***SB 560 (Wright) – Regulations: Small Businesses***

***Introduced February 17, 2011***

Existing law authorizes an agency considering adopting, amending, or repealing a regulation to consult with interested persons before initiating regulatory action, and requires the agency to do so if the regulation involves complex or numerous proposals.

This bill requires an agency, if it does not or is not able to consult with these parties to inform the Office of Small Business Advocate and the Department of Finance in writing of its decision and the reasons for not consulting the impacted businesses.

Existing law requires a state agency to include in a Notice of Proposed Action to adopt, amend or repeal a regulation, an Initial Statement of Reasons for proposing to take the regulatory action, which shall include a description of any reasonable alternatives that would lessen any adverse impact on small business, and the agency's reasons for rejecting those reasonable alternatives.

This bill requires the agency to describe its reasons for rejecting each specific alternative, and would repeal the law stating that an agency is not required to artificially construct alternatives, describe unreasonable alternatives, or justify why it has not described any.

This bill requires an agency to prepare a small business economic impact statement that contains the following information:

a) An identification and estimate of the number of small businesses subject to the proposed regulation.

b) The estimated annual average cost of compliance by a small business subject to the proposed regulation.

c) The estimated statewide annual average cost of compliance by small businesses subject to the proposed regulation.

This bill directs an agency adopting a regulation that requires the use of a new or emerging technology or equipment in order to achieve the identified purpose of the regulation to post a statement on its website and in the California Regulatory Notice Register prior to the effective date of the regulation that the required technology or equipment is commercially available, or will be commercially available, prior to the effective date of the regulation.

This bill specifies that, if the required technology or equipment is <u>not</u> commercially available on the effective date of a regulation, the agency is prohibited from enforcing a violation of the regulation until at least 6 months after the technology or equipment becomes commercially available and the agency posts that information.

This bill specifies that, in the event that a person or business incurs costs purchasing new or emerging technology or other equipment that is required by a regulation, but the agency determines that the regulatory program is not workable because the new or emerging technology or other equipment does not function as the agency intended, the agency is responsible for reimbursing the person or business for those incurred costs.

The APA also states that the agency is not required, in this initial statement, to artificially construct alternatives, describe unreasonable alternatives, or justify why it has not described alternatives or other equipment that is required by a regulation, but the agency determines that the regulatory program is not workable because the new or emerging technology or other equipment does not function as the agency intended, the agency is responsible for reimbursing the person or business for those incurred costs.

Existing law specifies that if an agency initially determines that the adoption of a regulation will not have a significant adverse economic impact directly affecting business, that it include a declaration of that determination.

This bill would delete that requirement and instead require, if an agency declares that it is not aware of any cost impact, that the agency include a statement describing how a person or business could comply with the proposed regulation without incurring a cost.

This bill specifies that a notice of proposed regulatory action include the small business economic impact statement that this bill requires an agency to prepare.

The APA requires the Department of Finance (DOF) to adopt and update instructions for inclusion in the State Administrative Manual prescribing the methods that any agency is required to use in making the determinations relating to mandates on local agencies or school districts.

This bill also requires DOF to adopt and update instructions prescribing the methods that any agency is required to use in making the determinations relating to significant, statewide adverse economic impacts directly affecting business.

Under existing law the Office of Administrative Law (OAL) reviews, approves or rejects proposed regulations.

This bill would require OAL to reject a proposed regulation if the adopting agency does not provide all relevant information concerning the small business economic impact statement.

Existing law authorizes any interested person to obtain a judicial declaration as to the validity of specified regulations or orders of repeal, by bringing a civil action for declaratory relief in the superior court.

This bill specifies that an interested person includes a small business or an organization or trade association that represents small businesses, and whose members are affected by the regulation.

The author states that this bill makes a number of reforms to help small businesses grow by encouraging more realistic regulations and requiring a genuine assessment of the actual costs of regulations to the business community. The author notes that California's burdensome regulatory climate is driving businesses - and jobs - to other states. With the US Department of Labor reporting last month that California's jobless rate is now the 2nd highest in the nation, it is essential that California take steps to become a more attractive location to remain and expand.

# SENATE BILL No. 560

**Introduced by Senator Wright**

February 17, 2011

An act to amend Sections 11346, 11346.2, 11346.3, 11346.45, 11346.5, 11349.1, 11350, 11350.3, and 11357 of, and to add Section 11346.6 to, the Government Code, relating to regulations.

LEGISLATIVE COUNSEL'S DIGEST

SB 560, as introduced, Wright. Regulations: small businesses.

(1) The Administrative Procedure Act generally sets forth the requirements for the adoption, publication, review, and implementation of regulations by state agencies. An agency that is considering adopting, amending, or repealing a regulation is authorized to consult with interested persons before initiating regulatory action, and requires an agency to do so when the regulation involves complex or numerous proposals.

This bill would require the agency, if it does not, or is unable to, consult with these parties to inform in writing the Office of Small Business Advocate and the Department of Finance of its decision and the reasons for not consulting the impacted businesses.

(2) The act requires every state agency subject to the act to submit, with the notice of the proposed adoption, amendment, or repeal of a regulation, an initial statement of reasons for proposing the adoption, amendment, or repeal of a regulation, which is required to include, among other things, a description of any reasonable alternatives that would lessen any adverse impact on small business and the agency's reasons for rejecting those reasonable alternatives. The act specifies that the agency is not required, in this initial statement, to artificially construct alternatives, describe unreasonable alternatives, or justify why it has not described alternatives.

This bill would require the agency to describe the agency's reasons for rejecting each specific alternative, and would delete the specification that an agency is not required to artificially construct alternatives, describe unreasonable alternatives, or justify why it has not described alternatives.

(3) The act requires a state agency to assess the potential of a proposal to adopt, amend, or repeal a regulation to adversely affect business enterprises and individuals.

This bill would also require an agency to submit an economic impact statement that makes that assessment and would also require an agency, before submitting a proposal, to prepare a small business economic impact statement that contains specified information.

This bill would also require an agency that adopts a regulation that requires the use of a new or emerging technology or equipment in order to achieve the identified purpose of the regulation to post, as specified, prior to the effective date of the regulation, that the required technology or equipment is commercially available or will be commercially available prior to the effective date of the regulation. This bill would, if the required technology or equipment is not commercially available on the effective date of a regulation, prohibit an agency from enforcing a violation of the regulation until at least 6 months after the technology or equipment becomes commercially available and the agency posts that information, as specified. This bill would also provide that the agency be required to reimburse a business or individual for the costs incurred in purchasing the required new or emerging technology or other equipment if that technology or other requirement is determined to not function as intended, as specified.

(4) Under the act, the agency must issue a notice of proposed action that includes prescribed information, including, if a state agency makes an initial determination that the adoption, amendment, or repeal of a regulation will not have a significant statewide adverse economic impact directly affecting business, a declaration of that determination.

This bill would delete that requirement and instead require, if an agency declares that it is not aware of any cost impact, that the notice of proposed action include a statement describing how a private person or business could comply with the proposed regulation without incurring a cost.

This bill would also require that the notice of proposed action include the small business economic impact statement that this bill requires an agency to prepare.

(5) The act also requires the Department of Finance to adopt and update, as necessary, instructions for inclusion in the State Administrative Manual prescribing the methods that any agency is required to use in making the determinations relating to mandates on local agencies or school districts, as specified.

This bill would also require the Department of Finance to adopt and update, as necessary, instructions prescribing the methods that any agency is required to use in making the determinations relating to significant, statewide adverse economic impacts directly affecting business, as specified.

(6) The act requires the Office of Administrative Law to review and approve regulations that are adopted, amended, or repealed, using prescribed standards. The act requires that the office reject a proposed regulation in specified circumstances.

This bill would require that the office reject a proposed regulation if the adopting agency does not provide specified information relating to the small business economic impact statement.

(7) The act authorizes any interested person to obtain a judicial declaration as to the validity of specified regulations or orders of repeal, by bringing an action for declaratory relief in the superior court in accordance with the Code of Civil Procedure.

This bill would specify that an interested person includes, but is not limited to, a small business or an organization or trade association that represents small businesses and whose members are affected by the regulation.

(8) The bill would also make conforming changes to the act.

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. This act shall be known, and may be cited, as the
2 Regulatory Reform Act of 2011.
3 SEC. 2. The Legislature finds and declares all of the following:
4 (a) California lost nearly 400,000 manufacturing jobs between
5 the years 2000 and 2007 according to a report by the Milken
6 Institute. Silicon Valley, for instance, has 130,000 fewer jobs now
7 than it had a decade ago and has an office space vacancy rate above
8 20 percent.

(b) A survey conducted by Los Angeles-based Kosmont Cos. and the Rose Institute of State and Local Government that examined business-related fees determined that California is one of the more expensive places to do business.

(c) For the second consecutive year, CEO Magazine has ranked California last among the states where companies preferred to do business.

(d) Since 1999, according to California Lutheran University, California has seen a far steeper decline than the national average in households earning an income between $35,000 and $75,000.

(e) California's regulatory burdens are often cited as one of the main causes that businesses prefer to expand into other states.

(f) It is the intent of the Legislature to create a regulatory structure that is aware and sensitive to the cost burdens imposed on businesses.

SEC. 3. Section 11346 of the Government Code is amended to read:

11346. (a) It is the purpose of this chapter to establish basic minimum procedural requirements for the adoption, amendment, or repeal of administrative regulations. Except as provided in Section 11346.1, ~~the provisions of~~ this chapter ~~are applicable~~ *applies* to the exercise of any quasi-legislative power conferred by any statute heretofore or hereafter enacted, but nothing in this chapter repeals or diminishes additional requirements imposed by any statute. This chapter shall not be superseded or modified by any subsequent legislation except to the extent that the legislation shall do so expressly.

(b) An agency that is considering adopting, amending, or repealing a regulation may consult with ~~interested persons~~ *parties who would be subject to the proposed regulations* before initiating regulatory action pursuant to this article. *If the agency does not, or is unable to, consult with parties who would be subject to the proposed regulation, it shall inform in writing the Office of Small Business Advocate and the Department of Finance of its decision and the reasons for not consulting the impacted businesses.*

SEC. 4. Section 11346.2 of the Government Code, as amended by Section 1 of Chapter 398 of the Statutes of 2010, is amended to read:

11346.2. Every agency subject to this chapter shall prepare, submit to the office with the notice of the proposed action as

described in Section 11346.5, and make available to the public upon request, all of the following:

(a) A copy of the express terms of the proposed regulation.

(1) The agency shall draft the regulation in plain, straightforward language, avoiding technical terms as much as possible, and using a coherent and easily readable style. The agency shall draft the regulation in plain English.

(2) The agency shall include a notation following the express terms of each California Code of Regulations section, listing the specific statutes or other provisions of law authorizing the adoption of the regulation and listing the specific statutes or other provisions of law being implemented, interpreted, or made specific by that section in the California Code of Regulations.

(3) The agency shall use underline or italics to indicate additions to, and strikeout to indicate deletions from, the California Code of Regulations.

(b) An initial statement of reasons for proposing the adoption, amendment, or repeal of a regulation. This statement of reasons shall include, but not be limited to, all of the following:

(1) A statement of the specific purpose of each adoption, amendment, or repeal and the rationale for the determination by the agency that each adoption, amendment, or repeal is reasonably necessary to carry out the purpose for which it is proposed. Where the adoption or amendment of a regulation would mandate the use of specific technologies or equipment, a statement of the reasons why the agency believes these mandates or prescriptive standards are required.

(2) An identification of each technical, theoretical, and empirical study, report, or similar document, if any, upon which the agency relies in proposing the adoption, amendment, or repeal of a regulation.

(3) (A) A description of reasonable alternatives to the regulation and the agency's reasons for rejecting ~~those alternatives~~ *each specific alternative*. In the case of a regulation that would mandate the use of specific technologies or equipment or prescribe specific actions or procedures, the imposition of performance standards shall be considered as an alternative.

(B) A description of reasonable alternatives to the regulation that would lessen any adverse impact on small business and the

agency's reasons for rejecting ~~those alternatives~~ *each specific alternative*.

(C) Notwithstanding subparagraph (A) or (B), an agency is not required to ~~artificially construct alternatives,~~ describe unreasonable alternatives~~, or justify why it has not described alternatives~~.

(4) Facts, evidence, documents, testimony, or other evidence on which the agency relies to support an initial determination that the action will not have a significant adverse economic impact on business.

(5) A department, board, or commission within the Environmental Protection Agency, the Resources Agency, or the Office of the State Fire Marshal shall describe its efforts, in connection with a proposed rulemaking action, to avoid unnecessary duplication or conflicts with federal regulations contained in the Code of Federal Regulations addressing the same issues. These agencies may adopt regulations different from federal regulations contained in the Code of Federal Regulations addressing the same issues upon a finding of one or more of the following justifications:

(A) The differing state regulations are authorized by law.

(B) The cost of differing state regulations is justified by the benefit to human health, public safety, public welfare, or the environment.

(c) A state agency that adopts or amends a regulation mandated by federal law or regulations, the provisions of which are identical to a previously adopted or amended federal regulation, shall be deemed to have complied with subdivision (b) if a statement to the effect that a federally mandated regulation or amendment to a regulation is being proposed, together with a citation to where an explanation of the provisions of the regulation can be found, is included in the notice of proposed adoption or amendment prepared pursuant to Section 11346.5. However, the agency shall comply fully with this chapter with respect to any provisions in the regulation that the agency proposes to adopt or amend that are different from the corresponding provisions of the federal regulation.

(d) This section shall be inoperative from January 1, 2012, until January 1, 2014.

SEC. 5. Section 11346.2 of the Government Code, as added by Section 2 of Chapter 398 of the Statutes of 2010, is amended to read:

11346.2. Every agency subject to this chapter shall prepare, submit to the office with the notice of the proposed action as described in Section 11346.5, and make available to the public upon request, all of the following:

(a) A copy of the express terms of the proposed regulation.

(1) The agency shall draft the regulation in plain, straightforward language, avoiding technical terms as much as possible, and using a coherent and easily readable style. The agency shall draft the regulation in plain English.

(2) The agency shall include a notation following the express terms of each California Code of Regulations section, listing the specific statutes or other provisions of law authorizing the adoption of the regulation and listing the specific statutes or other provisions of law being implemented, interpreted, or made specific by that section in the California Code of Regulations.

(3) The agency shall use underline or italics to indicate additions to, and strikeout to indicate deletions from, the California Code of Regulations.

(b) An initial statement of reasons for proposing the adoption, amendment, or repeal of a regulation. This statement of reasons shall include, but not be limited to, all of the following:

(1) A statement of the specific purpose of each adoption, amendment, or repeal and the rationale for the determination by the agency that each adoption, amendment, or repeal is reasonably necessary to carry out the purpose for which it is proposed.

(2) An identification of each technical, theoretical, and empirical study, report, or similar document, if any, upon which the agency relies in proposing the adoption, amendment, or repeal of a regulation.

(3) Where the adoption or amendment of a regulation would mandate the use of specific technologies or equipment, a statement of the reasons why the agency believes these mandates or prescriptive standards are required.

(4) (A) A description of reasonable alternatives to the regulation and the agency's reasons for rejecting ~~those alternatives~~ *each specific alternative*.

(B) A description of any performance standard that was considered as an alternative. In the case of a regulation that would mandate the use of specific technologies or equipment or prescribe specific actions or procedures, the imposition of performance standards shall be considered as an alternative.

(C) A description of reasonable alternatives to the regulation that would lessen any adverse impact on small business and the agency's reasons for rejecting ~~those alternatives~~ *each specific alternative*.

(D) Notwithstanding subparagraph (A), (B), or (C), an agency is not required to ~~artificially construct alternatives,~~ describe unreasonable alternatives~~, or justify why it has not described alternatives~~.

(5) Facts, evidence, documents, testimony, or other evidence on which the agency relies to support an initial determination that the action will not have a significant adverse economic impact on business.

(6) A department, board, or commission within the Environmental Protection Agency, the Resources Agency, or the Office of the State Fire Marshal shall describe its efforts, in connection with a proposed rulemaking action, to avoid unnecessary duplication or conflicts with federal regulations contained in the Code of Federal Regulations addressing the same issues. These agencies may adopt regulations different from federal regulations contained in the Code of Federal Regulations addressing the same issues upon a finding of one or more of the following justifications:

(A) The differing state regulations are authorized by law.

(B) The cost of differing state regulations is justified by the benefit to human health, public safety, public welfare, or the environment.

(c) A state agency that adopts or amends a regulation mandated by federal law or regulations, the provisions of which are identical to a previously adopted or amended federal regulation, shall be deemed to have complied with subdivision (b) if a statement to the effect that a federally mandated regulation or amendment to a regulation is being proposed, together with a citation to where an explanation of the provisions of the regulation can be found, is included in the notice of proposed adoption or amendment prepared pursuant to Section 11346.5. However, the agency shall comply

fully with this chapter with respect to any provisions in the regulation that the agency proposes to adopt or amend that are different from the corresponding provisions of the federal regulation.

(d) This section shall become operative on January 1, 2012.

(e) This section shall remain in effect only until January 1, 2014, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2014, deletes or extends that date.

SEC. 6. Section 11346.3 of the Government Code is amended to read:

11346.3. (a) ~~State agencies~~ *An agency* proposing to adopt, amend, or repeal any administrative regulation shall assess the potential for adverse economic impact on California business enterprises and individuals, avoiding the imposition of unnecessary or unreasonable regulations or reporting, recordkeeping, or compliance requirements. For purposes of this subdivision, assessing the potential for adverse economic impact shall require agencies, when proposing to adopt, amend, or repeal a regulation, to adhere to the following requirements, to the extent that these requirements do not conflict with other state or federal laws:

(1) The proposed adoption, amendment, or repeal of a regulation shall be based on adequate information concerning the need for, and consequences of, proposed governmental action.

(2) The state agency, prior to submitting a proposal to adopt, amend, or repeal a regulation to the office, shall consider the proposal's impact on business, with consideration of industries affected including the ability of California businesses to compete with businesses in other states. For purposes of evaluating the impact on the ability of California businesses to compete with businesses in other states, an agency shall consider, but not be limited to, information supplied by interested parties.

*(3)* ~~It is not the intent of this section~~ *An agency, before submitting a proposal* to ~~impose additional criteria on agencies, above that which exists in current law, in assessing adverse economic~~ *adopt, amend, or repeal a regulation to the office, shall consider the proposal's* impact on ~~California~~ *small* business ~~enterprises,~~ *by preparing a small business economic impact statement. An agency shall consider,* but ~~only to assure that the assessment is made early in the process of initiation and development of a proposed adoption, amendment, or repeal of a~~

~~regulation.~~ *not be limited to, information supplied by interested parties. The small business economic impact statement shall include all of the following:*

*(A) An identification and estimate of the number of small businesses subject to the proposed regulation.*

*(B) The estimated annual average cost of compliance by a small business subject to the proposed regulation.*

*(C) The estimated statewide annual average cost of compliance by small businesses subject to the proposed regulation.*

(b) (1) All state agencies proposing to adopt, amend, or repeal any administrative regulations shall assess whether and to what extent it will affect the following:

(A) The creation or elimination of jobs within the State of California.

(B) The creation of new businesses or the elimination of existing businesses within the State of California.

(C) The expansion of businesses currently doing business within the State of California.

(2) This subdivision does not apply to the University of California, the Hastings College of the Law, or the Fair Political Practices Commission.

(3) Information required from state agencies for the purpose of completing the assessment may come from existing state publications.

(c) No administrative regulation adopted on or after January 1, 1993, that requires a report shall apply to businesses, unless the state agency adopting the regulation makes a finding that it is necessary for the health, safety, or welfare of the people of the state that the regulation apply to businesses.

*(d) The office shall ensure compliance with the provisions of this section in all filings to adopt, amend, or repeal any administrative regulation, pursuant to Section 11349.1.*

SEC. 7. Section 11346.45 of the Government Code is amended to read:

11346.45. (a) In order to increase public participation and improve the quality of regulations, state agencies proposing to adopt regulations shall, prior to publication of the notice required by Section 11346.5, involve parties who would be subject to the proposed regulations in public discussions regarding those proposed regulations, when the proposed regulations involve

complex proposals or a large number of proposals that cannot easily be reviewed during the comment period.

(b) This section does not apply to a state agency in any instance where that state agency is required to implement federal law and regulations for which there is little or no discretion on the part of the state to vary.

(c) If the agency does not or cannot comply with the provisions of subdivision (a), it shall state the reasons for noncompliance with reasonable specificity in the rulemaking ~~record.~~ *record and to the Office of the Small Business Advocate and the Department of Finance.*

(d) The provisions of this section shall not be subject to judicial review or to the provisions of Section 11349.1.

SEC. 8. Section 11346.5 of the Government Code is amended to read:

11346.5. (a) The notice of proposed adoption, amendment, or repeal of a regulation shall include the following:

(1) A statement of the time, place, and nature of proceedings for adoption, amendment, or repeal of the regulation.

(2) Reference to the authority under which the regulation is proposed and a reference to the particular code sections or other provisions of law that are being implemented, interpreted, or made specific.

(3) An informative digest drafted in plain English in a format similar to the Legislative Counsel's digest on legislative bills. The informative digest shall include the following:

(A) A concise and clear summary of existing laws and regulations, if any, related directly to the proposed action and of the effect of the proposed action.

(B) If the proposed action differs substantially from an existing comparable federal regulation or statute, a brief description of the significant differences and the full citation of the federal regulations or statutes.

(C) A policy statement overview explaining the broad objectives of the regulation and, if appropriate, the specific objectives.

(4) Any other matters as are prescribed by statute applicable to the specific state agency or to any specific regulation or class of regulations.

(5) A determination as to whether the regulation imposes a mandate on local agencies or school districts and, if so, whether

the mandate requires state reimbursement pursuant to Part 7 (commencing with Section 17500) of Division 4.

(6) An estimate, prepared in accordance with instructions adopted by the Department of Finance, of the cost or savings to any state agency, the cost to any local agency or school district that is required to be reimbursed under Part 7 (commencing with Section 17500) of Division 4, other nondiscretionary cost or savings imposed on local agencies, and the cost or savings in federal funding to the state.

For purposes of this paragraph, "cost or savings" means additional costs or savings, both direct and indirect, that a public agency necessarily incurs in reasonable compliance with regulations.

(7) If a state agency, in proposing to adopt, amend, or repeal any administrative regulation, makes an initial determination that the action may have a significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states, it shall include the following information in the notice of proposed action:

(A) Identification of the types of businesses that would be affected.

(B) A description of the projected reporting, recordkeeping, and other compliance requirements that would result from the proposed action.

(C) The following statement: "The (name of agency) has made an initial determination that the (adoption/amendment/repeal) of this regulation may have a significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. The (name of agency) (has/has not) considered proposed alternatives that would lessen any adverse economic impact on business and invites you to submit proposals. Submissions may include the following considerations:

(i) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to businesses.

(ii) Consolidation or simplification of compliance and reporting requirements for businesses.

(iii) The use of performance standards rather than prescriptive standards.

(iv) Exemption or partial exemption from the regulatory requirements for businesses."

(8) If a state agency, in adopting, amending, or repealing any administrative regulation, makes an initial determination that the action will not have a significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states, it shall make a declaration to that effect in the notice of proposed action. In making this declaration, the agency shall provide in the record facts, evidence, documents, testimony, or other evidence upon which the agency relies to support its initial determination.

An agency's initial determination and declaration that a proposed adoption, amendment, or repeal of a regulation may have or will not have a significant, adverse impact on businesses, including the ability of California businesses to compete with businesses in other states, shall not be grounds for the office to refuse to publish the notice of proposed action.

(9) A description of all cost impacts, known to the agency at the time the notice of proposed action is submitted to the office, that a representative private person or business would necessarily incur in reasonable compliance with the proposed action. *If an agency declares, pursuant to this paragraph, that it is not aware of any cost impact that a representative private person or business would incur in compliance with the proposed adoption, amendment, or repeal of a regulation, the agency shall include a statement describing how a private person or business could comply with the proposed adoption, amendment, or repeal of a regulation without incurring a cost.*

~~If no cost impacts are known to the agency, it shall state the following:~~

~~"The agency is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action."~~

(10) ~~A~~ *The small business economic impact* statement *that is required by subdivision (a)* of *Section 11346.3, and a statement of* the results of the assessment required by subdivision (b) of Section 11346.3.

(11) The finding prescribed by subdivision (c) of Section 11346.3, if required.

(12) A statement that the action would have a significant effect on housing costs, if a state agency, in adopting, amending, or repealing any administrative regulation, makes an initial determination that the action would have that effect. In addition, the agency officer designated in paragraph (14), shall make available to the public, upon request, the agency's evaluation, if any, of the effect of the proposed regulatory action on housing costs.

(13) A statement that the adopting agency must determine that no reasonable alternative considered by the agency or that has otherwise been identified and brought to the attention of the agency would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

(14) The name and telephone number of the agency representative and designated backup contact person to whom inquiries concerning the proposed administrative action may be directed.

(15) The date by which comments submitted in writing must be received to present statements, arguments, or contentions in writing relating to the proposed action in order for them to be considered by the state agency before it adopts, amends, or repeals a regulation.

(16) Reference to the fact that the agency proposing the action has prepared a statement of the reasons for the proposed action, has available all the information upon which its proposal is based, and has available the express terms of the proposed action, pursuant to subdivision (b).

(17) A statement that if a public hearing is not scheduled, any interested person or his or her duly authorized representative may request, no later than 15 days prior to the close of the written comment period, a public hearing pursuant to Section 11346.8.

(18) A statement indicating that the full text of a regulation changed pursuant to Section 11346.8 will be available for at least 15 days prior to the date on which the agency adopts, amends, or repeals the resulting regulation.

(19) A statement explaining how to obtain a copy of the final statement of reasons once it has been prepared pursuant to subdivision (a) of Section 11346.9.

(20) If the agency maintains an Internet Web site or other similar forum for the electronic publication or distribution of written material, a statement explaining how materials published or distributed through that forum can be accessed.

(b) The agency representative designated in paragraph (14) of subdivision (a) shall make available to the public upon request the express terms of the proposed action. The representative shall also make available to the public upon request the location of public records, including reports, documentation, and other materials, related to the proposed action. If the representative receives an inquiry regarding the proposed action that the representative cannot answer, the representative shall refer the inquiry to another person in the agency for a prompt response.

(c) This section shall not be construed in any manner that results in the invalidation of a regulation because of the alleged inadequacy of the notice content or the summary or cost estimates, or the alleged inadequacy or inaccuracy of the housing cost estimates, if there has been substantial compliance with those requirements.

SEC. 9. Section 11346.6 is added to the Government Code, to read:

11346.6. (a) (1) An agency that adopts a regulation that requires the use of a new or emerging technology or other equipment in order to achieve the identified purpose of the regulation shall post on its Internet Web site, if available, and in the California Regulatory Notice Register, prior to the effective date of the regulation, that the required technology is commercially available or will be commercially available prior to the effective date of the regulation.

(2) For purposes of this section, new or emerging technology or other equipment shall not be determined to be commercially available unless it is available on the market from at least two providers or manufacturers.

(b) Notwithstanding any other law, if new or emerging technology or other equipment, whose use is required by a regulation, is not commercially available on the effective date of the regulation, the adopting agency shall not enforce a violation of that regulation until at least six months after the required

technology or other equipment becomes commercially available and the agency posts on its Internet Web site, if available, and in the California Regulatory Notice Register, that the required technology or other equipment has become commercially available.

(c) In the event that a person or business incurs costs purchasing new or emerging technology or other equipment that is required by an adopted regulation, but the agency ultimately determines that the regulatory program is not workable because the new or emerging technology or other equipment does not function as intended by the adopting agency, the agency shall be responsible for reimbursing the person or business for those incurred costs.

(d) Nothing in this section shall be construed to require an agency to readopt a regulation already approved by the office and filed with the Secretary of State.

(e) An agency shall not be required to comply with the requirements of this section if an adopted regulation that requires the use of a new or emerging technology or other equipment imposes that requirement on the industry that is directly responsible for developing or manufacturing the new or emerging technology or other equipment as a part of that industry's core business.

(f) Nothing in this section shall be construed to prohibit an agency from adopting new or additional standards for new or emerging technology or other equipment.

SEC. 10. Section 11349.1 of the Government Code is amended to read:

11349.1. (a) The office shall review all regulations adopted, amended, or repealed pursuant to the procedure specified in Article 5 (commencing with Section 11346) and submitted to it for publication in the California Code of Regulations Supplement and for transmittal to the Secretary of State and make determinations using all of the following standards:

(1) Necessity.

(2) Authority.

(3) Clarity.

(4) Consistency.

(5) Reference.

(6) Nonduplication.

In reviewing regulations pursuant to this section, the office shall restrict its review to the regulation and the record of the rulemaking proceeding. The office shall approve the regulation or order of

repeal if it complies with the standards set forth in this section and with this chapter.

(b) In reviewing proposed regulations for the criteria in subdivision (a), the office may consider the clarity of the proposed regulation in the context of related regulations already in existence.

(c) The office shall adopt regulations governing the procedures it uses in reviewing regulations submitted to it. The regulations shall provide for an orderly review and shall specify the methods, standards, presumptions, and principles the office uses, and the limitations it observes, in reviewing regulations to establish compliance with the standards specified in subdivision (a). The regulations adopted by the office shall ensure that it does not substitute its judgment for that of the rulemaking agency as expressed in the substantive content of adopted regulations.

(d) The office shall return any regulation subject to this chapter to the adopting agency if any of the following occur:

(1) The adopting agency has not prepared the estimate required by paragraph (6) of subdivision (a) of Section 11346.5 and has not included the data used and calculations made and the summary report of the estimate in the file of the rulemaking.

(2) The agency has not complied with Section 11346.3.

(3) The adopting agency has prepared the estimate required by paragraph (6) of subdivision (a) of Section 11346.5, the estimate indicates that the regulation will result in a cost to local agencies or school districts that is required to be reimbursed under Part 7 (commencing with Section 17500) of Division 4, and the adopting agency fails to do any of the following:

(A) Cite an item in the Budget Act for the fiscal year in which the regulation will go into effect as the source from which the Controller may pay the claims of local agencies or school districts.

(B) Cite an accompanying bill appropriating funds as the source from which the Controller may pay the claims of local agencies or school districts.

(C) Attach a letter or other documentation from the Department of Finance which states that the Department of Finance has approved a request by the agency that funds be included in the Budget Bill for the next following fiscal year to reimburse local agencies or school districts for the costs mandated by the regulation.

(D) Attach a letter or other documentation from the Department of Finance which states that the Department of Finance has authorized the augmentation of the amount available for expenditure under the agency's appropriation in the Budget Act which is for reimbursement pursuant to Part 7 (commencing with Section 17500) of Division 4 to local agencies or school districts from the unencumbered balances of other appropriations in the Budget Act and that this augmentation is sufficient to reimburse local agencies or school districts for their costs mandated by the regulation.

*(4) The adopting agency has not provided the small business economic impact statement required pursuant to paragraph (10) of subdivision (a) of Section 11346.5, or if the small business economic impact statement does not contain the elements required pursuant to Section 11346.3.*

*(5) The adopting agency has not provided the estimate or description required pursuant to paragraph (9) of subdivision (a) of Section 11346.5.*

(e) The office shall notify the Department of Finance of all regulations returned pursuant to subdivision (d).

(f) The office shall return a rulemaking file to the submitting agency if the file does not comply with subdivisions (a) and (b) of Section 11347.3. Within three state working days of the receipt of a rulemaking file, the office shall notify the submitting agency of any deficiency identified. If no notice of deficiency is mailed to the adopting agency within that time, a rulemaking file shall be deemed submitted as of the date of its original receipt by the office. A rulemaking file shall not be deemed submitted until each deficiency identified under this subdivision has been corrected.

This subdivision shall not limit the review of regulations under this article, including, but not limited to, the conformity of rulemaking files to subdivisions (a) and (b) of Section 11347.3.

SEC. 11. Section 11350 of the Government Code is amended to read:

11350. (a) Any interested person, *including, but not limited to, a small business or an organization or trade association that represents small businesses and whose members are affected by the regulation,* may obtain a judicial declaration as to the validity of any regulation or order of repeal by bringing an action for declaratory relief in the superior court in accordance with the Code

of Civil Procedure. The right to judicial determination shall not be affected by the failure either to petition or to seek reconsideration of a petition filed pursuant to Section 11340.7 before the agency promulgating the regulation or order of repeal. The regulation or order of repeal may be declared to be invalid for a substantial failure to comply with this chapter, or, in the case of an emergency regulation or order of repeal, upon the ground that the facts recited in the finding of emergency prepared pursuant to subdivision (b) of Section 11346.1 do not constitute an emergency within the provisions of Section 11346.1.

(b) In addition to any other ground that may exist, a regulation or order of repeal may be declared invalid if either of the following exists:

(1) The agency's determination that the regulation is reasonably necessary to effectuate the purpose of the statute, court decision, or other provision of law that is being implemented, interpreted, or made specific by the regulation is not supported by substantial evidence.

(2) The agency declaration pursuant to paragraph (8) of subdivision (a) of Section 11346.5 is in conflict with substantial evidence in the record.

(c) The approval of a regulation or order of repeal by the office or the Governor's overruling of a decision of the office disapproving a regulation or order of repeal shall not be considered by a court in any action for declaratory relief brought with respect to a regulation or order of repeal.

(d) In a proceeding under this section, a court may only consider the following evidence:

(1) The rulemaking file prepared under Section 11347.3.

(2) The finding of emergency prepared pursuant to subdivision (b) of Section 11346.1.

(3) An item that is required to be included in the rulemaking file but is not included in the rulemaking file, for the sole purpose of proving its omission.

(4) Any evidence relevant to whether a regulation used by an agency is required to be adopted under this chapter.

SEC. 12. Section 11350.3 of the Government Code is amended to read:

11350.3. Any interested person, *including, but not limited to, a small business or an organization or trade association that*

*represents small businesses and whose members are affected by the regulation,* may obtain a judicial declaration as to the validity of a regulation or order of repeal which the office has disapproved pursuant to Section ~~11349.3,~~ *11349.3* or 11349.6, or of a regulation that has been ordered repealed pursuant to Section 11349.7 by bringing an action for declaratory relief in the superior court in accordance with the Code of Civil Procedure. The court may declare the regulation valid if it determines that the regulation meets the standards set forth in Section 11349.1 and that the agency has complied with this chapter. If the court so determines, it may order the office to immediately file the regulation with the Secretary of State.

SEC. 13. Section 11357 of the Government Code is amended to read:

11357. (a) The Department of Finance shall adopt and update, as necessary, instructions for inclusion in the State Administrative Manual prescribing the methods that any agency subject to this chapter shall use in making the ~~determination~~ *determinations and estimates* required by ~~paragraph~~ *paragraphs* (5) ~~and the estimate required by paragraph (6)~~ *to (10), inclusive,* of subdivision (a) of Section 11346.5. The instructions shall include, but need not be limited to, the following:

(1) Guidelines governing the types of data or assumptions, or both, that may be used, and the methods that shall be used, to calculate the estimate of the cost or savings to public agencies *or small businesses* mandated by the regulation for which the estimate is being prepared.

(2) The types of direct or indirect costs and savings that should be taken into account in preparing the estimate.

(3) The criteria that shall be used in determining whether the cost of a regulation must be funded by the state pursuant to Section 6 of Article XIII B of the California Constitution and Part 7 (commencing with Section 17500) of Division 4.

*(4) The criteria that shall be used in determining whether the cost of a regulation will have a significant, statewide adverse economic impact on businesses.*

*(5) The criteria that shall be used in determining what costs, if any, may be incurred by an individual or business that complies with a proposed regulation.*

~~(4)~~

1 *(6)* The format the agency preparing the estimate shall follow
2 in summarizing and reporting its estimate of the cost or savings
3 to state and local agencies, school districts, and in federal funding
4 of state programs that will result from the regulation.
5 (b) Any action by the Department of Finance to adopt and
6 update, as necessary, instructions to any state or local agency for
7 the preparation, development, or administration of the state budget,
8 including any instructions included in the State Administrative
9 Manual, shall be exempt from this chapter.
10 (c) The Department of Finance may review any estimate
11 prepared pursuant to this section for content including, but not
12 limited to, the data and assumptions used in its preparation.

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