

AMENDED IN SENATE APRIL 11, 1996

**SENATE BILL**

**No. 1910**

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**Introduced by ~~Senator Johannessen~~ *Senators Johannessen  
and Haynes***

*(Coauthors: Assembly Members Baldwin, Bowen, Harvey,  
House, Margett, and Richter)*

February 23, 1996

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An act to amend Section 1021.5 of the Code of Civil Procedure, and to amend Sections 10248 and 11343.4 of, and to add Section 11350.1 to, the Government Code, relating to administrative regulations.

LEGISLATIVE COUNSEL'S DIGEST

SB 1910, as amended, Johannessen. Administrative regulations.

(1) The Administrative Procedure Act contains provisions relating to the adoption, review, and approval of regulations adopted by state agencies in accordance with statutory mandates. The act provides that a regulation or an order of repeal required to be filed with the Secretary of State shall become effective on the 30th day after the date of filing unless certain conditions exist.

This bill would prohibit enforcement of any regulation filed with the Secretary of State, notwithstanding the above provision, unless the regulation has been made available to the public for 30 days, as specified.

(2) The act also provides that a regulation may be declared to be invalid if certain conditions exist.

This bill would require that a regulation be declared invalid and unenforceable against an individual if the regulation is not made available to the public for 30 days or if an agency fails to mail a written copy of new regulations to an individual who would be affected by the regulation within 10 days after receipt of any written or oral request for these copies by the individual. *It would additionally provide that if a request for a copy of a regulation is made in person, the regulation shall be unenforceable against the requesting person until the person is provided with a copy.* It would also provide that if a regulation is declared invalid because of a substantive failure to comply with the 30-day availability or 10-day mailing requirement, the adopting agency would not be required to reinitiate adoption, review, and approval procedures for that regulation in accordance with the act, but instead the regulation would be deemed valid and enforceable upon the agency's compliance with the availability or mailing requirements.

(3) Existing law requires the Legislative Counsel to make specified information available to the public by means of a public computer network.

This bill would require the Office of Administrative Law to submit both a paper copy and a computer diskette containing the text of new or amended regulations to the Legislative Counsel when new or amended regulations are filed with the Secretary of State, and would require the Legislative Counsel to make available, within a reasonable period of time, by means of the public computer network, all new or amended regulations adopted on or after January 1, 1997, received from the office, and by June 1, 1999, all regulations contained in the California Code of Regulations. *The bill would provide that regulations made available by the Legislative Counsel by means of the public computer network between January 1, 1997, and April 1, 1998, shall constitute an unofficial version of the California Code of Regulations, and would declare the intent of the Legislature with respect to the availability of the official version of the California Code of Regulations in light of the existence of a contract entered into by the Office of Administrative Law.* It would also require that the diskette be prepared in a specified format by the agency proposing to



adopt the new regulations and be submitted by the agency to the office at the same time the agency submits the adopted regulation, the rulemaking file, or a complete copy of the rulemaking file, to the office for review.

(4) Existing law permits a court, upon motion, to award attorneys’ fees to a successful party against one or more opposing parties in any action that has resulted in the enforcement of an important right affecting the public interest if certain conditions are met.

This bill would specify that, for purposes of these provisions, “an important right affecting the public interest” includes, but is not limited to, the right to public availability of regulations.

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 1021.5 of the Code of Civil  
2 Procedure is amended to read:

3 1021.5. (a) Upon motion, a court may award  
4 attorneys’ fees to a successful party against one or more  
5 opposing parties in any action that has resulted in the  
6 enforcement of an important right affecting the public  
7 interest if all of the following conditions are met:

8 (1) A significant benefit, whether pecuniary or  
9 nonpecuniary, has been conferred on the general public  
10 or a large class of persons.

11 (2) The necessity and financial burden of private  
12 enforcement, or of enforcement by one public entity  
13 against another public entity, are such as to make the  
14 award appropriate.

15 (3) These fees should not in the interest of justice be  
16 paid out of the recovery, if any.

17 With respect to actions involving public entities, this  
18 section applies to allowances against, but not in favor of,  
19 public entities, and no claim shall be required to be filed  
20 therefor, unless one or more successful parties and one or  
21 more opposing parties are public entities, in which case  
22 no claim shall be required to be filed therefor under Part



1 3 (commencing with Section 900) of Division 3.6 of Title  
2 1 of the Government Code.

3 (b) Attorneys' fees awarded to a public entity  
4 pursuant to this section shall not be increased or  
5 decreased by a multiplier based upon extrinsic  
6 circumstances, as discussed in *Serrano v. Priest*, 20 Cal. 3d  
7 25, 49.

8 (c) For purposes of this section, "an important right  
9 affecting the public interest" includes, but is not limited  
10 to, the right to public availability of regulations as  
11 required by subdivision (b) of Section 11343.4 of the  
12 Government Code.

13 SEC. 2. Section 10248 of the Government Code is  
14 amended to read:

15 10248. (a) The Legislative Counsel, with the advice  
16 of the Assembly Committee on Rules and the Senate  
17 Committee on Rules, shall make all of the following  
18 information available to the public in electronic form:

19 (1) The legislative calendar, the schedule of legislative  
20 committee hearings, a list of matters pending on the  
21 floors of both houses of the Legislature, and a list of the  
22 committees of the Legislature and their members.

23 (2) The text of each bill introduced in each current  
24 legislative session, including each amended, enrolled, and  
25 chaptered form of each bill.

26 (3) The bill history of each bill introduced and  
27 amended in each current legislative session.

28 (4) The bill status of each bill introduced and amended  
29 in each current legislative session.

30 (5) All bill analyses prepared by legislative  
31 committees in connection with each bill in each current  
32 legislative session.

33 (6) All vote information concerning each bill in each  
34 current legislative session.

35 (7) Any veto message concerning a bill in each current  
36 legislative session.

37 (8) The California Codes.

38 (9) The California Constitution.

39 (10) All statutes enacted on or after January 1, 1993.

40 (11) The California Code of Regulations.



1 (b) The information identified in subdivision (a) shall  
2 be made available to the public by means of access by way  
3 of the largest nonproprietary, nonprofit cooperative  
4 public computer network. The information shall be made  
5 available in one or more formats and by one or more  
6 means in order to provide the greatest feasible access to  
7 the general public in this state. Any person who accesses  
8 the information may access all or any part of the  
9 information. The information may also be made available  
10 by any other means of access that would facilitate public  
11 access to the information. The information that is  
12 maintained in the legislative information system that is  
13 operated and maintained by the Legislative Counsel shall  
14 be made available in the shortest feasible time after the  
15 information is available in the information system. The  
16 information that is not maintained in the information  
17 system shall be made available in the shortest feasible  
18 time after it is available to the Legislative Counsel.

19 (c) Any documentation that describes the electronic  
20 digital formats of the information identified in  
21 subdivision (a) and is available to the public shall be made  
22 available by means of access by way of the computer  
23 network specified in subdivision (b).

24 (d) Personal information concerning a person who  
25 accesses the information may be maintained only for the  
26 purpose of providing service to the person.

27 (e) No fee or other charge may be imposed by the  
28 Legislative Counsel as a condition of accessing the  
29 information that is accessible by way of the computer  
30 network specified in subdivision (b).

31 (f) The electronic public access provided by way of the  
32 computer network specified in subdivision (b) shall be in  
33 addition to other electronic or print distribution of the  
34 information.

35 (g) No action taken pursuant to this section shall be  
36 deemed to alter or relinquish any copyright or other  
37 proprietary interest or entitlement of the State of  
38 California relating to any of the information made  
39 available pursuant to this section.



1 (h) Availability of a regulation by means of the public  
2 computer network is not a condition precedent to  
3 enforceability of the regulation.

4 SEC. 3. Section 11343.4 of the Government Code is  
5 amended to read:

6 11343.4. (a) A regulation or an order of repeal  
7 required to be filed with the Secretary of State shall  
8 become effective on the 30th day after the date of filing  
9 unless:

10 (1) Otherwise specifically provided by the statute  
11 pursuant to which the regulation or order of repeal was  
12 adopted, in which event it becomes effective on the day  
13 prescribed by this statute.

14 (2) It is a regulation adopted under Section 8054 or  
15 3373 of the Financial Code, in which event it shall become  
16 effective upon filing or upon any later date specified by  
17 the state agency in a written instrument filed with, or as  
18 part of, the regulation or order of repeal.

19 (3) A later date is prescribed by the state agency in a  
20 written instrument filed with, or as part of, the regulation  
21 or order of repeal.

22 (b) (1) Notwithstanding subdivision (a), no  
23 regulation filed with the Secretary of State is subject to  
24 enforcement unless the regulation has been made  
25 available to the public for 30 days. For purposes of this  
26 subdivision, a regulation has been made available to the  
27 public if both of the following conditions exist:

28 (A) The agency has developed and implemented  
29 procedures that ensure that written copies of new  
30 regulations are mailed within 10 days after receipt of an  
31 oral or written request.

32 (B) A reasonable number of copies of new regulations  
33 are available at all agency offices open to the public for  
34 distribution to individuals who request the text of new  
35 regulations in person. An agency shall make copies of new  
36 regulations available to the public free of charge or at the  
37 same rate that the agency customarily provides other  
38 written information of similar length to the public.



1 (2) This subdivision shall not apply to emergency  
2 regulations or regulations under the Revenue and  
3 Taxation Code.

4 (c) (1) The office shall submit both a paper copy and  
5 a computer diskette containing the text of new or  
6 amended regulations to the Legislative Counsel when  
7 new or amended regulations are filed with the Secretary  
8 of State pursuant to this section. The diskette shall be  
9 prepared by the agency proposing to adopt the new  
10 regulations and shall be submitted by the agency to the  
11 office at the same time the agency submits the adopted  
12 regulation, the rulemaking file, or a complete copy of the  
13 rulemaking file, to the office for review pursuant to  
14 subdivision (b) of Section 11347.3. If any alteration is  
15 made to the text of the regulation after the rulemaking  
16 file is submitted to the office, the agency proposing to  
17 adopt the new regulation shall enter these changes onto  
18 the diskette and return the diskette to the office within  
19 five days of the date that the regulation was filed with the  
20 Secretary of State.

21 (2) When an agency proposing to amend an existing  
22 regulation submits a diskette to the office in accordance  
23 with paragraph (1), the entire text of the regulation shall  
24 be set out and any new matter shall be underlined and  
25 any matter to be omitted shall be in type bearing a  
26 horizontal line through the center and commonly known  
27 as “strikeout” type.

28 SEC. 4. Section 11350.1 is added to the Government  
29 Code, to read:

30 11350.1. (a) In addition to any other ground that may  
31 exist, a regulation shall be declared invalid and  
32 unenforceable against an individual if either of the  
33 following events occur:

34 (1) The regulation is not made available to the public  
35 pursuant to subdivision (b) of Section 11343.4.

36 (2) An agency fails to mail a written copy of new  
37 regulations to an individual who would be affected by the  
38 regulation within 10 days after receipt of any written or  
39 oral request to do so by that individual pursuant to  
40 subdivision (b) of Section 11343.4.

1 (b) The regulation shall be deemed valid and  
2 enforceable with respect to an individual upon the  
3 agency's compliance with the 30-day availability  
4 requirement, or the 10-day mailing requirement  
5 specified in subdivision (b) of Section 11343.4. *However,*  
6 *if an agency fails to provide a copy of a regulation to an*  
7 *individual who requested it in person, that regulation*  
8 *shall be unenforceable against that individual until the*  
9 *individual is provided with a copy.*

10 (c) If a regulation has been declared invalid and  
11 unenforceable because of failure to comply with  
12 subdivision (b) of Section 11343.4, the adopting agency  
13 shall not be required to reinitiate adoption, review, and  
14 approval procedures for that regulation in accordance  
15 with this chapter.

16 SEC. 5. (a) The Legislative Counsel shall make  
17 available, within a reasonable period of time, by means of  
18 the public computer network specified in subdivision (b)  
19 of Section 10248 of the Government Code, all new or  
20 amended regulations received from the Office of  
21 Administrative Law pursuant to subdivision (c) of  
22 Section 11343.4 of the Government Code adopted on or  
23 after January 1, 1997.

24 (b) In order to comply with paragraph (11) of  
25 subdivision (a) of Section 10248 of the Government Code  
26 in an expeditious manner, the Legislative Counsel shall  
27 have until June 1, 1999, to make the entire California  
28 Code of Regulations available to the public in electronic  
29 form.

30 (c) *Regulations made available by the Legislative*  
31 *Counsel by means of the public computer network*  
32 *between January 1, 1997, and April 1, 1998, shall constitute*  
33 *an unofficial version of the California Code of Regulations*  
34 *and, when appearing on the computer network, shall*  
35 *contain a statement to that effect. It is the intent of the*  
36 *Legislature to make unofficial regulations available to the*  
37 *public electronically through a public computer network.*  
38 *In deference to the contract between the Office of*  
39 *Administrative Law and Bancroft Whitney authorizing*  
40 *Bancroft Whitney to be the exclusive publisher of the*



1 *official California Code of Regulations until April 1, 1998,*  
2 *the Legislative Counsel shall not make available the*  
3 *official version of the California Code of Regulations until*  
4 *the expiration of that contract. However, after this date,*  
5 *it is the intent of the Legislature to make the official*  
6 *version of the California Code of Regulations*  
7 *electronically available to the public.*

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