

**Introduced by Senator Wright**February 25, 2009

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An act to amend Sections 11346, 11346.2, 11346.3, 11346.45, 11346.5, 11346.9, 11350, 11350.3, 11357, 15570, and 65054.3 of, and to repeal and add Section 11342.610 of, the Government Code, and to amend Section 75121 of the Public Resources Code, relating to regulations.

## LEGISLATIVE COUNSEL'S DIGEST

SB 356, 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. An agency is required to involve parties who would be subject to the regulation, before publishing a notice of proposed action, if the proposed regulations involve complex proposals or a large number of proposals.

This bill would require an agency considering such an action to consult with those persons and would delete the condition that the agency involve those parties if the proposal is large or complex.

(2) The act defines the term "small business" with regard to specified business activities and excludes certain types of professional business activities.

This bill would repeal that definition and would instead define a small business with regard to being owned and operated by a person and meeting specified conditions regarding employment or gross receipts.

(3) 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 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 delete the provisions authorizing an agency to not justify alternatives and would, instead, require the description of reasonable alternatives to include the establishment of less stringent, consolidated, or simplified compliance or reporting requirements, the use of performance standards, and exemptions from the regulation, for small businesses. The bill would require an agency that rejects a reasonable alternative that is less burdensome to small businesses to state its reasons for rejecting the alternative.

(4) 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 instead 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.

(5) Under the act, 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, the agency is required to make a declaration of that determination in the notice of proposed action.

This bill would additionally require a state agency adopting, amending, or repealing a regulation to make an initial determination whether the regulation will have an adverse economic impact directly affecting small businesses and to consider specified factors when making this determination. The bill would also require, if a state agency makes an initial determination that the action will not have a significant, statewide adverse economic impact affecting small business, to make a declaration to that effect in the notice of proposed action.

(6) The act requires every agency subject to the act to prepare and submit to the office, with the adopted regulation, a final statement of reasons that is required to include, among other things, an explanation

setting forth the reasons for rejecting any proposed alternatives that would lessen the adverse economic impact on small businesses.

This bill would, instead, require an agency to include, if the agency initially determines the regulation would have a significant, statewide adverse economic impact on small businesses, a final regulatory flexibility analysis containing specified information.

The bill would also make conforming changes to the act.

(7) Existing law provides for the Office of Small Business Advocate within the Office of Planning and Research, with specified duties. Existing law requires the Secretary of Labor and Workforce Development to convene a biennial economic strategy panel to provide recommendations regarding a California economic development strategic plan, with specified membership. Existing law establishes the Strategic Growth Council, with a specified membership and requires the council to take certain actions with regard to coordinating programs of member state agencies to improve air and water quality, improve natural resource protection, increase the availability of affordable housing, improve transportation, meet the goals of the California Global Warming Solutions Act of 2006, encourage sustainable land use planning, and revitalize urban and community centers in a sustainable manner.

This bill would include the Director of the Office of Small Business Advocate as a member of the California economic strategy panel and the Strategic Growth Council.

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. The Legislature finds and declares all of the
- 2 following:
- 3 (a) A vibrant and growing small business sector is critical to
- 4 creating jobs in a dynamic economy.
- 5 (b) Small businesses bear a disproportionate share of regulatory
- 6 costs and burdens.
- 7 (c) The fundamental changes that are needed in the regulatory
- 8 and enforcement culture of state agencies to make them more
- 9 responsive to small business can be made without compromising
- 10 the statutory missions of these agencies.
- 11 (d) When adopting regulations to protect the health, safety, and
- 12 economic welfare of California, state agencies should seek to

1 achieve statutory goals as effectively and efficiently as possible  
2 without imposing unnecessary burdens on employers.

3 (e) Uniform regulatory and reporting requirements can impose  
4 unnecessary and disproportionately burdensome demands including  
5 legal, accounting, and consulting costs upon small businesses with  
6 limited resources.

7 (f) The failure to recognize differences in the scale and resources  
8 of regulated businesses can adversely affect competition in the  
9 marketplace, discourage innovation, and restrict improvements in  
10 productivity.

11 (g) Unnecessary regulations create entry barriers in many  
12 industries and discourage potential entrepreneurs from introducing  
13 beneficial products and processes.

14 (h) The practice of treating all regulated businesses as equivalent  
15 may lead to inefficient use of regulatory agency resources,  
16 enforcement problems, and, in some cases, to actions inconsistent  
17 with the intent of state laws to protect public health, safety, and  
18 the environment, and to promote economic welfare.

19 (i) Alternative regulatory approaches that do not conflict with  
20 the stated objective of applicable statutes must be explored to  
21 minimize significant economic impact of regulations on small  
22 businesses.

23 (j) The process by which state regulations are developed and  
24 adopted should be reformed to require agencies to solicit the ideas  
25 and comments of small businesses, and to examine the impact of  
26 proposed rules on those businesses.

27 SEC. 2. Section 11342.610 of the Government Code is  
28 repealed.

29 ~~11342.610. (a) “Small business” means a business activity in~~  
30 ~~agriculture, general construction, special trade construction, retail~~  
31 ~~trade, wholesale trade, services, transportation and warehousing,~~  
32 ~~manufacturing, generation and transmission of electric power, or~~  
33 ~~a health care facility, unless excluded in subdivision (b), that is~~  
34 ~~both of the following:~~

35 ~~(1) Independently owned and operated.~~

36 ~~(2) Not dominant in its field of operation.~~

37 ~~(b) “Small business” does not include the following professional~~  
38 ~~and business activities:~~

39 ~~(1) A financial institution including a bank, a trust, a savings~~  
40 ~~and loan association, a thrift institution, a consumer finance~~

1 ~~company, a commercial finance company, an industrial finance~~  
2 ~~company, a credit union, a mortgage and investment banker, a~~  
3 ~~securities broker-dealer, or an investment adviser.~~

4 ~~(2) An insurance company, either stock or mutual.~~

5 ~~(3) A mineral, oil, or gas broker.~~

6 ~~(4) A subdivider or developer.~~

7 ~~(5) A landscape architect, an architect, or a building designer.~~

8 ~~(6) An entity organized as a nonprofit institution.~~

9 ~~(7) An entertainment activity or production, including a motion~~  
10 ~~picture, a stage performance, a television or radio station, or a~~  
11 ~~production company.~~

12 ~~(8) A utility, a water company, or a power transmission company~~  
13 ~~generating and transmitting more than 4.5 million kilowatt hours~~  
14 ~~annually.~~

15 ~~(9) A petroleum producer, a natural gas producer, a refiner, or~~  
16 ~~a pipeline.~~

17 ~~(10) A manufacturing enterprise exceeding 250 employees.~~

18 ~~(11) A health care facility exceeding 150 beds or one million~~  
19 ~~five hundred thousand dollars (\$1,500,000) in annual gross receipts.~~

20 ~~(c) “Small business” does not include the following business~~  
21 ~~activities:~~

22 ~~(1) Agriculture, where the annual gross receipts exceed one~~  
23 ~~million dollars (\$1,000,000).~~

24 ~~(2) General construction, where the annual gross receipts exceed~~  
25 ~~nine million five hundred thousand dollars (\$9,500,000).~~

26 ~~(3) Special trade construction, where the annual gross receipts~~  
27 ~~exceed five million dollars (\$5,000,000).~~

28 ~~(4) Retail trade, where the annual gross receipts exceed two~~  
29 ~~million dollars (\$2,000,000).~~

30 ~~(5) Wholesale trade, where the annual gross receipts exceed~~  
31 ~~nine million five hundred thousand dollars (\$9,500,000).~~

32 ~~(6) Services, where the annual gross receipts exceed two million~~  
33 ~~dollars (\$2,000,000).~~

34 ~~(7) Transportation and warehousing, where the annual gross~~  
35 ~~receipts exceed one million five hundred thousand dollars~~  
36 ~~(\$1,500,000).~~

37 SEC. 3. Section 11342.610 is added to the Government Code,  
38 to read:

39 11342.610. “Small business” means an entity, including its  
40 affiliates, that meets both of the following requirements:

1 (a) Is owned and operated by a person, as defined in Section  
2 17007 of the Revenue and Taxation Code.

3 (b) Meets one of the following conditions:

4 (1) Employs fewer than 100 full-time employees.

5 (2) Has average annual gross receipts of less than ten million  
6 dollars (\$10,000,000) over the previous three years.

7 SEC. 4. Section 11346 of the Government Code is amended  
8 to read:

9 11346. (a) It is the purpose of this chapter to establish basic  
10 minimum procedural requirements for the adoption, amendment,  
11 or repeal of administrative regulations. Except as provided in  
12 Section 11346.1, ~~the provisions of this chapter are applicable~~  
13 *applies* to the exercise of any quasi-legislative power conferred  
14 by any statute heretofore or hereafter enacted, but nothing in this  
15 chapter repeals or diminishes additional requirements imposed by  
16 any statute. This chapter shall not be superseded or modified by  
17 any subsequent legislation except to the extent that the legislation  
18 shall do so expressly.

19 (b) An agency that is considering adopting, amending, or  
20 repealing a regulation ~~may~~ *shall* consult with interested persons  
21 before initiating regulatory action pursuant to this article.

22 SEC. 5. Section 11346.2 of the Government Code is amended  
23 to read:

24 11346.2. Every agency subject to this chapter shall prepare,  
25 submit to the office with the notice of the proposed action as  
26 described in Section 11346.5, and make available to the public  
27 upon request, all of the following:

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

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

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

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

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

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

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

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

25 (B) A description of reasonable alternatives to the regulation  
26 that would lessen any adverse impact on small business ~~and the~~  
27 ~~agency's reasons for rejecting those alternatives,~~ *including, but*  
28 *not limited to, all of the following:*

29 (i) *The establishment of less stringent compliance or reporting*  
30 *requirements for small businesses.*

31 (ii) *The establishment of less stringent schedules or deadlines*  
32 *for compliance or reporting requirements for small businesses.*

33 (iii) *The consolidation or simplification of compliance or*  
34 *reporting requirements for small businesses.*

35 (iv) *The use of performance standards for small businesses,*  
36 *instead of design or prescriptive standards.*

37 (v) *The exemption of small businesses from all or any part of*  
38 *the requirements contained in the proposed regulation.*

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

1 ~~alternatives, or justify why it has not described alternatives.~~*If an*  
2 *agency rejects a reasonable alternative pursuant to subparagraph*  
3 *(B) that is less burdensome to small businesses, the agency shall*  
4 *state its reasons for rejecting the alternative.*

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

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

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

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

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

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

38 11346.3. (a) ~~State agencies~~*An agency proposing to adopt,*  
39 *amend, or repeal any administrative regulation shall*~~assess~~ *submit*  
40 *an economic impact statement that assesses the potential for*

1 adverse economic impact on California business enterprises and  
2 individuals, avoiding the imposition of unnecessary or unreasonable  
3 regulations or reporting, recordkeeping, or compliance  
4 requirements. For purposes of this subdivision, assessing the  
5 potential for adverse economic impact shall require agencies, when  
6 proposing to adopt, amend, or repeal a regulation, to adhere to the  
7 following requirements, to the extent that these requirements do  
8 not conflict with other state or federal laws:

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

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

20 ~~It is not the intent of this section to impose additional criteria on~~  
21 ~~agencies, above that which exists in current law, in assessing~~  
22 ~~adverse economic impact on California business enterprises, but~~  
23 ~~only to assure that the assessment is made early in the process of~~  
24 ~~initiation and development of a proposed adoption, amendment,~~  
25 ~~or repeal of a regulation.~~

26 (3) *An agency, before submitting a proposal to adopt, amend,*  
27 *or repeal a regulation to the office, shall consider the proposal's*  
28 *impact on small business by preparing a small business economic*  
29 *impact statement that considers the industries affected, including*  
30 *the ability of California small businesses to compete with*  
31 *businesses in other states. For purposes of evaluating the impact*  
32 *of the proposal on the ability of California small businesses to*  
33 *compete with businesses in other states, an agency shall consider,*  
34 *but not be limited to, information supplied by interested parties.*  
35 *The small business economic impact statement shall include all*  
36 *of the following:*

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

39 (B) *The projected reporting, recordkeeping, and other*  
40 *administrative costs required for compliance with the proposed*

1 *regulation, including the type of professional skills necessary for*  
 2 *preparation of the report or record.*

3 (C) *A statement of the probable effect on impacted small*  
 4 *businesses.*

5 (D) *A description of reasonable alternatives to the regulation*  
 6 *that would lessen any adverse impact on small business, including,*  
 7 *but not limited to:*

8 (i) *The establishment of less stringent compliance or reporting*  
 9 *requirements for small businesses.*

10 (ii) *The establishment of less stringent schedules or deadlines*  
 11 *for compliance or reporting requirements for small businesses.*

12 (iii) *The consolidation or simplification of compliance or*  
 13 *reporting requirements for small businesses.*

14 (iv) *The use of performance standards for small businesses,*  
 15 *instead of design or prescriptive standards.*

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

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

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

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

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

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

31 (c) No administrative regulation adopted on or after January 1,  
 32 1993, that requires a report shall apply to businesses, unless the  
 33 state agency adopting the regulation makes a finding that it is  
 34 necessary for the health, safety, or welfare of the people of the  
 35 state that the regulation apply to businesses.

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

38 11346.45. (a) In order to increase public participation and  
 39 improve the quality of regulations, ~~state~~ agencies proposing to  
 40 adopt regulations shall, prior to publication of the notice required

1 by Section 11346.5, involve parties who would be subject to the  
2 proposed regulations in public discussions regarding those  
3 proposed regulations, ~~when the proposed regulations involve~~  
4 ~~complex proposals or a large number of proposals that cannot~~  
5 ~~easily be reviewed during the comment period.~~

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

10 (c) If the agency does not or cannot comply with ~~the provisions~~  
11 ~~of subdivision (a)~~, it shall state the reasons for noncompliance with  
12 reasonable specificity in the rulemaking record.

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

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

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

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

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

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

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

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

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

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

1 (5) A determination as to whether the regulation imposes a  
2 mandate on local agencies or school districts and, if so, whether  
3 the mandate requires state reimbursement pursuant to Part 7  
4 (commencing with Section 17500) of Division 4.

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

13 For purposes of this paragraph, “cost or savings” means  
14 additional costs or savings, both direct and indirect, that a public  
15 agency *or small business* necessarily incurs in reasonable  
16 compliance with regulations.

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

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

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

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

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

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

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

5 (iv) Exemption or partial exemption from the regulatory  
6 requirements for businesses.”

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

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

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

28 (A) *Identification of the types of small businesses that would be*  
29 *affected.*

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

33 (C) *The following statement: “The (name of agency) has made*  
34 *an initial determination that the (adoption/amendment/repeal) of*  
35 *this regulation may have a significant, statewide adverse economic*  
36 *impact directly affecting small business, including the ability of*  
37 *California businesses to compete with small businesses in other*  
38 *states. The (name of agency) (has/has not) considered proposed*  
39 *alternatives that would lessen any adverse economic impact on*

1 *small business and invites you to submit proposals. Submissions*  
2 *may include the following considerations:*

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

6 *(ii) Consolidation or simplification of compliance and reporting*  
7 *requirements for small businesses.*

8 *(iii) The use of performance standards for small businesses,*  
9 *instead of prescriptive or design standards.*

10 *(iv) Exemption or partial exemption from the regulatory*  
11 *requirements for businesses.*

12 *(10) (A) If a state agency, in adopting, amending, or repealing*  
13 *any administrative regulation, makes an initial determination that*  
14 *the action will not have a significant statewide adverse economic*  
15 *impact affecting small business, including the ability of California*  
16 *small businesses to compete with businesses in other states, it shall*  
17 *make a declaration to that effect in the notice of proposed action.*

18 *(B) In making a declaration pursuant to subparagraph (A), the*  
19 *agency shall provide in the record facts, evidence, documents,*  
20 *testimony, or other evidence upon which the agency relies to*  
21 *support its initial determination.*

22 *(C) An agency's initial determination and declaration pursuant*  
23 *to subparagraph (A) that a proposed adoption, amendment, or*  
24 *repeal of a regulation may have or will not have a significant,*  
25 *adverse impact on small businesses, including the ability of*  
26 *California small businesses to compete with businesses in other*  
27 *states, shall not be grounds for the office to refuse to publish the*  
28 *notice of proposed action.*

29 ~~(9)~~

30 *(11) A description of all cost impacts, known to the agency at*  
31 *the time the notice of proposed action is submitted to the office,*  
32 *that a representative private person or business would necessarily*  
33 *incur in reasonable compliance with the proposed action.*

34 *If no cost impacts are known to the agency, it shall state the*  
35 *following:*

36 *“The agency is not aware of any cost impacts that a*  
37 *representative private person or business would necessarily incur*  
38 *in reasonable compliance with the proposed action.”*

39 ~~(10)~~

1 (12) A statement of the results of the assessment required by  
2 subdivision (b) of Section 11346.3.

3 ~~(11)~~

4 (13) The finding prescribed by subdivision (c) of Section  
5 11346.3, if required.

6 ~~(12)~~

7 (14) A statement that the action would have a significant effect  
8 on housing costs, if a state agency, in adopting, amending, or  
9 repealing any administrative regulation, makes an initial  
10 determination that the action would have that effect. In addition,  
11 the agency officer designated in paragraph ~~(14)~~ (16), shall make  
12 available to the public, upon request, the agency's evaluation, if  
13 any, of the effect of the proposed regulatory action on housing  
14 costs.

15 ~~(13)~~

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

22 ~~(14)~~

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

27 ~~(15)~~

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

33 ~~(16)~~

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

39 ~~(17)~~

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

5 ~~(18)~~

6 (20) A statement indicating that the full text of a regulation  
7 changed pursuant to Section 11346.8 will be available for at least  
8 15 days prior to the date on which the agency adopts, amends, or  
9 repeals the resulting regulation.

10 ~~(19)~~

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

14 ~~(20)~~

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

19 (b) The agency representative designated in paragraph~~(14)~~ (16)  
20 of subdivision (a) shall make available to the public upon request  
21 the express terms of the proposed action. The representative shall  
22 also make available to the public upon request the location of  
23 public records, including reports, documentation, and other  
24 materials, related to the proposed action. If the representative  
25 receives an inquiry regarding the proposed action that the  
26 representative cannot answer, the representative shall refer the  
27 inquiry to another person in the agency for a prompt response.

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

33 SEC. 9. Section 11346.9 of the Government Code is amended  
34 to read:

35 11346.9. Every agency subject to this chapter shall do the  
36 following:

37 (a) Prepare and submit to the office with the adopted regulation  
38 a final statement of reasons that shall include all of the following:

39 (1) An update of the information contained in the initial  
40 statement of reasons. If the update identifies any data or any

1 technical, theoretical or empirical study, report, or similar  
2 document on which the agency is relying in proposing the adoption,  
3 amendment, or repeal of a regulation that was not identified in the  
4 initial statement of reasons, or which was otherwise not identified  
5 or made available for public review prior to the close of the public  
6 comment period, the agency shall comply with Section 11347.1.

7 (2) A determination as to whether adoption, amendment, or  
8 repeal of the regulation imposes a mandate on local agencies or  
9 school districts. If the determination is that adoption, amendment,  
10 or repeal of the regulation would impose a local mandate, the  
11 agency shall state whether the mandate is reimbursable pursuant  
12 to Part 7 (commencing with Section 17500) of Division 4. If the  
13 agency finds that the mandate is not reimbursable, it shall state the  
14 reasons for that finding.

15 (3) A summary of each objection or recommendation made  
16 regarding the specific adoption, amendment, or repeal proposed,  
17 together with an explanation of how the proposed action has been  
18 changed to accommodate each objection or recommendation, or  
19 the reasons for making no change. This requirement applies only  
20 to objections or recommendations specifically directed at the  
21 agency's proposed action or to the procedures followed by the  
22 agency in proposing or adopting the action. The agency may  
23 aggregate and summarize repetitive or irrelevant comments as a  
24 group, and may respond to repetitive comments or summarily  
25 dismiss irrelevant comments as a group. For the purposes of this  
26 paragraph, a comment is "irrelevant" if it is not specifically directed  
27 at the agency's proposed action or to the procedures followed by  
28 the agency in proposing or adopting the action.

29 (4) A determination with supporting information that no  
30 alternative considered by the agency would be more effective in  
31 carrying out the purpose for which the regulation is proposed or  
32 would be as effective and less burdensome to affected private  
33 persons than the adopted regulation.

34 ~~(5) An explanation setting forth the reasons for rejecting any~~  
35 ~~proposed alternatives that would lessen the adverse economic~~  
36 ~~impact on small businesses.~~

37 *(5) If an agency determines the regulation would have a*  
38 *significant, statewide adverse economic impact directly affecting*  
39 *small businesses pursuant to paragraph (9) of subdivision (a) of*

1 *Section 11346.5, a final regulatory flexibility analysis containing*  
2 *all of the following:*

3 *(A) A summary of the significant issues raised by the public*  
4 *comments in response to the initial regulatory flexibility analysis,*  
5 *a summary of the assessment of the agency of those issues, and a*  
6 *statement of changes made in the proposed regulation as a result*  
7 *of those comments.*

8 *(B) A description of, and an estimate of the number of, small*  
9 *businesses to which the proposed regulation will apply, and the*  
10 *projected costs of the regulation to small businesses, or an*  
11 *explanation of why that information is not available.*

12 *(C) A description of the projected reporting, recordkeeping,*  
13 *and other compliance requirements of the proposed regulation,*  
14 *including an estimate of the types of small businesses that will be*  
15 *subject to the proposed regulation and the types of professional*  
16 *skills necessary for preparation of the report or record.*

17 *(D) A description of the steps the agency has taken to minimize*  
18 *the significant economic impact on small businesses, including a*  
19 *statement of the factual, policy, and legal reasons for selecting the*  
20 *alternative adopted in the final regulation and why each of the*  
21 *other significant alternatives was rejected.*

22 (b) Prepare and submit to the office with the adopted regulation  
23 an updated informative digest containing a clear and concise  
24 summary of the immediately preceding laws and regulations, if  
25 any, relating directly to the adopted, amended, or repealed  
26 regulation and the effect of the adopted, amended, or repealed  
27 regulation. The informative digest shall be drafted in a format  
28 similar to the Legislative Counsel's Digest on legislative bills.

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

1 are different from the corresponding provisions of the federal  
2 regulation.

3 (d) If an agency determines that a requirement of this section  
4 can be satisfied by reference to an agency statement made pursuant  
5 to Sections 11346.2 to 11346.5, inclusive, the agency may satisfy  
6 the requirement by incorporating the relevant statement by  
7 reference.

8 SEC. 10. Section 11350 of the Government Code is amended  
9 to read:

10 11350. (a) Any interested person, *including, but not limited*  
11 *to, a small business or an organization or trade association whose*  
12 *members are affected by the regulation,* may obtain a judicial  
13 declaration as to the validity of any regulation or order of repeal  
14 by bringing an action for declaratory relief in the superior court  
15 in accordance with the Code of Civil Procedure. The right to  
16 judicial determination shall not be affected by the failure either to  
17 petition or to seek reconsideration of a petition filed pursuant to  
18 Section 11340.7 before the agency promulgating the regulation or  
19 order of repeal. The regulation or order of repeal may be declared  
20 to be invalid for a substantial failure to comply with this chapter,  
21 or, in the case of an emergency regulation or order of repeal, upon  
22 the ground that the facts recited in the finding of emergency  
23 prepared pursuant to subdivision (b) of Section 11346.1 do not  
24 constitute an emergency within the provisions of Section 11346.1.

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

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

33 (2) The agency declaration pursuant to paragraph (8) *or (10)* of  
34 subdivision (a) of Section 11346.5 is in conflict with substantial  
35 evidence in the record.

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

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

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

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

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

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

11 SEC. 11. Section 11350.3 of the Government Code is amended  
12 to read:

13 11350.3. Any interested person, *including, but not limited to,*  
14 *a small business or an organization or trade association whose*  
15 *members are affected by the regulation,* may obtain a judicial  
16 declaration as to the validity of a regulation or order of repeal  
17 which the office has disapproved pursuant to Section 11349.3, or  
18 11349.6, or of a regulation that has been ordered repealed pursuant  
19 to Section 11349.7 by bringing an action for declaratory relief in  
20 the superior court in accordance with the Code of Civil Procedure.  
21 The court may declare the regulation valid if it determines that the  
22 regulation meets the standards set forth in Section 11349.1 and  
23 that the agency has complied with this chapter. If the court so  
24 determines, it may order the office to immediately file the  
25 regulation with the Secretary of State.

26 SEC. 12. Section 11357 of the Government Code is amended  
27 to read:

28 11357. (a) The Department of Finance shall adopt and update,  
29 as necessary, instructions for inclusion in the State Administrative  
30 Manual prescribing the methods that any agency subject to this  
31 chapter shall use in making the determination required by  
32 paragraph (5) and the estimate required by paragraph (6) of  
33 subdivision (a) of Section 11346.5. The instructions shall include,  
34 but need not be limited to, the following:

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

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

3 (3) The criteria that shall be used in determining whether the  
4 cost of a regulation must be funded by the state pursuant to Section  
5 6 of Article XIII B of the California Constitution and Part 7  
6 (commencing with Section 17500) of Division 4.

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

10 ~~(4)~~

11 (5) The format the agency preparing the estimate shall follow  
12 in summarizing and reporting its estimate of the cost or savings  
13 to state and local agencies, school districts, *small businesses*, and  
14 in federal funding of state programs that will result from the  
15 regulation.

16 (b) Any action by the Department of Finance to adopt and  
17 update, as necessary, instructions to any state or local agency for  
18 the preparation, development, or administration of the state budget,  
19 including any instructions included in the State Administrative  
20 Manual, shall be exempt from this chapter.

21 (c) The Department of Finance may review any estimate  
22 prepared pursuant to this section for content including, but not  
23 limited to, the data and assumptions used in its preparation.

24 SEC. 13. Section 15570 of the Government Code is amended  
25 to read:

26 15570. (a) The secretary shall lead the preparation of a biennial  
27 California Economic Development Strategic Plan. In fulfilling this  
28 duty, the secretary shall do the following:

29 (1) Review the recommendations made by the California  
30 Economic Strategy Panel in their biennial economic development  
31 strategic plan document. This document shall make  
32 recommendations regarding an economic development strategic  
33 plan for the state, covering a two-year time period and containing  
34 a statement of economic goals for the state, a prioritized list  
35 identifying significant issues learned from economic development  
36 strategic plan panel meetings, proposals for legislation, regulations,  
37 and administrative reforms necessary to improve the business  
38 climate and economy of the state, evaluation of the effectiveness  
39 of the state's economic development programs, a list of key  
40 industries in which the state shall focus its economic development

1 efforts, and strategies to foster job growth and economic  
2 development covering all state agencies, offices, boards, and  
3 commissions that have economic development responsibilities.

4 (2) Convene a biennial economic strategy panel to provide  
5 recommendations regarding a California economic development  
6 strategic plan. This panel shall conduct meetings in Sacramento,  
7 all cities of the state with populations over 500,000, and in major  
8 cities of other regions of California as designated by the secretary.  
9 The secretary shall invite businesses, labor unions, organizations  
10 representing the interests of diverse ethnic and gender groups,  
11 local government leaders, academic economists and business  
12 professors, chambers of commerce and other business  
13 organizations, government agencies, and key industries to  
14 contribute to the preparation of the recommended economic  
15 strategy. These meetings shall address at least the following matters  
16 of concern:

17 (A) Strengths and weaknesses of the California economy and  
18 the state's prospects for future economic prosperity.

19 (B) Emerging and declining industries in California and  
20 elsewhere.

21 (C) Effectiveness of California's economic development  
22 programs in creating and retaining jobs and attracting industries.

23 (D) Adequacy of state and local physical and economic  
24 infrastructure.

25 (E) Government impediments to economic development.

26 (F) The development of a system of accountability for use in  
27 the annual state budget process and in the legislative process to  
28 measure the performance of all state policies, programs, and tax  
29 expenditures intended to stimulate the economy. In developing a  
30 system of accountability, the panel shall, by using only existing  
31 resources and without future budget augmentation made for this  
32 purpose, do all of the following:

33 (i) Develop a standard definition of economic development.

34 (ii) Develop, for use in state law, standard measurements of real  
35 per capita income, job growth, new business creation, private sector  
36 investment, minority entrepreneurship, and income inequality.

37 (iii) Survey and evaluate efforts in other states to develop  
38 accountability measures for public investments in economic  
39 development.

1 (iv) Determine whether a return on investment calculation is  
2 feasible for public investments in economic development.

3 (v) Conduct a comparative study of various methodologies for  
4 preparing the economic development sections of a state budget,  
5 including unified functional budget, zero-based budget, and  
6 performance-based budget methodologies.

7 (vi) Study the feasibility of statutory disclosure requirements  
8 on specified publicly funded subsidies to private sector businesses.

9 (vii) Submit a report of its findings and recommendations  
10 regarding this subparagraph to the Legislature no later than one  
11 year after its first meeting after January 1, 2005.

12 (b) The panel shall be composed of the following—~~15~~ 16  
13 members:

14 (1) The Secretary of Labor and Workforce Development, who  
15 shall serve as chair of the panel.

16 (2) Eight persons appointed by the Governor.

17 (3) The Speaker of the Assembly or his or her designee.

18 (4) The President pro Tempore of the Senate or his or her  
19 designee.

20 (5) The Minority Leader of the Assembly or his or her designee.

21 (6) The Minority Leader of the Senate or his or her designee.

22 (7) One person appointed by the Speaker of the Assembly.

23 (8) One person appointed by the Senate Committee on Rules.

24 (9) *The Director of the Office of Small Business Advocate.*

25 (c) The panel shall be representative of state government,  
26 business, labor, finance, and academic institutions, and shall be  
27 broadly reflective of the state's population as to gender, ethnicity,  
28 and geographic residence within California.

29 At least one-half of all the persons on the panel shall be from  
30 the private sector and at least two appointments shall be from  
31 private businesses with less than 50 employees. At least two  
32 appointments shall be from rural areas of the state. Beginning  
33 January 1, 2004, appointments to the panel shall be for four-year  
34 terms, except that the Governor's appointments made pursuant to  
35 paragraph (2) of subdivision (b) shall be made as follows:

36 (1) Four members shall be appointed on January 1, 2004, and  
37 every four years thereafter.

38 (2) Four members shall be appointed on January 1, 2004, for a  
39 two-year term.

1 (3) Upon the expiration of the initial appointments made  
2 pursuant to paragraph (2), four members shall be appointed on  
3 January 1, 2006, and every four years thereafter.

4 (d) The secretary shall deliver copies of the economic strategy  
5 panel's recommended California economic development strategic  
6 plan to every constitutional officer, legislator, member of the  
7 Governor's cabinet, members of the economic development  
8 strategic plan panel, and every state agency, office, board, and  
9 commission having economic development responsibilities.

10 (e) In each succeeding two-year cycle, the secretary shall  
11 undertake this process anew, so as to update the economic strategy  
12 on or before October 31 of each succeeding second year.

13 SEC. 14. Section 65054.3 of the Government Code is amended  
14 to read:

15 65054.3. (a) The Director of the Office of Small Business  
16 Advocate shall be appointed by, and shall serve at the pleasure of,  
17 the Governor.

18 (b) The Governor shall appoint the employees that are needed  
19 to accomplish the purposes of Section 65054, this section, and  
20 Section 65054.4.

21 (c) The duties and functions of the advocate shall include all of  
22 the following:

23 (1) Serve as the principal advocate in the state on behalf of small  
24 businesses, including, but not limited to, advisory participation in  
25 the consideration of all legislation and administrative regulations  
26 that affect small businesses, and advocacy on state policy and  
27 programs related to small businesses on disaster preparedness and  
28 recovery including providing technical assistance.

29 (2) Represent the views and interests of small businesses before  
30 other state agencies whose policies and activities may affect small  
31 business.

32 (3) Enlist the cooperation and assistance of public and private  
33 agencies, businesses, and other organizations in disseminating  
34 information about the programs and services provided by state  
35 government that are of benefit to small businesses, and information  
36 on how small businesses can participate in, or make use of, those  
37 programs and services.

38 (4) Issue a report every two years evaluating the efforts of state  
39 agencies and, where appropriate, specific departments that  
40 significantly regulate small businesses to assist minority and other

1 small business enterprises, and making recommendations that may  
2 be appropriate to assist the development and strengthening of  
3 minority and other small business enterprises.

4 (5) Consult with experts and authorities in the fields of small  
5 business investment, venture capital investment, and commercial  
6 banking and other comparable financial institutions involved in  
7 the financing of business, and with individuals with regulatory,  
8 legal, economic, or financial expertise, including members of the  
9 academic community, and individuals who generally represent the  
10 public interest.

11 (6) Determine the desirability of developing a set of rational,  
12 objective criteria to be used to define small business, and develop  
13 that criteria, if appropriate.

14 (7) Seek the assistance and cooperation of all state agencies and  
15 departments providing services to, or affecting, small business,  
16 including the small business liaison designated pursuant to Section  
17 14846, to ensure coordination of state efforts.

18 (8) Receive and respond to complaints from small businesses  
19 concerning the actions of state agencies and the operative effects  
20 of state laws and regulations adversely affecting those businesses.

21 (9) Counsel small businesses on how to resolve questions and  
22 problems concerning the relationship of small business to state  
23 government.

24 (10) Maintain, publicize, and distribute an annual list of persons  
25 serving as small business ombudsmen throughout state government.

26 (11) Consult with the Department of Transportation in the  
27 development and administration of the Small and Emerging  
28 Contractor Technical Assistance Program established pursuant to  
29 Article 2.6 (commencing with Section 14137) of Chapter 2 of Part  
30 5 of Division 3 of Title 2.

31 *(12) Serve as a member of the California Economic Strategy*  
32 *Panel created pursuant to Section 15570 and the Strategic Growth*  
33 *Council, created pursuant to Section 75121 of the Public Resources*  
34 *Code.*

35 SEC. 15. Section 75121 of the Public Resources Code is  
36 amended to read:

37 75121. (a) The Strategic Growth Council is hereby established  
38 in state government and it shall consist of the Director of State  
39 Planning and Research, the Secretary of the Resources Agency,  
40 the Secretary for Environmental Protection, the Secretary of

1 Business, Transportation and Housing, the Secretary of California  
2 Health and Human Services, *the Director of the Office of Small*  
3 *Business Advocate* and one member of the public to be appointed  
4 by the Governor. The public member shall have a background in  
5 land use planning, local government, resource protection and  
6 management, or community development or revitalization.

7 (b) Staff for the council shall be reflective of the council's  
8 membership.

O