
SENATE COMMITTEE ON APPROPRIATIONS

Senator Anthony Portantino, Chair
2021 - 2022 Regular Session

SB 430 (Borgeas) - Small businesses: reduction or waiver of civil penalties for violation of regulations or statutes

Version: February 12, 2021

Policy Vote: G.O. 14 - 0, B., P. & E.D. 12
- 0

Urgency: No

Mandate: No

Hearing Date: April 19, 2021

Consultant: Janelle Miyashiro

Bill Summary: SB 430 requires a state agency to establish a policy to reduce or waive civil penalties for violations of regulatory or statutory requirements by a small business under specified conditions.

Fiscal Impact: Unknown, potentially significant ongoing costs across all state agencies, departments, boards, or commissions that have significant rulemaking authority over small businesses, as defined. The costs to each entity to comply with the requirements of the bill are variable:

- The California Department of Insurance (CDI) anticipates costs of \$1,000 in Fiscal Year (FY) 2021-22, \$138,000 in FY 2022-23, and \$3,000 ongoing for staff time associated with developing the penalty reduction regulations and compiling and tracking data for the utilization report. CDI notes that to the extent that reduced fee revenues are not absorbable, there may be additional cost pressures on the Fees and License Subaccount in the Insurance Fund, which could accelerate the need of a fee increase in the future.
- The California Air Resources Board (CARB) anticipates additional workload to develop, implement, and review a small business policy as well as develop a small business track within CARB's Enforcement Division. To complete these new activities, CARB estimates costs of \$565,000 in FY 2022-23, \$1,385,000 in FY 2023-24, and \$1,381,000 in FY 2024-25 and ongoing (General Fund). CARB states that these additional costs are not absorbable within existing resources.
- The Department of General Services (DGS) anticipates a one-time cost of \$100,000 for the development of the policy and adoption of regulations.

The total cost across all state agencies is indeterminate, as the number of other entities that have significant rulemaking authority over small businesses is unknown. However, to the extent that a portion of the over 200 state agencies are captured by the bill and have similar costs as above, there may be significant fiscal impact totaling in the millions of dollars.

There may be additional fiscal impacts across all affected agencies resulting from any fee and/or penalty revenue reduction, the magnitude which is indeterminate at this time and would depend on the number of small businesses that would qualify for a fee and/or penalty reduction specific to each state agency's policy.

Background: SB 1436 (Figueroa, Chapter 234, Statutes of 2006) requires that each state agency that significantly regulates or affects 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.

Small business liaisons are prohibited from intervening or assisting a small business during a pending investigation or enforcement action. Once an enforcement action is initiated by an agency, the small business is left to their own devices to successfully navigate the process, which includes accessing or requesting any special small business provisions the agency may have included within its enforcement framework.

Proposed Law: By January 1, 2023, requires a state agency to establish a policy to reduce or waive civil penalties for violations of regulatory or statutory requirements by a small business if the small business meets both of the following criteria:

- The violation did not involve willful or criminal conduct.
 - The violation did not pose a serious health, safety, or environmental threat.
- Requires the policy to include the factors that the state agency will use to determine if and to what extent the civil penalties will be reduced or waived based on but not limited to:
 - The degree the business cooperated with the state agency during the investigation.
 - The degree the business engaged in correction action of the violation, as appropriate.
 - The prior history of the business in complying with the agency's regulatory requirements.
 - The degree the penalty would impede the business from continuing to conduct its business.
 - The degree to which the business's actions were negligent.
- Authorizes an agency to apply conditions to the reduction or waiver of penalties, adopt regulations and other administrative documents, and update the policy to reflect current issues and conditions.
- Requires the agency to post a current copy of the policy on its internet website within 30 days of adoption or amendment of the policy.
- Requires the agency to annually post a utilization report on its internet website that includes the aggregate number and category of enforcement actions reviewed, the total number of small business and actions that qualified for civil penalty reductions or waivers in the report period, and the total dollar amount of reductions and waiver issued.

- Requires the agency to notify the Office of the Small Business Advocate, and include a link to the policy and utilization report, within 15 working days of any of the following:
 - The policy is adopted or amended.
 - The annual utilization report is posted.
 - The policy or the annual utilization report is related from the agency's website, with a link to the new website location.
 - The policy or the annual utilization report is removed from the agency's website, with an explanation for the removal.
- Defines a "small business" to mean a business that is independently owned and operated, not dominant in its field of operation, has fewer than 100 employees, and has average annual gross receipts of up to \$15 million over the previous three years.
- Defines a "state agency" to mean any state agency, department, board, or commission that has significant rulemaking authority over small businesses. Excludes the Franchise Tax Board, the California Department of Tax and Fee Administration, and the State Board of Equalization.
- Makes the provisions of the bill operative only upon an appropriation by the Legislature.

Related Legislation: SB 1457 (Borgeas, 2020) similar to this bill, would have required a state agency to assist small businesses in complying with all statutes, regulations, and enforcement actions administered by that state agency and require a state agency to establish a policy that provides for the reduction or waiver of civil penalties for violations of regulatory or statutory requirements by a small business under appropriate circumstances, as specified. SB 1457 was not set for hearing in the Assembly Appropriations Committee.

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