

# SUMMARY ANALYSIS OF AMENDED BILL

## Franchise Tax Board

Author: Wayne Analyst: Kristina North Bill Number: AB 486

Related Bills: See Legislative History Telephone: 845-6978 Amended Date: June 30, 1999

Attorney: Patrick Kusiak Sponsor: CA Law Revision Comm.

**SUBJECT:** Administrative Law/State Agency Regulations Advisory Interpretations

       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/amended       .

       FURTHER AMENDMENTS NECESSARY.

       DEPARTMENT POSITION CHANGED TO NEUTRAL.

  X   REMAINDER OF PREVIOUS ANALYSIS OF BILL AS INTRODUCED FEBRUARY 18, and AMENDED APRIL 15, 1999, STILL APPLIES.

  X   OTHER - See comments below.

### SUMMARY OF BILL

Under the Government Code, Administrative Procedures Act (APA), this bill defines and allows a state agency to adopt an advisory interpretation upon completion of specified procedures and allows an interested person to petition a state agency to adopt an advisory interpretation. This bill also provides a new consent regulation procedure for noncontroversial regulations.

### SUMMARY OF AMENDMENT

The June 30, 1999, amendment:

- ◆ specifies that the advisory interpretation procedure does not apply to legal rulings of counsel issued by the Franchise Tax Board (FTB) or the State Board of Equalization (SBE);
- ◆ allows an agency to adopt a regulation to implement an advisory interpretation;
- ◆ specifies that an agency cannot assert or rely on an interpretation of law that is inconsistent with an advisory interpretation adopted by the agency;
- ◆ specifies that if an advisory interpretation is inconsistent with a published opinion of the California Supreme Court or the California Court of Appeal, it is not in effect;
- ◆ specifies that a decision by the Office of Administrative Law (OAL) regarding an advisory interpretation is not subject to judicial review;

Board Position:

<u>      </u> S	<u>      </u> NA	<u>      </u> NP
<u>      </u> SA	<u>      </u> O	<u>      </u> NAR
<u>  X  </u> N	<u>      </u> OUA	<u>      </u> PENDING

Legislative Director

Date

**Johnnie Lou Rosas**

**7/26/1999**

- ◆ requires an agency to respond to an interested person's petition to adopt, amend or repeal an advisory interpretation within five, rather than 15, days;
- ◆ requires the OAL to approve the advisory interpretation if the adopting agency has authority to interpret the provision and disapprove the interpretation if the adopting agency does not;
- ◆ specifies that a court is not precluded from giving judicial deference to an advisory interpretation adopted by the Division of Labor Standards Enforcement, Department of Industrial Relations;
- ◆ requires the OAL to disapprove a regulation adopted under the new consent regulation procedure proposed by this bill if the rulemaking file contains an adverse comment; and
- ◆ makes other nonsubstantive, technical changes.

The June 30, 1999, amendments resolved the implementation considerations in the department's analysis of the bill as amended April 5, 1999. Except for these changes, the remainder of the department's analysis of the bill as introduced December 7, 1998, and amended April 5, 1999, still apply.

#### **BOARD POSITION**

Neutral.

At its March 23, 1999, meeting, the Franchise Tax Board voted 2-0 to take a neutral position on this bill as introduced February 18, 1999.