

Date of Hearing: April 5, 2017

ASSEMBLY COMMITTEE ON ACCOUNTABILITY AND ADMINISTRATIVE REVIEW

Susan Talamantes Eggman, Chair

AB 77 (Fong) – As Amended February 7, 2017

SUBJECT: Regulations: effective dates and legislative review

SUMMARY: Authorizes the Legislature to override the effective date of a regulation by enacting a statute to override the regulation and requires the Office of Administrative Law (OAL) to forward a copy of each major regulation submitted to the Secretary of State to the Legislature for review.

EXISTING LAW:

- 1) Establishes the Administrative Procedure Act (APA) which governs the adoption, amendment, or repeal of regulations by state agencies charged with the implementation of statutes.
- 2) Requires the OAL to review all regulations adopted, amended, or repealed, for standards of necessity, authority, clarity, consistency, and non-duplication.
- 3) Directs the OAL, at the request of any standing, select, or joint committee of the Legislature, to initiate a priority review of any regulation that the committee believes does not meet the standards described above.
- 4) Provides for the effective dates of regulations according to a prescribed schedule and defines major regulations as those with an economic impact of \$50 million or more.

FISCAL EFFECT: Unknown

COMMENTS: This bill allows the Legislature to override a regulation via statute and requires the OAL to submit a copy of each major regulation to the Legislature for review. According to the author, this bill is intended to "provide the process and mechanism needed for greater checks and balances to ensure elected representatives can more effectively referee state agency regulations that have significant cost implications for families and businesses in their districts."

The regulations process is governed by the APA and overseen by the OAL to ensure that regulations are clear, necessary, legally valid, and publicly available. In seeking adoption of a proposed regulation, state agencies must comply with procedural requirements that include publishing the proposed regulation along with a supporting statement of reasons; providing a public comment period; and, submitting a final statement to OAL that summarizes and responds to all objections, recommendations and proposed alternatives that were raised during the public comment period. The OAL is then required to approve or reject the proposed regulation within 30 days.

The OAL is responsible for reviewing regulations using the standards identified in the APA, including for authority, necessity, and non-duplication. The APA defines authority to mean "the provision of law which permits or obligates an agency to adopt, amend, or repeal a regulation" and necessity to mean "the rulemaking record substantially demonstrates the need for a

regulation to effectuate the purpose of a statute." In other words, regulations cannot be adopted without statutory authorization from the Legislature.

This bill gives the Legislature authority to enact a statute to override a regulation. Regulations are intended to further clarify policy direction provided by the Legislature. It seems unlikely that the Legislature would enact statutes to override regulations that agencies develop and adopt to implement state law.

All regulations are published in the California Code of Regulations, which is available online, and the Department of Finance (DOF) maintains a list of major regulations and related documents on its website.

According to DOF's website, between six and ten major regulations have historically been submitted to DOF each year for review of their economic impacts. This bill directs OAL to also forward a copy of each major regulation to the Legislature for review.

It is unclear what value would be added by including the Legislature in the major regulations review process. Current law already allows any committee of the Legislature to request that OAL conduct a priority review of any regulation of concern to the committee.

Supporters of this bill state that it will "create an important opportunity for transparency and process improvement to work towards creating a more favorable regulatory climate in which to create and grow California's economy."

Opponents contend this bill is "unnecessary, costly, and significantly undermines executive branch authority."

PRIOR LEGISLATION:

- 1) AB 797 (Steinorth) of 2015, which was substantially similar to this bill, was subsequently amended in the Senate to address a different subject matter.
- 2) AB 1982 (Gorrell) of 2012 would have changed the effective date of regulations from 30 to 90 days; required the OAL to submit a copy of all major regulations to each house of the Legislature for review; and, authorized the Legislature to enact a statute to override the regulation. This measure was held on the Assembly Appropriations Committee Suspense File.
- 3) AB 2466 (Smyth) of 2010 would have changed the effective date of regulations from 30 to 90 days and required the OAL to submit copies of all regulations to the Legislature for the appropriate legislative policy committees to review. This measure was held on the Assembly Appropriations Committee Suspense File.

REGISTERED SUPPORT / OPPOSITION:

Support

California Apartment Association
California Chamber of Commerce

California Construction & Industrial Materials Association
California Delivery Association
California Forestry Association
California Independent Petroleum Association
California Manufacturers And Technology Association
California Sportsman's Lobby, Inc.
Fresno Chamber of Commerce
Howard Jarvis Taxpayers Association
Industrial Environmental Association
National Federation of Independent Business
National Shooting Sports Foundation, Inc.
Outdoor Sportsmen's Coalition Of California
Safari Club International California Coalition
Southern California Contractors Association
Western Growers Association

Opposition

California Nurses Association
National Nurses United

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