


MEMORANDUM

DATE	May 4, 2017
TO	Policy and Advocacy Committee
FROM	 Konnor Leitzell Student Assistant
SUBJECT	Agenda Item #6(a)(2) – SB 181 (Berryhill) Administrative Procedure Act: Repeal of Regulations

Background:

SB 181 (Berryhill) would require every state agency to repeal two existing regulations before proposing the adoption of new regulations. Specifically, this bill would require each agency to identify two existing regulations and create a proposal for the repeal of those regulations, and make the promulgation of new regulations contingent upon repealing the regulations identified for repeal.

Staff spoke with author's office and was told the bill was voted down in the Senate Committee on Governmental Organization and that the author is not pursuing the bill any further.

Location: Senate Committee on Governmental Organization

Status: Re-referred to Assembly Committee on Appropriations

Votes: 4/25/2017 Senate Committee on Governmental Organization (13-0-0)
Reconsideration Granted

4/25/2017 Senate Committee on Governmental Organization (5-6-2)

Action Requested:

No action is required. This is for informational purposes only.

Attachment A: SB 181 (Berryhill) Staff Analysis

Attachment A: SB 181 (Berryhill) Text

2017 Bill Analysis

Author: Berryhill	Bill Number: SB 181	Related Bills: AB 12 (Cooley), SB 555 (Morrell)
Sponsor:	Version: Amended	
Subject: Administrative Procedure Act: Repeal of Regulations.		

SUMMARY

SB 181 (Berryhill) would require every state agency to repeal two existing regulations before proposing the adoption of new regulations. Specifically, this bill would require each agency to identify two existing regulations and create a proposal for the repeal of those regulations, and make the promulgation of new regulations contingent upon repealing the regulations identified for repeal.

RECOMMENDATION

OPPOSE – SB 181 would diminish the Board of Psychology’s (Board’s) regulatory authority and control over the promulgation of regulations and could potentially restrict the Board’s ability to address new and critical issues within the field of psychology. Additionally, this bill is unnecessary in relation to the Board’s regulations, as the Board does regular comprehensive reviews of its existing regulations to ensure that these regulations are not outdated or duplicative.

REASON FOR THE BILL

According to the author, there is currently “an unwieldy and ever-expanding regulatory world left largely unchecked with maybe only the slightest trimming or manicure. In many instances, this forces businesses and individuals to pay exorbitant costs in compliance or fines for lack of compliance with regulations they may not have even known existed.” The author believes this bill will help streamline and reduce the amount of unnecessary regulations that burden businesses and individuals.

ANALYSIS

Currently, the Administrative Procedure Act dictates the requirements for the adoption, publication, review, and implementation of regulations. The Office of Administrative Law

Other Boards/Departments that may be affected: Board of Behavioral Science	
<input type="checkbox"/> Change in Fee(s) <input type="checkbox"/> Affects Licensing Processes <input type="checkbox"/> Affects Enforcement Processes	
<input type="checkbox"/> Urgency Clause <input type="checkbox"/> Regulations Required <input type="checkbox"/> Legislative Reporting <input type="checkbox"/> New Appointment Required	
Policy & Advocacy Committee Position: <input type="checkbox"/> Support <input type="checkbox"/> Support if Amended <input type="checkbox"/> Oppose <input type="checkbox"/> Oppose Unless Amended <input type="checkbox"/> Neutral <input type="checkbox"/> Watch Date: _____ Vote: _____	Full Board Position: <input type="checkbox"/> Support <input type="checkbox"/> Support if Amended <input type="checkbox"/> Oppose <input type="checkbox"/> Oppose Unless Amended <input type="checkbox"/> Neutral <input type="checkbox"/> Watch Date: _____ Vote: _____

is the state entity that interprets and enforces the provisions of the Administrative Procedure Act and to determine whether state agencies have met these requirements and standards before approving regulations to go into effect. This bill would require each state agency proposing to adopt a new regulation to identify two existing regulation previously adopted by that state agency to be repealed upon the adoption of the new regulation. This bill would also require the state agency to provide a proposal for the repeal of the regulations identified above.

This bill would diminish the Board's regulatory authority and control over the promulgation of regulations and could potentially restrict the Board's ability to address new and critical issues with its licensees. First and foremost, the Board promulgates regulations to protect consumers and ensure the ethical and legal practice of psychology in California. This bill would place artificial restrictions on the Board's authority to promulgate regulations needed to protect the public by address new and critical issues within the practice of psychology by requiring the Board to find two other sections of regulations that it could repeal without sacrificing standards that ensure consumer protection and ethical and legal practice. Additionally, while some state agencies have woefully outdated regulatory sections and provisions, this bill is unnecessary for the Board since it does regular periodic reviews of existing regulatory provisions to ensure that these regulations are not outdated or duplicative. For example, the Board is currently in the middle of a complete review and revision of the statutory and regulatory requirements for licensure as a psychologist. This comprehensive review has taken multiple years to complete and the package will result in the revision and/or repeal of multiple regulatory provisions. Similarly, the Board is also in the process of promulgating regulations relating to the provision of psychological services via telehealth, which is a critical issue within the field of psychology and should not be artificially delayed in order to find two regulatory provisions that can be repealed without sacrificing consumer protections and standards for legal and ethical practice in order to meet the requirements of this bill.

Additionally, there are administrative and technical concerns with the bill. This bill does not specify any criteria for the repeal of regulations or an expedited process for the repeal of identified sections, it is unclear whether this applies to revisions of current regulatory sections or just to the adoption of completely new sections of regulations, and it does not have an exemption for legislatively mandated regulations or emergency regulations that are needed to protect the health and safety of California consumers. These issues would create additional administrative and technical problems with the Board's implementation of the bill if it were enacted.

This bill would diminish the Board's ability to effectively protect consumers and regulate the practice of psychology without accomplishing its goals of streamlining existing regulations.

LEGISLATIVE HISTORY

SB 555 (Morrell, 2017) would require a state agency to review and report on regulations that it adopts or amends on and after January 1, 2018, five years after adoption, as specified. This bill is currently in the Senate Committee on Governmental Organization.

AB 12 (Cooley, 2017) would require each state agency, on or before January 1, 2020, to review, adopt, amend, or repeal any applicable regulations that are duplicative, overlapping, inconsistent, or out of date, and revise those identified regulations, as specified. This bill is currently in the Assembly Committee on Appropriations on the Suspense File.

AB 12 (Cooley, 2015) would have required each state agency, on or before January 1, 2018, to review, adopt, amend, or repeal any applicable regulations that are duplicative, overlapping, inconsistent, or out of date, and revise those identified regulations, as specified. This bill was held in the Senate Committee on Appropriations.

SB 981 (Huff, 2014) would have required each state agency to review each regulation adopted prior to January 1, 2014, and to develop a report to the Legislature containing prescribed information. This bill was held in the Senate Committee on Governmental Organization.

SB 366 (Calderon, 2011) would have required each state agency to review its regulations to identify duplicative, overlapping, inconsistent or outdated provisions and repeal or amend identified regulations. Also, would have created a Streamlined Permit Review Team charged with improving the efficiency of the state permitting process for development projects. This bill was held in the Senate Committee on Governmental Organization.

SB 396 (Huff, 2011) would have required each agency to review each regulation adopted prior to January 1, 2011, and develop a report with prescribed information to be submitted to the Legislature on or before January 1, 2013. This bill was held in the Senate Committee on Environmental Quality.

SB 401 (Fuller, 2011), among other things, would have required every regulation proposed by an agency after January 1, 2012, include a provision repealing the regulation in five years. This bill was held in the Senate Committee on Environmental Quality.

SB 591 (Gaines, 2011) would have enacted the California Smart Regulation Act and required state agencies to reduce the total number of regulations they impose by 33%. This bill was held in the Senate Committee on Governmental Organization.

OTHER STATES' INFORMATION

Not Applicable

PROGRAM BACKGROUND

The Board advances quality psychological services for Californians by ensuring ethical and legal practice and supporting the evolution of the practice. To accomplish this, the Board regulates licensed psychologists, psychological assistants, and registered psychologists.

Currently, the Board completes periodic in depth reviews of current regulation sections, and prior to adopting new regulations on a particular issue, does a thorough review of associated statutes and regulations to ensure all necessary revisions are addressed. The Board promulgates regulations for the purpose of providing consumer protection and ethical and legal practice by psychologists, registered psychologists, and psychological assistants.

FISCAL IMPACT

This bill would unnecessarily complicate and lengthen the regulatory process for Board Staff, potentially resulting in increases to staff workload and therefore costs for promulgating regulatory packages.

ECONOMIC IMPACT

Not Applicable

LEGAL IMPACT

Not Applicable

APPOINTMENTS

Not Applicable

SUPPORT/OPPOSITION

Support: None on file

Opposition: None on file

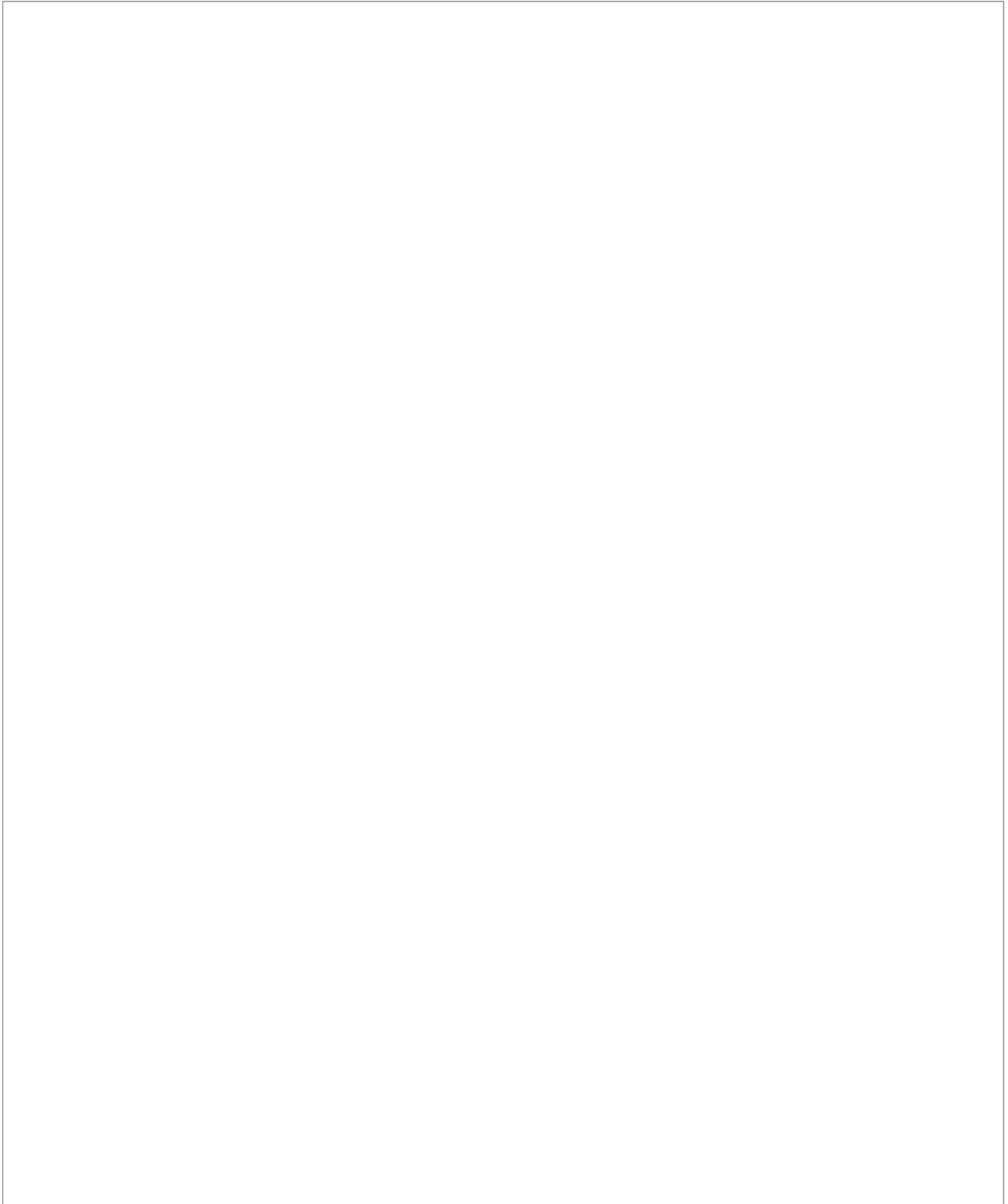
ARGUMENTS

Proponents: Not Applicable

Opponents: Not Applicable



California
LEGISLATIVE INFORMATION



(C) Notwithstanding subparagraph (A) or (B), an agency is not required to artificially construct alternatives or describe unreasonable alternatives.

(5) (A) 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.

(B) (i) If a proposed regulation is a building standard, the initial statement of reasons shall include the estimated cost of compliance, the estimated potential benefits, and the related assumptions used to determine the estimates.

(ii) The model codes adopted pursuant to Section 18928 of the Health and Safety Code shall be exempt from the requirements of this subparagraph. However, if an interested party has made a request in writing to the agency, at least 30 days before the submittal of the initial statement of reasons, to examine a specific section for purposes of estimating the cost of compliance and the potential benefits for that section, and including the related assumptions used to determine the estimates, then the agency shall comply with the requirements of this subparagraph with regard to that requested section.

(6) A department, board, or commission within the Environmental Protection Agency, the Natural 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.

(7) For every new regulation that is proposed to be added, the identification of two existing regulations that shall be repealed upon the adoption of the proposed new regulation, as set forth in Section 11346.35.

(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 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. 2. *Section 11346.35 is added to the Government Code, to read:*

11346.35. *Notwithstanding any other law, a state agency proposing to adopt a new regulation shall identify two existing regulations previously adopted by the state agency that shall be repealed upon the adoption of the new regulation being proposed. The agency shall additionally provide a proposal, pursuant to this chapter, for the repeal of those regulations identified to be repealed pursuant to this section. The adoption of the proposed new regulation shall be contingent upon the repeal of the two existing regulations identified pursuant to this section.*

SEC. 3. *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 the specific benefits anticipated by the proposed adoption, amendment, or repeal of a regulation, including, to the extent applicable, nonmonetary benefits such as the protection of public health and safety, worker safety, or the environment, the prevention of discrimination, the promotion of fairness or social equity, and the increase in openness and transparency in business and government, among other things.

(D) An evaluation of whether the proposed regulation is inconsistent or incompatible with existing state regulations.

(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 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 statement of the results of the economic impact assessment required by subdivision (b) of Section 11346.3 or the standardized regulatory impact analysis if required by subdivision (c) of Section 11346.3, a summary of any comments submitted to the agency pursuant to subdivision (f) of Section 11346.3 and the agency's response to those comments.

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

(12) (A) 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.

(B) 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.

(C) The statement described in subparagraph (A) shall also include the estimated costs of compliance and potential benefits of a building standard, if any, that were included in the initial statement of reasons.

(D) For purposes of model codes adopted pursuant to Section 18928 of the Health and Safety Code, the agency shall comply with the requirements of this paragraph only if an interested party has made a request to the agency to examine a specific section for purposes of estimating the costs of compliance and potential benefits for that section, as described in Section 11346.2.

(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, would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provision of law. For a major regulation, as defined by Section 11342.548, proposed on or after November 1, 2013, the statement shall be based, in part, upon the standardized regulatory impact analysis of the proposed regulation, as required by Section 11346.3, as well as upon the benefits of the proposed regulation identified pursuant to subparagraph (C) of paragraph (3).

(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.

(21) If the proposed regulation is subject to Section 11346.6, a statement that the agency shall provide, upon request, a description of the proposed changes included in the proposed action, in the manner provided by Section 11346.6, to accommodate a person with a visual or other disability for which effective communication is required under state or federal law and that providing the description of proposed changes may require extending the period of public comment for the proposed action.

(22) Pursuant to Section 11346.35, the identification of two existing regulations that shall be repealed upon the adoption of the proposed new regulation.

(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. 4. Section 11347.3 of the Government Code is amended to read:

11347.3. (a) Every agency shall maintain a file of each rulemaking that shall be deemed to be the record for that rulemaking proceeding. Commencing no later than the date that the notice of the proposed action is published in the California Regulatory Notice Register, and during all subsequent periods of time that the file is in the agency's possession, the agency shall make the file available to the public for inspection and copying during regular business hours.

(b) The rulemaking file shall include:

(1) Copies of any petitions received from interested persons proposing the adoption, amendment, or repeal of the regulation, and a copy of any decision provided for by subdivision (d) of Section 11340.7, which grants a petition in whole or in part.

(2) All published notices of proposed adoption, amendment, or repeal of the regulation, and an updated informative digest, the initial statement of reasons, and the final statement of reasons.

(3) The determination, together with the supporting data required by paragraph (5) of subdivision (a) of Section 11346.5.

(4) The determination, together with the supporting data required by paragraph (8) of subdivision (a) of Section 11346.5.

(5) The estimate, together with the supporting data and calculations, required by paragraph (6) of subdivision (a) of Section 11346.5.

(6) All data and other factual information, any studies or reports, and written comments submitted to the agency in connection with the adoption, amendment, or repeal of the regulation.

(7) All data and other factual information, technical, theoretical, and empirical studies or reports, if any, on which the agency is relying in the adoption, amendment, or repeal of a regulation, including any economic impact assessment or standardized regulatory impact analysis as required by Section 11346.3.

(8) A transcript, recording, or minutes of any public hearing connected with the adoption, amendment, or repeal of the regulation.

(9) The date on which the agency made the full text of the proposed regulation available to the public for 15 days prior to the adoption, amendment, or repeal of the regulation, if required to do so by subdivision (c) of Section 11346.8.

(10) The text of regulations as originally proposed and the modified text of regulations, if any, that were made available to the public prior to adoption.

(11) Any other information, statement, report, or data that the agency is required by law to consider or prepare in connection with the adoption, amendment, or repeal of a regulation.

(12) An index or table of contents that identifies each item contained in the rulemaking file. The index or table of contents shall include an affidavit or a declaration under penalty of perjury in the form specified by Section 2015.5 of the Code of Civil Procedure by the agency official who has compiled the rulemaking file, specifying the date upon which the record was closed, and that the file or the copy, if submitted, is complete.

(13) Pursuant to Section 11346.35, the identification of two existing regulations that shall be repealed upon the adoption of the proposed new regulation.

(c) Every agency shall submit to the office with the adopted regulation, the rulemaking file or a complete copy of the rulemaking file.

(d) The rulemaking file shall be made available by the agency to the public, and to the courts in connection with the review of the regulation.

(e) Upon filing a regulation with the Secretary of State pursuant to Section 11349.3, the office shall return the related rulemaking file to the agency, after which no item contained in the file shall be removed, altered, or destroyed or otherwise disposed of. The agency shall maintain the file unless it elects to transmit the file to the State Archives pursuant to subdivision (f).

(f) The agency may transmit the rulemaking file to the State Archives. The file shall include instructions that the Secretary of State shall not remove, alter, or destroy or otherwise dispose of any item contained in the file. Pursuant to Section 12223.5, the Secretary of State may designate a time for the delivery of the rulemaking file to the State Archives in consideration of document processing or storage limitations.

SEC. 5. 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. "Noncompliance" means that the agency failed to complete the economic impact assessment or standardized regulatory impact analysis required by Section 11346.3 or failed to include the assessment or analysis in the file of the rulemaking proceeding as required by Section 11347.3.

(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 proposed regulation conflicts with an existing state regulation and the agency has not identified the manner in which the conflict may be resolved.

(5) The agency did not make the alternatives determination as required by paragraph (4) of subdivision (a) of Section 11346.9.

(6) For the adoption of a new regulation, the agency did not identify two existing regulations to be repealed pursuant to Section 11346.35.

(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.

(g) Notwithstanding any other law, return of the regulation to the adopting agency by the office pursuant to this section is the exclusive remedy for a failure to comply with subdivision (c) of Section 11346.3 or paragraph (10) of subdivision (a) of Section 11346.5.