

# SUMMARY ANALYSIS OF AMENDED BILL

Author: Cooley, et al. Analyst: Jane Raboy Bill Number: AB 12  
 Related Bills: See Prior Analysis Telephone: 845-5718 Amended Date: April 22, 2015  
 Attorney: Bruce Langston Sponsor \_\_\_\_\_

<b>SUBJECT:</b>	State Agency Regulations/Agencies Review & Report to Governor & Legislature/Regulatory Reform
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## SUMMARY

This bill would, under the Administrative Procedure Act (APA),<sup>1</sup> revise and create new regulatory reform, as specified, for each state agency.

This analysis only addresses the provisions of the bill that impact the Franchise Tax Board's (FTB) programs and operations.

## RECOMMENDATION

No position.

## SUMMARY OF AMENDMENTS

The April 22, 2015, amendments made numerous substantive and technical changes, removed the adoption of emergency regulations, and added coauthors. Except for the "State Law" and "This Bill" sections, the remainder of the department's analysis of the bill as introduced December 1, 2014, still applies. The "Implementation Considerations" and "Economic Impact" sections have been restated for convenience.

## STATE LAW

The FTB<sup>2</sup> is required to follow the rulemaking procedures in the APA and related regulations adopted by the Office of Administrative Law (OAL) and the Department of Finance (DOF). 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.

The following sections of state law are referenced in the bill to define certain phrases:

- Gov Code section 11000 defines a state agency<sup>3</sup> to include every state office, officer, department, division, bureau, board, and commission unless specifically exempt from statute.
- Gov Code section 11340.9 specifies that the APA does not apply in certain cases. Among other things, the following are exceptions under the APA: (1) a legal ruling of counsel issued by the FTB; (2) a form prescribed by the state agency or any instructions related to the form; and (3) establishment of criteria or guidelines to be used by staff in carrying out its duties in performing an audit, investigation, examination, or inspection, if disclosure of the criteria or guideline meets specified criteria.

<sup>1</sup> Government Code (Gov Code) sections 11340, et seq.  
<sup>2</sup> The FTB is a state agency as defined in Gov Code section 11000.  
<sup>3</sup> Ibid.

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- Gov Code section 11342.600 defines a regulation to mean every rule, regulation, order, or standard of general application or the amendment, supplement, or revision of any rule, regulation, order, or standard adopted by any state agency to implement, interpret, or make specific the law enforced or administered by it, or to govern its procedure.

## **THIS BILL**

This bill would require the FTB to perform the following duties on or before January 1, 2018:

- Review all provisions of the California Code of Regulations applicable to, or adopted by, the FTB.
- Identify any regulations that are duplicative, overlapping, inconsistent, or out of date.
- Adopt, amend, or repeal regulations to reconcile or eliminate any duplication, overlap, inconsistencies, or out-of-date provisions, and comply with the process specified for procedure for adoption of regulations for public participation (Gov Code sections 11346, et seq.), unless the addition, revision, or deletion is without regulatory effect and may be done pursuant to California Code of Regulations, Title 1, section 100.
- Hold at least one noticed public hearing, noticed on the FTB's Internet Web site for the purposes of accepting public comment on proposed revisions to its regulations.
- Notify the appropriate policy and fiscal committee of each house of the Legislature of the revisions to regulations that the FTB proposes to make at least 30 days prior to initiating the process under Gov Code sections 11346, et seq., or California Code of Regulations, Title 1 section 100.
- Report to the Governor and the Legislature on the FTB's compliance with this chapter, including the number and content of regulations that the FTB identifies as duplicative, overlapping, inconsistent, or out of date, and the FTB's actions to address those regulations. The report shall be submitted in compliance with Gov Code section 9795.

This bill would define the following:<sup>4</sup>

- "State agency" means a state agency, as defined in the Gov Code section 11000, excluding those state agencies or activities described in the Gov Code section 11340.9.
- "Regulation" has the same meaning as provided in the Gov Code section 11342.600.

On or before January 1, 2018, the Government Operations Agency (CalGovOps),<sup>5</sup> would be required to notify the FTB of any existing regulations adopted by the FTB that may duplicate, overlap, or be inconsistent with a regulation adopted by another department, board, or other unit within CalGovOps.

<sup>4</sup> See "STATE LAW" section of analysis for more details.

<sup>5</sup> For purposes of this analysis, CalGovOps is the parent agency to FTB, an agency listed under Gov Code section 12800.

This bill would require FTB to notify CalGovOps of revisions to regulations that it proposes to make at least 90 days prior to a noticed public hearing and at least 90 days prior to adoption, amendment, or repeal of the regulations, as specified. CalGovOps would be required to review the proposed regulations and make recommendations to the FTB (and each of the other state agencies within that agency) within 30 days of receiving the notification regarding any duplicative, overlapping, or inconsistent regulation of another department, board, or other unit within CalGovOps.

This bill would require CalGovOps to notify the FTB of any existing regulations adopted by CalGovOps that may duplicate, overlap, or be inconsistent with the FTB's regulations.

This bill would not be construed to do the following:

- Weaken or undermine in any manner any human health, public, or worker rights, public welfare, environmental, or other protection established under statute.
- Affect the authority or requirement for an agency to adopt regulations as provided by statute.

Rather, it would be the intent of the Legislature to ensure that FTB (and each of the other state agencies) focus more efficiently and directly on their duties as prescribed by law.

This bill would remain in effect only until January 1, 2019, and would be repealed as of that date, unless a later enacted statute, that is enacted before January 1, 2019, deletes or extends that date.

## **IMPLEMENTATION CONSIDERATIONS**

The department has identified the following implementation concern. Department staff is available to work with the author's office to resolve this and other concerns that may be identified.

It is unclear whether a state agency proposing to amend, adopt, or repeal multiple regulations would be required to hold a public hearing for each regulation or could a single hearing be held for all the proposed changes required under the bill's language. The lack of clarity could cause disputes between the public and the department.

## **ECONOMIC IMPACT**

This bill would not impact state income or franchise tax revenues because provisions of the current tax law remain unchanged.

## **LEGISLATIVE STAFF CONTACT**

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