

SB 366 (Calderon and Pavley) – Regulations: Agency Review

Introduced February 15, 2011

Existing law, 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.

This bill would, until January 1, 2013, require each state agency, defined, to mean every state office, officer, department, division, bureau, board, and commission, except the California State University within 180 days of the effective date of the bill, to undertake specified actions in regards to the regulations that have been adopted by the state agency, including, among others, identifying any regulations that are duplicative, overlapping, inconsistent, or out of date, and adopting, amending, or repealing regulations to reconcile or eliminate any duplication, overlap, inconsistency, or out-of-date provisions, after conducting a publicly noticed hearing, as specified, and using procedures for adopting emergency regulations.

This bill would also require each of the overseeing agencies, until January 1, 2013, and within 60 days of the effective date of the bill, to notify any state department, board, or commission within that state agency of any regulations adopted by those entities that the agency has determined may be duplicative, overlapping, or inconsistent with a regulation adopted by another state department, board, or commission within the agency. The bill would also require a state department, board, or commission within an agency to notify that state agency of revisions to regulations that the entity proposes to make at least 60 days prior to the required noticed public hearing and adoption of the emergency regulation, as specified.

Other provisions included in this bill:

Existing law sets forth generally the procedures for the review and approval of permits for development projects in the state. This bill would, until January 1, 2013, establish the Streamlined Permit Review Team in state government, consisting of the Secretary of Business, Transportation and Housing, the Secretary for Environmental Protection, and the Secretary of the Natural Resources Agency. The bill would require the team, upon the request of a permit applicant, to convene permitting agencies, as defined, to perform various activities in making the application process more efficient. The bill would require the permitting agencies to determine the completeness of an application complete and act upon the application within specified time periods, subject to certain conditions. This bill would require the team, on or before March 1, 2014, to submit a report to the Governor and to the Legislature with prescribed information relating to the permitting activities of the team.

The California Constitution authorizes the Governor to declare a fiscal emergency and to call the Legislature into special session for that purpose. Governor Schwarzenegger issued a proclamation declaring a fiscal emergency, and calling a special session for

this purpose, on December 6, 2010. Governor Brown issued a proclamation on January 20, 2011, declaring and reaffirming that a fiscal emergency exists and stating that his proclamation supersedes the earlier proclamation for purposes of that constitutional provision.

This bill would state that it addresses the fiscal emergency declared and reaffirmed by the Governor by proclamation issued on January 20, 2011, pursuant to the California Constitution.

Introduced by Senators Calderon and Pavley

February 15, 2011

An act to add and repeal Article 5.5 (commencing with Section 65958) of Chapter 4.5 of Division 1 of Title 1 of, and to add and repeal Chapter 3.6 (commencing with Section 11366) of Part 1 of Division 3 of Title 2 of, the Government Code, relating to state government, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

SB 366, as introduced, Calderon. Regulations: agency review.

(1) Existing law, 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. Existing law creates the State and Consumer Services; Business, Transportation and Housing; California Emergency Management; California Environmental Protection; California Health and Human Services; Labor and Workforce Development; Natural Resources; and Youth and Adult Correctional Agencies in state government with various duties to oversee the actions of state departments that are within those agencies.

This bill would, until January 1, 2013, require each state agency, defined, to mean every state office, officer, department, division, bureau, board, and commission, except the California State University within 180 days of the effective date of the bill, to undertake specified actions in regards to the regulations that have been adopted by the state agency, including, among others, identifying any regulations that are duplicative, overlapping, inconsistent, or out of date, and adopting, amending, or repealing regulations to reconcile or eliminate any duplication, overlap, inconsistency, or out-of-date provisions, after conducting a publicly

noticed hearing, as specified, and using procedures for adopting emergency regulations.

The bill would also require each of the overseeing agencies listed above, until January 1, 2013, and within 60 days of the effective date of the bill, to notify any state department, board, or commission within that state agency of any regulations adopted by those entities that the agency has determined may be duplicative, overlapping, or inconsistent with a regulation adopted by another state department, board, or commission within the agency. The bill would also require a state department, board, or commission within an agency to notify that state agency of revisions to regulations that the entity proposes to make at least 60 days prior to the required noticed public hearing and adoption of the emergency regulation, as specified.

(2) Existing law sets forth generally the procedures for the review and approval of permits for development projects in the state.

This bill would, until January 1, 2013, establish the Streamlined Permit Review Team in state government, consisting of the Secretary of Business, Transportation and Housing, the Secretary for Environmental Protection, and the Secretary of the Natural Resources Agency. The bill would require the team, upon the request of a permit applicant, to convene permitting agencies, as defined, to perform various activities in making the application process more efficient. The bill would require the permitting agencies to determine the completeness of an application complete and act upon the application within specified time periods, subject to certain conditions. This bill would require the team, on or before March 1, 2014, to submit a report to the Governor and to the Legislature with prescribed information relating to the permitting activities of the team.

The California Constitution authorizes the Governor to declare a fiscal emergency and to call the Legislature into special session for that purpose. Governor Schwarzenegger issued a proclamation declaring a fiscal emergency, and calling a special session for this purpose, on December 6, 2010. Governor Brown issued a proclamation on January 20, 2011, declaring and reaffirming that a fiscal emergency exists and stating that his proclamation supersedes the earlier proclamation for purposes of that constitutional provision.

This bill would state that it addresses the fiscal emergency declared and reaffirmed by the Governor by proclamation issued on January 20, 2011, pursuant to the California Constitution.

This bill would declare that it is to take effect immediately as an urgency statute.

Vote: $\frac{2}{3}$. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

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

1 SECTION 1. Chapter 3.6 (commencing with Section 11366)
2 is added to Part 1 of Division 3 of Title 2 of the Government Code,
3 to read:

4
5 CHAPTER 3.6. REGULATORY REFORM

6
7 Article 1. Findings and Declarations

8
9 11366. The Legislature finds and declares all of the following:

10 (a) The Administrative Procedure Act (Chapter 3.5 (commencing
11 with Section 11340)) requires agencies and the Office of
12 Administrative Law to review regulations to ensure their
13 consistency with law and to consider impacts on the state's
14 economy and businesses, including small businesses.

15 (b) However, the act does not require agencies to individually
16 review their regulations to identify overlapping, inconsistent,
17 duplicative, or out-of-date regulations that may exist.

18 (c) At a time when the state's economy is struggling,
19 unemployment is at historic levels, and state government is in
20 historic fiscal distress, state agencies should identify, review
21 publicly, and eliminate overlapping, inconsistent, duplicative, or
22 out-of-date regulations, both to ensure they more efficiently
23 implement and enforce laws and to reduce unnecessary and
24 outdated rules and regulations.

25
26 Article 2. Definitions

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28 11366.1. For the purpose of this chapter, the following
29 definitions shall apply:

30 (a) "State agency" means a state agency, as defined in Section
31 11000, except those state agencies or activities described in Section
32 11340.9.

1 (b) "Regulation" has the same meaning as provided in Section
2 11342.600.

3
4 Article 3. State Agency Duties
5

6 11366.2. Within 180 days of the effective date of this chapter,
7 each state agency shall do all of the following:

8 (a) Review all provisions of the California Code of Regulations
9 applicable to, or adopted by, that agency.

10 (b) Identify any regulations that are duplicative, overlapping,
11 inconsistent, or out of date.

12 (c) Adopt, amend, or repeal regulations to reconcile or eliminate
13 any duplication, overlap, inconsistencies, or out of date provisions.

14 (d) Hold at least one noticed public hearing, which shall also
15 be noticed on the Internet Web site of the agency, for the purposes
16 of accepting public comment on proposed revisions to its
17 regulations.

18 (e) Notify the appropriate policy and fiscal committees of each
19 house of the Legislature of the revisions to regulations that the
20 state agency proposes to make at least 60 days prior to a noticed
21 public hearing pursuant to subdivision (d) and at least 60 days
22 prior to the proposed adoption, amendment, or repeal of the
23 regulations pursuant to subdivision (f), for the purpose of allowing
24 those committees to review, and hold hearings on, the proposed
25 revisions to the regulations.

26 (f) Adopt as emergency regulations, consistent with Section
27 11346.1, those changes, as provided for in subdivision (c), to a
28 regulation identified by the agency as duplicative, overlapping,
29 inconsistent, or out of date.

30 (g) Report to the Governor and the Legislature on its compliance
31 with this chapter, including the number and content of regulations
32 it identifies as duplicative, overlapping, inconsistent, or out of
33 date, and the actions by the agency to address those regulations.

34 11366.3. (a) Within 60 days of the effective date of this
35 chapter, each agency included in Section 12800 shall notify a
36 department, board, or commission within that agency of any
37 existing regulations adopted by that department, board, or
38 commission that the agency has determined may be duplicative,
39 overlapping, or inconsistent with a regulation adopted by another
40 department, board, or commission within that agency.

1 (b) A department, board, or commission within an agency shall
2 notify that agency of revisions to regulations that it proposes to
3 make at least 60 days prior to a noticed public hearing pursuant to
4 subdivision (d) of Section 11366.2 and at least 60 days prior to
5 adoption, amendment, or repeal of the regulations pursuant to
6 subdivision (f) of Section 11366.2. The agency shall review the
7 proposed regulations and make recommendations to the
8 department, board, or commission within 30 days of receiving the
9 notification regarding any duplicative, overlapping, or inconsistent
10 regulation of another department, board or commission within the
11 agency.

12 11366.4. A state agency included in Section 12800 shall notify
13 another state agency of any existing regulations adopted by that
14 state agency that may duplicate, overlap, or be inconsistent with
15 the other state agency's regulations.

16 11366.45. Nothing in this chapter shall be construed to weaken
17 or undermine in any manner any human health, public or worker
18 rights, public welfare, environmental, or other protection
19 established under statute. Nothing in this chapter shall be construed
20 to effect the authority or requirement for an agency to adopt
21 regulations as provided by statute. Rather, it is the intent of the
22 Legislature to ensure state agencies focus more efficiently and
23 directly on their duties as prescribed by law so as to use scarce
24 public dollars more efficiently to implement the law, while
25 achieving equal or improved economic and public benefits.

26

27 Article 4. Chapter Repeal

28

29 11366.5. This chapter shall remain in effect only until January
30 1, 2013, and as of that date is repealed, unless a later enacted
31 statute, that is enacted before January 1, 2013, deletes or extends
32 that date.

33 SEC. 2. Article 5.5 (commencing with Section 65958) is added
34 to Chapter 4.5 of Division 1 of Title 7 of the Government Code,
35 to read:

36

37 Article 5.5. Streamlined Permit Review

38

39 65958. The Legislature finds and declares as follows:

1 (a) It is in the state's interest to assist those applicants needing
2 state permits or approvals by providing a consolidated, unified,
3 and coordinated state permit process whereby, upon request by a
4 permit applicant, agencies with lead and ancillary responsibilities
5 can be convened in a single process to coordinate and expedite
6 permit reviews and disposition of those permits.

7 (b) Bipartisan legislation enacted in 2006 applicable to
8 emergency flood protection levee repairs, and in 2009 relating to
9 "shovel ready" transportation projects, ensured that there was
10 coordination and sequencing of approvals to reduce or eliminate
11 delays and to ensure that all key regulatory approvals were made.

12 (c) It is the intent of the Legislature in enacting this article to
13 ensure that state agencies focus more directly on their duties as
14 prescribed by law so as to use scarce public dollars to more
15 efficiently implement the law, while achieving the same or greater
16 economic and public benefits, and to help ensure that state
17 government is working in a coordinated fashion to help get
18 businesses that create jobs a response so that they can proceed
19 with that job creation.

20 65958.2. (a) As used in this article, the term "Permitting
21 agency" means any agency, department, office, board, or
22 commission within the Business, Transportation and Housing
23 Agency, the California Environmental Protection Agency, or the
24 Natural Resources Agency.

25 (b) The definitions contained in Article 2 (commencing with
26 Section 65925) shall also govern this article.

27 65958.5. (a) The Streamlined Permit Review Team is created
28 in state government, consisting of the following officials, one of
29 whom shall be designated chairperson by the Governor:

30 (1) The Secretary of Business, Transportation and Housing.

31 (2) The Secretary for Environmental Protection.

32 (3) The Secretary of the Natural Resources Agency.

33 (b) Upon the request of a permit applicant, the team shall
34 convene, in a duly noticed public hearing, those permitting agencies
35 with jurisdiction over the project in question to coordinate actions
36 on permits, help reduce or eliminate unnecessary inconsistencies,
37 delay, duplication, overlap, or paperwork associated with issuance
38 of multiple permits, and assist in ensuring that permitting agencies
39 and the public have the information necessary to deem permit

1 applications complete and to act upon permits at the earliest
2 feasible date in accordance with the requirements of this chapter.

3 (c) A permitting agency for a project, no later than 30 days after
4 receiving an application for a permit, shall determine the
5 completeness of an application in accordance with the requirements
6 of this chapter or request additional information necessary to
7 determine the completeness of an application. The project applicant
8 shall provide to the permitting agency the requested additional
9 information.

10 (d) (1) A permitting agency for a project shall act on a permit
11 as soon as reasonably possible, but in any case no later than the
12 time permitted in accordance with the requirements of this chapter.

13 (2) If a permitting agency fails to act on a complete permit
14 application for a project as soon as reasonably possibly, but in any
15 case no later than the time permitted in accordance with the
16 requirements of this chapter, the failure to act shall be deemed
17 approval of the permit application for the project in accordance
18 with the requirements of this chapter. However, the permitting
19 agency shall provide public notice when the project is approved
20 pursuant to this paragraph, in the same form and manner as it would
21 provide that notice under existing law.

22 (e) The time limits specified in this section may be extended
23 upon mutual written agreement of the lead agency and a permitting
24 agency.

25 (f) The time limits specified in this section shall not apply if
26 federal statutes, regulations, or delegation agreements establish
27 time schedules that differ from those time limits, and failure to
28 comply with federal time schedules could affect the disposition of
29 the project.

30 (g) Except as otherwise provided by this section, this section
31 does not affect in any manner the requirements, duties, or authority
32 of a permitting agency established by statute.

33 (h) Nothing in this chapter shall be construed to effect the
34 authority or requirement for an agency to adopt regulations as
35 provided by statute.

36 65958.7. (a) Except for the reporting requirement described
37 in subdivision (b), the provisions of this article shall become
38 inoperative on January 1, 2013.

39 (b) On or before March 1, 2014, the Streamlined Permit Review
40 Team shall report to the Governor and to the Legislature on the

1 number and types of development projects for which the process
2 established by this article was used, and the disposition of those
3 development projects.

4 (c) This article shall remain in effect only until March 15, 2014,
5 and as of that date is repealed, unless a later enacted statute, that
6 is enacted before March 15, 2014, deletes or extends that date.

7 SEC. 3. This act addresses the fiscal emergency declared and
8 reaffirmed by the Governor by proclamation on January 20, 2011,
9 pursuant to subdivision (f) of Section 10 of Article IV of the
10 California Constitution.

11 SEC. 4. This act is an urgency statute necessary for the
12 immediate preservation of the public peace, health, or safety within
13 the meaning of Article IV of the Constitution and shall go into
14 immediate effect. The facts constituting the necessity are:

15 In order to more efficiently focus the efforts of state agencies
16 on implementing the law and to reduce or eliminate superfluous
17 or unnecessary regulations that are not authorized by law, in order
18 to allow state agencies to amend or repeal duplicative, overlapping,
19 inconsistent, or out of date regulations from the California Code
20 of Regulations and to streamline the state permit review process
21 for development projects at the earliest possible time, it is necessary
22 that this bill take effect immediately.