Franchise Tax Board

ANALYSIS OF ORIGINAL BILL

Author:	Cooley	Analyst:	Jane Raboy	Bill Number:	AB 12
Related Bills:	See Legislative History	Telephone:	845-5718	Introduced Date:	December 1, 2014
		Attorney:	Bruce Langston	Sponsor	

SUBJECT:	State Agency Regulations/Agency Review

SUMMARY

This bill would, under the Administrative Procedure Act (APA),[1] 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.

REASON FOR THE BILL

The reason for this bill is to ensure state agencies increase efficiency on the implementation and enforcement of state laws and eliminate redundant, outdated rules and regulations.

EFFECTIVE/OPERATIVE DATE

This bill would be effective January 1, 2016, and operative as of that date.

STATE LAW

The FTB[2] 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[3] 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

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

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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.

- 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.

The adoption of emergency regulations, as provided under Gov Code section 11346.1, requires the finding of an emergency to adopt or repeal a regulation. The finding of an emergency must include a written statement that including the specific facts demonstrating the existence of an emergency and need for immediate action, demonstrating the need for the proposed regulation or repeal of a regulation to address only the demonstrated emergency. The adopting agency, a state agency, is generally required to mail a notice of the proposed emergency regulatory action to every person who has filed a request for notice of regulatory action at least five days before submitting the emergency regulation to the OAL. An adopting agency is not required to provide notice if the emergency situation clearly poses such an immediate, serious harm that delaying action to allow public comment would be inconsistent with the public interest.

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.
- 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 90 days prior to a noticed public hearing and at least 90 days prior to the proposed adoption, amendment, or repeal of the regulations to allow the committees to review, and hold hearings on, the proposed revisions to the regulations.
- Adopt as emergency regulations, consistent with Gov Code section 11346.1, the changes to a regulation identified by the FTB as duplicative, overlapping, inconsistent, or out of date.
- 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:[4]

- "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),[5] 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.

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. 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.

On or before January 1, 2017, the FTB would be required to compile an overview of the statutory law that the FTB oversees or administers that would include the following:

- A synopsis of the FTB's key programs;
- When each program was authorized or instituted;
- When any statute authorizing a program was significantly revised to alter, redirect, or extend the original program, including the reason for the revision, if known; and
- An identification of any emerging challenges the FTB is encountering with respect to the programs.

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.

[4] See **STATE LAW** section of analysis for more details.
[5] For purposes of this analysis, CalGovOps is the parent agency to FTB, an agency listed under Gov Code section 12800.

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.

LEGISLATIVE HISTORY

AB 273 (Valadao, et al., 2011/2012), would have required the DOF to develop methods for estimating costs and economic impact of proposed regulations and required agencies to follow those methods in determining the economic impact of future proposed regulatory actions. AB 273 failed to pass out of the house of origin by the Constitutional deadline.[6]

AB 425 (Nestande, 2011/2012) would have required 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. AB 425 failed to pass out of the Assembly by the Constitutional deadline.[7]

ABX1 6 (Logue, 2011/2012) would have required the DOF to develop methods for estimating costs and economic impact of proposed regulations and required agencies to follow those methods in determining the economic impact of future proposed regulatory actions. ABX1 6 was held at the desk of the Assembly.

SB 196 (Cannella, et al., 2011/2012) among other things, would have revised the APA to require an agency to analyze proposed regulations with greater emphasis on the economic impact on businesses and individuals. SB 196 failed to pass out of the Senate by the Constitutional deadline.[8]

SB 366 (Calderon and Pavley, 2011/2012) would have required, within 180 days of its effective date, state agencies to review and redress duplicative, overlapping, inconsistent, or out-of-date regulations. SB 366 was held in the Senate.

[6] California Constitution, Article IV, Section 10, Subdivision (c).
[7] Ibid.
[8] Ibid.

SB 617 (Calderon and Pavley, Chapter 496, Statutes of 2011) requires all state agencies that create, modify, or repeal a major regulation with an economic impact of $50 million or more to issue a standardized economic impact report, and enacted requirements for regulatory impact reports to be completed by the DOF and the OAL.

OTHER STATES' INFORMATION

Since this bill would revise and create new regulatory reform for each California state agency subject to the APA, a review of other states' tax information would not be relevant.

FISCAL IMPACT

The department's costs to implement this bill have yet to be determined. As the bill moves through the legislative process, costs will be identified and an appropriation will be requested, if necessary.

ECONOMIC IMPACT

This bill as introduced on December 1, 2014, would not impact state income or franchise tax revenues because provisions of the current tax law remain unchanged.

SUPPORT/OPPOSITION

Support: None provided.

Opposition: None provided.

ARGUMENTS

Proponents: Some may argue that this bill would provide greater transparency into the regulatory reform processes of state agencies.

Opponents: Some may argue that this bill would make the regulatory reform process more costly.

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