

BILL ANALYSIS

SB 617

Page 1

Date of Hearing: September 7, 2011

ASSEMBLY COMMITTEE ON ACCOUNTABILITY AND ADMINISTRATIVE REVIEW

Roger Dickinson, Chair

SB 617 (Ron Calderon/ Pavley) - As Amended: September 2, 2011

SENATE VOTE : 37-0 (Not relevant)ASSEMBLY COMMITTEE ON BUSINESS, PROFESSIONS AND CONSUMERPROTECTIONS 9-0Ayes: Allen, Berryhill, Butler, Eng, Hagman, Hayashi, Hill, Ma, SmytheSUBJECT : STATE GOVERNMENT: FINANCIAL AND ADMINISTRATIVE
ACCOUNTABILITYSUMMARY : 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. Specifically, this bill :

- 1) Defines a major regulation as any proposed adoption, amendment or repeal of a regulation that will have an economic impact on California businesses and individuals in an amount exceeding \$50 million, as estimated by the agency proposing the regulation.
- 2) Requires agencies adopting, amending or repealing a regulation to submit to the Office of Administrative Law (OAL) an initial statement of reasons that includes the problem the agency is addressing. The statement shall enumerate the benefits of the new proposal, and include nonmonetary benefits such as protection of public health and safety, worker safety, or the environment, the prevention of discrimination, the promotion of fairness or social equity, and the increase in transparency in government or business, among other things.
- 3) Requires that every state agency proposing to adopt, amend, or repeal a major regulation on or after January 1, 2013 prepare a standardized

- regulatory impact assessment that addresses all of the following:
- a) The creation or elimination of jobs.
 - b) The creation or elimination of new business.
 - c) The competitive advantages or disadvantages to California business.
 - d) The increase or decrease in investment in the state.
 - e) The incentives for innovation in products, materials or processes; and,
 - f) The benefits to the health, safety and welfare of Californians.
- 4) States that economic impact analyses are a tool to alert the agencies and the public of the economic consequences of regulatory choices and are not to be used to reassess statutory policy.
 - 5) Requires that every state agency proposing to adopt, amend, or repeal a regulation that is not a major regulation or that is a major regulation proposed before January 1, 2013 prepare an economic impact analysis that includes analysis of the benefits of the regulation to the health and welfare of California residents, worker safety and the state's environment.
 - 6) Exempts the University of California, the Hastings College of Law and the Fair Political Practices Commission.
 - 7) Requires the Department of Finance, in consultation with the Office of Administrative Law, to adopt regulations on or before January 1, 2013 describing the processes agencies must use to develop a standardized regulatory impact analysis.
 - 8) Requires that every state agency proposing to adopt, amend, or repeal a major regulation on or after January 1, 2013 submit its standardized regulatory impact analysis to the Department of Finance for review. The department shall comment, within 30 days, on the extent to which the analysis adheres to the regulations the department has adopted regarding the preparation of regulatory impact analyses.
 - 9) Authorizes agencies to update their analysis and reflect those comments.
 - 10) Provides that the baseline for the regulatory analysis shall be the most cost-effective

set of regulatory measures that will effectively

- implement the statutory policy or other provisions of law.
- 11) Requires agencies, when submitting to OAL a final statement of reasons for the proposed regulation, to include:
 - a. A determination with supporting information that no alternative considered by the agency would be more cost effective in implementing the regulation, and,
 - b. An explanation of the reasons for rejecting any proposed alternatives that would lessen the adverse economic impact on small business.
 - 12) Requires OAL to return a regulation to the adopting agency if the agency has not examined alternatives as required.
 - 13) Requires OAL to prepare a report, on or before January 1, 2014, describing state agencies' use of regulatory impact analyses, and whether agencies are adhering to regulations describing the development of the analyses. The report may also include any recommendations to the Legislature for improving the program.
 - 14) Renames the Financial Integrity and State Managers Accountability Act of 1983 as the State Government Fraud Prevention, Detection and Financial Integrity Monitoring and Accountability Act of 2011.
 - 15) Expands upon existing legislative findings, specified, and declares that active oversight processes, including regular and ongoing monitoring processes, for the prevention and early detection of fraud and errors in program administration are vital to the appropriate and efficient use of public resources.
 - 16) Adds the requirement that effective, independent, and objective ongoing monitoring of the internal accounting and administrative controls be included within each state agency's system of internal accounting and control.
 - 17) Stipulates that state agency heads must implement systems and processes to ensure the independence and objectivity of the monitoring of internal accounting and administrative control as an ongoing activity.

- 18) Requires the Director of Finance to establish a framework of recommended practices to guide state agencies in conducting active ongoing monitoring of processes for internal accounting and administrative control.

- 19) Sunsets on January 1, 2014, an existing reporting requirement that directs state agencies to report on the adequacy of their systems of internal accounting and administrative control.

EXISTING LAW:

_____ 1) Under the Administrative Procedure Act (APA) (Government Code §11340 et seq.), establishes rulemaking procedures and standards for state agencies. State regulations must also be adopted in compliance with regulations adopted by the Office of Administrative Law (OAL). The APA, among other things:

- a) Requires every agency to prepare and submit a specified notice of the proposed action and make certain information available to the public (e.g., draft regulation in "plain English"; statement of reasons for proposing the adoption, amendment, or repeal of a regulation; evidence to support a determination that the action will not have a significant adverse economic impact on business). (§11346.2). The statement of reasons must identify each technical, empirical report upon which the agency relies in proposing the regulation. (§11346.2(b)(2)).
- b) Requires state agencies in proposing to adopt, amend,

potential for or repeal any regulation to assess the business adverse economic impact on California assessing the potential enterprises and individuals. In agencies must meet for adverse economic impact, state certain requirements (e.g., be based on

adequate information concerning the need for, and consequences of, proposed action; consider industries affected including the ability to compete with businesses in other states). State agencies must also assess whether, and to what extent, regulations will affect certain matters (e.g., creation or elimination of jobs in the state, creation of new businesses or elimination of existing businesses in the state, expansion of businesses currently doing business in the state). (Government Code §11346.3). OAL must return any regulation to the adopting agency under certain conditions, including failure to comply with this requirement to assess potential adverse economic impacts. (§11349.1).

c) Requires the notice of proposed adoption, amendment, or repeal of a regulation to include certain matters (e.g., include specified information if there may be a significant, statewide adverse economic impact; description of all cost impacts to be incurred by a

of the results of private person or business; statement (\$11346.5). the economic impact assessment).

d) Requires OAL to either approve a submitted regulation and transmit it to the Secretary of State for filing, or disapprove it, within 30 working days. If OAL fails to act within 30 days, the regulation is deemed approved

and OAL must transmit it to the
Secretary of State.
(§11349.3).

FISCAL EFFECT : Unknown

COMMENTS : Author's amendments will be heard in Committee today. The amendments:

- 1) Require the Department of Finance to adopt new regulations describing the process agencies must use to develop regulatory impact analyses by November 1, 2013, instead of January 1, 2013. Subsequently, agencies adopting, amending or repealing major regulations on or after November 1, 2013 would be required to conduct a regulatory impact analysis, and the OAL would prepare a report describing state agencies' use of regulatory impact analyses by November 1, 2015.
- 2) Clarify the definition of a major regulation to mean any proposed adoption, amendment, or repeal of a regulation subject to review by the OAL.
- 3) Clarify the benefits of a proposed regulation by eliminating the vague requirement that agencies monetize, to the extent practicable, the benefits of regulations, including but not limited to the health, safety and welfare of California residents, worker safety, and the state's environment and quality of life.
- 4) State that the baseline for regulatory

SB 617
Page 7

analysis shall be the most cost-effective set of regulatory measures that are equally effective in achieving the purposes of the regulation in a manner that ensures full compliance with the authorizing statute or other law being implemented or made specific by the proposed regulation.

- 5) Further emphasize the importance of analyzing the nonmonetary benefits of a regulation, such as the protection of public health and safety, worker safety, the environment, the prevention of discrimination, the promotion of fairness or social equity, and the increase in the openness and transparency of business and government.

The bill seeks to improve communication between state agencies and the public during the regulatory development process, and

require a more thorough and standardized economic impact analysis of regulations before they are approved.

In testimony to the Little Hoover Commission last year, the acting director of OAL suggested the current economic impact analysis practices required by the Administrative Procedures Act are "illusory and ineffective because it allows an agency to make a perfunctory, after-the-fact assessment of impact that is more symbolic than real."

The bill's author states that this legislation will improve California's economic climate by requiring agencies to thoroughly study the impacts of regulation, adopt the least burdensome, most efficient regulations possible and by allowing more public input during the regulatory development process.

REGISTERED SUPPORT / OPPOSITION :

Support

California Asian Pacific Chamber of Commerce
 California Association of Bed & Breakfast Inns
 California Building Industry Association
 California Business Properties Association
 California Chamber of Commerce
 California Construction and Industrial Materials Association
 California Farm Bureau Federation

SB 617
 Page 8

California Grocers Association
 California Hotel & Lodging Association
 California Independent Oil Marketers Association
 California League of Food Processors
 California Manufacturers & Technology Association
 California New Car Dealers Association
 California Professional Association of Specialty Contractors
 California Restaurant Association
 California Retailers Association
 Chemical Industry Council of California
 Consumer Specialty Products Association
 Industrial Environmental Association
 International Fragrance Association - North America
 Los Angeles Chamber of Commerce
 National Federation of Independent Business - California
 Pacific Merchant Shipping Association
 Western States Petroleum Association

Opposition

None on file.

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