

State of California

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Legislative Change No.**00-42**Bill Number: AB 1822Author: WayneChapter Number: 00-1060

Laws Affecting Franchise Tax Board:

Government Code Sections 11340.85, 11340.9, 11342, 11342.580,
11344.1, 11346.2, 11346.3, 11346.5, 11346.54, 11346.8, 11346.9,
11347, 11347.1, 11347.3, 11349.2, 11350

Date Filed with the Secretary of the State: September 30, 2000**SUBJECT: Administrative Procedure Act/State Agency Regulations****Assembly Bill 1822 (Wayne), as enacted on September 30, 2000, made the following changes to California law:**

This act generally makes revisions to existing law relating to the procedure for the adoption, amendment, or repeal of regulations by state agencies and for the review of those regulatory actions by the Office of Administrative Law (OAL). This legislative change addresses only those provisions applicable to rulemaking procedures that impact the department's programs and operations. This bill was joined with and enacted after AB 505.

Section 11340.85 of the Government Code is added.

This act defines "electronic communication" to include electronic transmission of written or graphical material by electronic mail, facsimile, or other means, not including voice mail. This act also defines "public notice" as a notice that is required to be given by an agency to persons who have requested notice of the agency's regulatory actions.

This act specifies that a state agency may permit and encourage, but not require, use of electronic communication.

This act authorizes a state agency to deliver a required or authorized notice to an individual or receive a comment or petition via electronic communication.

This act requires a state agency maintaining an Internet website or other similar forum of electronic communication to publish or distribute a required rulemaking document. It specifies that electronic communication must not be the exclusive means of communication. However, failure to comply with this requirement is not grounds for disapproval of a proposed regulation. This act does not require a state agency to establish or maintain a website or other forum for the electronic publication or distribution of written material.

Section 11340.9 of the Government Code is added.

This act specifies that this chapter regarding Administrative Regulations and Rulemaking does not apply in certain cases, including a legal ruling of counsel issued by the Franchise Tax Board or State Board of Equalization.

Section 11342 of the Government Code is repealed.

This act repeals certain previous definitions regarding the regulatory process. This act then adds and restructures these definitions in individual code sections.

Bureau Director

Brian Putler

Date

2/6/01

Section 11342.580 of the Government Code is added.

This act redefines "plain English" as satisfying the standard for clarity in that the regulations must be written or displayed so that their meaning is easily understood by those individuals directly affected by them.

Section 11344.1 of the Government Code is amended.

This act requires the OAL to post weekly on its website the California Regulatory Notice Register with one or more Internet links to permit public access to the proposed regulatory action text submitted by state agencies. Each posting of the California Regulatory Notice Register must remain on the OAL's website for a minimum of 18 months.

Section 11346 of the Government Code is amended.

This act authorizes a state agency to consult with interested persons before initiating a regulatory action.

Section 11346.2 of the Government Code is amended.

This act provides that all regulations shall be drafted in plain English, not just those that affect small business. It eliminates the language that allows an agency to prepare a plain English summary for those regulations that cannot be drafted in plain English.

This act also eliminates the requirement that the initial statement of reasons for a regulation must include a description of the public problem, administrative requirement, or other circumstances that the regulation is intended to address. The act adds that the initial statement of reasons must describe any reasonable alternatives that have been brought to the agency's attention, rather than just any alternatives the agency has identified.

Section 11346.3 of the Government Code is amended.

This act requires that a state agency assess the potential for adverse economic impact on California businesses and individuals of the proposed *repeal* of a regulation.

Section 11346.5 of the Government Code is amended.

This act requires that the informative digest for a regulatory notice must be written in plain English. This act also includes the proposed *repeal* of a regulation in the requirement that a state agency must provide certain information after determining that a proposed regulatory action may adversely impact businesses, and it expands the information actually provided in the notice.

Section 11346.54 of the Government Code is repealed.

This act repeals the section that required a state agency proposing regulations to assess the effect of the regulation on the creation or elimination of new jobs or businesses within California.

Section 11346.8 of the Government Code is amended.

This act allows a state agency to impose reasonable limitations on oral testimony at public hearings on proposed regulations.

Section 11346.9 of the Government Code is amended.

This act defines "irrelevant comment" as a comment that is not specifically directed at either the state agency's proposed regulatory action or the rulemaking procedures followed by the state agency. This act allows a state agency to respond to or summarily dismiss repetitive or irrelevant comments as a group in its statement of reasons for a regulatory action.

Section 11347 of the Government Code is amended.

This act requires a state agency that decides not to proceed with a proposed regulatory action to inform OAL by notice to be published in the California Regulatory Notice Register.

Section 11347.1 of the Government Code is added.

This act requires that a state agency make available to the public, under specified conditions, any study or report on which it has relied for the proposed regulatory action and has added to the rulemaking file after publication of the notice of proposed regulatory action.

This act specifies the ending time for the 15-calendar-day period within which the agency must mail documents added to the rulemaking file after publication of the notice of proposed regulatory action and then allow additional public comment thereon. The 15-day period ends when the action is adopted by the agency rather than when the action is submitted to the OAL for review and filing with the Secretary of State.

Section 11347.3 of the Government Code is amended.

This act requires a state agency to make available to the public the rulemaking file for inspection and copying during regulatory business hours beginning no later than the date that the notice of proposed action is published and during all subsequent periods the agency has the file in its possession.

Section 11349.2 of the Government Code is added.

This act allows a state agency to add material to a file that has been submitted to the OAL as long as other sections of this chapter are not violated.

Section 11350 of the Government Code is amended.

This act specifies what evidence a court may consider in connection with an action for a judicial declaration of the validity of a regulation, order, or repeal. It further specifies that a court may consider any evidence in determining the question of whether a regulation used by an agency is required to be adopted under the Administrative Procedures Act.

This act also authorizes a state agency to deliver a required or authorized notice to an individual via electronic communication. Also, an agency may receive a comment or petition via electronic communication.

This act is effective and operative beginning January 1, 2001.

This act will not require any reports by the department to the Legislature.