AB 338 (Wagner) – Regulations: Legislative Validation: Effective Date

Introduced February 10, 2011, Amended February 17, 2012

This bill would require the Office of Administrative Law (OAL) to submit a copy of any disapproved regulation to the Legislature if OAL disapproved the regulation because it found that the agency exceeded its statutory authority in adopting the regulation (Government Code §11349.3).

This bill would require a regulation that is required to be filed with the Secretary of State to become effective 60 days, rather than 30 days, after the date of filing (Government Code §11343.4(a)).

According to the author, "The system for the approval of the adoption, amendment or repeal of a regulation on a business excludes the legislature before approval and does not allow enough time for the regulations being acted upon to be addressed before they are enacted."

AMENDED IN SENATE FEBRUARY 17, 2012

AMENDED IN ASSEMBLY APRIL 15, 2011

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL No. 338

Introduced by Assembly Member Wagner

February 10, 2011

An act to amend Sections 11343.4 and 11349.3 of the Government Code, relating to regulations.

LEGISLATIVE COUNSEL'S DIGEST

AB 338, as amended, Wagner. Regulations: legislative validation: effective date.

The Administrative Procedure Act governs the procedure for the adoption, amendment, or repeal of regulations by state agencies and for the review of those regulatory actions by the Office of Administrative Law. That act requires the office to transmit a copy of a regulation to the Secretary of State for filing if the office approves the regulation or fails to act on it within 30 days. That act provides that a regulation or an order of repeal of a regulation becomes effective on the 30th day after it is filed with the Secretary of State, unless prescribed conditions occur.

This bill would require the office to also submit to the Legislature for review a copy of each disapproved regulation where the basis for that disapproval was a determination that the agency exceeded its statutory authority in adopting the regulation. This bill would also require that a regulation become effective on the ~~90th~~ *60th* day after it is filed with the Secretary of State, unless prescribed conditions occur.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 11343.4 of the Government Code is
2 amended to read:
3 11343.4. A regulation or an order of repeal required to be filed
4 with the Secretary of State shall become effective on the ~~90th~~ *60th*
5 day after the date of filing unless:
6 (a) Otherwise specifically provided by the statute pursuant to
7 which the regulation or order of repeal was adopted, in which event
8 it becomes effective on the day prescribed by the statute.
9 (b) A later date is prescribed by the state agency in a written
10 instrument filed with, or as part of, the regulation or order of repeal.
11 (c) The agency makes a written request to the office
12 demonstrating good cause for an earlier effective date, in which
13 case the office may prescribe an earlier date.
14 SEC. 2. Section 11349.3 of the Government Code is amended
15 to read:
16 11349.3. (a) The office shall either approve a regulation
17 submitted to it for review and transmit it to the Secretary of State
18 for filing or disapprove it within 30 working days after the
19 regulation has been submitted to the office for review. If the office
20 fails to act within 30 days, the regulation shall be deemed to have
21 been approved and the office shall transmit it to the Secretary of
22 State for filing.
23 (b) (1) If the office disapproves a regulation, it shall return it
24 to the adopting agency within the 30-day period specified in
25 subdivision (a) accompanied by a notice specifying the reasons
26 for disapproval. Within seven calendar days of the issuance of the
27 notice, the office shall provide the adopting agency with a written
28 decision detailing the reasons for disapproval. No regulation shall
29 be disapproved except for failure to comply with the standards set
30 forth in Section 11349.1 or for failure to comply with this chapter.
31 (2) The office shall submit a copy of any disapproved regulation
32 to the Legislature where the office disapproved the regulation
33 because it found that the agency exceeded its statutory authority
34 in adopting the regulation.

(c) If an agency determines, on its own initiative, that a regulation submitted pursuant to subdivision (a) should be returned by the office prior to completion of the office's review, it may request the return of the regulation. All requests for the return of a regulation shall be memorialized in writing by the submitting agency no later than one week following the request. Any regulation returned pursuant to this subdivision shall be resubmitted to the office for review within the one-year period specified in subdivision (b) of Section 11346.4 or shall comply with Article 5 (commencing with Section 11346) prior to resubmission.

(d) The office shall not initiate the return of a regulation pursuant to subdivision (c) as an alternative to disapproval pursuant to subdivision (b).

O