

AMENDED IN SENATE MAY 11, 2009

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 of, and to repeal and add Section 11342.610 of, the Government 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 use the definition of “small business” contained in the Small Business Procurement and Contract Act.~~

(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 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 analysis containing specified information.

The bill would also make conforming changes to the act.

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
- 13 achieve statutory goals as effectively and efficiently as possible
- 14 without imposing unnecessary burdens on employers.
- 15 (e) Uniform regulatory and reporting requirements can impose
- 16 unnecessary and disproportionately burdensome demands including
- 17 legal, accounting, and consulting costs upon small businesses with
- 18 limited resources.
- 19 (f) The failure to recognize differences in the scale and resources
- 20 of regulated businesses can adversely affect competition in the
- 21 marketplace, discourage innovation, and restrict improvements in
- 22 productivity.

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

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

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

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

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 Section 11342.610 of the Government Code is repealed.

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

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

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

~~(b) Meets one of the following conditions:~~

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

~~(2) Has average annual gross receipts of less than ten million dollars (\$10,000,000) over the previous three years. affiliates, as defined in Section 14837.~~

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

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

(b) An agency that is considering adopting, amending, or repealing a regulation ~~shall may consult with interested persons parties who would be subject to the proposed regulations~~ before initiating regulatory action pursuant to this article. *If the agency does not, or is unable to, consult with parties who would be subject to the proposed regulation, it shall inform in writing the Office of Small Business Advocate and the Department of Finance of its decision and the reasons for not consulting the impacted businesses.*

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

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

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

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

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

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

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

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

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

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

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

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

22 (i) The establishment of less burdensome compliance or
23 reporting requirements for small businesses.

24 (ii) The establishment of less burdensome schedules or deadlines
25 for compliance or reporting requirements for small businesses.

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

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

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

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

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

(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 different from the corresponding provisions of the federal regulation.

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

11346.3. (a) An agency proposing to adopt, amend, or repeal any administrative regulation shall assess the potential for adverse economic impact on California business enterprises and individuals, avoiding the imposition of unnecessary or unreasonable regulations or reporting, recordkeeping, or compliance requirements. For purposes of this subdivision, assessing the potential for adverse economic impact shall require agencies, when proposing to adopt, amend, or repeal a regulation, to adhere to the following requirements, to the extent that these requirements do not conflict with other state or federal laws:

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

4 (2) The state agency, prior to submitting a proposal to adopt,
5 amend, or repeal a regulation to the office, shall consider the
6 proposal's impact on business, with consideration of industries
7 affected including the ability of California businesses to compete
8 with businesses in other states. For purposes of evaluating the
9 impact on the ability of California businesses to compete with
10 businesses in other states, an agency shall consider, but not be
11 limited to, information supplied by interested parties.

12 (3) An agency, before submitting a proposal to adopt, amend,
13 or repeal a regulation to the office, shall consider the proposal's
14 impact on small business by preparing a small business economic
15 ~~impact statement that considers the industries affected, including~~
16 ~~the ability of California small businesses to compete with~~
17 ~~businesses in other states. For purposes of evaluating the impact~~
18 ~~of the proposal on the ability of California small businesses to~~
19 ~~compete with businesses in other states, an impact statement. An~~
20 agency shall consider, but not be limited to, information supplied
21 by interested parties. The small business economic impact
22 statement shall include all of the following:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(c) If the agency does not or cannot comply with subdivision (a), it shall state the reasons for noncompliance with reasonable specificity in the rulemaking record *and to the Office of Small Business Advocate and the Department of Finance*.

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

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

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

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

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

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

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

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

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

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

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

(6) An estimate, prepared in accordance with instructions adopted by the Department of Finance, of the cost or savings to any state agency, the cost to any local agency or school district that is required to be reimbursed under Part 7 (commencing with Section 17500) of Division 4, other nondiscretionary cost or

1 savings imposed on local agencies, and the cost or savings in
2 federal funding to the state.

3 For purposes of this paragraph, “cost or savings” means
4 additional costs or savings, both direct and indirect, that a public
5 agency necessarily incurs in reasonable compliance with
6 regulations.

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

14 (A) Identification of the types of businesses that would be
15 affected.

16 (B) A description of the projected reporting, recordkeeping, and
17 other compliance requirements that would result from the proposed
18 action.

19 (C) The following statement: “The (name of agency) has made
20 an initial determination that the (adoption/amendment/repeal) of
21 this regulation may have a significant, statewide adverse economic
22 impact directly affecting business, including the ability of
23 California businesses to compete with businesses in other states.
24 The (name of agency) (has/has not) considered proposed
25 alternatives that would lessen any adverse economic impact on
26 business and invites you to submit proposals. Submissions may
27 include the following considerations:

28 (i) The establishment of differing compliance or reporting
29 requirements or timetables that take into account the resources
30 available to businesses.

31 (ii) Consolidation or simplification of compliance and reporting
32 requirements for businesses.

33 (iii) The use of performance standards rather than prescriptive
34 standards.

35 (iv) Exemption or partial exemption from the regulatory
36 requirements for businesses.”

37 (8) If a state agency, in adopting, amending, or repealing any
38 administrative regulation, makes an initial determination that the
39 action may have or will not have a significant, statewide adverse
40 economic impact directly affecting business, including the ability

1 of California businesses to compete with businesses in other states,
2 it shall make a declaration to that effect in the notice of proposed
3 action. In making this declaration, the agency shall provide in the
4 record facts, evidence, documents, testimony, or other evidence
5 upon which the agency relies to support its initial determination.

6 An agency's initial determination and declaration that a proposed
7 adoption, amendment, or repeal of a regulation may have or will
8 not have a significant, adverse impact on businesses, including the
9 ability of California businesses to compete with businesses in other
10 states, shall not be grounds for the office to refuse to publish the
11 notice of proposed action, except as provided in subdivision (c)
12 of Section 11346.3.

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

20 (A) Identification of the types of small businesses that would
21 be affected.

22 ~~(B) A description of the projected reporting, recordkeeping, and~~
23 ~~other compliance requirements that would result from the proposed~~
24 ~~action.~~

25 *(B) The estimated average annual cost of compliance by a small*
26 *business subject to the proposed regulation.*

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

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

39 (ii) Consolidation or simplification of compliance and reporting
40 requirements for small businesses.

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

3 (iv) The exemption of small businesses, if appropriate to the
4 cost burden imposed, from all or part of the requirements contained
5 in the proposed regulation.

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

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

16 (C) An agency's initial determination and declaration pursuant
17 to subparagraph (A) that a proposed adoption, amendment, or
18 repeal of a regulation may have or will not have a significant,
19 adverse impact on small businesses, ~~including the ability of~~
20 ~~California small businesses to compete with businesses in other~~
21 ~~states~~, shall not be grounds for the office to refuse to publish the
22 notice of proposed action, except as provided in *paragraphs (1)*
23 *and (2) of subdivision (c) of Section 11346.3.*

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

28 If no cost impacts are known to the agency, it shall state the
29 following:

30 "The agency is not aware of any cost impacts that a
31 representative private person or business would necessarily incur
32 in reasonable compliance with the proposed action."

33 (12) A statement of the results of the assessment required by
34 subdivisions (a) and (b) of Section 11346.3.

35 (13) The finding prescribed by subdivision (c) of Section
36 11346.3, if required.

37 (14) A statement that the action would have a significant effect
38 on housing costs, if a state agency, in adopting, amending, or
39 repealing any administrative regulation, makes an initial
40 determination that the action would have that effect. In addition,

1 the agency officer designated in paragraph (16); shall make
2 available to the public, upon request, the agency's evaluation, if
3 any, of the effect of the proposed regulatory action on housing
4 costs.

5 (15) A statement that the adopting agency must determine that
6 no reasonable alternative considered by the agency or that has
7 otherwise been identified and brought to the attention of the agency
8 would be more effective in carrying out the purpose for which the
9 action is proposed or would be as effective and less burdensome
10 to affected private persons than the proposed action.

11 (16) The name and telephone number of the agency
12 representative and designated backup contact person to whom
13 inquiries concerning the proposed administrative action may be
14 directed.

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

20 (18) Reference to the fact that the agency proposing the action
21 has prepared a statement of the reasons for the proposed action,
22 has available all the information upon which its proposal is based,
23 and has available the express terms of the proposed action, pursuant
24 to subdivision (b).

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

29 (20) A statement indicating that the full text of a regulation
30 changed pursuant to Section 11346.8 will be available for at least
31 15 days prior to the date on which the agency adopts, amends, or
32 repeals the resulting regulation.

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

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

1 (b) The agency representative designated in paragraph (16) of
2 subdivision (a) shall make available to the public upon request the
3 express terms of the proposed action. The representative shall also
4 make available to the public upon request the location of public
5 records, including reports, documentation, and other materials,
6 related to the proposed action. If the representative receives an
7 inquiry regarding the proposed action that the representative cannot
8 answer, the representative shall refer the inquiry to another person
9 in the agency for a prompt response.

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

15 SEC. 9. Section 11346.9 of the Government Code is amended
16 to read:

17 11346.9. Every agency subject to this chapter shall do the
18 following:

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

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

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

37 (3) A summary of each objection or recommendation made
38 regarding the specific adoption, amendment, or repeal proposed,
39 together with an explanation of how the proposed action has been
40 changed to accommodate each objection or recommendation, or

1 the reasons for making no change. This requirement applies only
2 to objections or recommendations specifically directed at the
3 agency's proposed action or to the procedures followed by the
4 agency in proposing or adopting the action. The agency may
5 aggregate and summarize repetitive or irrelevant comments as a
6 group, and may respond to repetitive comments or summarily
7 dismiss irrelevant comments as a group. For purposes of this
8 paragraph, a comment is "irrelevant" if it is not specifically directed
9 at the agency's proposed action or to the procedures followed by
10 the agency in proposing or adopting the action.

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

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

20 (A) A summary of the significant issues raised by the public
21 comments from small businesses, a summary of the assessment
22 of the agency of those issues, and a statement of changes made in
23 the proposed regulation as a result of those comments.

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

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

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

35 (b) Prepare and submit to the office with the adopted regulation
36 an updated informative digest containing a clear and concise
37 summary of the immediately preceding laws and regulations, if
38 any, relating directly to the adopted, amended, or repealed
39 regulation and the effect of the adopted, amended, or repealed

regulation. The informative digest shall be drafted in a format similar to the Legislative Counsel's Digest on legislative bills.

(c) A state agency that adopts or amends a regulation mandated by federal law or regulations, the provisions of which are identical to a previously adopted or amended federal regulation, shall be deemed to have complied with this section 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 different from the corresponding provisions of the federal regulation.

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

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

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

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

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

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

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

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

(1) The rulemaking file prepared under Section 11347.3.

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

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

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

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

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

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

1 11357. (a) The Department of Finance shall adopt and update,
2 as necessary, instructions for inclusion in the State Administrative
3 Manual prescribing the methods that any agency subject to this
4 chapter shall use in making the determinations and estimates
5 required by paragraphs (5) to (12), inclusive, of subdivision (a) of
6 Section 11346.5. The instructions shall include, but need not be
7 limited to, the following:

8 (1) Guidelines governing the types of data or assumptions, or
9 both, that may be used, and the methods that shall be used, to
10 calculate the estimate of the cost or savings to public agencies or
11 small businesses mandated by the regulation for which the estimate
12 is being prepared.

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

15 (3) The criteria that shall be used in determining whether the
16 cost of a regulation must be funded by the state pursuant to Section
17 6 of Article XIII B of the California Constitution and Part 7
18 (commencing with Section 17500) of Division 4.

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

22 (5) The format the agency preparing the estimate shall follow
23 in summarizing and reporting its estimate of the cost or savings
24 to state and local agencies, school districts, small businesses, and
25 in federal funding of state programs that will result from the
26 regulation.

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

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

35 *SEC. 13. The changes made to the Government Code by*
36 *Sections 2 to 12, inclusive, of this act at the 2009–10 Regular*
37 *Session of the Legislature do not affect any regulation that is*

- 1 *adopted pursuant to, and in compliance with, a law that is in effect*
- 2 *on, before, or after January 1, 2010.*

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