

AMENDED IN SENATE APRIL 16, 2009

SENATE BILL

No. 356

Introduced by Senator Wright

(Coauthors: Senators Calderon, Correa, DeSaulnier, and Dutton)

***(Coauthors: Assembly Members Arambula, DeVore, Jeffries, Niello,
Nielsen, Silva, Smyth, and Solorio)***

February 25, 2009

An act to amend Sections 11346, 11346.2, 11346.3, 11346.45, 11346.5, 11346.9, 11350, 11350.3, *and* 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 amended, 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 *burdensome*, 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.

1 (c) The fundamental changes that are needed in the regulatory
2 and enforcement culture of state agencies to make them more
3 responsive to small business can be made without compromising
4 the statutory missions of these agencies.

5 (d) When adopting regulations to protect the health, safety, and
6 economic welfare of California, state agencies should seek to
7 achieve statutory goals as effectively and efficiently as possible
8 without imposing unnecessary burdens on employers.

9 (e) Uniform regulatory and reporting requirements can impose
10 unnecessary and disproportionately burdensome demands including
11 legal, accounting, and consulting costs upon small businesses with
12 limited resources.

13 (f) The failure to recognize differences in the scale and resources
14 of regulated businesses can adversely affect competition in the
15 marketplace, discourage innovation, and restrict improvements in
16 productivity.

17 (g) Unnecessary regulations create entry barriers in many
18 industries and discourage potential entrepreneurs from introducing
19 beneficial products and processes.

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

25 (i) Alternative regulatory approaches that do not conflict with
26 the stated objective of applicable statutes must be explored to
27 minimize significant economic impact of regulations on small
28 businesses.

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

33 SEC. 2. Section 11342.610 of the Government Code is
34 repealed.

35 SEC. 3. Section 11342.610 is added to the Government Code,
36 to read:

37 11342.610. "Small business" means an entity, including its
38 affiliates, that meets both of the following requirements:

39 (a) Is owned and operated by a person, as defined in Section
40 17007 of the Revenue and Taxation Code.

1 (b) Meets one of the following conditions:

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

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

5 SEC. 4. Section 11346 of the Government Code is amended
6 to read:

7 11346. (a) It is the purpose of this chapter to establish basic
8 minimum procedural requirements for the adoption, amendment,
9 or repeal of administrative regulations. Except as provided in
10 Section 11346.1, this chapter applies to the exercise of any
11 quasi-legislative power conferred by any statute heretofore or
12 hereafter enacted, but nothing in this chapter repeals or diminishes
13 additional requirements imposed by any statute. This chapter shall
14 not be superseded or modified by any subsequent legislation except
15 to the extent that the legislation shall do so expressly.

16 (b) An agency that is considering adopting, amending, or
17 repealing a regulation shall consult with interested persons before
18 initiating regulatory action pursuant to this article.

19 SEC. 5. Section 11346.2 of the Government Code is amended
20 to read:

21 11346.2. Every agency subject to this chapter shall prepare,
22 submit to the office with the notice of the proposed action as
23 described in Section 11346.5, and make available to the public
24 upon request, all of the following:

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

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

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

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

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

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

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

(3) *A small business economic impact statement that includes both of the following:*

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

(B) *The estimated annual average cost of compliance by a small business subject to the proposed regulation, including the projected reporting, recordkeeping, and other administrative costs required for compliance with the proposed regulation.*

~~(3)~~

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

(B) A description of reasonable alternatives to the regulation that would lessen any adverse impact on small business, including, but not limited to, all of the following:

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

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

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

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

(v) The exemption of *some or all* ~~small businesses~~ *businesses*, *if appropriate to the cost burden imposed*, from all or any part of the requirements contained in the proposed regulation.

(C) If an agency rejects a reasonable alternative pursuant to subparagraph (B) that is less burdensome to small businesses, the agency shall state its reasons for rejecting the alternative.

(4)

(5) 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.

(5)

(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.

(c) An 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 provisions 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

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

3 SEC. 6. Section 11346.3 of the Government Code is amended
4 to read:

5 11346.3. (a) An agency proposing to adopt, amend, or repeal
6 any administrative regulation shall ~~submit an economic impact~~
7 ~~statement that assesses~~ *assess* the potential for adverse economic
8 impact on California business enterprises and individuals, avoiding
9 the imposition of unnecessary or unreasonable regulations or
10 reporting, recordkeeping, or compliance requirements. For purposes
11 of this subdivision, assessing the potential for adverse economic
12 impact shall require agencies, when proposing to adopt, amend,
13 or repeal a regulation, to adhere to the following requirements, to
14 the extent that these requirements do not conflict with other state
15 or federal laws:

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

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

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

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

1 (B) *The estimated annual average cost of compliance by a small*
2 *business subject to the proposed regulation, including the projected*
3 *reporting, recordkeeping, and other administrative costs required*
4 *for compliance with the proposed regulation, including the type*
5 *of professional skills necessary for preparation of the report or*
6 *record.*

7 ~~(C) A statement of the probable effect on impacted small~~
8 ~~businesses.~~

9 ~~(D)~~

10 (C) A description of reasonable alternatives to the regulation
11 that would lessen any adverse impact on small business, including,
12 but not limited to:

13 (i) The establishment of less stringent compliance or reporting
14 requirements for small businesses.

15 (ii) The establishment of less stringent schedules or deadlines
16 for compliance or reporting requirements for small businesses.

17 (iii) The consolidation or simplification of compliance or
18 reporting requirements for small businesses.

19 (iv) The use of performance standards for small businesses,
20 instead of design or prescriptive standards.

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

24 (A) The creation or elimination of jobs within the State of
25 California.

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

28 (C) The expansion of businesses currently doing business within
29 the State of California.

30 (2) This subdivision does not apply to the University of
31 California, the Hastings College of the Law, or the Fair Political
32 Practices Commission.

33 (3) Information required from state agencies for the purpose of
34 completing the assessment may come from existing state
35 publications.

36 (c) No administrative regulation adopted on or after January 1,
37 1993, that requires a report shall apply to businesses, unless the
38 state agency adopting the regulation makes a finding that it is
39 necessary for the health, safety, or welfare of the people of the
40 state that the regulation apply to businesses.

1 (1) *The office shall ensure compliance with the provisions of*
2 *this subdivision in all filings to adopt, amend, or repeal any*
3 *administrative regulations.*

4 (2) *If the office determines that no economic impact statement*
5 *has been filed with the rulemaking package, or that the economic*
6 *impact statement is incomplete based on the criteria in this section,*
7 *the office shall return the rulemaking package to the regulatory*
8 *agency with a statement identifying the incomplete provisions.*

9 SEC. 7. Section 11346.45 of the Government Code is amended
10 to read:

11 11346.45. (a) In order to increase public participation and
12 improve the quality of regulations, agencies proposing to adopt
13 regulations shall, prior to publication of the notice required by
14 Section 11346.5, involve parties who would be subject to the
15 proposed regulations in public discussions regarding those
16 proposed regulations.

17 (b) This section does not apply to an agency in any instance
18 where that agency is required to implement federal law and
19 regulations for which there is little or no discretion on the part of
20 the state to vary.

21 (c) If the agency does not or cannot comply with subdivision
22 (a), it shall state the reasons for noncompliance with reasonable
23 specificity in the rulemaking record.

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

26 SEC. 8. Section 11346.5 of the Government Code is amended
27 to read:

28 11346.5. (a) The notice of proposed adoption, amendment, or
29 repeal of a regulation shall include the following:

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

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

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

1 (A) A concise and clear summary of existing laws and
2 regulations, if any, related directly to the proposed action and of
3 the effect of the proposed action.

4 (B) If the proposed action differs substantially from an existing
5 comparable federal regulation or statute, a brief description of the
6 significant differences and the full citation of the federal regulations
7 or statutes.

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

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

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

17 (6) An estimate, prepared in accordance with instructions
18 adopted by the Department of Finance, of the cost or savings to
19 any state agency, the cost to any local agency or school district
20 that is required to be reimbursed under Part 7 (commencing with
21 Section 17500) of Division 4, other nondiscretionary cost or
22 savings imposed on local agencies, *and* the cost or savings in
23 federal funding to the state, ~~and the cost or savings to small~~
24 ~~businesses.~~

25 For purposes of this paragraph, “cost or savings” means
26 additional costs or savings, both direct and indirect, that a public
27 agency ~~or small business~~ necessarily incurs in reasonable
28 compliance with regulations.

29 (7) If a state agency, in proposing to adopt, amend, or repeal
30 any administrative regulation, makes an initial determination that
31 the action 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 it shall include the following information in the notice of proposed
35 action:

36 (A) Identification of the types of businesses that would be
37 affected.

38 (B) A description of the projected reporting, recordkeeping, and
39 other compliance requirements that would result from the proposed
40 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 may have or 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~~ *action, except as provided in subdivision (c) of Section 11346.3.*

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

1 (A) Identification of the types of small businesses that would
2 be affected.

3 (B) A description of the projected reporting, recordkeeping, and
4 other compliance requirements that would result from the proposed
5 action.

6 (C) The following statement: “The (name of agency) has made
7 an initial determination that the (adoption/amendment/repeal) of
8 this regulation may have a significant, statewide adverse economic
9 impact directly affecting small business, including the ability of
10 California businesses to compete with small businesses in other
11 states. The (name of agency) (has/has not) considered proposed
12 alternatives that would lessen any adverse economic impact on
13 small business and invites you to submit ~~proposals~~. *proposals.*”
14 Submissions may include the following considerations:

15 (i) The establishment of differing compliance or reporting
16 requirements or timetables that take into account the resources
17 available to small businesses.

18 (ii) Consolidation or simplification of compliance and reporting
19 requirements for small businesses.

20 (iii) The use of performance standards for small businesses,
21 instead of prescriptive or design standards.

22 (iv) ~~Exemption or partial exemption from the regulatory~~
23 ~~requirements for businesses.~~ *The exemption of small businesses,*
24 *if appropriate to the cost burden imposed, from all or part of the*
25 *requirements contained in the proposed regulation.*

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

32 (B) In making a declaration pursuant to subparagraph (A), the
33 agency shall provide in the record facts, evidence, documents,
34 testimony, or other evidence upon which the agency relies to
35 support its initial determination.

36 (C) An agency’s initial determination and declaration pursuant
37 to subparagraph (A) that a proposed adoption, amendment, or
38 repeal of a regulation may have or will not have a significant,
39 adverse impact on small businesses, including the ability of
40 California small businesses to compete with businesses in other

1 states, shall not be grounds for the office to refuse to publish the
2 notice of proposed ~~action~~ *action, except as provided in subdivision*
3 *(c) of Section 11346.3.*

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

8 If no cost impacts are known to the agency, it shall state the
9 following:

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

13 (12) A statement of the results of the assessment required by
14 ~~subdivision~~ *subdivisions (a) and (b) of Section 11346.3.*

15 (13) The finding prescribed by subdivision (c) of Section
16 11346.3, if required.

17 (14) A statement that the action would have a significant effect
18 on housing costs, if a state agency, in adopting, amending, or
19 repealing any administrative regulation, makes an initial
20 determination that the action would have that effect. In addition,
21 the agency officer designated in paragraph (16), shall make
22 available to the public, upon request, the agency’s evaluation, if
23 any, of the effect of the proposed regulatory action on housing
24 costs.

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

31 (16) The name and telephone number of the agency
32 representative and designated backup contact person to whom
33 inquiries concerning the proposed administrative action may be
34 directed.

35 (17) The date by which comments submitted in writing must
36 be received to present statements, arguments, or contentions in
37 writing relating to the proposed action in order for them to be
38 considered by the state agency before it adopts, amends, or repeals
39 a regulation.

1 (18) Reference to the fact that the agency proposing the action
2 has prepared a statement of the reasons for the proposed action,
3 has available all the information upon which its proposal is based,
4 and has available the express terms of the proposed action, pursuant
5 to subdivision (b).

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

10 (20) A statement indicating that the full text of a regulation
11 changed pursuant to Section 11346.8 will be available for at least
12 15 days prior to the date on which the agency adopts, amends, or
13 repeals the resulting regulation.

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

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

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

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

35 SEC. 9. Section 11346.9 of the Government Code is amended
36 to read:

37 11346.9. Every agency subject to this chapter shall do the
38 following:

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

(1) An update of the information contained in the initial statement of reasons. If the update identifies any data or any technical, theoretical or empirical study, report, or similar document on which the agency is relying in proposing the adoption, amendment, or repeal of a regulation that was not identified in the initial statement of reasons, or which was otherwise not identified or made available for public review prior to the close of the public comment period, the agency shall comply with Section 11347.1.

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

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

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

(5) If an agency determines the regulation would have a significant, statewide adverse economic impact directly affecting small businesses pursuant to paragraph (9) of subdivision (a) of Section 11346.5, a final ~~regulatory flexibility~~ analysis containing all of the following:

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

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

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

15 ~~(B) An identification and estimate of the number of small~~
16 ~~businesses subject to the proposed regulation.~~

17 ~~(C) The estimated annual average cost of compliance by a small~~
18 ~~business subject to the proposed regulation, including the projected~~
19 ~~reporting, recordkeeping, and other administrative costs required~~
20 ~~for compliance with the proposed regulation.~~

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

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

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

1 pursuant to Section 11346.5. However, the agency shall comply
2 fully with this chapter with respect to any provisions in the
3 regulation that the agency proposes to adopt or amend that are
4 different from the corresponding provisions of the federal
5 regulation.

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

11 SEC. 10. Section 11350 of the Government Code is amended
12 to read:

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

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

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

36 (2) The agency declaration pursuant to paragraph (8) or (10) of
37 subdivision (a) of Section 11346.5 is in conflict with substantial
38 evidence in the record.

39 (c) The approval of a regulation or order of repeal by the office
40 or the Governor's overruling of a decision of the office

1 disapproving a regulation or order of repeal shall not be considered
2 by a court in any action for declaratory relief brought with respect
3 to a regulation or order of repeal.

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

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

7 (2) The finding of emergency prepared pursuant to subdivision
8 (b) of Section 11346.1.

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

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

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

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

29 SEC. 12. Section 11357 of the Government Code is amended
30 to read:

31 11357. (a) The Department of Finance shall adopt and update,
32 as necessary, instructions for inclusion in the State Administrative
33 Manual prescribing the methods that any agency subject to this
34 chapter shall use in making the ~~determination required by~~
35 ~~paragraph (5) and the estimate required by paragraph (6)~~
36 *determinations and estimates required by paragraphs (5) to (12),*
37 *inclusive*, of subdivision (a) of Section 11346.5. The instructions
38 shall include, but need not be limited to, the following:

39 (1) Guidelines governing the types of data or assumptions, or
40 both, that may be used, and the methods that shall be used, to

1 calculate the estimate of the cost or savings to public agencies or
2 small businesses mandated by the regulation for which the estimate
3 is being prepared.

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

6 (3) The criteria that shall be used in determining whether the
7 cost of a regulation must be funded by the state pursuant to Section
8 6 of Article XIII B of the California Constitution and Part 7
9 (commencing with Section 17500) of Division 4.

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

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

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

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

26 ~~SEC. 13. Section 15570 of the Government Code is amended~~
27 ~~to read:~~

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

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

1 of the state's economic development programs, a list of key
2 industries in which the state shall focus its economic development
3 efforts, and strategies to foster job growth and economic
4 development covering all state agencies, offices, boards, and
5 commissions that have economic development responsibilities.

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

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

21 (B) Emerging and declining industries in California and
22 elsewhere.

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

25 (D) Adequacy of state and local physical and economic
26 infrastructure.

27 (E) Government impediments to economic development.

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

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

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

1 ~~(iii) Survey and evaluate efforts in other states to develop~~
2 ~~accountability measures for public investments in economic~~
3 ~~development.~~

4 ~~(iv) Determine whether a return on investment calculation is~~
5 ~~feasible for public investments in economic development.~~

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

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

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

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

16 ~~(1) The Secretary of Labor and Workforce Development, who~~
17 ~~shall serve as chair of the panel.~~

18 ~~(2) Eight persons appointed by the Governor.~~

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

20 ~~(4) The President pro Tempore of the Senate or his or her~~
21 ~~designee.~~

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

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

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

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

26 ~~(9) The Director of the Office of Small Business Advocate.~~

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

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

38 ~~(1) Four members shall be appointed on January 1, 2004, and~~
39 ~~every four years thereafter.~~

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

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

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

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

15 ~~SEC. 14. Section 65054.3 of the Government Code is amended~~
16 ~~to read:~~

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

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

23 ~~(c) The duties and functions of the advocate shall include all of~~
24 ~~the following:~~

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

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

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

~~(4) Issue a report every two years evaluating the efforts of state agencies and, where appropriate, specific departments that significantly regulate small businesses to assist minority and other small business enterprises, and making recommendations that may be appropriate to assist the development and strengthening of minority and other small business enterprises.~~

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

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

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

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

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

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

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

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

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

1 ~~75121. (a) The Strategic Growth Council is hereby established~~
2 ~~in state government and it shall consist of the Director of State~~
3 ~~Planning and Research, the Secretary of the Resources Agency,~~
4 ~~the Secretary for Environmental Protection, the Secretary of~~
5 ~~Business, Transportation and Housing, the Secretary of California~~
6 ~~Health and Human Services, the Director of the Office of Small~~
7 ~~Business Advocate and one member of the public to be appointed~~
8 ~~by the Governor. The public member shall have a background in~~
9 ~~land use planning, local government, resource protection and~~
10 ~~management, or community development or revitalization.~~
11 ~~(b) Staff for the council shall be reflective of the council's~~
12 ~~membership.~~