

State of California

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Legislative Change No. 06-22
Bill Number: AB 1302 Author: Horton Chapter Number: 06-713

Laws Affecting Franchise Tax Board: Government Code Sections 11342.545, 11346.1

Date Filed with the Secretary of State: September 29, 2006

SUBJECT: State Agency Regulations/Emergency Regulations

Assembly Bill 1302 (Horton), as enacted on September 29, 2006, made the following changes to California law:

Section 11342.545 of the Government Code is added.

This act adds a provision that defines “emergency” as a situation that calls for immediate action to avoid serious harm to the public peace, health, safety, or general welfare.

Section 11346.1 of the Government Code is amended.

This act requires the adopting agency to mail a notice of the proposed emergency regulatory action to every person who has filed a request for notice of regulatory action at least five days before submitting the emergency regulation to Office of Administrative Law (OAL).

This act requires the notice to include both of the following:

- The specific regulatory language proposed to be adopted.
- The factual and evidentiary basis for the emergency and the need for immediate action.

This act would not require an agency to provide the five-day notice if the situation clearly poses an immediate and serious harm that delaying action for public comment would be inconsistent with the public interest.

This act allows an agency to adopt a regulation or order of repeal if it is necessary to address an emergency.

This act requires for any emergency finding a written statement that demonstrates, by substantial evidence, the need for the proposed regulation to effectuate the statute being implemented, interpreted or made specific, and that addresses only the demonstrated emergency. The emergency finding would need to identify each technical, theoretical, and empirical study, report, or similar document that the agency relies on.

Assistant Bureau Director

Patrice Gau-Johnson

Date

10/11/06

This act prevents the adoption of an emergency regulation if the finding of emergency is based only upon expediency, convenience, best interest, general public need, or speculation. If the situation identified in the finding was known by the agency when adopting the emergency regulation and the agency had sufficient time to address it through non-emergency regulations, the finding requires the facts explaining the failure to address the situation through non-emergency regulations.

This act allows the emergency regulation to remain in effect for 180 days. OAL may approve no more than two re-adoptions, each for a period of only 90 days, of the regulation that is the same or substantially equivalent to an emergency regulation previously adopted by the agency. Re-adoption would be allowed if the agency has made significant progress and has proceeded with diligence to comply with the provisions of the Administrative Procedures Act (APA).

This act requires the OAL to post the proposed emergency regulation on its website and allow interested persons five calendar days to submit comments prior to adoption of the emergency regulation, unless the situation clearly poses an immediate and serious harm that delaying action for public comment would be inconsistent with the public interest.

This act is effective on January 1, 2007, and operative as of that date.

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