

AMENDED IN SENATE APRIL 7, 2011

SENATE BILL

No. 353

Introduced by Senator Blakeslee

February 15, 2011

An act to amend Section 11353 of, and to add Section 11346.35 to, the Government Code, relating to regulations. An act to amend Sections 11342.520, 11344.1, 11346.1, 11346.3, 11346.45, 11346.5, 11346.9, 11349, 11349.1, 11349.3, 11349.7, 11352, 11353, and 11354.1 of, to add Sections 11342.3, 11342.547, 11346.35, 11349.73, and 11349.75 to, and to add Article 1.5 (commencing with Section 13090) to Chapter 2 of Part 3 of Division 3 of, and to repeal Section 11349.5 of, the Government Code, and to amend Section 311 of the Public Utilities Code, relating to regulations.

LEGISLATIVE COUNSEL'S DIGEST

SB 353, as amended, Blakeslee. Regulations: economic analysis.

Existing law, the Administrative Procedure Act, governs the procedure for the adoption, amendment, or repeal of regulations by state agencies and for the review of those regulatory actions by the Office of Administrative Law. Existing law requires a state agency proposing to adopt, amend, or repeal any administrative regulation to assess the potential for adverse economic impact on California business enterprises and individuals, as prescribed.

Existing law exempts the adoption or revision of state policies for water quality control and water quality control plans and guidelines by the State Water Resources Control Board from the procedures of the act, except as provided.

(1) Existing law, the Administrative Procedure Act, governs the procedure for the adoption, amendment, or repeal of regulations by

state agencies and for the review of those regulatory actions by the Office of Administrative Law.

This bill would also provide that the activities of the office in reviewing and approving regulations, and amendments or repeal of regulations, as prescribed, be exempt from the California Environmental Quality Act.

(2) The act requires that state agencies proposing to adopt regulations, prior to publication of the notice of proposed action, involve parties that would be subject to the proposed regulations in public discussions regarding those proposed regulations, when the proposed regulations involve complex proposals or a large number of proposals that cannot easily be reviewed during the comment period.

This bill would make the requirement to involve parties that would be subject to the proposed regulations in public discussions regarding those proposed regulations applicable to all proposed regulations. The bill would also require, for a major regulation, as defined, that an agency consider and evaluate reasonable alternatives to a proposed regulation that are proposed by a party who would be subject to the proposed regulation.

(3) The act requires a state agency proposing to adopt, amend, or repeal any administrative regulation to assess the potential for adverse economic impact on California business enterprises and individuals, as prescribed. 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 an agency shall use in making certain determinations relating to cost impacts of regulations.

This bill would require each state agency proposing to adopt, amend, or repeal a regulation, in addition to those existing economic analysis requirements, to prepare a cost-benefit economic analysis of the proposed regulation with specified information. Commencing July 1, 2012, this bill would require an agency that proposes to adopt a major regulation to prepare an additional economic assessment with specified information.

The bill would establish within the Department of Finance the Office of Economic and Regulatory Analysis, which would be required to review and approve economic analyses of proposed regulations and perform other related duties, as specified. The bill would require the Office of Economic and Regulatory Analysis to adopt guidelines that

each agency would be required to follow for purposes of performing the economic assessments.

(4) The act requires a state agency to issue a notice of proposed action, with specified information relating to the proposed regulation, including an informative digest and a statement related to the description of cost impacts known to the agency.

This bill would require additional information to be included in the informative digest, as specified, and would eliminate the requirement that the agency include a prescribed statement in the notice of proposed action when no cost impacts are known to the agency. The bill would also require that the notice of proposed action also include a statement of the results of the economic assessment, including the additional economic assessment performed for a major regulation, and the corresponding approval from the Office of Economic and Regulatory Analysis.

(5) The act requires the office to approve or disapprove regulations submitted by an agency within 30 days. The office is required to make determinations regarding submitted regulations using the standards of necessity, authority, clarity, consistency, reference, and nonduplication, as defined. The act requires that the office disapprove and return to the agency a regulation that does not satisfy prescribed requirements of the act. The act authorizes an agency to appeal to the Governor a decision by the office to disapprove a proposed regulation, as specified.

This bill would define the term “cost-effectiveness” as specified. The bill would increase to 60 days the amount of time in which the office is required to approve or disapprove a submitted regulation. The bill would repeal the provisions that authorize an agency to appeal an office decision to the Governor.

(6) The act requires the office, at the request of any standing, select, or joint committee of the Legislature, to initiate a priority review of any regulation, group of regulations, or series of regulations that the committee believes does not meet the standards of necessity, authority, clarity, consistency, reference, and nonduplication. If the office determines that the regulation no longer meets those standards, the office is required to file an order of repeal of the regulation with the Secretary of State, as specified.

This bill would require the Office of Administrative Law to convene public workshops, as specified, for determining whether regulations should be subject to the priority review process. The bill would require

the office to initiate the priority review process for a regulation, if the office determines it no longer meets the required standards, as specified.

This bill would subject a major regulation to a mandatory priority review, that the office would be required to initiate 7 years after the date that the regulation is implemented, as specified.

(7) The act exempts the State Water Resources Control Board from the procedures of the act, except as provided.

This bill would require the State Water Resources Control Board to comply with the economic assessment—requirement and the corresponding external economic peer review requirement of the act for any policy, plan, or guideline adopted by the board requirements of the act and would specify that an exemption for certain requirements and permits and waivers are limited to those for individual applicants, as specified.

(8) This bill would make conforming changes.

Vote: majority. Appropriation: no. Fiscal committee: yes.

State-mandated local program: no.

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

1 ~~SECTION 1. Section 11346.35 is added to the Government~~
2 ~~Code, to read:~~

3 ~~11346.35. (a) For purposes of this section, the following terms~~
4 ~~have the following meanings:~~

5 ~~(1) “Economic assessment” refers to the assessment required~~
6 ~~by Section 11346.3.~~

7 ~~(2) “Major rule” means the adoption, amendment, or repeal of~~
8 ~~any regulation by a state agency, including a policy adopted by~~
9 ~~the State Water Resources Control Board pursuant to the~~
10 ~~Porter-Cologne Water Quality Control Act (Division 7~~
11 ~~(commencing with Section 13000) of the Water Code) that has the~~
12 ~~effect of a regulation, and that is adopted in order to implement,~~
13 ~~interpret, or make specific a statute, that will have an economic~~
14 ~~impact on the state’s business enterprises in an amount exceeding~~
15 ~~one hundred million dollars (\$100,000,000), as estimated in the~~
16 ~~economic assessment.~~

17 ~~(b) An agency shall enter into an agreement with the National~~
18 ~~Bureau of Economic Research, the University of California, the~~
19 ~~California State University, or groups of economists of comparable~~
20 ~~stature and qualifications that are recommended by the President~~

1 of the University of California, to conduct an external economic
2 peer review of the economic assessment for any major rule
3 proposed for adoption by an agency.

4 (c) (1) An agency shall use the process for selecting external
5 peer reviewers adopted pursuant to Section 57004 of the Health
6 and Safety Code, except as provided in paragraph (2).

7 (2) An agency may contact or communicate with an external
8 economic peer reviewer for the purpose of entering into a contract
9 with the reviewer and providing the proposed major rule, including
10 the economic assessment, and other appropriate materials on which
11 the economic assessment of the proposed major rule are based.

12 (d) A person shall not serve as an external economic peer
13 reviewer for the economic assessment of a major rule if that person
14 participated in the development of the economic assessment of the
15 major rule.

16 (e) The identity of the individual external economic peer
17 reviewers shall remain confidential until the external economic
18 peer reviewer submits the written report to the state board.

19 (f) An agency shall not take any action to adopt the final version
20 of a major rule unless all of the following conditions are met:

21 (1) The agency submits the economic assessment of the
22 proposed major rule, along with a statement of the findings,
23 conclusions, and assumptions on which the economic assessment
24 of the proposed rule are based and the supporting data, studies,
25 and other appropriate materials, to the external economic peer
26 review entity for its evaluation.

27 (2) The external economic peer review entity, within the
28 timeframe agreed upon by the agency and the external economic
29 peer review entity, prepares a written report that contains an
30 evaluation of the economic assessment of the proposed rule. If the
31 external economic peer review entity finds that the agency has
32 failed to demonstrate that the economic assessment of the proposed
33 rule is based upon sound economic knowledge, methods, and
34 practices, the report shall state that finding, and the reasons
35 explaining the finding, within the agreed-upon timeframe, but no
36 later than 60 days following the external economic peer review
37 entity's receipt of the materials listed in paragraph (1).

38 (3) The agency accepts the finding of the external economic
39 peer review entity, in whole, or in part, and revises the economic
40 assessment of the proposed rule accordingly, or rejects the finding.

1 If the agency disagrees with any aspect of the finding of the
2 external economic peer review entity, it shall explain, and include
3 as part of the rulemaking record, its basis for arriving at such a
4 determination in the adoption of the final rule, including the reasons
5 why it has determined that the scientific portions of the proposed
6 rule are based on sound scientific knowledge, methods, and
7 practices. The external economic peer review entity's written
8 findings will also be included in the rulemaking record.

9 (g) The agency shall notify the fiscal committees of each house
10 of the Legislature and the Department of Finance of the completion
11 of the external economic peer review. The notification shall include
12 the text of the proposed major rule, the agency's economic
13 assessment of the major rule, and the external economic peer
14 review entity's written findings.

15 (h) The requirements of this section do not apply to any
16 emergency regulation adopted pursuant to Section 11346.1.

17 (i) Nothing in this section shall be interpreted to, in any way,
18 limit the authority of an agency to adopt a rule pursuant to the
19 requirements of the statute that authorizes or requires the adoption
20 of the major rule.

21 *SECTION 1. Section 11342.3 is added to the Government Code,*
22 *to read:*

23 *11342.3. The activities of the office in reviewing and approving*
24 *regulations, and amendments or repeal of regulations pursuant*
25 *to this chapter are exempt from the California Environmental*
26 *Quality Act (Division 13 (commencing with Section 21000) of the*
27 *Public Resources Code).*

28 *SEC. 2. Section 11342.520 of the Government Code is amended*
29 *to read:*

30 *11342.520. "Agency" means state agency, as defined in Section*
31 *11000.*

32 *SEC. 3. Section 11342.547 is added to the Government Code,*
33 *to read:*

34 *11342.547. For purposes of this chapter, "major regulation"*
35 *means either of the following:*

36 *(a) Any regulation, or a group of regulations authorized by the*
37 *same statute, that is proposed for adoption, amendment, or repeal*
38 *by a regional office, board, or department of a state agency that*
39 *has a gross economic cost of at least five million dollars*

1 (\$5,000,000) in any given year, as estimated by the economic
2 assessment required by subdivision (a) of Section 11346.3.

3 (b) Any regulation, or group of regulations authorized by the
4 same statute, that is proposed for adoption, amendment, or repeal
5 by a state agency that has a gross economic cost of at least
6 twenty-five million dollars (\$25,000,000) in any given year, as
7 estimated by the economic assessment required by subdivision (a)
8 of Section 11346.3.

9 SEC. 4. Section 11344.1 of the Government Code is amended
10 to read:

11 11344.1. The office shall do all of the following:

12 (a) Provide for the publication of the California Regulatory
13 Notice Register, which shall be an official publication of the State
14 of California and which shall contain the following:

15 (1) Notices of proposed action prepared by regulatory agencies,
16 subject to the notice requirements of this chapter, and which have
17 been approved by the office.

18 (2) A summary of all regulations filed with the Secretary of
19 State in the previous week.

20 (3) Summaries of all regulation decisions issued in the previous
21 week detailing the reasons for disapproval of a regulation, the
22 reasons for not filing an emergency regulation, and the reasons for
23 repealing an emergency regulation. The California Regulatory
24 Notice Register shall also include a quarterly index of regulation
25 decisions.

26 (4) Material that is required to be published under Sections
27 ~~11349.5, 11349.7, 11349.7~~ and 11349.9.

28 (5) Determinations issued pursuant to Section 11340.5.

29 (b) Establish the publication dates and manner and form in
30 which the California Regulatory Notice Register shall be prepared
31 and published and ensure that it is published and distributed in a
32 timely manner to the presiding officer and rules committee of each
33 house of the Legislature and to all subscribers.

34 (c) Post on its ~~website~~ *Internet Web site*, on a weekly basis:

35 (1) The California Regulatory Notice Register. Each issue of
36 the California Regulatory Notice Register on the office's ~~website~~
37 *Internet Web site* shall remain posted for a minimum of 18 months.

38 (2) One or more Internet links to assist the public to gain access
39 to the text of regulations proposed by state agencies.

1 *SEC. 5. Section 11346.1 of the Government Code is amended*
2 *to read:*

3 11346.1. (a) (1) The adoption, amendment, or repeal of an
4 emergency regulation is not subject to any provision of this article
5 or Article 6 (commencing with Section 11349), except this section
6 and ~~Sections 11349.5 and~~ Section 11349.6.

7 (2) At least five working days before submitting an emergency
8 regulation to the office, the adopting agency shall, except as
9 provided in paragraph (3), send a notice of the proposed emergency
10 action to every person who has filed a request for notice of
11 regulatory action with the agency. The notice shall include both
12 of the following:

13 (A) The specific language proposed to be adopted.

14 (B) The finding of emergency required by subdivision (b).

15 (3) An agency is not required to provide notice pursuant to
16 paragraph (2) if the emergency situation clearly poses such an
17 immediate, serious harm that delaying action to allow public
18 comment would be inconsistent with the public interest.

19 (b) (1) Except as provided in subdivision (c), if a state agency
20 makes a finding that the adoption of a regulation or order of repeal
21 is necessary to address an emergency, the regulation or order of
22 repeal may be adopted as an emergency regulation or order of
23 repeal.

24 (2) Any finding of an emergency shall include a written
25 statement that contains the information required by paragraphs (2)
26 to (6), inclusive, of subdivision (a) of Section 11346.5 and a
27 description of the specific facts demonstrating the existence of an
28 emergency and the need for immediate action, and demonstrating,
29 by substantial evidence, the need for the proposed regulation to
30 effectuate the statute being implemented, interpreted, or made
31 specific and to address only the demonstrated emergency. The
32 finding of emergency shall also identify each technical, theoretical,
33 and empirical study, report, or similar document, if any, upon
34 which the agency relies. The enactment of an urgency statute shall
35 not, in and of itself, constitute a need for immediate action.

36 A finding of emergency based only upon expediency,
37 convenience, best interest, general public need, or speculation,
38 shall not be adequate to demonstrate the existence of an emergency.
39 If the situation identified in the finding of emergency existed and
40 was known by the agency adopting the emergency regulation in

1 sufficient time to have been addressed through nonemergency
2 regulations adopted in accordance with the provisions of Article
3 5 (commencing with Section 11346), the finding of emergency
4 shall include facts explaining the failure to address the situation
5 through nonemergency regulations.

6 (3) The statement and the regulation or order of repeal shall be
7 filed immediately with the office.

8 (c) Notwithstanding any other provision of law, no emergency
9 regulation that is a building standard shall be filed, nor shall the
10 building standard be effective, unless the building standard is
11 submitted to the California Building Standards Commission, and
12 is approved and filed pursuant to Sections 18937 and 18938 of the
13 Health and Safety Code.

14 (d) The emergency regulation or order of repeal shall become
15 effective upon filing or upon any later date specified by the state
16 agency in a written instrument filed with, or as a part of, the
17 regulation or order of repeal.

18 (e) No regulation, amendment, or order of repeal initially
19 adopted as an emergency regulatory action shall remain in effect
20 more than 180 days unless the adopting agency has complied with
21 Sections 11346.2 to 11347.3, inclusive, either before adopting an
22 emergency regulation or within the 180-day period. The adopting
23 agency, prior to the expiration of the 180-day period, shall transmit
24 to the office for filing with the Secretary of State the adopted
25 regulation, amendment, or order of repeal, the rulemaking file,
26 and a certification that Sections 11346.2 to 11347.3, inclusive,
27 were complied with either before the emergency regulation was
28 adopted or within the 180-day period.

29 (f) If an emergency amendment or order of repeal is filed and
30 the adopting agency fails to comply with subdivision (e), the
31 regulation as it existed prior to the emergency amendment or order
32 of repeal shall thereupon become effective and after notice to the
33 adopting agency by the office shall be reprinted in the California
34 Code of Regulations.

35 (g) If a regulation is originally adopted and filed as an
36 emergency and the adopting agency fails to comply with
37 subdivision (e), this failure shall constitute a repeal of the
38 regulation and after notice to the adopting agency by the office,
39 shall be deleted.

(h) The office may approve not more than two readoptions, each for a period not to exceed 90 days, of an emergency regulation that is the same as or substantially equivalent to an emergency regulation previously adopted by that agency. Readoption shall be permitted only if the agency has made substantial progress and proceeded with diligence to comply with subdivision (e).

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

11346.3. (a) State agencies 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) The proposed adoption, amendment, or repeal of a regulation shall be based on adequate information concerning the need for, and consequences of, proposed governmental action.

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

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

(b) (1) ~~All~~ A state agency proposing to adopt, amend, or repeal a regulation, or a group of regulations authorized by the same statute, shall prepare an analysis of the benefits and costs, expressed in monetary terms to the extent feasible and appropriate. Benefits and costs shall be identified separately and calculated on

1 *a gross basis. Benefits and costs shall be calculated for any year*
2 *in which benefits or costs are projected to occur in the 10 years*
3 *following the date the regulation is proposed to be adopted.*

4 (2) Allstate agencies proposing to adopt, amend, or repeal any
5 administrative regulations shall assess whether and to what extent
6 it will affect the following:

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

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

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

13 ~~(2)~~

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

17 ~~(3)~~

18 (4) Information required from state agencies for the purpose of
19 completing the assessment may come from existing state
20 publications.

21 (c) No administrative regulation adopted on or after January 1,
22 1993, that requires a report shall apply to businesses, unless the
23 state agency adopting the regulation makes a finding that it is
24 necessary for the health, safety, or welfare of the people of the
25 state that the regulation apply to businesses.

26 (d) *Commencing July 1, 2012, an agency shall prepare the*
27 *economic assessment required in subdivision (b) consistent with*
28 *the guidelines adopted by the Office of Economic and Regulatory*
29 *Analysis pursuant to Section 13092.*

30 (e) *Commencing July 1, 2012, an agency shall not submit an*
31 *initial statement of reasons pursuant to Section 11346.2 or a final*
32 *statement of reasons pursuant to Section 11346.9 unless and until*
33 *the agency has received approval from the Office of Economic*
34 *and Regulatory Analysis pursuant to Section 13093 that the*
35 *economic assessment required by subdivision (b) was prepared in*
36 *accordance with the guidelines adopted by the Office of Economic*
37 *and Regulatory Analysis pursuant to Section 13092.*

38 SEC. 7. Section 11346.35 is added to the Government Code,
39 to read:

1 11346.35. (a) (1) Each state agency proposing to adopt,
2 amend, or repeal a major regulation, or a group of regulations
3 authorized by the same statute and that includes a major
4 regulation, shall prepare an additional economic assessment of
5 the proposed regulation in the preparation of the initial statement
6 of reasons pursuant to Section 11346.2, and shall prepare an
7 economic assessment for each of the alternatives considered by
8 the agency in the preparation of the final statement of reasons
9 pursuant to Section 11346.9.

10 (2) The economic assessment shall include all of the following:

11 (A) The economic assessment prepared pursuant to Section
12 11346.3.

13 (B) An analysis of the benefits and costs that cannot feasibly or
14 appropriately be expressed in monetary terms, enumerated and
15 presented in a manner that allows for the consideration of both
16 quantified and nonquantified impacts.

17 (C) A distributional assessment that evaluates how certain
18 industries, income groups, or geographic regions experience
19 benefits or costs as a consequence of the regulation, including,
20 but not limited to, the following:

21 (i) The analyses of benefits and costs prepared pursuant to
22 subparagraphs (A) and (B).

23 (ii) The short-term and long-term creation or elimination of
24 jobs.

25 (iii) The cumulative economic impact of the regulation and
26 existing federal, state, and local regulations.

27 (iv) The potential for economic leakage as a result of the
28 regulation in which economic activity is relocated from California
29 to another state or country.

30 (v) The impact on the ability of California businesses to compete
31 with other states and to attract businesses to locate in the state.

32 (D) The effects on sales tax, income tax, and corporation tax
33 revenue to the General Fund, and fee revenues to special funds,
34 as a result of changes in economic activity.

35 (E) An analysis of the cumulative impact of the proposed
36 regulation and any other related regulations enacted pursuant to
37 the same authorizing statute.

38 (b) The agency shall prepare the economic assessment required
39 in subdivision (a) consistent with the guidelines adopted by the

1 *Office of Economic and Regulatory Analysis pursuant to Section*
2 *13092.*

3 *(c) Prior to submitting the initial statement of reasons pursuant*
4 *to Section 11346.2, the agency shall have received approval from*
5 *the Office of Economic and Regulatory Analysis pursuant to*
6 *Section 13093 that the economic assessment required by*
7 *subdivision (a) for the proposed regulation was prepared according*
8 *to the guidelines adopted by the Office of Economic and Regulatory*
9 *Analysis pursuant to Section 13092.*

10 *(d) Prior to submitting a final statement of reasons pursuant to*
11 *Section 11346.9, the agency shall have received approval from*
12 *the Office of Economic and Regulatory Analysis pursuant to*
13 *Section 13093 that the additional economic assessment required*
14 *by subdivision (a) for the proposed regulation and each of the*
15 *alternatives considered by the agency were prepared according*
16 *to the guidelines established by the Office of Economic and*
17 *Regulatory Analysis pursuant to Section 13092.*

18 *(e) This section shall become operative on July 1, 2012.*

19 *SEC. 8. Section 11346.45 of the Government Code is amended*
20 *to read:*

21 *11346.45. (a) In order to increase public participation and*
22 *improve the quality of regulations, state agencies proposing to*
23 *adopt regulations shall, prior to publication of the notice required*
24 *by Section 11346.5, involve parties who that would be subject to*
25 *the proposed regulations in public discussions regarding those*
26 *proposed regulations, when the proposed regulations involve*
27 *complex proposals or a large number of proposals that cannot*
28 *easily be reviewed during the comment period.*

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

33 *(b) For any major regulation, an agency shall consider and*
34 *evaluate alternatives, including the preparation of an economic*
35 *assessment pursuant to Section 11346.3 for those alternatives. The*
36 *consideration and evaluation of alternatives shall also include*
37 *any reasonable alternative proposed to the agency by a party that*
38 *would be subject to the proposed regulation.*

1 (c) If the agency does not or cannot comply with the provisions
2 of subdivision (a), it shall state the reasons for noncompliance with
3 reasonable specificity in the rulemaking record.

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

6 *SEC. 9. Section 11346.5 of the Government Code is amended*
7 *to read:*

8 11346.5. (a) The notice of proposed adoption, amendment, or
9 repeal of a regulation shall include the following:

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

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

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

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

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

26 (C) A policy statement overview explaining the broad objectives
27 of the regulation and, ~~if appropriate, the specific objectives the~~
28 *specific benefits anticipated by the proposed regulation.*

29 (D) *An evaluation of whether the proposed regulation is*
30 *inconsistent or incompatible with other regulations.*

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

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

38 (6) An estimate, prepared in accordance with instructions
39 adopted by the Department of Finance, of the cost or savings to
40 any state agency, the cost to any local agency or school district

1 that is required to be reimbursed under Part 7 (commencing with
2 Section 17500) of Division 4, other nondiscretionary cost or
3 savings imposed on local agencies, and the cost or savings in
4 federal funding to the state.

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

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

16 (A) Identification of the types of businesses that would be
17 affected.

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

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

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

33 (ii) Consolidation or simplification of compliance and reporting
34 requirements for businesses.

35 (iii) The use of performance standards rather than prescriptive
36 standards.

37 (iv) Exemption or partial exemption from the regulatory
38 requirements for businesses.”

39 (8) If a state agency, in adopting, amending, or repealing any
40 administrative regulation, makes an initial determination that the

1 action will not have a significant, statewide adverse economic
2 impact directly affecting business, including the ability of
3 California businesses to compete with businesses in other states,
4 it shall make a declaration to that effect in the notice of proposed
5 action. In making this declaration, the agency shall provide in the
6 record facts, evidence, documents, testimony, or other evidence
7 upon which the agency relies to support its initial determination.

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

14 (9) A description of all cost impacts, known to the agency at
15 the time the notice of proposed action is submitted to the office,
16 that a representative private person or business would necessarily
17 incur in reasonable compliance with the proposed action.

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

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

23 (10) (A) A statement of the results of the *economic* assessment
24 required by subdivision ~~(b)~~ (a) of Section 11346.3 *and the approval*
25 *from the Office of Economic and Regulatory Analysis as required*
26 *pursuant to Section 11346.3.*

27 (B) *For a major regulation, a statement of the results of the*
28 *additional economic assessment required by subdivision (a) of*
29 *Section 11346.35 and the approval from the Office of Regulatory*
30 *and Economic Analysis as required pursuant to subdivision (c) of*
31 *Section 11346.35.*

32 (11) The finding prescribed by subdivision (c) of Section
33 11346.3, if required.

34 (12) A statement that the action would have a significant effect
35 on housing costs, if a state agency, in adopting, amending, or
36 repealing any administrative regulation, makes an initial
37 determination that the action would have that effect. In addition,
38 the agency officer designated in paragraph (14), shall make
39 available to the public, upon request, the agency's evaluation, if

1 any, of the effect of the proposed regulatory action on housing
2 costs.

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

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

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

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

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

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

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

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

38 (b) The agency representative designated in paragraph (14) of
39 subdivision (a) shall make available to the public upon request the
40 express terms of the proposed action. The representative shall also

1 make available to the public upon request the location of public
2 records, including reports, documentation, and other materials,
3 related to the proposed action. If the representative receives an
4 inquiry regarding the proposed action that the representative cannot
5 answer, the representative shall refer the inquiry to another person
6 in the agency for a prompt response.

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

12 *SEC. 10. Section 11346.9 of the Government Code is amended*
13 *to read:*

14 11346.9. Every agency subject to this chapter shall do the
15 following:

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

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

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

34 (3) A summary of each objection or recommendation made
35 regarding the specific adoption, amendment, or repeal proposed,
36 together with an explanation of how the proposed action has been
37 changed to accommodate each objection or recommendation, or
38 the reasons for making no change. This requirement applies only
39 to objections or recommendations specifically directed at the
40 agency's proposed action or to the procedures followed by the

1 agency in proposing or adopting the action. The agency may
2 aggregate and summarize repetitive or irrelevant comments as a
3 group, and may respond to repetitive comments or summarily
4 dismiss irrelevant comments as a group. For the purposes of this
5 paragraph, a comment is “irrelevant” if it is not specifically directed
6 at the agency’s proposed action or to the procedures followed by
7 the agency in proposing or adopting the action.

8 (4) A determination with supporting information that no
9 alternative considered by the agency would be more effective in
10 carrying out the purpose for which the regulation is proposed or
11 would be as effective and less burdensome to affected private
12 persons than the adopted regulation. *For a major regulation, the*
13 *determination shall be based upon the economic assessments of*
14 *the proposed regulation and each of the alternatives considered*
15 *by the agency, as required pursuant to subdivision (a) of Section*
16 *11346.35. The agency shall include, as supporting information,*
17 *the approval of the economic assessments by the Office of*
18 *Economic and Regulatory Analysis, as required pursuant to Section*
19 *11346.35.*

20 (5) An explanation setting forth the reasons for rejecting any
21 proposed alternatives that would lessen the adverse economic
22 impact on small businesses. *For a major regulation, the*
23 *explanation shall be based upon the economic assessments of the*
24 *proposed regulation and each of the alternatives considered by*
25 *the agency, as required pursuant to subdivision (a) of Section*
26 *11346.35. The agency shall include, as supporting information,*
27 *the approval of the economic assessments by the Office of*
28 *Economic and Regulatory Analysis, as required pursuant to Section*
29 *11346.35.*

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

37 (c) A state agency that adopts or amends a regulation mandated
38 by federal law or regulations, the provisions of which are identical
39 to a previously adopted or amended federal regulation, shall be
40 deemed to have complied with this section if a statement to the

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

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

15 *SEC. 11. Section 11349 of the Government Code is amended*
16 *to read:*

17 11349. The following definitions govern the interpretation of
18 this chapter:

19 (a) “Necessity” means the record of the rulemaking proceeding
20 demonstrates by substantial evidence the need for a regulation to
21 effectuate the purpose of the statute, court decision, or other
22 provision of law that the regulation implements, interprets, or
23 makes specific, taking into account the totality of the record. For
24 purposes of this standard, evidence includes, but is not limited to,
25 facts, studies, and expert opinion.

26 (b) “Authority” means the provision of law which permits or
27 obligates the agency to adopt, amend, or repeal a regulation.

28 (c) “Clarity” means written or displayed so that the meaning of
29 regulations will be easily understood by those persons directly
30 affected by them.

31 (d) “Consistency” means being in harmony with, and not in
32 conflict with or contradictory to, existing statutes, court decisions,
33 or other provisions of law.

34 (e) “Reference” means the statute, court decision, or other
35 provision of law which the agency implements, interprets, or makes
36 specific by adopting, amending, or repealing a regulation.

37 (f) “Nonduplication” means that a regulation does not serve the
38 same purpose as a state or federal statute or another regulation.
39 This standard requires that an agency proposing to amend or adopt
40 a regulation must identify any state or federal statute or regulation

which is overlapped or duplicated by the proposed regulation and justify any overlap or duplication. This standard is not intended to prohibit state agencies from printing relevant portions of enabling legislation in regulations when the duplication is necessary to satisfy the clarity standard in paragraph (3) of subdivision (a) of Section 11349.1. This standard is intended to prevent the indiscriminate incorporation of statutory language in a regulation.

(g) “Cost-effectiveness” or “cost effective” means that the record of the rulemaking proceeding demonstrates by a preponderance of the evidence that a proposed major regulation would be the least costly alternative to those persons subject to the regulation and would be at least equally effective in effectuating the purpose of the authorizing statute, court decision, or other provision of law that the major regulation implements, interprets, or makes specific.

SEC. 12. Section 11349.1 of the Government Code is amended to read:

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

- (1) Necessity.
- (2) Authority.
- (3) Clarity.
- (4) Consistency.
- (5) Reference.
- (6) Nonduplication.
- (7) Cost-effectiveness, for a major regulation.

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

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

(c) The office shall adopt regulations governing the procedures it uses in reviewing regulations submitted to it. The regulations

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

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

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

14 (2) (A) The agency has not complied with Section 11346.3.
15 *For purposes of this subparagraph, noncompliance shall include*
16 *a failure by the agency to demonstrate approval of the economic*
17 *assessment of the proposed regulation by the Office of Economic*
18 *and Regulatory Analysis.*

19 (B) *For a major regulation, the agency has not complied with*
20 *Section 11346.35. For purposes of this subparagraph,*
21 *noncompliance shall include a failure by the agency to demonstrate*
22 *approval of the economic assessment of the proposed regulation*
23 *by the Office of Economic and Regulatory Analysis, a failure by*
24 *the agency to prepare, and receive approval of, an additional*
25 *economic assessment for each alternative considered by the*
26 *agency, including an economic assessment of each reasonable*
27 *alternative proposed by a party that would be subject to the*
28 *proposed regulation.*

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

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

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

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

(D) Attach a letter or other documentation from the Department of Finance which states that the Department of Finance has authorized the augmentation of the amount available for expenditure under the agency's appropriation in the Budget Act which is for reimbursement pursuant to Part 7 (commencing with Section 17500) of Division 4 to local agencies or school districts from the unencumbered balances of other appropriations in the Budget Act and that this augmentation is sufficient to reimburse local agencies or school districts for their costs mandated by the regulation.

(4) The proposed regulation conflicts with an existing regulation and the agency has not identified the manner in which the conflict may be resolved.

(5) For a major regulation, the office determines that the agency is not proposing to adopt the most efficient and cost-effective regulatory alternative.

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

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

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

SEC. 13. Section 11349.3 of the Government Code is amended to read:

11349.3. (a) The office shall either approve a regulation submitted to it for review and transmit it to the Secretary of State

1 for filing or disapprove it within ~~30~~ 60 working days after the
2 regulation has been submitted to the office for review. If the office
3 fails to act within ~~30~~ 60 days, the regulation shall be deemed to
4 have been approved and the office shall transmit it to the Secretary
5 of State for filing.

6 (b) If the office disapproves a regulation, it shall return it to the
7 adopting agency within the ~~30-day~~ 60-day period specified in
8 subdivision (a) accompanied by a notice specifying the reasons
9 for disapproval. Within seven calendar days of the issuance of the
10 notice, the office shall provide the adopting agency with a written
11 decision detailing the reasons for disapproval. No regulation shall
12 be disapproved except for failure to comply with the standards set
13 forth in Section 11349.1 or for failure to comply with this chapter.

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

24 (d) The office shall not initiate the return of a regulation pursuant
25 to subdivision (c) as an alternative to disapproval pursuant to
26 subdivision (b).

27 *SEC. 14. Section 11349.5 of the Government Code is repealed.*

28 ~~11349.5. (a) To initiate a review of a decision by the office;~~
29 ~~the agency shall file a written Request for Review with the~~
30 ~~Governor's Legal Affairs Secretary within 10 days of receipt of~~
31 ~~the written opinion provided by the office pursuant to subdivision~~
32 ~~(b) of Section 11349.3. The Request for Review shall include a~~
33 ~~complete statement as to why the agency believes the decision is~~
34 ~~incorrect and should be overruled. Along with the Request for~~
35 ~~Review, the agency shall submit all of the following:~~

36 ~~(1) The office's written decision detailing the reasons for~~
37 ~~disapproval required by subdivision (b) of Section 11349.3.~~

38 ~~(2) Copies of all regulations, notices, statements, and other~~
39 ~~documents which were submitted to the office.~~

~~(b) A copy of the agency's Request for Review shall be delivered to the office on the same day it is delivered to the Governor's office. The office shall file its written response to the agency's request with the Governor's Legal Affairs Secretary within 10 days and deliver a copy of its response to the agency on the same day it is delivered to the Governor's office.~~

~~(c) The Governor's office shall provide the requesting agency and the office with a written decision within 15 days of receipt of the response by the office to the agency's Request for Review. Upon receipt of the decision, the office shall publish in the California Regulatory Notice Register the agency's Request for Review, the office's response thereto, and the decision of the Governor's office.~~

~~(d) The time requirements set by subdivisions (a) and (b) may be shortened by the Governor's office for good cause.~~

~~(e) The Governor may overrule the decision of the office disapproving a proposed regulation, an order repealing an emergency regulation adopted pursuant to subdivision (b) of Section 11346.1, or a decision refusing to allow the readoption of an emergency regulation pursuant to Section 11346.1. In that event, the office shall immediately transmit the regulation to the Secretary of State for filing.~~

~~(f) Upon overruling the decision of the office, the Governor shall immediately transmit to the Committees on Rules of both houses of the Legislature a statement of his or her reasons for overruling the decision of the office, along with copies of the adopting agency's initial statement of reasons issued pursuant to Section 11346.2 and the office's statement regarding the disapproval of a regulation issued pursuant to subdivision (b) of Section 11349.3. The Governor's action and the reasons therefor shall be published in the California Regulatory Notice Register.~~

SEC. 15. Section 11349.7 of the Government Code is amended to read:

11349.7. The office, at the request of any standing, select, or joint committee of the Legislature, *or upon its own determination pursuant to Section 11349.75*, shall initiate a priority review of any regulation, group of regulations, or series of regulations that the committee believes does not meet the standards set forth in Section 11349.1.

1 The office shall notify interested persons and shall publish notice
2 in the California Regulatory Notice Register that a priority review
3 has been requested, shall consider the written comments submitted
4 by interested persons, the information contained in the rulemaking
5 record, if any, and shall complete each priority review made
6 pursuant to this section within 90 calendar days of the receipt of
7 the committee's written request *or, for a review initiated pursuant*
8 *to Section 11349.75, the date the notice is published in the*
9 *California Regulatory Notice Register that the review process has*
10 *been initiated.* During the period of any priority review made
11 pursuant to this section, all information available to the office
12 relating to the priority review shall be made available to the public.
13 In the event that the office determines that a regulation does not
14 meet the standards set forth in Section 11349.1, it shall order the
15 adopting agency to show cause why the regulation should not be
16 repealed and shall proceed to seek repeal of the regulation as
17 provided by this section in accordance with the following:

18 (a) In the event it determines that any of the regulations subject
19 to the review do not meet the standards set forth in Section 11349.1,
20 the office shall within 15 days of the determination order the
21 adopting agency to show cause why the regulation should not be
22 repealed. In issuing the order, the office shall specify in writing
23 the reasons for its determination that the regulation does not meet
24 the standards set forth in Section 11349.1. The reasons for its
25 determination shall be made available to the public. The office
26 shall also publish its order and the reasons therefor in the California
27 Regulatory Notice Register. In the case of a regulation for which
28 no, or inadequate, information relating to its necessity can be
29 furnished by the adopting agency, the order shall specify the
30 information which the office requires to make its determination.

31 (b) No later than 60 days following receipt of an order to show
32 cause why a regulation should not be repealed, the agency shall
33 respond in writing to the office. Upon written application by the
34 agency, the office may extend the time for an additional 30 days.

35 (c) The office shall review and consider all information
36 submitted by the agency in a timely response to the order to show
37 cause why the regulation should not be repealed, and determine
38 whether the regulation meets the standards set forth in Section
39 11349.1. The office shall make this determination within 60 days
40 of receipt of an agency's response to the order to show cause. If

the office does not make a determination within 60 days of receipt of an agency's response to the order to show cause, the regulation shall be deemed to meet the standards set forth in subdivision (a) of Section 11349.1. In making this determination, the office shall also review any written comments submitted to it by the public within 30 days of the publication of the order to show cause in the California Regulatory Notice Register. During the period of review and consideration, the information available to the office relating to each regulation for which the office has issued an order to show cause shall be made available to the public. The office shall notify the adopting agency within two working days of the receipt of information submitted by the public regarding a regulation for which an order to show cause has been issued. If the office determines that a regulation fails to meet the standards, it shall prepare a statement specifying the reasons for its determination. The statement shall be delivered to the adopting agency, the Legislature, and the Governor and shall be made available to the public and the courts. Thirty days after delivery of the statement required by this subdivision the office shall prepare an order of repeal of the regulation and shall transmit it to the Secretary of State for filing. *However, the office shall not prepare the order of repeal if, within those 30 days, the agency undertakes to amend the regulation pursuant to Article 5 (commencing with Section 11346), in a manner that will eliminate the identified deficiency for the regulation.*

~~(d) The Governor, within 30 days after the office has delivered the statement specifying the reasons for its decision to repeal, as required by subdivision (c), may overrule the decision of the office ordering the repeal of a regulation. The regulation shall then remain in full force and effect. Notice of the Governor's action and the reasons therefor shall be published in the California Regulatory Notice Register.~~

~~The Governor shall transmit to the rules committee of each house of the Legislature a statement of reasons for overruling the decision of the office, plus any other information that may be requested by either of the rules committees.~~

~~(e)~~

(d) In the event that the office orders the repeal of a regulation, it shall publish the order and the reasons therefor in the California Regulatory Notice Register.

1 SEC. 16. Section 11349.73 is added to the Government Code,
2 to read:

3 11349.73. (a) A major regulation shall be subject to a
4 mandatory priority review pursuant to Section 11349.7, which the
5 office shall initiate seven years from the date the regulation is
6 implemented.

7 (b) The agency shall prepare an updated economic assessment
8 pursuant to Sections 11346.3 and 11346.35, which shall be subject
9 to approval by the Office of Economic and Regulatory Analysis
10 pursuant to Section 13093.

11 (c) The agency shall submit the approved updated economic
12 assessment to the office as part of the priority review. Failure to
13 provide an approved updated economic assessment shall be
14 grounds for the office to order the repeal of the regulation. The
15 office shall consider the approved updated economic assessment,
16 among other information submitted by the agency, in its
17 determination of whether the regulation meets the standards set
18 forth in Section 11349.1.

19 SEC. 17. Section 11349.75 is added to the Government Code,
20 to read:

21 11349.75. (a) The office shall convene public workshops, no
22 less than one time annually, to solicit stakeholder input to identify
23 major regulations, groups of major regulations, or series of major
24 regulations that should be subject to a priority review pursuant
25 to Section 11349.7. In particular, the office shall request
26 stakeholders, including agencies, to demonstrate whether major
27 regulations satisfy the standards for review established in Section
28 11349.1. At least 30 days prior to the public workshop, the office
29 shall notify interested persons and shall publish notice in the
30 California Regulatory Notice Register that a public workshop will
31 be held to identify major regulations that should be subject to a
32 priority review pursuant to Section 11349.7. The office shall
33 consider the written comments and information submitted by
34 interested persons at the public workshop.

35 (b) Within 30 days of a public workshop, based on the written
36 comments submitted by interested persons and the information
37 provided at the public workshop, the office shall make an initial
38 determination whether a major regulation continues to meet the
39 standards of review established in Section 11349.1 and shall notify
40 the adopting agency in writing of the determination. If the office

1 *makes an initial determination that the regulation does not meet*
2 *the standards of review in Section 11349.1 it may require a priority*
3 *review of the regulation pursuant to Section 11349.7. The office*
4 *shall provide written notification of this determination to the*
5 *adopting agency and shall publish notice in the California*
6 *Regulatory Notice Register that a priority review has been initiated.*

7 *(c) The office shall prioritize major regulations for a priority*
8 *review that the interested persons are able to demonstrate, by*
9 *substantial evidence, are not utilizing the most cost-effective*
10 *alternative.*

11 *SEC. 18. Section 11352 of the Government Code is amended*
12 *to read:*

13 *11352. The following actions are not subject to this chapter:*

14 *(a) The issuance, denial, or waiver of any water quality*
15 *certification as authorized under Section 13160 of the Water Code.*

16 *(b) The issuance, denial, or revocation of waste discharge*
17 *requirements and permits to individual applicants pursuant to*
18 *Sections 13263 and 13377 of the Water Code and waivers issued*
19 *to individual applicants pursuant to Section 13269 of the Water*
20 *Code. The exception in this subdivision shall not apply to any*
21 *issuance, denial, or revocation of waste discharge requirements*
22 *and permits issued pursuant to Sections 13263 and 13377 of the*
23 *Water Code and waivers issued pursuant to Section 13269 of the*
24 *Water Code, as to actions taken by the State Water Resources*
25 *Control Board if the waste discharge requirement, permit, or*
26 *waiver is applicable statewide or in an entire region, and as to*
27 *actions taken by a regional water quality control board if the waste*
28 *discharge requirement, permit, or waiver is applicable throughout*
29 *the region, including, but not limited to, comprehensive conditional*
30 *waivers adopted by regional boards pursuant to the Irrigated*
31 *Lands Regulatory Program.*

32 *(c) The development, issuance, and use of the guidance*
33 *document pursuant to Section 13383.7 of the Water Code.*

34 ~~SEC. 2:~~

35 *SEC. 19. Section 11353 of the Government Code is amended*
36 *to read:*

37 *11353. (a) Except as provided in subdivision (b) and (c), this*
38 *chapter does not apply to the adoption or revision of state policy*
39 *for water quality control and the adoption or revision of water*

1 quality control plans and guidelines pursuant to Division 7
2 (commencing with Section 13000) of the Water Code.

3 (b) (1) Any policy, plan, or guideline, or any revision thereof,
4 that the State Water Resources Control Board has adopted or that
5 a court determines is subject to this part, after June 1, 1992, shall
6 be submitted to the office.

7 (2) The State Water Resources Control Board shall include in
8 its submittal to the office all of the following:

9 (A) A clear and concise summary of any regulatory provisions
10 adopted or approved as part of that action, for publication in the
11 California Code of Regulations.

12 (B) The administrative record for the proceeding. Proposed
13 additions to a policy, plan, or guideline shall be indicated by
14 underlined text and proposed deletions shall be indicated by
15 strike-through text in documents submitted as part of the
16 administrative record for the proceeding.

17 (C) A summary of the necessity for the regulatory provision.

18 (D) A certification by the chief legal officer of the State Water
19 Resources Control Board that the action was taken in compliance
20 with all applicable procedural requirements of Division 7
21 (commencing with Section 13000) of the Water Code.

22 ~~(E) The results of the economic impact assessment and the~~
23 ~~external economic peer review of the assessment, if any, as required~~
24 ~~by Sections 11346.3 and 11346.35.~~

25 *(E) The results of the economic assessment required by Section*
26 *11346.3 and, for a major regulation, the additional economic*
27 *assessment required by Section 11346.35.*

28 (3) Paragraph (2) does not limit the authority of the office to
29 review any regulatory provision which is part of the policy, plan,
30 or guideline submitted by the State Water Resources Control Board.

31 (4) The office shall review the regulatory provisions to
32 determine compliance with the standards of necessity, authority,
33 clarity, consistency, reference, ~~and nonduplication~~ *nonduplication*,
34 *and efficiency* set forth in subdivision (a) of Section 11349.1. The
35 office shall also review the responses to public comments prepared
36 by the State Water Resources Control Board or the appropriate
37 regional water quality control board to determine compliance with
38 the public participation requirements of the Federal Water Pollution
39 Control Act (33 U.S.C. Sec. 1251 et seq.). The office shall review
40 the regulatory provisions for compliance with the economic impact

assessment required by ~~Section 11346.3 and the external economic~~
~~peer review analysis, if any, required by Section 11346.35. The~~
~~office shall restrict its~~ *Section 11346.3 and, for a major regulation,*
the additional economic assessment required by Section 11346.35.
The office shall restrict its review to the regulatory provisions and
the administrative record of the proceeding. Sections 11349.3,
11349.4, ~~11349.5~~, and 11350.3 shall apply to the review by the
office to the extent that those sections are consistent with this
section.

(5) The policy, plan, guideline, or revision shall not become
effective unless and until the regulatory provisions are approved
by the office in accordance with subdivision (a) of Section 11349.3.

(6) Upon approval of the regulatory provisions, the office shall
transmit to the Secretary of State for filing the clear and concise
summary of the regulatory provisions submitted by the State Water
Resources Control Board.

(7) Any proceedings before the State Water Resources Control
Board or a California regional water quality control board to take
any action subject to this subdivision shall be conducted in
accordance with the procedural requirements of Division 7
(commencing with Section 13000) of the Water Code, together
with any applicable requirements of the Federal Water Pollution
Control Act (33 U.S.C. Sec. 1251 et seq.), and the requirements
of this chapter, other than the requirements of this section, shall
not apply.

(8) This subdivision shall not provide a basis for review by the
office under this subdivision or Article 6 (commencing with
Section 11349) of any such policy, plan, or guideline adopted or
revised prior to June 1, 1992.

(c) The State Water Resources Control Board shall perform the
economic ~~impact~~ assessment required by *Section 11346.3 and, for*
a major regulation, the additional economic assessment required
by Section 11346.35 for any policy, plan, or guideline, or any
revision thereof, that it adopts after ~~January~~ *July 1, 2012.*

(d) Subdivision (a) does not apply to a provision of any policy,
plan, guideline, or revision, as applied to any person who, as of
June 1, 1992, was a party to a civil action challenging that provision
on the grounds that it has not been adopted as a regulation pursuant
to this chapter.

(e) Copies of the policies, plans, and guidelines to which subdivision (a) applies shall be maintained at central locations for inspection by the public. The State Water Resources Control Board shall maintain, at its headquarters in Sacramento, a current copy of each policy, plan, or guideline in effect. Each regional water quality control board shall maintain at its headquarters a current copy of each policy, plan, or guideline in effect in its respective region. Any revision of a policy, plan, or guideline shall be made available for inspection by the public within 30 days of its effective date.

SEC. 20. Section 11354.1 of the Government Code is amended to read:

11354.1. (a) For purposes of this section, “commission” means the San Francisco Bay Conservation and Development Commission.

(b) This chapter does not apply to any policy, plan, or guideline adopted by the commission prior to January 1, 1996, pursuant to Chapter 5 (commencing with Section 66650) of Title 7.2 of this code or Division 19 (commencing with Section 29000) of the Public Resources Code.

(c) The issuance or denial by the commission of any permit pursuant to subdivision (a) of Section 66632, and the issuance or denial by, or appeal to, the commission of any permit pursuant to Chapter 6 (commencing with Section 29500) of Division 19 of the Public Resources Code, are not subject to this chapter.

(d) (1) Any amendments or other changes to the San Francisco Bay Plan or to a special area plan pursuant to Chapter 5 (commencing with Section 66650) of Title 7.2, adopted by the commission on or after January 1, 1996, and any amendments or other changes to the Suisun Marsh Protection Plan, as defined in Section 29113 of the Public Resources Code, or in the Suisun Marsh local protection program, as defined in Section 29111 of the Public Resources Code, adopted by the commission on and after January 1, 1996, shall be submitted to the office but are not subject to this chapter except as provided in this subdivision.

(2) The commission shall include in its submittal to the office pursuant to paragraph (1) both of the following documents:

(A) A clear and concise summary of any regulatory provision adopted or approved by the commission as part of the proposed change for publication in the California Code of Regulations.

(B) The administrative record for the proceeding, and a list of the documents relied upon in making the change. Proposed additions to the plans shall be indicated by underlined text, and proposed deletions shall be indicated by strike-through text in documents submitted as part of the administrative record for the proceeding.

(3) The office shall review the regulatory provisions to determine compliance with the standards of necessity, authority, clarity, consistency, reference, and nonduplication set forth in subdivision (a) of Section 11349.1. The office shall also review the responses to public comments prepared by the commission to determine compliance with the public participation requirements of Sections 11000 to 11007, inclusive, of Title 14 of the California Code of Regulations, and to ensure that the commission considers all relevant matters presented to it before adopting, amending, or repealing any regulatory provision, and that the commission explains the reasons for not modifying a proposed plan change to accommodate an objection or recommendation. The office shall restrict its review to the regulatory provisions and the administrative record of the proceeding. Sections 11349.3, 11349.4, ~~11349.5~~, and 11350.3 shall apply to the review by the office to the extent that those sections are consistent with this section.

(4) In reviewing proposed changes to the commission's plans for the criteria specified in subdivision (a) of Section 11349.1, the office shall consider the clarity of the proposed plan change in the context of the commission's existing plans.

(5) The proposed plan or program change subject to this subdivision shall not become effective unless and until the regulatory provisions are approved by the office in accordance with subdivision (a) of Section 11349.3.

(6) Upon approval of the regulatory provisions, the office shall transmit to the Secretary of State for filing the clear and concise summary of the regulatory provisions submitted by the commission.

(e) Except as provided in subdivisions (b), (c), and (d), the adoption of any regulation by the commission shall be subject to this chapter in all respects.

SEC. 24. Article 1.5 (commencing with Section 13090) is added to Chapter 2 of Part 3 of Division 3 of the Government Code, to read:

1 Article 1.5. *Office of Economic and Regulatory Analysis*

2
3 13090. *There is within the Department of Finance, the Office*
4 *of Economic and Regulatory Analysis. Pursuant to this chapter,*
5 *the office shall review and approve economic analyses of proposed*
6 *regulations, review alternative analyses of regulations, and set*
7 *standards for economic analyses and alternative analyses.*

8 13091. (a) *The office shall be under the direction and control*
9 *of the Director of Finance, who shall administer this chapter and*
10 *perform all duties, exercise all powers, and discharge all*
11 *responsibilities under the jurisdiction of the office.*

12 (b) *The office may employ personnel necessary to carry out the*
13 *purposes of this article. All personnel shall be appointed pursuant*
14 *to the State Civil Service Act (Part 2 (commencing with Section*
15 *18500) of Division 5 of Title 2). The director may also enter into*
16 *contracts for services of experts in economics and policy analysis*
17 *for carrying out the purposes of this article.*

18 13092. (a) *On or before June 30, 2012, the office shall adopt*
19 *guidelines, including specific methodologies, for agencies to follow*
20 *in doing all of the following:*

21 (1) *Preparing economic assessments required by subdivision*
22 *(b) of Section 11346.3*

23 (2) *Preparing additional economic assessments for major*
24 *regulations required by subdivision (a) of Section 11346.35.*

25 (3) *Selecting the most cost effective alternative for a major*
26 *regulation as required by Section 11349.1.*

27 (b) *The department shall publish the adopted guidelines in the*
28 *State Administrative Manual.*

29 (c) *The guidelines adopted pursuant to this article shall not be*
30 *subject to the requirements of the Administrative Procedure Act*
31 *(Chapter 3.5 (commencing with Section 11340) of Part 1).*

32 13093. (a) *Each state agency proposing to adopt, amend, or*
33 *repeal a regulation shall submit the economic assessment prepared*
34 *pursuant to subdivision (b) of Section 11346.3 to the office. Within*
35 *30 days of receipt of an economic assessment, the office shall*
36 *review the economic assessment to determine if the agency*
37 *prepared the economic assessment consistent with the guidelines*
38 *established in Section 13092.*

39 (1) *The office shall disapprove and return to the agency any*
40 *economic assessment that it determines is not prepared consistent*

1 with the guidelines established in Section 13092. The office shall
2 issue a written statement of its determination to the agency, and
3 notify the Office of Administrative Law, including the specific
4 reasons for the disapproval.

5 (2) The office shall approve any economic assessment that it
6 determines is prepared consistent with the guidelines established
7 in Section 13092, including, but not limited to, the determination
8 as to whether the regulation is a major regulation. The office shall
9 issue a written statement of its determination to the agency, and
10 notify the Office of Administrative Law of the economic
11 assessment's approval.

12 (b) Each state agency proposing to adopt, amend, or repeal a
13 major regulation shall submit the additional economic assessment
14 prepared pursuant to subdivision (a) of Section 11346.35 to the
15 office. Within 30 days of receipt of an economic assessment, the
16 office shall review the economic assessment to determine if the
17 agency prepared the economic assessment consistent with the
18 guidelines established in Section 13092.

19 (1) The office shall disapprove and return to the agency any
20 additional economic assessment that it determines is not prepared
21 consistent with the guidelines established in Section 13092. The
22 office shall issue a written statement of their determination to the
23 agency, and notify the Office of Administrative Law, that includes
24 the specific reasons for the disapproval.

25 (2) The office shall approve any additional economic assessment
26 that it determines is prepared consistent with the guidelines
27 established in Section 13092. The office shall issue a written
28 statement of their determination to the agency, and notify the Office
29 of Administrative Law, of their approval.

30 SEC. 25. Section 311 of the Public Utilities Code is amended
31 to read:

32 311. (a) The commission, each commissioner, the executive
33 director, and the assistant executive directors may administer oaths,
34 certify to all official acts, and issue subpoenas for the attendance
35 of witnesses and the production of papers, waybills, books,
36 accounts, documents, and testimony in any inquiry, investigation,
37 hearing, or proceeding in any part of the state.

38 (b) The administrative law judges may administer oaths,
39 examine witnesses, issue subpoenas, and receive evidence, under
40 rules that the commission adopts.

1 (c) The evidence in any hearing shall be taken by the
2 commissioner or the administrative law judge designated for that
3 purpose. The commissioner or the administrative law judge may
4 receive and exclude evidence offered in the hearing in accordance
5 with the rules of practice and procedure of the commission.

6 (d) Consistent with the procedures contained in Sections 1701.1,
7 1701.2, 1701.3, and 1701.4, the assigned commissioner or the
8 administrative law judge shall prepare and file an opinion setting
9 forth recommendations, findings, and conclusions. The opinion
10 of the assigned commissioner or the administrative law judge is
11 the proposed decision and a part of the public record in the
12 proceeding. The proposed decision of the assigned commissioner
13 or the administrative law judge shall be filed with the commission
14 and served upon all parties to the action or proceeding without
15 undue delay, not later than 90 days after the matter has been
16 submitted for decision. The commission shall issue its decision
17 not sooner than 30 days following filing and service of the
18 proposed decision by the assigned commissioner or the
19 administrative law judge, except that the 30-day period may be
20 reduced or waived by the commission in an unforeseen emergency
21 situation or upon the stipulation of all parties to the proceeding or
22 as otherwise provided by law. The commission may, in issuing its
23 decision, adopt, modify, or set aside the proposed decision or any
24 part of the decision. Where the modification is of a decision in an
25 adjudicatory hearing it shall be based upon the evidence in the
26 record. Every finding, opinion, and order made in the proposed
27 decision and approved or confirmed by the commission shall, upon
28 that approval or confirmation, be the finding, opinion, and order
29 of the commission.

30 (e) Any item appearing on the commission's public agenda as
31 an alternate item to a proposed decision or to a decision subject to
32 subdivision (g) shall be served upon all parties to the proceeding
33 without undue delay and shall be subject to public review and
34 comment before it may be voted upon. For purposes of this
35 subdivision, "alternate" means either a substantive revision to a
36 proposed decision that materially changes the resolution of a
37 contested issue or any substantive addition to the findings of fact,
38 conclusions of law, or ordering paragraphs. The commission shall
39 adopt rules that provide for the time and manner of review and
40 comment and the rescheduling of the item on a subsequent public

1 agenda, except that the item may not be rescheduled for
2 consideration sooner than 30 days following service of the
3 alternative item upon all parties. The alternate item shall be
4 accompanied by a digest that clearly explains the substantive
5 revisions to the proposed decision. The commission's rules may
6 provide that the time and manner of review and comment on an
7 alternate item may be reduced or waived by the commission in an
8 unforeseen emergency situation.

9 (f) The commission may specify that the administrative law
10 judge assigned to a proceeding involving an electrical, gas,
11 telephone, railroad, or water corporation, or a highway carrier,
12 initiated by customer or subscriber complaint need not prepare,
13 file, and serve an opinion, unless the commission finds that to do
14 so is required in the public interest in a particular case.

15 (g) (1) Prior to voting on any commission decision not subject
16 to subdivision (d), the decision shall be served on parties and
17 subject to at least 30 days public review and comment. Any
18 alternate to any commission decision shall be subject to the same
19 requirements as provided for alternate decisions under subdivision
20 (e). For purposes of this subdivision, "decision" also includes
21 resolutions, including resolutions on advice letter filings.

22 (2) The 30-day period may be reduced or waived in an
23 unforeseen emergency situation, upon the stipulation of all parties
24 in the proceeding, for an uncontested matter in which the decision
25 grants the relief requested, or for an order seeking temporary
26 injunctive relief.

27 (3) This subdivision does not apply to uncontested matters that
28 pertain solely to water corporations, or to orders instituting
29 investigations or rulemakings, categorization resolutions under
30 Sections 1701.1 to 1701.4, inclusive, or orders authorized by law
31 to be considered in executive session. Consistent with regulatory
32 efficiency and the need for adequate prior notice and comment on
33 commission decisions, the commission may adopt rules, after
34 notice and comment, establishing additional categories of decisions
35 subject to waiver or reduction of the time period in this section.

36 (h) Notwithstanding any other provision of law, amendments,
37 revisions, or modifications by the commission of its Rules of
38 Practice and Procedure, shall be submitted to the Office of
39 Administrative Law for prior review in accordance with Sections
40 11349, 11349.3, 11349.4, ~~11349.5~~, 11349.6, and 11350.3 of, and

1 subdivisions (a) and (b) of Section 11349.1 of, the Government
2 Code. If the commission adopts an emergency revision to its Rules
3 of Practice and Procedure based upon a finding that the revision
4 is necessary for the preservation of the public peace, health and
5 safety, or general welfare, this emergency revision shall only be
6 reviewed by the Office of Administrative Law in accordance with
7 subdivisions (b) to (d), inclusive, of Section 11349.6 of the
8 Government Code. The emergency revision shall become effective
9 upon filing with the Secretary of State and shall remain in effect
10 for no more than 120 days. A petition for writ of review pursuant
11 to Section 1756 of a commission decision amending, revising, or
12 modifying its Rules of Practice and Procedure shall not be filed
13 until the regulation has been approved by the Office of
14 Administrative Law, the Governor, or a court pursuant to Section
15 11350.3 of the Government Code. If the period for filing the
16 petition for writ of review would otherwise have already
17 commenced under Section 1733 or 1756 at the time of that
18 approval, then the period for filing the petition for writ of review
19 shall continue until 30 days after the date of that approval. Nothing
20 in this subdivision shall require the commission to comply with
21 Article 5 (commencing with Section 11346) of Chapter 3.5 of Part
22 1 of Division 3 of Title 2 of the Government Code. This
23 subdivision is only intended to provide for the Office of
24 Administrative Law review of procedural commission decisions
25 relating to commission Rules of Practice and Procedure, and not
26 general orders, resolutions, or other substantive regulations.

27 (i) The commission shall immediately notify the Legislature
28 whenever the commission reduces or waives the time period for
29 public review and comment due to an unforeseen emergency
30 situation, as provided in subdivision (d), (e), or (g).