
THIRD READING

Bill No: SB 410
Author: Leyva (D)
Amended: 3/3/21
Vote: 21

SENATE LABOR, PUB. EMP. & RET. COMMITTEE: 4-1, 4/19/21
AYES: Cortese, Durazo, Laird, Newman
NOES: Ochoa Bogh

SENATE APPROPRIATIONS COMMITTEE: Senate Rule 28.8

SUBJECT: Occupational safety and health: regulations

SOURCE: California Labor Federation, AFL-CIO

DIGEST: This bill exempts future occupational safety and health standards from the requirement that a state agency first draft a standardized regulatory impact analysis before amending, adopting or repealing that regulation.

ANALYSIS:

Existing law:

- 1) Assures, under the California Occupational Safety and Health Act, safe and healthful working conditions for all California workers by authorizing the enforcement of effective standards, assisting and encouraging employers to maintain safe and healthful working conditions, and by providing for research, information, education, training, and enforcement in the field of occupational safety and health. (Labor Code §6300)
- 2) Establishes the Division of Occupational Safety and Health (known as Cal/OSHA) within the Department of Industrial Relations (DIR) to, among other things, propose, administer, and enforce occupational safety and health standards. (Labor Code §6300 et seq.)

- 3) Establishes, under the Administrative Procedure Act (APA), rulemaking procedures and standards for state agencies to follow when adopting regulations to ensure that these are clear, necessary and legally valid. (Government Code §11340 et seq.)
- 4) Establishes and charges the Office of Administrative Law (OAL) with the responsibility of reviewing adopted regulations with the intent of reducing the number of administrative regulations and improve the quality of those regulations. (Government Code §11340.1)
- 5) Requires that a state agency proposing to adopt, amend, or repeal any administrative regulation 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. (Government Code §11346.3)
- 6) Requires that a state agency proposing to adopt, amend, or repeal a regulation that is not a major regulation or that is a major regulation proposed prior to November 1, 2013, prepare an economic impact assessment that assesses whether and to what extent it will affect the following:
 - a) The creation or elimination of jobs within the state.
 - b) The creation of new businesses or the elimination of existing businesses within the state.
 - c) The expansion of businesses currently doing business within the state.
 - d) The benefits of the regulation to the health and safety of California residents, worker safety, and the state's environment. (Government Code §11346.3(b))
- 7) Requires that a state agency proposing to adopt, amend, or repeal a regulation that is not a major regulation or that is a major regulation proposed prior to November 1, 2013, prepare a standardized regulatory impact analysis that addresses all of the following:
 - a) The creation or elimination of jobs within the state.
 - b) The creation of new businesses or the elimination of existing businesses within the state.
 - c) The competitive advantages or disadvantages for businesses currently doing business within the state.

- d) The increase or decrease of investment in the state.
 - e) The incentives for innovation in products, materials, or processes.
 - f) The benefits of the regulations, including, but not limited to, benefits to the health, safety, and welfare of California residents, worker safety, and the state's environment and quality of life, among any other benefits identified by the agency. (Government Code §11346.3(c))
- 8) Defines “Major Regulation” to mean any proposed adoption, amendment, or repeal of a regulation subject to review by the Office of Administrative Law that will have an economic impact on California business enterprises and individuals in an amount exceeding fifty million dollars (\$50,000,000), as estimated by the agency. (Government Code §11342.548)

This bill:

- 1) Exempts future occupational safety and health standards from the requirement that an adopting agency prepare a standardized regulatory impact analysis about the regulation proposed to be adopted, amended or repealed.
- 2) Clarifies that adopting state agencies must still prepare an economic impact assessment before adopting, amending or repealing a regulation.

Background

- 1) *The Office of Administrative Law.* Established on July 1, 1980, the OAL ensures that regulations proposed by the over 200 California state agencies are clear, necessary, legally valid, and available to the public. OAL is responsible for ensuring that state agencies comply with the rulemaking procedures and standards set forth in California's APA, which are designed to provide the public with a meaningful opportunity to participate in the adoption of regulations, or rules that have the force of law. A “regulation” is any rule, regulation, order or standard of general application or the amendment, supplement, or revision of any rule, regulation, order, or standard adopted by any state agency to implement, interpret, or make specific the law enforced or administered by it.
- 2) *Process for the Adoption of Occupational Safety and Health Regulations.* Existing law charges the Standards Board with the responsibility of adopting regulations that are at least as effective as federal standards for all issues under the Federal Occupational Safety and Health Act of 1970 within six months of the effective date of the federal standard (Labor Code Section 142.3). The

Division of Occupational Safety and Health, better known as Cal/OSHA, protects and improves the health and safety of working men and women in California and the safety of passengers riding on elevators, amusements rides, and tramways – through specified activities including setting and enforcing standards. The policy of the Standards Board is that all regulations must be enforceable, reasonable, understandable, and contribute directly to the safety and health of California employees.

Once a state agency decides to conduct a regular rulemaking action, it engages in preliminary rulemaking activities wherein the agency typically researches and gathers materials and information necessary to develop the documents required to conduct a formal APA rulemaking proceeding. After the necessity for a rulemaking action is established, proposed regulation changes are developed by either the Standards Board or Cal/OSHA staff, generally with the assistance and recommendations of an advisory committee. Advisory committees consist of representatives from industry, labor, the public, and other interested groups.

The proposal is then scheduled for hearing at one of the Standard Board's public hearings. Written and oral testimony is encouraged and received at public hearings. Following the public hearing, all testimony is returned to the originating staff for review, and the proposed regulation change may be revised in response to written and oral comments. When all comments and testimony have been addressed, the staff schedules the proposed standard for consideration and adoption at the Standards Board business meeting.

Regarding the financial impact of a proposed regulation, agencies are required to conduct an Economic Impact Statement (STD. 399) to be included with any proposed regulation if there will be an estimated fiscal impact on state or local government. Additionally, for any major regulation, as defined, with an estimated cost exceeding \$50 million, agencies are also required to conduct an SRIA. SRIAs are required to be submitted to the DOF for review and comments at least 60 days prior to filing with OAL. Following adoption at the agency, a copy of the proposed rule, in addition to the required impact assessments, is sent to the OAL for approval. After approval, the regulations are published in Title 8 of the California Code of Regulations.

Comments

1) *Need for this bill?* _According to the author:

SB 410 exempts Cal/OSHA from the requirement to perform a SRIA on any proposed major regulation with an economic impact of over \$50 million. All other existing layers of review—including internal fiscal analysis, the advisory committee process, OSHSB public hearings and meetings, and the standard rulemaking process—remain in place.

SB 410 underscores the notion that worker safety should never be delayed or set aside due to cost considerations. This bill reflects the exceptionally detailed fiscal analysis that already occurs at Cal/OSHA and allows the agency to focus scarce resources in more effective ways.

2) *Staff Comments.* The adoption of new regulations is governed by a robust series of checks, as discussed above. The current SRIA process is potentially slightly duplicative and future Cal/OSHA regulations would still be subject to the numerous other avenues for review. However, it is worth noting that the Department of Finance frequently weighs in on the SRIA process. The author's office could consider amendments that give the Department of Finance more input in another area of the regulation review process.

Related/Prior Legislation

SB 772 (Leyva, 2017) was substantively similar to SB 410. The bill failed passage on the Assembly Floor.

SB 617 (Calderon, Chapter 496, Statutes of 2011) required state agencies to prepare an in-depth economic assessment of any regulation estimated to generate an economic impact of over \$50 million.

FISCAL EFFECT: Appropriation: No Fiscal Com.: Yes Local: No

SUPPORT: (Verified 5/4/21)

California Labor Federation, AFL-CIO (source)

California Nurses Association

California Professional Firefighters

California State Council of Service Employees International Union

Worksafe

OPPOSITION: (Verified 5/4/21)

Agricultural Council of California
American Composites Manufacturers Association
Association of California School Administrators
California Association of Health Facilities
California Association of Joint Powers Authorities
California Beer and Beverage Distributors
California Business Properties Association
California Chamber of Commerce
California Farm Bureau
California Hotel & Lodging Association
California League of Food Producers
California Legislative Conference of Plumbing, Heating & Piping Industry
California Manufacturers & Technology Association
California Restaurant Association
California Retailers Association
California Special Districts Association
California State Association of Counties
Electrical Contractors of California Trust
Engineering & Utility Contractors Association Dba United Contractors
Family Business Association of California
Housing Contractors of California
National Electrical Contractors Association
National Elevator Industry, Inc.
Northern California Allied Trades
Official Police Garages of Los Angeles
PCI West-Chapter of The Precast/Prestressed Concrete Institute
Public Risk Innovation, Solutions, and Management
Tri County Chamber Alliance
United Contractors
Wall and Ceiling Alliance
Western Line Constructors Chapter, Inc., Neca, Inc.
Western Wall and Ceiling Contractors Association
Wine Institute

ARGUMENTS IN SUPPORT: According to the California Labor Federation, AFL-CIO, the sponsor of the bill:

In 2011, the Legislature approved, and the Governor signed SB 617 (Calderon), which required state agencies to prepare an economic

assessment of all regulations with an estimated fiscal impact of over \$50 million. Final regulations to implement the bill were approved by the Department of Finance and took effect in November of 2013.

This assessment, referred to as the Standardized Regulatory Impact Assessment (SRIA), has resulted in nearly all major regulations now taking up to two years longer and consuming far more staff time than was the case prior to this change. While SB 617 and the SRIA process were intended to improve the regulatory process, the result has been a duplicative process that costs more, takes longer, and protects fewer workers.

ARGUMENTS IN OPPOSITION: According to the Northern California Allied Trades:

State agencies that are proposing to adopt, amend, or repeal major regulations are required to prepare a standardized regulatory impact analysis (RIA) to address, among other things, the creation or elimination of jobs and businesses within the state; the competitive advantages or disadvantages for businesses currently doing business within the state; the increase or decrease of investment in the state; incentives for innovation in products, materials, or processes; and, the benefits of the regulations, including benefits to the health, safety, and welfare of California residents, worker safety, and the state's environment and quality of life.

The RIA is intended to provide agencies and the public with the tools to determine whether the regulatory proposal is an efficient and effective means of implementing policy decisions in the least burdensome manner. To exempt major occupational safety and health standards and orders from the RIA would eliminate a critical step of informing the agencies and the public of the economic consequences of regulatory choices and of the most cost-effective regulatory measures that are equally effective in achieving the purpose of the proposed regulation.

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