



Bill Analysis

Author: Cooley

Sponsor:

Bill Number: AB 1996

Related Bills: See Legislative
History

Introduced: February 10, 2022

SUBJECT

State Agency Administrative Regulations/ Agency Review

SUMMARY

Under the Government Code (GC), this bill would require the Franchise Tax Board (FTB) to conduct a review to identify regulations that are duplicative, overlapping inconsistent, or out of date and address any of these issues by adopting, amending, or repealing those regulations. Additionally, this bill would require the FTB to report to the Legislature's fiscal committees on its revisions and to the Governor and the Legislature on its compliance.

This analysis only addresses the provisions of the bill that would impact the department's programs and operations.

RECOMMENDATION

No position.

SUMMARY OF AMENDMENTS

Not applicable.

REASON FOR THE BILL

The reason for this bill is for state agencies to review their regulations.

ANALYSIS

This bill would, on or before January 1, 2026, require state agencies, including the FTB to do the following:

- Review all provisions of the California Code of Regulations adopted by that state agency.
- Identify any regulations that are duplicative, overlapping, inconsistent, or out of date.

Introduced February 10, 2022

- Adopt, amend, or repeal regulations to reconcile or eliminate any duplication, overlap, inconsistencies, or out-of-date provisions. In doing this, the agency would be required to comply with the public participation provisions of the Administrative Procedures Act (APA), unless the addition, revision, or deletion is subject to the rules regarding publication of changes with no regulatory effect.
- Hold at least one noticed public hearing, which would require a notice on the FTB website, for the purposes of accepting public comment on proposed revisions to its regulations.
- Notify the appropriate policy and fiscal committees 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 public participation process the APA or publication of changes with no regulatory effect.
- Report to the Governor and the Legislature, in compliance with section 9795 of the GC, relating to reports to the Legislature, on the state agency's compliance with this chapter, including the number and content of regulations the state agency identifies as duplicative, overlapping, inconsistent, or out of date, and the state agency's actions to address those regulations.

This bill would also require each agency listed in GC section 12800, including the Government Operations Agency (GovOps), on or before January 1, 2026, to notify a department, board, or other unit within the GovOps of any existing regulations adopted by that department, board, or other unit that the GovOps has determined may be duplicative, overlapping, or inconsistent with a regulation adopted by another department, board, or other unit within GovOps.

In addition, departments, boards, and units within GovOps, would be required to notify GovOps of any regulation it proposes to make at least 90 days prior to the public noticed hearing, and at least 90 days prior to adoption, amendment or repeal of the regulations. GovOps would be required to review the proposed regulations and make recommendations within 30 days of receiving notifications of any duplicative, overlapping or inconsistent regulations. Additionally, GovOps would be required to notify a state agency of any existing regulations adopted by that agency that may duplicate, overlap or be inconsistent with the state agency's regulations.

These provisions would be repealed by its own terms on January 1, 2027.

Effective/Operative Date

As an administrative measure, this bill would be effective and operative on January 1, 2023.

Introduced February 10, 2022

Federal/State Law

Federal Law

No comparable provision in federal law.

State Law

Administrative Procedures Act (APA)

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.

Implementation Considerations

The department has identified the following implementation considerations, and is available to work with the author's office to resolve these and other considerations that may be identified.

This bill would require that at least one 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.

This bill would require the FTB to review all regulations and complete all necessary actions by January 1, 2026, including submission to and approval by the OAL, which would be a significant amount of effort for FTB within the timeframe given. Depending on the OAL review timelines, it may be difficult for all agencies to meet this deadline for the adoption, amendment, and repeal component of the statute. The author may want to amend the bill to require that agencies submit all actions to the OAL by January 1, 2026.

Technical Considerations

None noted.

Policy Considerations

None noted.

Introduced February 10, 2022

LEGISLATIVE HISTORY

AB 312 (Cooley & Frazier, 2019/2020), would have, under the APA, created regulatory reform for agencies. AB 312 did not pass out of the Assembly by the constitutional deadline.

AB 12 (Cooley, et al., 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.

PROGRAM BACKGROUND

In order to adopt or amend a regulation, the FTB participates in the state's regulatory process under the APA. There are over 1000 regulations that have been adopted by the FTB.

The process involves:

- Getting authorization to proceed from the three-member Franchise Tax Board.
- Holding interested parties meetings (IPM) and formal regulatory hearings.
- Drafting the language.
- Getting input from the public.
- Working with the OAL for final approval and filing.

FISCAL IMPACT

The department's costs to implement this bill have yet to be determined, but are expected to be significant. As the bill moves through the legislative process, costs will be identified.

ECONOMIC IMPACT

Revenue Estimate

This bill as introduced February 10, 2022, would not impact state income or franchise tax revenue.

LEGAL IMPACT

None noted.

Introduced February 10, 2022

APPOINTMENTS

None noted.

SUPPORT/OPPOSITION

The March 18, 2022, Assembly Accountability and Administrative Review committee analysis listed the following support and opposition.

Support

Western Growers Association, Western Electrical Contractors Association, Pacific Merchant Shipping Association, Official Police Garage Association of Los Angeles, National Federation of Independent Business, Mendocino and Humboldt Redwood Companies, Family Business Association of California, California League of Food Producers, California Grocers Association, California Chamber of Commerce, California Beer and Beverage Distributors, California Association of Winegrape Growers, and California Association of Health Facilities.

Opposition

California Labor Federation, Northern California District Council of the International Longshore and Warehouse Union(ILWU), California Nurse Association, California Alliance for Retired Americans (CARA), California Pan-Ethnic Health Network, Health Access California, and Western Center on Law and Poverty, Inc.

ARGUMENTS

To be determined.

LEGISLATIVE CONTACT

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