

AMENDED IN ASSEMBLY JUNE 22, 2010
AMENDED IN SENATE JANUARY 12, 2010
AMENDED IN SENATE JANUARY 11, 2010
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 ~~11350~~ 11346, 11346.2, 11346.3, 11346.45, 11346.5, 11349.1, 11350, and 11350.3, and 11357 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, and requires an agency to do so when the regulation involves complex or numerous proposals.

This bill would require the agency, if it does not, or is unable to, consult with these parties to 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.

(2) 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 require the agency to describe the agency's reasons for rejecting each specific alternative, and would delete the specification that an agency is not required to artificially construct alternatives, describe unreasonable alternatives, or justify why it has not described alternatives.

(3) 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 also 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.

(4) Under the act, the agency must issue a notice of proposed action that includes prescribed information, including, 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, a declaration of that determination.

This bill would delete that requirement and instead require, if an agency declares that it is not aware of any cost impact, that the notice of proposed action include a statement describing how a private person or business could comply with the proposed regulation without incurring a cost.

This bill would also require that the notice of proposed action include the small business economic impact statement that this bill requires an agency to prepare.

(5) The act also requires the Department of Finance to adopt and update, as necessary, instructions for inclusion in the State Administrative Manual prescribing the methods that any agency is

required to use in making the determinations relating to mandates on local agencies or school districts, as specified.

This bill would also require the Department of Finance to adopt and update, as necessary, instructions prescribing the methods that any agency is required to use in making the determinations relating to significant, statewide adverse economic impacts directly affecting business, as specified.

(6) The act requires the Office of Administrative Law to review and approve regulations that are adopted, amended, or repealed, using prescribed standards. The act requires that the office reject a proposed regulation in specified circumstances.

This bill would require that the office reject a proposed regulation if the adopting agency does not provide specified information relating to the small business economic impact statement.

~~The Administrative Procedure Act generally sets forth the requirements for the adoption, publication, review, and implementation of regulations by state agencies. The~~

(7) The act authorizes any interested person to obtain a judicial declaration as to the validity of specified regulations or orders of repeal, by bringing an action for declaratory relief in the superior court in accordance with the Code of Civil Procedure.

This bill would specify that an interested person includes, but is not limited to, a small business or an organization or trade association that represents small businesses and whose members are affected by the regulation.

(8) The bill would also make conforming changes to the act.

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

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

- 1 SECTION 1. Section 11346 of the Government Code is
- 2 amended to read:
- 3 11346. (a) It is the purpose of this chapter to establish basic
- 4 minimum procedural requirements for the adoption, amendment,
- 5 or repeal of administrative regulations. Except as provided in
- 6 Section 11346.1, ~~the provisions of this chapter are applicable~~
- 7 applies to the exercise of any quasi-legislative power conferred
- 8 by any statute heretofore or hereafter enacted, but nothing in this
- 9 chapter repeals or diminishes additional requirements imposed by

1 any statute. This chapter shall not be superseded or modified by
2 any subsequent legislation except to the extent that the legislation
3 shall do so expressly.

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

12 SEC. 2. Section 11346.2 of the Government Code is amended
13 to read:

14 11346.2. Every agency subject to this chapter shall prepare,
15 submit to the office with the notice of the proposed action as
16 described in Section 11346.5, and make available to the public
17 upon request, all of the following:

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

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

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

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

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

35 (1) A statement of the specific purpose of each adoption,
36 amendment, or repeal and the rationale for the determination by
37 the agency that each adoption, amendment, or repeal is reasonably
38 necessary to carry out the purpose for which it is proposed. Where
39 the adoption or amendment of a regulation would mandate the use
40 of specific technologies or equipment, a statement of the reasons

1 why the agency believes these mandates or prescriptive standards
2 are required.

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

7 (3) (A) A description of reasonable alternatives to the regulation
8 and the agency's reasons for rejecting ~~those alternatives~~ *each*
9 *specific alternative*. In the case of a regulation that would mandate
10 the use of specific technologies or equipment or prescribe specific
11 actions or procedures, the imposition of performance standards
12 shall be considered as an alternative.

13 (B) A description of reasonable alternatives to the regulation
14 that would lessen any adverse impact on small business and the
15 agency's reasons for rejecting ~~those alternatives~~ *each specific*
16 *alternative*.

17 (C) Notwithstanding subparagraph (A) or (B), an agency is not
18 required to ~~artificially construct alternatives~~; describe unreasonable
19 alternatives, ~~or justify why it has not described alternatives~~.

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

24 (5) A department, board, or commission within the
25 Environmental Protection Agency, the Resources Agency, or the
26 Office of the State Fire Marshal shall describe its efforts, in
27 connection with a proposed rulemaking action, to avoid
28 unnecessary duplication or conflicts with federal regulations
29 contained in the Code of Federal Regulations addressing the same
30 issues. These agencies may adopt regulations different from federal
31 regulations contained in the Code of Federal Regulations
32 addressing the same issues upon a finding of one or more of the
33 following justifications:

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

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

38 (c) A state agency that adopts or amends a regulation mandated
39 by federal law or regulations, the provisions of which are identical
40 to a previously adopted or amended federal regulation, shall be

1 deemed to have complied with subdivision (b) if a statement to
2 the effect that a federally mandated regulation or amendment to a
3 regulation is being proposed, together with a citation to where an
4 explanation of the provisions of the regulation can be found, is
5 included in the notice of proposed adoption or amendment prepared
6 pursuant to Section 11346.5. However, the agency shall comply
7 fully with this chapter with respect to any provisions in the
8 regulation that the agency proposes to adopt or amend that are
9 different from the corresponding provisions of the federal
10 regulation.

11 *SEC. 3. Section 11346.3 of the Government Code is amended*
12 *to read:*

13 11346.3. (a) ~~State agencies~~—An agency proposing to adopt,
14 amend, or repeal any administrative regulation shall assess the
15 potential for adverse economic impact on California business
16 enterprises and individuals, avoiding the imposition of unnecessary
17 or unreasonable regulations or reporting, recordkeeping, or
18 compliance requirements. For purposes of this subdivision,
19 assessing the potential for adverse economic impact shall require
20 agencies, when proposing to adopt, amend, or repeal a regulation,
21 to adhere to the following requirements, to the extent that these
22 requirements do not conflict with other state or federal laws:

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

26 (2) The state agency, prior to submitting a proposal to adopt,
27 amend, or repeal a regulation to the office, shall consider the
28 proposal's impact on business, with consideration of industries
29 affected including the ability of California businesses to compete
30 with businesses in other states. For purposes of evaluating the
31 impact on the ability of California businesses to compete with
32 businesses in other states, an agency shall consider, but not be
33 limited to, information supplied by interested parties.

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

1 (3) *An agency, before submitting a proposal to adopt, amend,*
2 *or repeal a regulation to the office, shall consider the proposal's*
3 *impact on small business by preparing a small business economic*
4 *impact statement. An agency shall consider, but not be limited to,*
5 *information supplied by interested parties. The small business*
6 *economic impact statement shall include all 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.*

11 (C) *The estimated statewide annual average cost of compliance*
12 *by small businesses subject to the proposed regulation.*

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

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

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

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

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

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

28 (c) No administrative regulation adopted on or after January 1,
29 1993, that requires a report shall apply to businesses, unless the
30 state agency adopting the regulation makes a finding that it is
31 necessary for the health, safety, or welfare of the people of the
32 state that the regulation apply to businesses.

33 (d) *The office shall ensure compliance with the provisions of*
34 *this section in all filings to adopt, amend, or repeal any*
35 *administrative regulation, pursuant to Section 11349.1.*

36 SEC. 4. *Section 11346.45 of the Government Code is amended*
37 *to read:*

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

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

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

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

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

16 *SEC. 5. Section 11346.5 of the Government Code is amended*
17 *to read:*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

7 (8) If a state agency, in adopting, amending, or repealing any
8 administrative regulation, makes an initial determination that the
9 action will not 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 make a declaration to that effect in the notice of proposed
13 action. In making this declaration, the agency shall provide in the
14 record facts, evidence, documents, testimony, or other evidence
15 upon which the agency relies to support its initial determination.

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

22 (9) A description of all cost impacts, known to the agency at
23 the time the notice of proposed action is submitted to the office,
24 that a representative private person or business would necessarily
25 incur in reasonable compliance with the proposed action. *If an*
26 *agency declares, pursuant to this paragraph, that it is not aware*
27 *of any cost impact that a representative private person or business*
28 *would incur in compliance with the proposed adoption, amendment,*
29 *or repeal of a regulation, the agency shall include a statement*
30 *describing how a private person or business could comply with*
31 *the proposed adoption, amendment, or repeal of a regulation*
32 *without incurring a cost.*

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

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

38 (10) ~~A~~ *The small business economic impact statement that is*
39 *required by subdivision (a) of Section 11346.3, and a statement*

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

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

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

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

19 (14) The name and telephone number of the agency
20 representative and designated backup contact person to whom
21 inquiries concerning the proposed administrative action may be
22 directed.

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

28 (16) Reference to the fact that the agency proposing the action
29 has prepared a statement of the reasons for the proposed action,
30 has available all the information upon which its proposal is based,
31 and has available the express terms of the proposed action, pursuant
32 to subdivision (b).

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

37 (18) A statement indicating that the full text of a regulation
38 changed pursuant to Section 11346.8 will be available for at least
39 15 days prior to the date on which the agency adopts, amends, or
40 repeals the resulting regulation.

1 (19) A statement explaining how to obtain a copy of the final
2 statement of reasons once it has been prepared pursuant to
3 subdivision (a) of Section 11346.9.

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

8 (b) The agency representative designated in paragraph (14) of
9 subdivision (a) shall make available to the public upon request the
10 express terms of the proposed action. The representative shall also
11 make available to the public upon request the location of public
12 records, including reports, documentation, and other materials,
13 related to the proposed action. If the representative receives an
14 inquiry regarding the proposed action that the representative cannot
15 answer, the representative shall refer the inquiry to another person
16 in the agency for a prompt response.

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

22 *SEC. 6. Section 11349.1 of the Government Code is amended*
23 *to read:*

24 11349.1. (a) The office shall review all regulations adopted,
25 amended, or repealed pursuant to the procedure specified in Article
26 5 (commencing with Section 11346) and submitted to it for
27 publication in the California Code of Regulations Supplement and
28 for transmittal to the Secretary of State and make determinations
29 using all of the following standards:

- 30 (1) Necessity.
- 31 (2) Authority.
- 32 (3) Clarity.
- 33 (4) Consistency.
- 34 (5) Reference.
- 35 (6) Nonduplication.

36 In reviewing regulations pursuant to this section, the office shall
37 restrict its review to the regulation and the record of the rulemaking
38 proceeding. The office shall approve the regulation or order of
39 repeal if it complies with the standards set forth in this section and
40 with this chapter.

1 (b) In reviewing proposed regulations for the criteria in
2 subdivision (a), the office may consider the clarity of the proposed
3 regulation in the context of related regulations already in existence.

4 (c) The office shall adopt regulations governing the procedures
5 it uses in reviewing regulations submitted to it. The regulations
6 shall provide for an orderly review and shall specify the methods,
7 standards, presumptions, and principles the office uses, and the
8 limitations it observes, in reviewing regulations to establish
9 compliance with the standards specified in subdivision (a). The
10 regulations adopted by the office shall ensure that it does not
11 substitute its judgment for that of the rulemaking agency as
12 expressed in the substantive content of adopted regulations.

13 (d) The office shall return any regulation subject to this chapter
14 to the adopting agency if any of the following occur:

15 (1) The adopting agency has not prepared the estimate required
16 by paragraph (6) of subdivision (a) of Section 11346.5 and has not
17 included the data used and calculations made and the summary
18 report of the estimate in the file of the rulemaking.

19 (2) The agency has not complied with Section 11346.3.

20 (3) The adopting agency has prepared the estimate required by
21 paragraph (6) of subdivision (a) of Section 11346.5, the estimate
22 indicates that the regulation will result in a cost to local agencies
23 or school districts that is required to be reimbursed under Part 7
24 (commencing with Section 17500) of Division 4, and the adopting
25 agency fails to do any of the following:

26 (A) Cite an item in the Budget Act for the fiscal year in which
27 the regulation will go into effect as the source from which the
28 Controller may pay the claims of local agencies or school districts.

29 (B) Cite an accompanying bill appropriating funds as the source
30 from which the Controller may pay the claims of local agencies
31 or school districts.

32 (C) Attach a letter or other documentation from the Department
33 of Finance which states that the Department of Finance has
34 approved a request by the agency that funds be included in the
35 Budget Bill for the next following fiscal year to reimburse local
36 agencies or school districts for the costs mandated by the
37 regulation.

38 (D) Attach a letter or other documentation from the Department
39 of Finance which states that the Department of Finance has
40 authorized the augmentation of the amount available for

1 expenditure under the agency's appropriation in the Budget Act
2 which is for reimbursement pursuant to Part 7 (commencing with
3 Section 17500) of Division 4 to local agencies or school districts
4 from the unencumbered balances of other appropriations in the
5 Budget Act and that this augmentation is sufficient to reimburse
6 local agencies or school districts for their costs mandated by the
7 regulation.

8 *(4) The adopting agency has not provided the small business*
9 *economic impact statement required pursuant to paragraph (10)*
10 *of subdivision (a) of Section 11346.5, or if the small business*
11 *economic impact statement does not contain the elements required*
12 *pursuant to Section 11346.3.*

13 *(5) The adopting agency has not provided the estimate or*
14 *description required pursuant to paragraph (9) of subdivision (a)*
15 *of Section 11346.5.*

16 (e) The office shall notify the Department of Finance of all
17 regulations returned pursuant to subdivision (d).

18 (f) The office shall return a rulemaking file to the submitting
19 agency if the file does not comply with subdivisions (a) and (b)
20 of Section 11347.3. Within three state working days of the receipt
21 of a rulemaking file, the office shall notify the submitting agency
22 of any deficiency identified. If no notice of deficiency is mailed
23 to the adopting agency within that time, a rulemaking file shall be
24 deemed submitted as of the date of its original receipt by the office.
25 A rulemaking file shall not be deemed submitted until each
26 deficiency identified under this subdivision has been corrected.

27 This subdivision shall not limit the review of regulations under
28 this article, including, but not limited to, the conformity of
29 rulemaking files to subdivisions (a) and (b) of Section 11347.3.

30 **SECTION 1.**

31 **SEC. 7.** Section 11350 of the Government Code is amended
32 to read:

33 11350. (a) Any interested person, including, but not limited
34 to, a small business or an organization or trade association *that*
35 *represents small businesses and* whose members are affected by
36 the regulation, may obtain a judicial declaration as to the validity
37 of any regulation or order of repeal by bringing an action for
38 declaratory relief in the superior court in accordance with the Code
39 of Civil Procedure. The right to judicial determination shall not
40 be affected by the failure either to petition or to seek

1 reconsideration of a petition filed pursuant to Section 11340.7
2 before the agency promulgating the regulation or order of repeal.
3 The regulation or order of repeal may be declared to be invalid for
4 a substantial failure to comply with this chapter, or, in the case of
5 an emergency regulation or order of repeal, upon the ground that
6 the facts recited in the finding of emergency prepared pursuant to
7 subdivision (b) of Section 11346.1 do not constitute an emergency
8 within the provisions of Section 11346.1.

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

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

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

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

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

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

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

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

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

35 ~~SEC. 2.~~

36 ~~SEC. 8.~~ Section 11350.3 of the Government Code is amended
37 to read:

38 11350.3. Any interested person, including, but not limited to,
39 a small business or an organization or trade association *that*
40 *represents small businesses and* whose members are affected by

1 the regulation, may obtain a judicial declaration as to the validity
2 of a regulation or order of repeal which the office has disapproved
3 pursuant to Section 11349.3 or 11349.6, or of a regulation that has
4 been ordered repealed pursuant to Section 11349.7 by bringing an
5 action for declaratory relief in the superior court in accordance
6 with the Code of Civil Procedure. The court may declare the
7 regulation valid if it determines that the regulation meets the
8 standards set forth in Section 11349.1 and that the agency has
9 complied with this chapter. If the court so determines, it may order
10 the office to immediately file the regulation with the Secretary of
11 State.

12 *SEC. 9. Section 11357 of the Government Code is amended to*
13 *read:*

14 11357. (a) The Department of Finance shall adopt and update,
15 as necessary, instructions for inclusion in the State Administrative
16 Manual prescribing the methods that any agency subject to this
17 chapter shall use in making the ~~determination required by~~
18 ~~paragraph (5) and the estimate required by paragraph (6)~~
19 *determinations and estimates required by paragraphs (5) to (10),*
20 *inclusive, of subdivision (a) of Section 11346.5. The instructions*
21 *shall include, but need not be limited to, the following:*

22 (1) Guidelines governing the types of data or assumptions, or
23 both, that may be used, and the methods that shall be used, to
24 calculate the estimate of the cost or savings to public agencies *or*
25 *small businesses* mandated by the regulation for which the estimate
26 is being prepared.

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

29 (3) The criteria that shall be used in determining whether the
30 cost of a regulation must be funded by the state pursuant to Section
31 6 of Article XIII B of the California Constitution and Part 7
32 (commencing with Section 17500) of Division 4.

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

36 (5) *The criteria that shall be used in determining what costs, if*
37 *any, may be incurred by an individual or business that complies*
38 *with a proposed regulation.*

39 (4)

1 (6) The format the agency preparing the estimate shall follow
2 in summarizing and reporting its estimate of the cost or savings
3 to state and local agencies, school districts, and in federal funding
4 of state programs that will result from the regulation.

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

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