



# Personal Insurance Federation of California

California's Personal Lines Trade Association

REPRESENTING THE LEADING AUTOMOBILE AND HOMEOWNERS INSURERS

State Farm • Farmers • 21st Century Insurance Group • SAFECO • Progressive • NAMIC

## STAFF

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## MEMORANDUM

**Date:** April 12, 2005

**To:** The Honorable Gloria Negrete McLeod, Chair  
Members, Business and Professions Committee

**From:** Dan C. Dunmoyer, President  
Rex D. Frazier, Vice President & General Counsel  
Michael A. Gunning, Senior Legislative Advocate  
Michael A. Paiva, Senior Legislative Advocate

**Re:** AB 1351 (Vargas): Office of Administrative Law: Regulations  
Assembly Business and Professions Committee Hearing: April 19, 2005  
**PIFIC Position: Support, as proposed to be Amended**

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The Personal Insurance Federation of California, representing insurers who write over 50% of the personal lines insurance policies in California, including State Farm, Farmers, SAFECO, 21<sup>st</sup> Century Insurance Group, Progressive Insurance Company, and NAMIC, **supports AB 1351, as proposed to be amended**, by Assembly Member Vargas.

Existing law requires all state agencies not expressly or specifically exempted to comply with the rulemaking provisions of the Administrative Procedure Act (Government Code §§11340 et. seq) ("APA"). This law generally prohibits a state agency from using what are commonly known as "underground regulations," which are rules of general applicability employed by a state agency without any public notice or comment. Such underground regulations run counter to the purpose of the APA, which is to ensure that those persons or entities whom the regulation will affect have voice in its creation, as well as notice of the law's requirements so they can conform their conduct accordingly. Tidewater Marine Western, Inc. v. Bradshaw, 14 Cal.4<sup>th</sup> 557 (1996).

The APA, at Government Code §11340.5, empowers the Office of Administrative Law ("OAL") to issue determinations as to whether a rule employed by a state agency without public notice and comment is a "regulation" under the APA, and hence only usable by such state agency after complying with APA requirements. Such an activity not only secures the public's right to participate in California government activities, it also provides an important tool for members of the public to challenge agency action without first being forced into a court proceeding.

AB 1351 would provide important changes in the law governing how the OAL handles requests for determination. In particular, it would set firm time requirements for the OAL to follow in handling requests for determination. During the 1990s, the OAL

developed a severe backlog of these requests, which sometimes took many years to answer. This rendered the program ineffective. By establishing time requirements for this program, AB 1351 helps ensure that this will not happen again.

Restoring a functioning determinations program at the OAL will ensure that state agencies carry out the intent of the Legislature. Moreover, the regulated public has the right to have the APA enforced adequately. AB 1351 is a key aspect of that effort.

For these reasons, **PIFC urges an aye vote on AB 1351, as proposed to be Amended**, when it is heard in the Assembly Committee on Business and Professions on April 19, 2005. If you have any questions, please contact Rex Frazier at (916) 442-6646 or via email at [rfrazier@pifc.org](mailto:rfrazier@pifc.org).

cc: Assembly Member Juan Vargas, Author  
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