

## ***SB 401 (Fuller) – Regulations: Repeal Provisions***

***Introduced February 16, 2011***

This bill specifies that every regulation proposed by a state agency after January 1, 2012, shall include a provision repealing the regulation in 5 years.

Specifically, this bill:

- 1) Requires that every regulation proposed by an agency after January 1, 2012, include a provision repealing the regulation in 5 years.
- 2) Prohibits OAL from approving a proposed regulation unless it contains repeal provisions.
- 3) Authorizes an agency, in the year prior to a regulation's scheduled repeal, to amend the regulation to extend the repeal date after complying with certain public hearing requirements.

The author notes that businesses have left California, contemplated leaving the state, or dismissed ever relocating to California often cite the state's regulatory climate as the primary reason for their decision. Job gains in Texas and Arizona far outpace those of California. The author states that, for years, regulations have been adopted by state agencies with no follow-up review of the new rules to find out whether a rule is achieving its original stated objective and not causing economic harm.

The author believes that the built-in review process would allow a determination as to whether a new rule is necessary and would allow accumulation of at least 4 years' worth of data to develop a thorough cost-benefit analysis of the new regulation.

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**Introduced by Senator Fuller**February 16, 2011

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An act to amend Section 11349.1 of, and to add Sections 11346.15 and 11349.10 to, the Government Code, relating to regulations.

## LEGISLATIVE COUNSEL'S DIGEST

SB 401, as introduced, Fuller. Regulations: repeal provisions.

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 require that every regulation proposed by an agency after January 1, 2012, include a provision repealing the regulation in 5 years. The bill would prohibit the office from approving a proposed regulation unless it contains repeal provisions. The bill would authorize an agency, in the year prior to a regulation's scheduled repeal, to amend the regulation to extend the repeal date, as specified, after complying with certain public hearing requirements.

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 11346.15 is added to the Government  
2 Code, to read:  
3 11346.15. Every regulation proposed by an agency on or after  
4 January 1, 2012, shall include a provision that repeals the regulation  
5 five years after the date that the regulation is approved by the  
6 office. Notwithstanding the requirements of this article, the

1 regulation may be amended to change the repeal date in the manner  
2 provided in Section 11349.95.

3 SEC. 2. Section 11349.1 of the Government Code is amended  
4 to read:

5 11349.1. (a) The office shall review all regulations adopted,  
6 amended, or repealed pursuant to the procedure specified in Article  
7 5 (commencing with Section 11346) and submitted to it for  
8 publication in the California Code of Regulations Supplement and  
9 for transmittal to the Secretary of State and make determinations  
10 using all of the following standards:

- 11 (1) Necessity.
- 12 (2) Authority.
- 13 (3) Clarity.
- 14 (4) Consistency.
- 15 (5) Reference.
- 16 (6) Nonduplication.

17 In reviewing regulations pursuant to this section, the office shall  
18 restrict its review to the regulation and the record of the rulemaking  
19 proceeding. The office shall approve the regulation or order of  
20 repeal if it complies with the standards set forth in this section and  
21 with this chapter.

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

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

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

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

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

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

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

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

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

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

29 (4) *The regulation does not include provisions for the repeal of*  
30 *the regulation, as required by Section 11346.15.*

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

33 (f) The office shall return a rulemaking file to the submitting  
34 agency if the file does not comply with subdivisions (a) and (b)  
35 of Section 11347.3. Within three state working days of the receipt  
36 of a rulemaking file, the office shall notify the submitting agency  
37 of any deficiency identified. If no notice of deficiency is mailed  
38 to the adopting agency within that time, a rulemaking file shall be  
39 deemed submitted as of the date of its original receipt by the office.

1 A rulemaking file shall not be deemed submitted until each  
2 deficiency identified under this subdivision has been corrected.

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

6 SEC. 3. Section 11349.10 is added to the Government Code,  
7 to read:

8 11349.10. (a) An agency may review an existing regulation  
9 that is scheduled for repeal within the next year. If the agency  
10 determines that there is a continued need for the regulation, then  
11 the agency may amend the regulation in a manner that extends the  
12 repeal date of the regulation another five years.

13 (b) The requirements of Article 5 (commencing with Section  
14 11346) and Article 6 (commencing with Section 11349) shall not  
15 apply to a proposed action by an agency to amend a regulation, if  
16 the extension of the repeal date described in subdivision (a) is the  
17 only amendment proposed to the existing regulation. However,  
18 the agency shall not amend a regulation to extend the repeal date  
19 unless and until the agency has conducted a noticed public hearing  
20 that provides for public participation and consideration of public  
21 comments about the continued need for the regulation. The agency  
22 shall submit the amended regulation to the office for purposes of  
23 filing the amended regulation with the Secretary of State.

24 (c) Notwithstanding any other law, a regulation that is not  
25 amended pursuant to this section prior to its repeal date, shall be  
26 repealed on that date and be otherwise inoperative.

27 (d) Nothing in this section shall be construed to prevent an  
28 agency from readopting a regulation that has expired by operation  
29 of its repeal provision, if the agency readopts the regulation in full  
30 compliance with the rulemaking requirements imposed by this  
31 chapter.