Franchise Tax Board

ANALYSIS OF AMENDED BILL

Author:	Calderon and Pavley	Analyst:	Brian Werking	Bill Number:	SB 617
Related Bills:	See Legislative History	Telephone:	845-5103	Introduced & Amended Dates:	February 18, May 4, June 14, September 2, & 8, 2011
		Attorney:	Patrick Kusiak	Sponsor:	

SUBJECT: State Agency Regulations/Standardized Impact Analysis/Financial & Administrative Accountability

SUMMARY

This bill would do the following:

- update state government accounting practices by requiring ongoing monitoring of internal auditing and financial controls and other new best practices in financial accounting, and
- require 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.

This analysis only addresses provisions of the bill that impact the Franchise Tax Board (FTB).

RECOMMENDATION AND SUPPORTING ARGUMENTS

No position.

Summary of Amendments

This bill as introduced February 18, 2011, and amended May 4 and June 14, 2011, makes updates to the state government accounting practices by requiring ongoing monitoring of internal auditing and financial controls and other new best practices in financial accounting.

The bill as amended September 2 and 8, 2011, revises various provisions of the Administrative Procedures Act (APA) and requires each state agency to prepare a standardized regulatory impact analysis with respect to the adoption, amendment, or repeal of a "major regulation," proposed on or after November 1, 2013.

This is the department's first analysis of this bill.

Board Position:			Executive Officer	Date
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PURPOSE OF THE BILL

It appears the purpose of the bill is to provide ongoing monitoring of internal accounting and administrative controls and to require agencies to provide greater analysis of regulations with an estimated cost of more than $50 million in order to create transparency in government and ensure agencies remain efficient.

EFFECTIVE/OPERATIVE DATE

This bill would be effective on January 1, 2012, and the standardized regulatory impact analysis requirements would be specifically operative November 1, 2013.

SUMMARY OF REVENUE IMPACT

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

PROVISION 1 – UPDATING THE FINANCIAL INTEGRITY AND STATE MANAGER'S ACCOUNTABILITY ACT OF 1983

ANALYSIS

STATE LAW

Under the Financial Integrity and State Manager's Accountability Act of 1983[1] (FISMA), the Executive Officer of the FTB is responsible for establishing and maintaining a system or systems of internal accounting and administrative control within the department.

The FTB's management is responsible for documenting the system, communicating the system requirements to employees, assuring that the system is functioning as designed and modifying the system as changes in conditions warrant.

The Executive Officer of the FTB is required to conduct an internal review and prepare a biennial report on the adequacy of the agency's systems of internal accounting and administrative control. Copies of the reports shall be submitted to the Legislature, the State Auditor, the Governor, the Director of Finance, and to the State Library where they shall be available for public inspection.

THIS PROVISION

This provision updates various provisions within the FISMA in order to incorporate best practices in financial accounting. This provision would add the requirement that effective, independent, and objective ongoing monitoring of the internal accounting and administrative controls be included within the FTB's system of internal accounting and control.

This provision would require that the Executive Officer of the FTB, as head of the agency, implement systems and processes to ensure the independence and objectivity of the monitoring of internal accounting and administrative control as an ongoing activity.

[1] Government Code Sections 13400 et seq.

This provision would expand the list of recipients for the biennial report from the Executive Officer of the FTB on the adequacy of the FTB's system of internal accounting, and administrative control, and monitoring practice, to include the Controller, the Treasurer, and the Attorney General.

This provision would require the Director of Finance, on or before, November 1, 2013, to establish a framework of recommended practices to guide the FTB in conducting active ongoing monitoring of processes for internal accounting and administrative controls.

IMPLEMENTATION CONSIDERATION

Department staff is unable to determine the impact of this provision on the department's programs and operations until the Director of Finance has established a general framework for the FTB to conduct internal reviews of their systems of internal accounting and administrative controls.

LEGISLATIVE HISTORY

AB 1806 (Budget Committee, 2006 Ch. 69), among other things, amended FISMA by requiring that state agency management conduct an internal review and prepare a report on the adequacy of their organization's system of internal control on a biennial basis.

FISCAL IMPACT

Department staff is unable to determine the costs to administer this provision until the Director of Finance has established a general framework for the FTB to conduct internal reviews of their systems of internal accounting and administrative controls, but it is expected for the costs to be minimal.

ECONOMIC IMPACT

Revenue Estimate

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

PROVISION 2 – Revise the Administrative Procedures Act

ANALYSIS

STATE LAW

The FTB must follow the rulemaking procedures in the Administrative Procedure Act[2] (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. In seeking adoption, amendment or repeal of a proposed regulation, the FTB must comply with

[2] Government Code Sections 11340, et seq.

procedural requirements that include publishing the proposed regulation with a supporting statement of reasons; mailing and publishing a notice of the proposed action at least 45 days before a public hearing or before the close of the public comment period; and submitting a final statement of reasons and responses to public comments to OAL which summarizes and responds to all objections, recommendations, and proposed alternatives that were raised during the public comment period. The OAL is then required to approve or reject the proposed regulation within 30 days.

THIS PROVISION

This provision would require the FTB to include, when submitting an initial statement of reasons (ISOR) for adopting, amending, or repealing a regulation to OAL, the problem the FTB intends to address, enumerating the benefits anticipated from the regulatory action, including the benefits or goals provided in the authorizing statute. This provision provides that the benefits may include nonmonetary benefits.

This provision would specify that reasonable alternatives included in the ISOR include alternatives that are proposed as less burdensome and equally effective in achieving the purposes of the regulation in a manner that ensures full compliance with the authorizing statute or other law being implemented or made specific by the proposed regulation.

This provision would require the FTB when proposing to adopt, amend, or repeal a regulation that is not a major regulation or that is a “major regulation” proposed prior to November 1, 2013, to prepare an economic impact analysis, as specified, that includes the benefits of the regulation to the health and welfare of California residents, worker safety, and the state's environment.

This provision would define "major regulation" to mean any proposed adoption, amendment, or repeal of a regulation that will have an economic impact on California business enterprises and individuals in an amount exceeding $50 million, as estimated by the agency.

This provision would require the FTB when proposing to adopt, amend, or repeal a “major regulation” on or after November 1, 2013, to prepare a standardized regulatory impact assessment as prescribed by the Department of Finance (DOF), as specified, addressing the following:

- The creation or elimination of jobs within the state;
- The creation of new businesses or the elimination of existing businesses within the state;
- The competitive advantages or disadvantages for businesses currently doing business within the state;
- The increase or decrease of investment in the state;
- The incentives for innovation in products, material, or processes; and,
- The benefits of the regulations, including benefits to the health, safety, and welfare of California residents, worker safety, and the state's environment and quality of life, among any other benefits identified by the agency.

This provision would allow the FTB, for the purpose of completing the assessment, to derive information from existing state, federal, or academic publications.

This provision would require the FTB to include the standardized regulatory impact analysis in the ISOR, when proposing to adopt, amend, or repeal a “major regulation.”

This provision would require the FTB when proposing to adopt, amend, or repeal a “major regulation” on or after November 1, 2013, to submit the standardized regulatory impact assessment to the DOF for its comment on the extent to which the assessment adheres to the regulations adopted. The FTB would be authorized to update their analysis to reflect these comments.

This provision would require the DOF, in consultation with OAL and other state agencies, on or before November 1, 2013, to adopt regulations for conducting the standardized regulatory impact analyses, as specified. These regulations would assist agencies in conducting their standardized regulatory impact analysis. If an agency fails to comply with the DOF regulations, OAL is authorized to notify the Legislature of the agency's noncompliance and OAL's only option is to return the proposed regulatory action to the agency.

This provision would require that the notice of proposed adoption, amendment, or repeal of a regulation submitted by an agency to OAL include the following:

- A policy statement overview of the benefits anticipated by the proposed adoption, amendment, or repeal of a regulation, including, to the extent applicable, nonmonetary benefits;
- An evaluation of whether a proposed regulation is inconsistent or incompatible with existing state regulations;
- A statement of the results of the economic impact assessment or the standardized regulatory impact analysis, as specified; and
- A statement that the agency has determined that no reasonable alternative considered by the agency or that has otherwise been identified would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law. For a “major regulation” proposed on or after November 1, 2013, the statement shall be based upon the standardized regulatory impact analysis of the proposed regulation, as well as upon the benefits of the proposed regulation.

This provision would require an agency, when submitting to OAL a final statement of reasons with the adopted regulation, to also include:

- A determination with supporting information that no alternative considered by the agency would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provision of law. For a major regulation proposed on or after November 1, 2013, this determination shall be based upon the standardized regulatory impact analysis of the proposed regulation, and upon the statement of benefits; and
- An explanation setting forth the reasons for rejecting any proposed alternatives that would lessen the adverse economic impact on small businesses including the standardized regulatory impact analysis for a major regulation, as well as the benefits of the proposed regulation, as specified.

This provision would require OAL to return a regulation to an agency if the proposed regulation conflicts with an existing regulation and the agency has not identified the manner in which the conflict may be resolved or the agency has not made the alternatives determination, as specified.

This provision would require an agency to include the economic impact assessment or standardized regulatory impact analysis in the file that the agency maintains for each rulemaking action. If an agency fails to complete the economic impact assessment or the standardized regulatory impact analysis, or failed to include the assessment or analysis in the file of the rulemaking proceeding, OAL could return the agency's proposed regulatory action.

IMPLEMENTATION CONSIDERATIONS

Department staff is unable to determine the impact of this provision on the department's programs and operations until Department of Finance has established regulations for conducting the standardized regulatory impact assessment.

TECHNICAL CONSIDERATIONS

On page 4, line 3, replace "January" with "November".

LEGISLATIVE HISTORY

AB 273 (Valadao et al., 2011/2012) would require 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 is being held in the Assembly Appropriations Committee.

AB 425 (Nestande, 2011/2012) would require 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 is being held in the Assembly Appropriations Committee.

ABX1 6 (Logue, 2011/2012) would require 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 is currently in the Assembly.

SB 196 (Cannella et al., 2011/2012), among other things, would revise the APA to require an agency to analyze proposed regulations with greater emphasis on the economic impact on businesses and individuals. This bill is currently in the Senate.

FISCAL IMPACT

Department staff is unable to determine the costs to administer this provision until the DOF has established regulations for conducting the standardized regulatory impact assessment, but it is expected for the costs to be minimal provided the $50 million threshold applies to the impact of the regulation, and not to the underlying legislation on which the regulation is based.

ECONOMIC IMPACT

Revenue Estimate

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

SUPPORT/OPPOSITION[3]

Support: California Building Industry Association, California Business Properties Association, California Chamber of Commerce, California Construction and Industrial Materials Association, California Farm Bureau Federation, California Grocers Association, California Hotel & Lodging Association, California Independent Oil Marketers Association, California League of Food Processors, California Manufacturers & Technology Association, California New Car Dealers Association, California Professional Association of Specialty Contractors, California Restaurant Association, California Retailers Association, Chemical Industry Council of California, Consumer Specialty Products Association, Industrial Environmental Association, International Fragrance Association - North America, Los Angeles Chamber of Commerce, National Federation of Independent Business - California , Pacific Merchant Shipping Association, Southern California Edison, Western States Petroleum Association

Opposition: None on file.

ARGUMENTS

Pro: Some may argue that this bill would provide greater transparency into the rulemaking processes of state agencies.

Con: Some may argue that this bill would make the rulemaking and the internal auditing processes more costly.

LEGISLATIVE STAFF CONTACT

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[3] As provided in the Senate Committee on Governmental Organization of the bill as amended September 8, 2011, at < http://www.leginfo.ca.gov/pub/11-12/bill/sen/sb_0601-0650/sb_617_cfa_20110912_111405_sen_comm.html> [as of September 13, 2011].