

# ANALYSIS OF AMENDED BILL

## Franchise Tax Board

Author: V. Manuel Pérez Analyst: Brian Werking Bill Number: AB 1409  
Related Bills: See Legislative History Telephone: 845-5103 Introduced & Amended Dates: March 10 & April 25, 2011, & March 21, & March 22, 2012  
Attorney: Patrick Kusiak Sponsor: \_\_\_\_\_

**SUBJECT:** State Agency Regulations/Impact On Small Business

### SUMMARY

This bill would require each state agency<sup>1</sup> to include additional information with their initial statement of reasons during the rulemaking process as required under the Administrative Procedures Act<sup>2</sup> (APA).

### RECOMMENDATION

No position.

### Summary of Amendments

The bill as introduced March 10, 2011, and amended April 25, 2011, would make findings and declarations related to the Technology, Trade, and Commerce Agency, and would make changes to the Legislative reporting requirements of the Secretary of Business, Transportation and Housing.

The March 21, 2012, amendments replaced the findings and declaration provisions and the legislative reporting provisions of the bill with provisions requiring additional information to be included with the initial statement of reasons as required under the APA. Specifically, the amendments would require agencies to include all rulemaking alternatives received from the public or the Office of the Small Business Advocate. The amendments also would require agencies to include an assessment of whether another state agency has adopted a similar or related regulation and include a determination of whether there are opportunities to coordinate compliance with the other state agency.

The March 22, 2012, amendments replaced the previous authors of the bill with Assembly Member V. Manuel Pérez.

This is the department's first analysis of this bill. This analysis only addresses the provisions of the bill that impact the department's programs and operations.

<sup>1</sup> This bill applies to state agency rulemaking that is subject to the Administrative Procedures Act.

<sup>2</sup> Government Code Sections 11340, et seq.

Board Position:

\_\_\_\_\_ S      \_\_\_\_\_ NA        X   NP  
\_\_\_\_\_ SA      \_\_\_\_\_ O      \_\_\_\_\_ NAR  
\_\_\_\_\_ N      \_\_\_\_\_ OUA

Executive Officer

Date

Selvi Stanislaus

05/24/12

## **REASON FOR THE BILL**

According to the author, the purpose of this bill is to offer practical solutions that meet the necessary policy outcomes while providing a more flexible and realistic approach to compliance.

## **EFFECTIVE/OPERATIVE DATE**

This bill would become effective and operative January 1, 2013.

## **ANALYSIS**

### STATE LAW

The Franchise Tax Board (FTB) must follow the rulemaking procedures in the APA and regulations adopted by the Office of Administrative Law (OAL).

The APA governs the adoption, amendment, or repeal of regulations by state agencies for purposes of ensuring that they are clear, necessary, legally valid, and available to the public. The APA requires the FTB to submit with the notice of the proposed adoption, amendment, or repeal of a regulation, an initial statement of reasons. The initial statement of reasons shall include among other things, a description of any reasonable alternatives to the regulation that would lessen any adverse impact on small business and the agency's reasons for rejecting those alternatives.

### THIS BILL

This bill would add the following provisions to current law:

Require the FTB to include in its initial statement of reasons for any proposed rulemaking action, a list of any alternatives submitted by the public or the Office of the Small Business Advocate that were determined to be unreasonable.

Provide examples of acceptable reasonable alternatives that would lessen any adverse impact on small business. These examples include:

- phasing of implementation to take into account the compliance capacity and resources of small business,
- performance standards to provide compliance flexibility for small business,
- simplification of reporting and compliance standards,
- differing requirements for small and large business, and
- partial or total exemptions based on the firm's actual degree of activity within the regulated activity.

Require the FTB to include with the initial statement of reasons an assessment of whether there has been an adoption of a similar or related regulation by another state regulatory entity and include a determination whether there are opportunities to coordinate compliance in order to reduce regulatory burdens on businesses and individuals.

## IMPLEMENTATION CONSIDERATIONS

Implementing this bill would not significantly impact the department's programs and operations.

## **LEGISLATIVE HISTORY**

AB 273 (Valadao, et al., 2011/2012) would have required the Department of Finance (DOF) to develop methods for estimating costs and economic impact of proposed regulations and an agency would be required to follow those methods in determining economic impact of future proposed regulatory actions. This bill did not pass out of the house of origin by the Constitutional deadline.<sup>3</sup>

AB 425 (Nestande, 2011/2012) would have required an agency to review their adopted regulations and repeal or report to the Legislature those regulations identified as duplicative, archaic, or inconsistent with state statute by December 31, 2012, or report regulations that are deemed to inhibit economic growth. This bill did not pass out of the house of origin by the Constitutional deadline.<sup>4</sup>

ABX1 6 (Logue, 2011/2012) would have required the DOF to develop methods for estimating costs and economic impact of proposed regulations and an agency would be required to follow those methods in determining economic impact of future proposed regulatory actions. This bill was held at the desk of the Assembly.

SB 196 (Cannella, et al., 2011/2012), among other things, would have revised the APA to require an agency to analyze proposed regulations with greater emphasis on the economic impact on businesses and individuals. This bill did not pass out of the house of origin by the Constitutional deadline.<sup>5</sup>

SB 617 (Calderon & Pavley, Stats. 2011, Ch. 496), updates state government accounting practices by requiring ongoing monitoring of internal auditing and financial controls and other new best practices in financial accounting, and requires each state agency to prepare a standardized regulatory impact analysis, with respect to the adoption, amendment, or repeal of a "major regulation," that is proposed on or after November 1, 2013.

## **FISCAL IMPACT**

This bill would not significantly impact the department's costs.

## **ECONOMIC IMPACT**

### Revenue Estimate

This provision would not impact the state's income tax revenues.

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<sup>3</sup> California Constitution, Article IV, Section 10, Subdivision (c).

<sup>4</sup> *Ibid.*

<sup>5</sup> *Ibid.*

**SUPPORT/OPPOSITION**

Support: None provided.

Opposition: None provided.

**ARGUMENTS**

Proponents: Proponents would say that this bill would provide greater transparency to the rulemaking process.

Opponents: Opponents would say that this bill would provide additional burdens on state agencies during the rulemaking process.

**LEGISLATIVE STAFF CONTACT**

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