



**STATE BOARD OF EQUALIZATION  
STAFF LEGISLATIVE BILL ANALYSIS**

Date:	<b>05/17/12</b>	Bill No:	<b><a href="#">Senate Bill 1099</a></b>
Tax Program:	<b>Administration</b>	Author:	<b>Wright</b>
Sponsor:	<b>NFIB and SB-Cal</b>	Code Sections:	<b>GC 11343, 11343.4, &amp; 11344</b>
Related Bills:	<b>SB 553 (Fuller) SB 688 (Wright) AB 127 (Logue) AB 338 (Wagner)</b>	Effective Date:	<b>01/01/13</b>

***This analysis only addresses the provisions that impact the BOE.***

**BILL SUMMARY**

Among other things, this bill makes the following changes to the Administrative Procedure Act:

- Provides that regulations adopted by state agencies shall take effect on either January 1, April 1, July 1, or October 1, as specified (instead of 30 days from the date a regulation is filed with the Secretary of State as provided by existing law). (Government Code [GC] Section 11343.4.)
- Requires within 15 days of the Office of Administrative Law (OAL) filing a state agency's regulation with the Secretary of State (SOS), for the state agency to post the regulation on its Internet Web site in an easily marked and identifiable location. Requires the state agency to keep the regulation on its Internet Web site for at least six months from the date the regulation is filed with the SOS. (GC Section 11343.)
- Requires the OAL to also make available on its Internet Web site a list of, and a link to the full text of, each regulation filed with the SOS for which the effective date is pending. (GC Section 11344.)

**ANALYSIS**

**CURRENT LAW**

Current law establishes detailed procedural requirements in the Administrative Procedure Act (APA) (Chapter 3.5 (commencing with Section 11340) of Division 3 of Title 2 of the Government Code) that must be followed by state agencies when they propose to adopt, amend, or repeal regulations.

The OAL is charged with the review of regulations as provided in the APA. The OAL has 30 working days to review the regulation. If approved, the OAL sends the regulation to the SOS for filing.

Under the APA, a regulation or an order of repeal becomes effective 30 days after it is filed with the SOS, unless:

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- Otherwise specifically provided by the statute under which the regulation or order of repeal was adopted, in which case the regulation or order of repeal becomes effective on the date prescribed by the statute.
- A later date is prescribed by the state agency in a written instrument filed with, or as part of, the regulation or order of repeal.
- The agency makes a written request to the OAL demonstrating good cause for an earlier effective date, in which case the OAL may prescribe an earlier date. (GC Section 11343.4)

Under the APA, the OAL is required to make available on the Internet, free of charge, the full text of the California Code of Regulations <http://ccr.oal.ca.gov/> (GC Section 11344)

### PROPOSED LAW

This bill would amend GC Sections 11343, 11343.4, and 11344 to do the following:

- 1) Revises a requirement that a regulation or order of repeal becomes effective 30 days after it is filed with the SOS, with a requirement that the regulation or order of repeal instead becomes effective on either of the following days:
  - January 1 if the regulation or order of repeal is filed on September 1 to November 30.
  - April 1 if the regulation or order of repeal is filed on December 1 to February 29.
  - July 1 if the regulation or order of repeal is filed on March 1 to May 31.
  - October 1 if the regulation or order of repeal is filed on June 1 to August 31.
- 2) Requires within 15 days of the OAL filing a state agency's regulation with the SOS, for the state agency to post the regulation on the Internet Web site in an easily marked and identifiable location. Requires the state agency to keep the regulation on its Internet Web site for at least six months from the date the regulation is filed with the SOS. Within five days of posting, the state agency will be required to send to the OAL the Internet Web site link of each regulation the agency posts on its Web site.
- 3) Requires the OAL to provide on its Internet Web site a list of, and a link to the full text of each regulation filed with the SOS for which the effective date is pending.

This bill would become operative on January 1, 2013.

### COMMENTS

1. **Sponsor and Purpose.** This bill is sponsored by the National Federation of Independent Business and Small Business California. According to the author's office, "every year businesses face a barrage of new regulations promulgated by state agencies. These regulations go into effect 30 days after being filed with the Secretary of State's office and this happens year round. It is difficult, if not impossible, for a small business with minimal staff to keep track of the regulatory process involving multiple departments and agencies. This often has the effect of guaranteeing that many businesses will be out of compliance with some of the new rules."

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2. **This bill provides that regulations would become effective on quarterly fixed dates—January 1, April 1, July 1 or October 1.** A regulation would take effect on a quarterly basis as follows: January 1 if the regulation is filed with the SOS on September 1 to November 30; April 1 if the regulation is filed on December 1 to February 29; July 1 if the regulation is filed on March 1 to May 31; and October 1 if the regulation is filed on June 1 to August 31.

The same exceptions that exist in current law would still apply. Those exceptions are: (1) if a regulation is adopted under a statute requiring a specific effective date, in that event the regulation is effective on the date prescribed by the statute, and (2) if a state agency requests in writing to the OAL for an earlier or later effective date. The agency must show good cause for an earlier effective date.

3. **The BOE makes specific information on proposed rules and regulations available on its Web site.** The BOE maintains a rulemaking calendar of regulations currently in the process of adoption, amendment, or repeal. [www.boe.ca.gov/regs/regscont.htm](http://www.boe.ca.gov/regs/regscont.htm) The calendar lists the number and title of the regulation, the date of the public hearing, the current status of the regulation, and links to the rulemaking documents. For example, the following provides a link to the proposed sales and use tax regulation 1684, *Collection of Use Tax by Retailers* [www.boe.ca.gov/regs/reg\\_1684\\_2012.htm](http://www.boe.ca.gov/regs/reg_1684_2012.htm).

The BOE also maintains a numerical listing of all of the BOE's rulemaking files on an annual basis going back to 2009. The listing provides the title and description, BOE's adoption date, and the final effective date of the regulation. The rulemaking files includes such documents as the OAL Notice of Approval of Regulatory Action, OAL Form 400 Notice Publication/Regulation Submission, Final Statement of Reasons, Updated Informative Digest, final and proposed text of regulation, the Initial Statement of Reasons, the STD 399 Fiscal Impact Statement, the Notice of Proposed Regulatory Action, public comments, Board meeting transcripts and minutes, and the regulation history. The following provides a link to the BOE's 2012 Regulation Archive [www.boe.ca.gov/regs/reg\\_archive.htm](http://www.boe.ca.gov/regs/reg_archive.htm).

In addition, the BOE makes available notifications of proposed regulatory changes. Anyone can sign up to receive the Announcements of Proposed Regulatory Change and/or Announcement of Public Meeting Agenda's electronically, at no charge [www.boe.ca.gov/aprc/index.htm](http://www.boe.ca.gov/aprc/index.htm).

4. **State agencies, including BOE, would be required to post the final version of the regulation on their website.** Within 15 days of the OAL filing the regulation with the SOS, the BOE would be required to post the regulation on its website in an easily marked and identifiable location. BOE must keep the regulation on its website for at least six months from the date the regulation is filed with the SOS. Further, within five days of posting the regulation, BOE must send to the OAL the Internet Web site link of the regulation.

The BOE staff does not see a problem in complying with this provision as it already maintains the entire rulemaking file on its website, which includes the final text of each regulation approved by the OAL and filed with the SOS.

- 5. Delaying the operative date of a regulation.** Depending on when the OAL files a regulation with the SOS, a regulation could potentially be delayed in taking effect for up to 90 days. For example, the BOE's Sales and Use Tax Regulation 1616, *Federal Areas*, was approved by the OAL and filed with the SOS on January 11, 2012. The regulation was amended for purposes of clarifying the additional circumstances under which sales of tangible personal property to and the use of property by the governments of federally-recognized Indian tribes are exempt from California sales and use tax. The regulation took effect on February 10, 2012 (the 30<sup>th</sup> day after filing with the SOS). Under the provisions of this bill, the regulation would become effective on April 1, 2012, which would delay implementation of BOE's regulation for an additional 51 days. For tax purposes, delaying the effective date of a regulation can be somewhat problematic.

The BOE's regulatory actions are necessary to implement new legislation, a court decision, changes in interpretation of existing law, or the need to clarify the application of existing law. The sooner the BOE can implement a regulation, the better it is for BOE staff, taxpayers, and the public. As previously stated, current law provides that state agencies may make a written request to the OAL demonstrating good cause for an earlier effective date. BOE never uses this provision because it does not see a problem in waiting 30 days for a regulation to conform to existing law. BOE staff would, however, anticipate making requests for an earlier effective date should this bill become law.

- 6. Related legislation.** Similar bills have been introduced this session that would change the effective dates of regulations.
- SB 553 (Fuller) would have provided that a regulation or an order of repeal of a regulation that is identified by a state agency as having, or as being reasonably likely to have, an adverse economic impact of \$10 million or more shall become effective 180 days after the date of filing with the SOS. The bill failed passage in the Senate Committee on Governmental Organization.
  - SB 688 (Wright), among its provisions, would have prohibited a regulation or an order of repeal of a regulation that has a cumulative statewide cost impact in excess of \$10 million from taking effect until the January 1 that is one year following the date that the regulation is filed with the SOS. The bill failed passage in the Senate Committee on Environmental Quality.
  - AB 127 (Logue) would have required that a regulation or an order of repeal of a regulation would become effective on January 1<sup>st</sup> of the next year following a 90-day period after the date it is filed with the SOS. The bill failed passage in the Assembly Committee on Business, Professions, and Consumer Protection.
  - AB 338 (Wagner), among other things, would have required a regulation or an order of repeal of a regulation that is required to be filed with the SOS to become effective 60 days, rather than 30 days, after the date of filing. The measure failed passage in the Senate Committee on Environmental Quality.

**COST ESTIMATE**

The provisions of the bill involve tasks and costs which are absorbable.

**REVENUE ESTIMATE**

This bill would have no direct impact on the taxes and fees administered by the BOE.

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