

SUMMARY ANALYSIS OF AMENDED BILL

Franchise Tax Board

Author: Wright Analyst: Kristina E. North Bill Number: AB 2439

Related Bills: See Prior Analysis Telephone: 845-6978 Amended Date: April 4, 2000

Attorney: Patrick Kusiak Sponsor:

SUBJECT: Administrative Procedure Act/Small Business Reform Act of 2000/State Agencies Adopting Regulations

DEPARTMENT AMENDMENTS ACCEPTED. Amendments reflect suggestions of previous analysis of bill as introduced/amended _____.

AMENDMENTS IMPACT REVENUE. A new revenue estimate is provided.

AMENDMENTS DID NOT RESOLVE THE DEPARTMENT'S CONCERNS stated in the previous analysis of bill as introduced February 24, 2000.

FURTHER AMENDMENTS NECESSARY.

DEPARTMENT POSITION CHANGED TO _____.

REMAINDER OF PREVIOUS ANALYSIS OF BILL AS INTRODUCED February 24, 2000, STILL APPLIES.

OTHER - See comments below.

SUMMARY OF BILL

Under the Administrative Procedures Act (the Act) within the Government Code, this bill makes various changes to the laws governing regulatory procedures.

SUMMARY OF AMENDMENT

The April 4, 2000, amendment:

- ◆ removes all references to "business" days, thus restoring the existing counting rule using calendar days.
- ◆ clarifies that OAL shall establish a system to give an identification number to each regulatory action instead of each regulation, proposed regulation, proposed amendment or repeal of a regulation contained within a regulatory action.
- ◆ deletes the earlier amendment requiring that the text of *all* regulations be drafted in "plain English," thus returning to the existing law requirement that only those regulations pertaining to small businesses be written in plain English.
- ◆ defines "representative," for the purpose of mailing a notice of regulatory action to a representative number of small business enterprises or their representatives, as including a trade or industry association, professional association, or any business group or association that represents a business enterprise or employees of a business enterprise.

Board Position:

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Legislative Director

Date

Johnnie Lou Rosas

5/3/00

- ◆ requires that state agencies involve parties that would be affected by the proposed regulations in public discussions regarding those regulations. Also, it specifies that this section is not subject to judicial review or OAL's review of the state agency's rulemaking file.
- ◆ requires that the state agency give preference to the regulatory action alternative that both meets the statutory requirements and is the most cost-effective.
- ◆ replaces the requirement that a state agency provide an additional public comment period of seven days with the authorization to extend the public comment period for an additional seven days or longer, depending on the length and complexity of the regulations and the extent of public involvement in the public hearing.
- ◆ clarifies that a state agency must separately identify and respond to any comments made by the Office of Small Business Advocate, as well as the Trade and Commerce Agency, and removes the requirement that failure of a state agency to do so would be grounds for delaying the approval of the regulatory action.
- ◆ deletes the provision which would have required each state agency to establish a Small Business Advisory Council. Instead, adds that each state agency must designate at least one person to serve as a small business advocate, for which the agency is required to widely publicize the ombudsman position in appropriate agency publications and on the agency's website. The small business ombudsman would be responsible for receiving and responding to complaints received by the agency from small businesses; counseling and assisting small businesses in resolving problems and questions; and reporting small business concerns and, where appropriate, reporting recommendations to the agency secretary.

Except for the changes discussed in this analysis, the department's analysis of the bill as introduced on February 24, 2000, still applies. The difficulty in determining departmental costs is restated, and the revised implementation and technical concerns are stated below:

Implementation Consideration

Because of the complexity of the regulatory actions taken by this department, an attorney serves as the knowledgeable contact person for each regulatory action. This bill would require a backup contact person who is as knowledgeable about the regulations and their applicability and who is able to respond to questions and comments directly, without referring the affected party to another point of contact. It is unclear if the author intended that the contact person or backup be available at all times, or if the agency could respond to any requests within a reasonable amount of time. This requirement may necessitate hiring new attorneys specifically to provide the backup to a regulatory action contact person.

Department staff is available to assist author's staff with these and any other concerns.

Technical Considerations

This bill specifies that definitions provided for the California Small Business Advocate apply to Government Code sections 15334.5 through 15334.8, inclusive, unless otherwise indicated. However, these section numbers, added in the bill as introduced February 24, 2000, were deleted and replaced with section numbers 65054 through 65054.5. The author's office may wish to consider changing the section numbers identified to coincide with the revised section numbers.

The title of this bill indicates the repeal of Chapter 11 (commencing with Section 8500) of Division 1 of Title 2. The commencement section, however, begins with 8850.

Departmental Costs

Departmental costs are difficult to determine without resolution of the implementation consideration pertaining to the contact person backup. The projected costs could range from insignificant to moderate.

BOARD POSITION

Pending.