed to be placed or is placed.

8) Requires that the procedures for implementing this program are to be in place and application for an entrepreneurs-in-residence position be submitted no later than March 1, 2018. Among other areas, the bill requires the implementing procedures to include:

   a) A process for engaging with and receiving approval from state agencies about prospective appointments.

   b) A process for screening prospective appointees, including checking background and references.

   c) A standard memorandum of understanding that stipulates the responsibilities of each party in participating in the EIR Program, including, but not limited to, hours, duties, goals, expected outcomes, agency support, and office participation. This standard memorandum of understanding will serve as a model that will be adapted to address each individual placement to create the memorandum of understanding into which the appointee, the agency, and GOVOP enters.

9) Defines the duties of the entrepreneur to include:

   a) Providing recommendations on how to streamline, eliminate, or modify potentially inefficient or duplicative activities, processes, and programs.

   b) Providing recommendations on methods to improve program efficiency that may be instituted to address the needs of small businesses and entrepreneurs.

   c) Assisting the state agency the entrepreneur-in-residence serves in improving outreach and service to small business concerns and entrepreneurs including, but not limited to, the following:

      i) Facilitating meetings and forums to educate small businesses and entrepreneurs on programs or initiatives of the state agency the entrepreneur-in-residence is serving.

      ii) Facilitating in-service sessions with state employees on issues of concern to entrepreneurs and small businesses.

      iii) Providing technical assistance or mentorship to small businesses and entrepreneurs in accessing programs at GOVOPS and the state agency the entrepreneur-in-residence is serving.

10) Requires the entrepreneur-in-residence to report directly to the head of the state agency in which they are serving and to also keep GOVOPS updated on his or her activities, findings, and recommendations.

11) Requires GOVOPS to establish an informal working group of the individuals who are serving in the EIR Program for the purpose of discussing best practices, experiences, opportunities, and recommendations.

12) Requires GOVOPS to prepare an annual progress report, which will be submitted to the Governor and the Assembly Committee on Jobs, Economic Development, and the Economy. The annual report requirement is eliminated on January 1, 2022. At a minimum, the report is to include:

   a) A progress report on the activities of each entrepreneur-in-residence during the reporting period, based on the applicable memorandum of understanding.

   b) A general summary on how the overall program is addressing the goals of the program, which are as follows:

      i) Making state programs simpler, easier to access, more efficient, and more responsive to the needs and concerns of small businesses and entrepreneurs.

      ii) Providing for better outreach by the state to the private sector.

      iii) Strengthening coordination and interaction between the state and the private sector on issues relevant to entrepreneurs and small business concerns.

13) States that it is anticipated that program impacts will not be fully measurable until recommended changes and activities are fully implemented. GOVOPS and the agency where an entrepreneur-in-residence is placed are required to continue measuring and reporting the impact of the activities of the entrepreneur-in-residence for three years following the placement of an entrepreneur-in-residence.

14) Defines agency as any state agency, department, or commission.

FISCAL EFFECT: Unknown

POLICY FRAMEWORK:

Although the state has a vigorous public process that is designed to allow the rulemaking agency to fully consider the comments, suggestions, and economic impacts of proposed regulations on all business – especially small businesses - state agencies are often unable to assess the cost and complexity of the proposed implementation model on varying size businesses. An intrinsic challenge to California's rule making process is that those businesses that may be most affected have the least ability to monitor the broad range of state rulemaking entities, recommend appropriate alternative implementation models or engage meaningfully in the often complex and highly technical rule making proceedings.

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

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

This bill establishes a process for imbedding private sector professionals within state agencies in order to help facilitate change and encourage the adoption of more small business friendly policies and practices. It is a process that has been used by the private sector to create leaner administrative processes and is more recently being adopted by local, state, and federal governments.

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

COMMENTS:

1) **Author's Purpose**: According to the author's statement, "California is currently the 6th largest economic power in the world making it home to the largest, richest and most diverse economy in the United States. Entrepreneurs who live and do business in our state are significant economic drivers to this prosperity.

   According to the US Census Bureau, 49.9% of private company employees in California worked at small businesses with less than 100 employees. California's continued economic growth depends on implementation governmental practices appropriate for small businesses in terms of time, money, and expertise.

   Entrepreneurs leading small businesses face many obstacles in todays economy, such as availability of capital and access to different markets, but the biggest obstacle to success is often government itself. Governmental processes are highly bureaucratic, leading to slow decision making that has a direct effect on small businesses and entrepreneurs' success.

   Embedding Entrepreneurs-in-Residence with diverse backgrounds in business, finance and tech provides government agencies with direct access to expert knowledge on small businesses experiences traversing government bureaucracy. Utilizing the expertise of private-sector entrepreneurs will make state governmental activities and practices more streamlined and accessible. The result can potentially give California's business leaders an edge on the world competition to ensure the continued growth of our economy."

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 $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 be more flexible and adaptive to both 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.

AB 86 does not authorize the lowering of any regulatory standard. The bill proposes to reduce the regulatory burden on small businesses by providing state agencies with expert advice on the operation and administrative structures of small businesses.

3) **Cost of Regulations on Business**: There are two major sources of data on the cost of regulatory compliance on businesses, the federal SBA and the Office of the Small Business Advocate (OSBA). For the last 10 years, the federal SBA has conducted a peer reviewed study that analyzes the cost of federal government regulations on different size businesses. This research shows that small businesses continue to bear a disproportionate share of the federal regulatory burden. On a per employee basis, it costs about $2,400, or 45% more, for small firms to comply with federal regulations than their larger counterparts.

   The first study on the impact of California regulations on small businesses was released by the OSBA in 2009. This first in-the-nation study found that the total cost of regulations to small businesses averaged about $134,000 per business in 2007. Of course, no one would advocate that there should be no regulations in the state. The report, however, importantly identifies that the cost of regulations can provide a significant cost to the everyday operations of California businesses and should therefore be a consideration among the state's economic development policies.

   Regulatory costs are driven by a number of factors including multiple definitions of small business in state and federal law, the lack of e-commerce solutions to address outdated paperwork requirements, procurement requirements that favor larger size bidders, and the lack of technical assistance to alleviate such obstacles that inhibit small business success.

4) **Different Approaches to Regulatory Reform**: In general, the Legislature's engagement on regulatory reforms has taken two basic approaches. One set of policies has addressed specific regulatory challenges on a case-by-case basis. The other approach makes systemic change to the way in which rules are adopted, often adding a supplemental more targeted review pre- or post-adoption. Recommendations for systemic change has included:

   a) ***Dynamic Fiscal Analysis in Appropriations Committee***: These bills required an analysis of bills before the Legislature on their impact on business and the economy. Currently, the Legislature's fiscal committee reviews focus on the bill's direct impact on state funds, and most specifically on the General Fund. The fiscal committee's analysis is not intended to include legislations' potential economic impact on the state.

   b) ***Substantive Administrative Review***: These bills shifted the review of the Office of Administrative Law from a procedural review of the regulation package to a substantive review of its impact on business and the economy, including the sufficiency of the assessment of alternatives. Alternatively, legislation has suggested that another state entity, such as the State Auditor or Legislative Analyst's Office, could be designated to undertake an expanded review of proposed regulations.

c) ***Enhanced Analysis of Alternatives***: These bills required a more meaningful consideration of alternative implementation models, which could lower costs or reduce the implementation burden on small businesses.

d) ***Post Implementation Analysis***: These bills required a review of a regulation's impact five-years after its implementation. Alternatively, legislation has been suggested that all regulations have a sunset date, which would allow for full review once the actual impacts could be identified.

Until now, the first approach has been the most successful, although by its nature addressing regulatory impacts on a case by case basis has had very limited overall impact on California's regulatory business climate. Due to their potential implementation costs, a majority of the bills advancing the systemic approach to regulatory reform have failed to move from the fiscal committees - as illustrated in the comment on related legislation.

The most significant systemic change in recent years was approved in SB 617 (Calderon), Chapter 496, Statutes of 2011, which required an enhanced economic impact analysis for regulations anticipated to have an impact of $50 million or more. The SB 617 process follows the federal regulatory model, however, it should be noted that the state process is silent as to the assessment of costs based on size of business and requires no post impact review.

AB 86 proposes a third option for addressing regulatory impacts on small business. By bringing experienced professions who have worked in the field, state employees would have an opportunity to discuss implementation issues on a more informal and day-to-day basis as compared to a formal regulatory adoption process, which is more designed for the bureaucracy being put in the positon of defending their proposal against those that come to speak in opposition.

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

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

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

Several states have adopted EIR Programs, including Virginia (2014), Ohio (2015), and Texas (2015). One project from Ohio's inaugural EIR Program year was the data project for the Ohio Pharmacy Board. Working directly with Pharmacy Board, the entrepreneur developed method for implementing a permanent data analytics and reporting process. According to their annual report, this process has been "*essential in taking proactive action against pharmacists, prescribers, and individuals who engage in controlled-substance abuse – so this is literally about saving lives*."

The author has introduced legislation to establish a state EIR Program in California three times, each of which have passed JEDE by bipartisan votes. A list and description of these bills is provided under Comment 8.

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

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

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

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

   b) BuildingEye (buildingeye.com) will work with the San Francisco Municipal Transportation Agency to engage residents and communities. BuildingEye is a software startup that makes permit and noticing information easier to discover through a mapping interface.

   Synthicity also worked with the SF police department on creating the next generation of law enforcement technology. Their project consisted of developing an application that police officers could use when conducting a field interview. At the completion of the first round of projects, the City of SF concluded that the EIR program had resulted in lower costs, increased revenues, and enhanced productivity. According to a related YouTube video, the EIR Program had helped the city create a cultural change within participating departments in delivering community services.

7) **Proposed Amendments**: Below is a list of clarifying and implementation amendments the author may wish to consider. These amendments could be adopted at the Committee hearing. These amendments include:

a) Extend the date for developing implementing policies and procedures from March 1, 2018, to May 1, 2018, in order to allow adequate time for adopting regulations.

b) Extend the date for accepting initial applications from March 1, 2018, to August 18, 2018, in order to provide time for outreach and marketing of the new program.

c) Specify that the applications will be accepted on an ongoing basis throughout the year.

d) Clarify that the two-year term limit relates to a single memorandum of understanding.

e) Authorize breaks in service to accommodate the needs of a volunteer, when there is mutual agreement by the state agency and GOVOPS.

f) Extend the final annual report date in order to harmonize another requirement in the bill that requires monitoring and reporting program outcomes three years following the initial entrepreneur-in-residence assignment.

g) Delete the term "informal" from the requirement for GOVOPS to have a workgroup.

8) **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 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.

c) ***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.

d) ***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 agency's website and to notify Governor's Office of Business and Economic Development (GO-Biz) and the Department of General Services (DGS) of liaison position vacancies, as specified. Status: Pending in the Assembly Committee on Jobs, Economic Development, and the Economy.

e) ***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.

f) ***AB 912 (Obernolte) 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.

g) ***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.

h) ***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.

i) ***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."

j) ***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.

k) ***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.

REGISTERED SUPPORT / OPPOSITION:

Support

California Association of Independent Businesses
California Chamber of Commerce
California Manufacturer & Technology Association
Small Business California
TechNet

Opposition

None on File

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