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Today's podcast is on the OAL petition process. In other words, how lawmakers and the public can petition to repeal or change regulations.

We've often heard from legislators and other interested parties that they would like to see administrative agencies in California consider repealing expired and outdated regulations, or amending existing regulations that have become particularly problematic for the regulated community.

Many of these regulations have been on the books for many years. Sometimes, even after the authorizing statute for a regulation has been repealed, or there have been many years of implementation that have created unnecessarily and exceedingly burdensome regulations for the regulated community.

While unknown to many, California law actually enables any person to seek changes or to repeal existing state regulations. This petition process is found in the California Government Code, in Sections 11340.6 and 11340.7.

This petition process consists of a formal letter that requests an amendment to, or the repeal of an existing regulation. The formal letter is directed towards the rule-making entity that adopted and administers the particular regulation.

Under current state law, any interested party may file a petition that's in writing to the state agency, and that petition must identify the nature of the regulatory change or repeal that's being requested, the reason or reasons that the petition is being requested, and the agency's rulemaking power to either amend or repeal the particular regulation.

Although this process is formal in nature, it is rather simple in its application.

The OAL petition process is similar to the Federal Administrative Procedure Act. By state law, the agency must notify the party who filed this written petition, and the agency must respond with any denial of the petition within 30 calendar days.

Now, the agency's denial of the petition must be in writing, and it must include the reason or reasons that the state agency is denying the petition. If there's no denial of the written petition, then the state agency must actually schedule the item for a public hearing that will be conducted by that state agency.

Moreover, the state agency must transmit its written decision to the Office of Administrative Law, OAL, and that will be published in the Notice Register so that the public is aware of the agency's determination.

This is an important option for interested parties to pursue because they will have the ability to try to amend or repeal an existing regulation that may have become unduly burdensome over the course of implementation, or it's resulted in unintended

consequences that could not have been predicted at the time of the regulation's formal adoption.

As a result of this provision of state law, the public can force California agencies to, at the very least, consider revisiting a regulation that's currently on the books. In reviewing these written petitions to state agencies, the most common petition is one to amend an existing regulation.

Those that are often successful are usually presented by an association or group that represent broad interests. These groups usually present actual changes to the existing regulation with their proposed amendments, and a thorough explanation of why these particular changes are necessary and justified.

Thereafter, the agency usually holds a public hearing before it makes a determination to grant or deny the written petition. The agency often considers whether alternatives exist to address the identified situation via some other means.

Holding this public hearing is intended to gather input on the written petitioner's proposal and any reasonable alternatives to respond. In these public hearings, the agency is interested in not only the petitioner's comments, but also the comments of those who may be present and who are asked to provide verbal or written remarks.

Successful written petitions usually state clearly and concisely the substance or nature of the amendment or repeal being requested, and their reasons for that request.

If the petitioner has supporting documentation such as any technical or engineering studies, assuming, of course, that the regulation is of a technical or scientific nature, then those should also be submitted. The more thorough and persuasive the written petition, the more likely it is to be successful.

Petitioners using this provision of law should be aware that all proposed regulatory changes are subject to specific legal standards and ultimate approval by the Office of Administrative Law.

Keep in mind that OAL utilizes six standards to determine whether the regulatory change met the statutory requirements of necessity, authority, clarity, consistency, reference, and non-duplication. Accordingly, petitioners should also consider these legal standards when they petition for changes in regulations.

Some have advocated for an approach of no new regulations without repealing an existing one. While this burden is placed on the rulemaking agency itself, requiring two regulations to be repealed for each new regulation may or may not be warranted.

However, the entire obligation of improving and streamlining regulatory burdens should not be placed exclusively on the rulemaking agencies, but also on the regulated community. Interested parties may often be in a better position to propose amendments to regulations that are not working as intended, or that have already served their purpose.

When members of the public identify a California regulation that needs to be amended, or even repealed, they need not rely solely on the regulatory agency to take the initiative to make a change. Indeed, there is an existing process already in place for these interested individuals, and it is a process that should be put into use more often.

Thanks for joining this podcast.