

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 not 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.

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.

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

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

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

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

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

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

18 11346. (a) It is the purpose of this chapter to establish basic
19 minimum procedural requirements for the adoption, amendment,
20 or repeal of administrative regulations. Except as provided in
21 Section 11346.1, ~~the provisions of this chapter are applicable~~
22 *applies* to the exercise of any quasi-legislative power conferred
23 by any statute heretofore or hereafter enacted, but nothing in this
24 chapter repeals or diminishes additional requirements imposed by
25 any statute. This chapter shall not be superseded or modified by
26 any subsequent legislation except to the extent that the legislation
27 shall do so expressly.

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

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

39 11346.2. Every agency subject to this chapter shall prepare,
40 submit to the office with the notice of the proposed action as

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

4 11346.2. Every agency subject to this chapter shall prepare,
5 submit to the office with the notice of the proposed action as
6 described in Section 11346.5, and make available to the public
7 upon request, all of the following:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

11 11346.3. (a) ~~State agencies~~ *An agency* proposing to adopt,
12 amend, or repeal any administrative regulation shall assess the
13 potential for adverse economic impact on California business
14 enterprises and individuals, avoiding the imposition of unnecessary
15 or unreasonable regulations or reporting, recordkeeping, or
16 compliance requirements. For purposes of this subdivision,
17 assessing the potential for adverse economic impact shall require
18 agencies, when proposing to adopt, amend, or repeal a regulation,
19 to adhere to the following requirements, to the extent that these
20 requirements do not conflict with other state or federal laws:

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

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

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

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

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

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

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

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

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

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

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

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

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

25 (c) No administrative regulation adopted on or after January 1,
26 1993, that requires a report shall apply to businesses, unless the
27 state agency adopting the regulation makes a finding that it is
28 necessary for the health, safety, or welfare of the people of the
29 state that the regulation apply to businesses.

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

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

35 11346.45. (a) In order to increase public participation and
36 improve the quality of regulations, state agencies proposing to
37 adopt regulations shall, prior to publication of the notice required
38 by Section 11346.5, involve parties who would be subject to the
39 proposed regulations in public discussions regarding those
40 proposed regulations, when the proposed regulations involve

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

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

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

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

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

16 11346.5. (a) The notice of proposed adoption, amendment, or
17 repeal of a regulation shall include the following:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3 (iv) Exemption or partial exemption from the regulatory
4 requirements for businesses.”

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

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

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

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

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

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

1 (11) The finding prescribed by subdivision (c) of Section
2 11346.3, if required.

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

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

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

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

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

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

35 (18) A statement indicating that the full text of a regulation
36 changed pursuant to Section 11346.8 will be available for at least
37 15 days prior to the date on which the agency adopts, amends, or
38 repeals the resulting regulation.

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

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

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

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

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

24 11346.6. (a) (1) An agency that adopts a regulation that
25 requires the use of a new or emerging technology or other
26 equipment in order to achieve the identified purpose of the
27 regulation shall post on its Internet Web site, if available, and in
28 the California Regulatory Notice Register, prior to the effective
29 date of the regulation, that the required technology is commercially
30 available or will be commercially available prior to the effective
31 date of the regulation.

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

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

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

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

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

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

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

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

26 11349.1. (a) The office shall review all regulations adopted,
27 amended, or repealed pursuant to the procedure specified in Article
28 5 (commencing with Section 11346) and submitted to it for
29 publication in the California Code of Regulations Supplement and
30 for transmittal to the Secretary of State and make determinations
31 using all of the following standards:

- 32 (1) Necessity.
- 33 (2) Authority.
- 34 (3) Clarity.
- 35 (4) Consistency.
- 36 (5) Reference.
- 37 (6) Nonduplication.

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

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

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

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

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

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

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

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

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

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

34 (C) Attach a letter or other documentation from the Department
35 of Finance which states that the Department of Finance has
36 approved a request by the agency that funds be included in the
37 Budget Bill for the next following fiscal year to reimburse local
38 agencies or school districts for the costs mandated by the
39 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

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

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

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

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

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

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

29 (1) The rulemaking file prepared under Section 11347.3.

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

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

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

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

39 11350.3. Any interested person, *including, but not limited to,*
40 *a small business or an organization or trade association that*

1 *represents small businesses and whose members are affected by*
2 *the regulation*, may obtain a judicial declaration as to the validity
3 of a regulation or order of repeal which the office has disapproved
4 pursuant to Section ~~11349.2~~, 11349.3 or 11349.6, or of a regulation
5 that has been ordered repealed pursuant to Section 11349.7 by
6 bringing an action for declaratory relief in the superior court in
7 accordance with the Code of Civil Procedure. The court may
8 declare the regulation valid if it determines that the regulation
9 meets the standards set forth in Section 11349.1 and that the agency
10 has complied with this chapter. If the court so determines, it may
11 order the office to immediately file the regulation with the
12 Secretary of State.

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

15 11357. (a) The Department of Finance shall adopt and update,
16 as necessary, instructions for inclusion in the State Administrative
17 Manual prescribing the methods that any agency subject to this
18 chapter shall use in making the ~~determination~~ *determinations and*
19 *estimates* required by ~~paragraph paragraphs (5) and the estimate~~
20 ~~required by paragraph (6) to (10), inclusive~~, of subdivision (a) of
21 Section 11346.5. The instructions shall include, but need not be
22 limited to, the following:

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

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

30 (3) The criteria that shall be used in determining whether the
31 cost of a regulation must be funded by the state pursuant to Section
32 6 of Article XIII B of the California Constitution and Part 7
33 (commencing with Section 17500) of Division 4.

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

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

40 (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.