

ANALYSIS OF AMENDED BILL

Franchise Tax Board

Author: Wright, et al. Analyst: Brian Werking Bill Number: SB 1099
Related Bills: See Legislative History Telephone: 845-5103 Introduced & Amended Dates: February 16, April 25, & May 17, 2012
Attorney: Patrick Kusiak Sponsor: _____

SUBJECT: State Agency Regulations/Effective Date/State Agencies Post Each Regulation Filed With Secretary Of State On Internet Website & Send Link

SUMMARY

This bill would provide within the rulemaking process under the Administrative Procedures Act¹ (APA), new quarterly effective dates for regulations filed by the Office of Administrative Law (OAL) with the Secretary of State (SOS) and would provide specific website publishing requirements for OAL and rulemaking agencies² in regards to regulations with pending effectiveness.

RECOMMENDATION

No position.

Summary of Amendments

The bill as introduced on February 16, 2012, would provide that a regulation or order of repeal filed by the OAL with the SOS becomes effective on either January 1, or July 1, depending on the date the regulation or order of repeal is filed with the SOS. As introduced this bill would also require the OAL to provide on its website a list of, and a link to, the full text of each regulation filed with the SOS whose effectiveness is pending.

The April 25, 2012, amendments would replace the biannual effective dates for a regulation or order of repeal under the APA with quarterly effective dates of January 1, April 1, July 1, or October 1 depending on the date that the regulation or order of repeal is filed with the SOS.

The May 17, 2012 amendments would add a new requirement, requiring state agencies that maintain a website to post on its website each regulation or order of repeal that has been filed with the SOS and to provide the hypertext link to the SOS. The amendments would also remedy an incorrect reference contained in the Health and Safety Code referencing the Government Code.

¹ Government Code Sections 11340 et seq.

² This bill applies to state agency rulemaking that is subject to the Administrative Procedures Act.

Board Position:	Executive Officer	Date
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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.

REASON FOR THE BILL

This bill would allow California businesses to prepare for new regulations and alleviate the pressure of regulations being enacted at differing times, which is a significant step toward making California's regulatory environment more business friendly.

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 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. Under the APA, an FTB regulation or order of repeal becomes effective on the 30th day after it is filed with the Secretary of State unless:

- Otherwise provided by the law under which the regulation was adopted.
- A later date is prescribed by the FTB.
- The FTB makes a written request to OAL demonstrating good cause for an earlier effective date, in which case OAL may prescribe an earlier date.

THIS BILL

This bill would provide that regulations adopted by the FTB under the APA, take effect quarterly on either January 1, April 1, July 1, or October 1, unless:

- Otherwise provided by the law under which the regulation was adopted.
- A later date is prescribed by the FTB.
- The FTB makes a written request to OAL demonstrating good cause for an earlier effective date, in which case OAL may prescribe an earlier date.

Regulations would become effective based on the date the regulation or order of repeal is filed with the SOS, as follows:

Filed On Or After	Filed On Or Before	Effective Date
September 1	November 30	January 1
December 1	February 29	April 1
March 1	May 31	July 1
June 1	August 31	October 1

This bill would require the FTB to post the regulation on its website in an easily identifiable location within 15 days of OAL filing the regulation with the SOS. The FTB would be required to keep the regulation on its website for a minimum of six months from the date the regulation is filed with the SOS. Within five days of posting the regulation on its website, the FTB would be required to provide the OAL a link to the regulation.

In addition, this bill would require the OAL to provide on its website a list of, and a link to, the full text of each regulation filed with the SOS whose effectiveness is pending.

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. An agency would have been required to follow those methods in determining economic impact of future proposed regulatory actions. This bill failed to pass out of the house of origin by the Constitutional deadline.³

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 failed to pass out of the house of origin by the Constitutional deadline.⁴

ABX1 6 (Logue, 2011/2012) would have required the DOF to develop methods for estimating costs and economic impact of proposed regulations. An agency would have been 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 failed to pass out of the house of origin by the Constitutional deadline.⁵

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.

³ California Constitution, Article IV, Section 10, Subdivision (c).

⁴ *Ibid.*

⁵ *Ibid.*

ECONOMIC IMPACT

Revenue Estimate

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

SUPPORT/OPPOSITION⁶

Support: National Federation of Independent Business (co-source), Small Business California (co-source), American Chemistry Council, American Council of Engineering Companies of California, Associated Builders and Contractors of California, Association of California Water Agencies, California Asian Pacific Chamber of Commerce, California Association of Bed & Breakfast Inns, California Association of Health Facilities, California Chamber of Commerce, California Construction and Industrial Materials Association, California Council for Environmental and Economic Balance, California Grocers Association, California Hotel & Lodging Association, California Independent Oil Marketers Association, California League of Food Processors, California Manufacturers & Technology Association, California Professional Association of Specialty Contractors, California Retailers Association, Chemical Industry Council of California, Coalition for Adequate School Housing, Coalition of Small and Disabled Veteran Businesses, Consumer Specialty Products Association, Golden State Builders Exchanges, United Contractors, Western Growers Association

Opposition: California Board of Accountancy, California Labor Federation, California Nurses Association, Health Access California, National Nurses Organizing Committee, Sierra Club

ARGUMENTS

Proponents: Proponents would say that this bill would reduce some of the burden on businesses when complying with new regulations.

Opponents: Opponents would say that this would further complicate an already cumbersome rulemaking process for state agencies.

LEGISLATIVE STAFF CONTACT

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⁶ As provided in the Senate Floor Analysis of the bill as amended May 17, 2012, at <http://www.leginfo.ca.gov/pub/11-12/bill/sen/sb_1051-1100/sb_1099_cfa_20120517_143707_sen_floor.html> [as of June 15, 2012].