

ASSEMBLY BILL

No. 1415

Introduced by Committee on Accountability and Administrative Review (Frazier (Chair), Achadjian (Vice Chair), Buchanan, Ian Calderon, Cooley, Lowenthal, Medina, Quirk-Silva, and Salas)

March 20, 2013

An act to amend Section 11340.5 of the Government Code, relating to administrative regulations.

LEGISLATIVE COUNSEL'S DIGEST

AB 1415, as introduced, Committee on Accountability and Administrative Review. Administrative procedures: regulations: determinations: judicial review.

The Administrative Procedure Act generally sets forth the requirements for the adoption, publication, review, and implementation of regulations by state agencies. The act provides that if the office is notified of, or on its own, learns of the issuance, enforcement of, or use of, an agency guideline, criterion, bulletin, manual, instruction, order, standard of general application, or other rule that has not been adopted as a regulation and filed with the Secretary of State, the office may issue a determination as to whether the guideline, criterion, bulletin, manual, instruction, order, standard of general application, or other rule, is a regulation. Existing law allows an interested person to obtain judicial review of a given determination by filing a written petition with the court within 30 days of the date of its publication.

This bill would extend that filing time to 45 days.

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 11340.5 of the Government Code is
2 amended to read:

3 11340.5. (a) ~~No~~A state agency shall *not* issue, utilize, enforce,
4 or attempt to enforce any guideline, criterion, bulletin, manual,
5 instruction, order, standard of general application, or other rule,
6 which is a regulation as defined in Section 11342.600, unless the
7 guideline, criterion, bulletin, manual, instruction, order, standard
8 of general application, or other rule has been adopted as a
9 regulation and filed with the Secretary of State pursuant to this
10 chapter.

11 (b) If the office is notified of, or on its own, learns of the
12 issuance, enforcement of, or use of, an agency guideline, criterion,
13 bulletin, manual, instruction, order, standard of general application,
14 or other rule that has not been adopted as a regulation and filed
15 with the Secretary of State pursuant to this chapter, the office may
16 issue a determination as to whether the guideline, criterion, bulletin,
17 manual, instruction, order, standard of general application, or other
18 rule, is a regulation as defined in Section 11342.600.

19 (c) The office shall do all of the following:

20 (1) File its determination upon issuance with the Secretary of
21 State.

22 (2) Make its determination known to the agency, the Governor,
23 and the Legislature.

24 (3) Publish its determination in the California Regulatory Notice
25 Register within 15 days of the date of issuance.

26 (4) Make its determination available to the public and the courts.

27 (d) Any interested person may obtain judicial review of a given
28 determination by filing a written petition requesting that the
29 determination of the office be modified or set aside. A petition
30 shall be filed with the court within ~~30~~ 45 days of the date the
31 determination is published.

32 (e) A determination issued by the office pursuant to this section
33 shall not be considered by a court, or by an administrative agency
34 in an adjudicatory proceeding if all of the following occurs:

35 (1) The court or administrative agency proceeding involves the
36 party that sought the determination from the office.

37 (2) The proceeding began prior to the party's request for the
38 office's determination.

1 (3) At issue in the proceeding is the question of whether the
2 guideline, criterion, bulletin, manual, instruction, order, standard
3 of general application, or other rule that is the legal basis for the
4 adjudicatory action is a regulation as defined in Section 11342.600.

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