



Analysis of Original Bill

Author: Cooley & Frazier

Sponsor:

Bill Number: AB 312

Analyst: Cristina Perfino

Phone: (916) 845-4313

Introduced: January 29, 2019

Attorney: Shane Hofeling

Related Bills: See Legislative
History

Subject: State Agency Regulations/ Agency Review

Summary

This bill would, under the Administrative Procedure Act (APA), create regulatory reform, as specified, for state agencies.

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ensure state agencies increase efficiency on the implementation and enforcement of state laws and eliminate redundant, outdated rules and regulations.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

As an administrative measure, this bill would become effective and operative on January 1, 2020.

State Law

The FTB 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) for the promulgation of regulations, with limited exceptions as authorized by statute. 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:

- Government Code section 11000 defines a state agency to include every state office, officer, department, division, bureau, board, and commission unless specifically exempt from statute.
- Government 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 use of 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.
- Government 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 state agencies, including the FTB, to perform the following actions on or before January 1, 2022:

- Review adopted provisions of the California Code of Regulations and identify those 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 public hearing, noticed on the internet website of the state agency for the purposes of accepting public comment on proposed revisions to the regulations.
- Notify the appropriate policy and fiscal committees of each house of the Legislature of the proposed revisions at least 30 days prior to initiating the regulatory process required under Article 5 (commencing with Section 11346) of Chapter 3.5 or Section 100 of Title 1 of the California Code of Regulations.
- Report to the Governor and the Legislature on compliance with this chapter (including the number and content of regulations identified as duplicative, overlapping, inconsistent, or out of date) and the state agency's actions to address those regulations. The report shall be submitted in compliance with Government Code section 9795.

This bill would define the following:

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

On or before January 1, 2022, the Government Operations Agency (CalGovOps),¹ 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 the 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.

Unless extended or deleted by a later enacted statute, this bill will remain in effect until January 1, 2023, and as of that date is repealed.

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.

This bill would require that a public hearing be held to discuss changes proposed by the department. It is unclear whether a public hearing must be held for each proposed regulation change or could a single hearing be held for all the proposed changes. The lack of clarity could cause disputes between the public and the department.

¹ CalGovOps is the parent agency to FTB, an agency listed under Government Code section 12800.

Legislative History

AB 12 (Cooley, 2015/2016) was substantially similar to this bill and would have, under the APA, revised and created new regulatory reform for state agencies. AB 12 was held in the Senate Appropriations committee.

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 California state agencies 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.

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

Cristina Perfino
Legislative Analyst, FTB
(916) 845-4313
cristina.perfino@ftb.ca.gov

Jame Eiserman
Revenue Manager, FTB
(916) 845-7484
jame.eiserman@ftb.ca.gov

Jahna Carlson
Asst. Legislative Director, FTB
(916) 845-5683
Jahna.carlson@ftb.ca.gov