

AMENDED IN ASSEMBLY APRIL 15, 2011

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 338

Introduced by Assembly Member Wagner

February 10, 2011

An act to amend Sections 11343.4 and 11349.3 of, and to add Section 11349.35 to, the Government Code, relating to regulations.

LEGISLATIVE COUNSEL'S DIGEST

AB 338, as amended, Wagner. Regulations: legislative validation: effective date.

The Administrative Procedure Act governs the procedure for the adoption, amendment, or repeal of regulations by state agencies and for the review of those regulatory actions by the Office of Administrative Law. That act requires the office to transmit a copy of a regulation to the Secretary of State for filing if the office approves the regulation or fails to act on it within 30 days. That act provides that a regulation or an order of repeal of a regulation becomes effective on the 30th day after it is filed with the Secretary of State, unless prescribed conditions occur.

This bill would require the office to also submit to the Legislature for review a copy of each *disapproved* regulation ~~that it submits to the Secretary of State where the basis for that disapproval was a determination that the agency exceeded its statutory authority in adopting the regulation.~~ This bill would also require that a regulation become effective on the 90th day after it is filed with the Secretary of State, unless prescribed conditions occur.

~~This bill would require the Legislature to refer a copy of every regulation submitted to it by the office to an appropriate policy~~

committee for review of its consistency with the intent of the Legislature in regard to the statute that authorizes the particular regulation and to offer recommendations as to whether the regulation should be repealed by statute.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

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

1 SECTION 1. Section 11343.4 of the Government Code is
2 amended to read:

3 11343.4. A regulation or an order of repeal required to be filed
4 with the Secretary of State shall become effective on the 90th day
5 after the date of filing unless:

6 (a) Otherwise specifically provided by the statute pursuant to
7 which the regulation or order of repeal was adopted, in which event
8 it becomes effective on the day prescribed by the statute.

9 (b) A later date is prescribed by the state agency in a written
10 instrument filed with, or as part of, the regulation or order of repeal.

11 (c) The agency makes a written request to the office
12 demonstrating good cause for an earlier effective date, in which
13 case the office may prescribe an earlier date.

14 SEC. 2. Section 11349.3 of the Government Code is amended
15 to read:

16 11349.3. (a) ~~(1)~~—The office shall either approve a regulation
17 submitted to it for review and transmit it to the Secretary of State
18 for filing or disapprove it within 30 working days after the
19 regulation has been submitted to the office for review. If the office
20 fails to act within 30 days, the regulation shall be deemed to have
21 been approved and the office shall transmit it to the Secretary of
22 State for filing.

23 ~~(2) The office shall submit a copy of each regulation submitted~~
24 ~~to the Secretary of State pursuant to paragraph (1) to each house~~
25 ~~of the Legislature for review pursuant to Section 11349.35.~~

26 (b) ~~(1)~~ If the office disapproves a regulation, it shall return it
27 to the adopting agency within the 30-day period specified in
28 subdivision (a) accompanied by a notice specifying the reasons
29 for disapproval. Within seven calendar days of the issuance of the
30 notice, the office shall provide the adopting agency with a written
31 decision detailing the reasons for disapproval. No regulation shall

1 be disapproved except for failure to comply with the standards set
2 forth in Section 11349.1 or for failure to comply with this chapter.

3 (2) *The office shall submit a copy of any disapproved regulation*
4 *to the Legislature where the office disapproved the regulation*
5 *because it found that the agency exceeded its statutory authority*
6 *in adopting the regulation.*

7 (c) If an agency determines, on its own initiative, that a
8 regulation submitted pursuant to subdivision (a) should be returned
9 by the office prior to completion of the office's review, it may
10 request the return of the regulation. All requests for the return of
11 a regulation shall be memorialized in writing by the submitting
12 agency no later than one week following the request. Any
13 regulation returned pursuant to this subdivision shall be resubmitted
14 to the office for review within the one-year period specified in
15 subdivision (b) of Section 11346.4 or shall comply with Article 5
16 (commencing with Section 11346) prior to resubmission.

17 (d) The office shall not initiate the return of a regulation pursuant
18 to subdivision (c) as an alternative to disapproval pursuant to
19 subdivision (b).

20 ~~SEC. 3.—Section 11349.35 is added to the Government Code,~~
21 ~~to read:~~

22 ~~11349.35. The Legislature shall refer a copy of every regulation~~
23 ~~submitted to it by the office pursuant to Section 11349.3 to an~~
24 ~~appropriate policy committee in each house of the Legislature for~~
25 ~~review. The committee shall review the regulation for consistency~~
26 ~~with the intent of the Legislature in regard to the statute that~~
27 ~~authorizes the particular regulation and offer recommendations as~~
28 ~~to whether the regulation should be repealed by statute.~~