

ANALYSIS OF AMENDED BILL

Franchise Tax Board

Author: Wright Analyst: Kristina E. North Bill Number: AB 505

Related Bills: See Legislative History Telephone: 845-6978 Amended Date: July 5, 2000

Attorney: Patrick Kusiak Sponsor: _____

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

SUMMARY OF BILL

Under the Administrative Procedures Act (the Act) within the Government Code, this bill would make various changes to the laws governing regulatory procedures, including requiring each state agency to establish a small business ombudsman.

This analysis addresses only those provisions applicable to rulemaking procedures that impact the department's programs and operations.

SUMMARY OF AMENDMENTS

The July 5, 2000, amendment makes changes to the regulatory procedure provisions discussed in this analysis.

The June 19, 2000, amendment deleted the firearm safety standard provisions. It also added provisions recodifying and recasting administrative regulatory procedures and establishing the Office of Small Business Advocate in the Office of Policy and Planning in the Governor's Office and establishing the Governor's Small Business Reform Task Force.

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

EFFECTIVE DATE

This bill would be effective January 1, 2001.

LEGISLATIVE HISTORY

AB 2439 (Wright - 2000) and **AB 1822** (Frusetta - 2000) would make various changes to the laws governing regulatory procedures.

SPECIFIC FINDINGS

Current state law allows a state agency to adopt, amend, or repeal regulations and provides a procedure for such actions, including review of proposed regulations by the Office of Administrative Law (OAL).

Current state law requires a state agency to assess whether and to what extent a proposed regulatory action would affect the creation or elimination of jobs or businesses or the expansion of businesses within the state.

Board Position:

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Department Director

Date

Gerald H. Goldberg

8/10/00

Current state tax law requires that, in areas where federal and state income tax laws are the same, federal income tax regulations must be applied to the extent they do not conflict with state law or state regulations.

Current state law requires that the California Small Business Advocate be established within the Trade and Commerce Agency. The relevant Government Code sections provide definitions and the duties and functions of the Advocate. It requires state agencies to provide the Advocate reports, documents, and other information deemed necessary by the Advocate.

This bill would define:

?? "cost impact" as the amount of estimated costs within a reasonable range or a description of the type and extent of direct costs necessarily incurred in reasonable compliance with the proposed action;

?? "proposed action" as the regulatory action submitted to the OAL for publication in the California Regulatory Notice Register; and

?? "representative," for the purpose of mailing the notice of proposed action, as including a trade association, industry association, professional association, or any other group or association of any kind representing a business enterprise or employees thereof.

This bill would require a state agency to:

?? extend the public comment period for at least an additional four days if a public hearing is held within four days or less from the end of the public comment period. This extension of the public comment period would not apply if it would cause the agency to miss the maximum effective period for a notice;

?? consider extending the public comment period up to 90 additional days if the proposed action is lengthy or complex;

?? include the proposed repeal of a regulation to the existing requirement that an agency assess the potential for adverse economic impact on California business enterprises and individuals;

?? designate at least one person to serve as a small business ombudsman, widely publicizing the position in appropriate agency publications and on the agency's website. The ombudsman would be responsible for:

1) receiving and responding to complaints received by the agency from small business;

2) providing technical advice and assisting small businesses in resolving problems and questions; and

3) reporting small business concerns and recommendations to the agency secretary or agency head.

The ombudsman could not advocate for or against a regulatory action or intervene in any pending investigation or enforcement action;

- ?? give a person requesting a notice of regulatory action the option of being notified of all regulatory actions or specified regulatory actions regarding one or more of the agency's programs;
- ?? involve parties that would be impacted by the proposed regulations in public discussions regarding complex proposals or a large number of proposals not easily reviewed during the public comment period. A statement of reasons for noncompliance with this provision must be added to the rulemaking record. This provision would not apply to a state agency required to implement federal law and regulations for which little or no discretion on the part of the state exists. This provision is not subject to judicial review or the OAL standards of regulatory review;
- ?? keep its rulemaking records on all pending regulatory actions, of which a notice is published in the California Regulatory Notice Register, current and in one central location;
- ?? post on the agency's website, if it has a website, information regarding a proposed regulatory action as specified;
- ?? provide a description of all cost impacts known to the agency when the notice of proposed action is submitted to OAL. If no costs are known, the agency must include a statement to that effect;
- ?? determine if a proposed action would significantly impact businesses, with the threshold for significant impact being costs in excess of \$10 million. If the agency determines the proposed regulatory action would not significantly impact businesses, it must make a declaration to that effect in the notice of proposed action and provide the supporting information for the determination in the rulemaking record;
- ?? accept comments from interested parties by facsimile and electronic mail;
- ?? furnish whatever public reports, documents, and information that the Director of the Small Business Advocate deems necessary; and
- ?? identify and respond separately to comments made by the Office of Small Business Advocate and the Trade and Commerce Agency. If any comments are rejected, the agency must provide the basis for the rejection.

This bill would require OAL to:

- ?? develop a unique identification numbering system for each regulatory action sufficient for the public to identify and track the action. OAL would not be required to develop the system until January 1, 2002; and
- ?? post weekly on its website the California Regulatory Notice Register, with one or more Internet links to permit public access to the proposed regulatory action text submitted by state agencies beginning January 1, 2002. Each posting of the California Regulatory Notice Register must remain on the OAL's website for a minimum of 18 months.

This bill would repeal existing provisions pertaining to the California Small Business Advocate, including related definitions, duties and functions of the advocate, and related requirements of state agencies.

This bill would establish the Office of Small Business Advocate within the Office of Planning and Research. The Director, or "Advocate," and the employees of the Office of Small Business Advocate would be appointed by the Governor. This bill would establish the Director's duties and functions.

This bill also would establish a Governor's Small Business Reform Task Force to be chaired by the Director of the Office of Small Business Advocate. The task force would be required to include representatives appointed by the governor from the California Small Business Association, other small business associations, and agency secretaries or their designees from state agencies heavily involved in small business regulation. This bill would establish the task force's duties and functions.

This bill would require the Secretary of Trade and Commerce to conduct a study to consider problems encountered by small businesses working with different levels of government, different governmental offices, and multiple jurisdictions. The report would be required to be submitted to the Legislature and the appropriate budget and policy committees of each legislative house on or before January 30, 2002.

This bill also would make a number of technical changes to the laws governing regulatory procedures.

Implementation Consideration

In circumstances where the proposed repeal of a regulation is not compelled by a statutory change or judicial decision, this bill may make it more difficult to repeal a regulation by requiring the department to assess any significant adverse economic impact on individuals and corporations before repealing the regulation.

Technical Consideration

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, the referenced sections do not exist. The author's office may wish to consider changing the section numbers identified to coincide with the revised section numbers.

FISCAL IMPACT

Departmental Costs

This bill should not significantly impact department costs.

Tax Revenue Estimate

This bill would not impact the department's collection of state income tax revenue.

BOARD POSITION

Pending.