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ORIGINAL

STATE OF CALIFORNIA
DEPARTMENT OF FINANCE

PROPOSED REGULATIONS TO IMPLEMENT SB 617

Re: MAJOR REGULATIONS

Thursday, August 29, 2013

9:05 a.m. to 9:32 a.m.

State of California
Department of Finance
915 L Street, Redwood Room
Sacramento, California 95814

Reported By: ERIC L. THRONE, CSR No. 7855, RPR, RMR, CRR

DIAMOND COURT REPORTERS
1107 Second Street, Suite 210
Sacramento, California 95814
(916) 498-9288

1 THURSDAY, AUGUST 29, 2013, SACRAMENTO, CALIFORNIA, 9:05 A.M.

2 MR. RYAN: For the record, today is Thursday,
3 August 29, 2013, the time is 9:05.

4 This is the time and place set for the public hearing
5 conducted by the Department of Finance on the Proposed
6 Regulations to Implement SB 617 regarding Major Regulations
7 as described in the notice published in the California
8 Regulatory Notice Register, sent by mail to all those on the
9 mailing list and posted on the department's Web site.

10 My name is Chris Ryan, I'm the assistant program
11 budget manager, and I will be conducting the hearing with my
12 colleagues: Anita Scuri, Ben Gevercer, and Irena Asmundson.

13 The purpose of this hearing is to receive oral or
14 written testimony concerning the regulatory proposal
15 described in the notice of proposed action.

16 Copies of the proposed regulation text and the initial
17 statement of reasons are available on the table in the back
18 of the room.

19 Before we begin, I'd like to describe the process that
20 will be followed for the rulemaking.

21 The entire hearing is being recorded there's a video
22 recording here in the corner and we have a transcriber taking
23 notes as well.

24 Those persons testifying will not be sworn -- not be
25 sworn in or cross-examined. The panel may, however, ask

1 clarifying questions of the presenters.

2 The department will give full consideration to all
3 oral and written testimony, including any recommendation or
4 objection that are directed at the proposed regulations and
5 are received no later than the conclusion of this hearing.

6 The department will not be responding to each
7 commenter directly. Instead, responses, recommendations, or
8 objections will be included in the final statement of reasons
9 that is filed with the administrative -- the Office of
10 Administrative Law and also posted on the department's
11 Web site.

12 A record of this hearing will become a part of the
13 rulemaking file which will be maintained at the department's
14 main office in Sacramento, and will be available for review
15 during regular business hours.

16 To ensure our record is complete, we ask that persons
17 testifying adhere to the following procedures:

18 If you would like to testify, please print your name
19 on one of the cards at the back table so we can call you.

20 When your name is called, please come to the podium
21 and state your name and who you represent for the record.

22 When you testify, please identify the specific section
23 and subsection of the regulation you are addressing.

24 It would be helpful if you could state, at the
25 beginning of your testimony, whether you support or oppose

1 the regulation.

2 It is not necessary to repeat the testimony of
3 previous witnesses. It is sufficient to indicate that you
4 agree with what a specific commenter has said. If you have
5 submitted written comments, you may summarize them for the
6 record, but please do not read them.

7 We would appreciate it if your testimony could be
8 directed to one or more of the six standards which a
9 regulation must meet:

10 Authority: What law permits or obligates the agency
11 to enact regulations?

12 Necessity: Is there substantial evidence of the need
13 for the regulation?

14 Consistency: Does the regulation conflict with
15 existing law or with another regulation?

16 Clarity: Can the regulation be easily understood by
17 those affected?

18 Nonduplication: Does the regulation duplicate or
19 overlap with another statute or regulation?

20 Reference: What statute or court decision is the
21 agency implementing by enacting regulations?

22 So now we're at the point where we will call for those
23 wishing to comment. I think the first person I'm going to
24 call to testify is Ronnie Isaac with the California
25 Department of Insurance.

1 **MS. ISAAC:** So hello everyone, greetings. George
2 Teekell gave you a five-page letter which didn't catch one
3 point that I wanted to ask about or get clarification for and
4 give you my suggestions.

5 **MR. RYAN:** Could you state your name for the record?

6 **MS. ISAAC:** Yes. I'm Ronnie Isaac, I'm with the
7 Department of Insurance.

8 **MR. RYAN:** And your position?

9 **MS. ISAAC:** And I'm an economist.

10 **MR. RYAN:** Great.

11 **MS. ISAAC:** I'm talking about the definitions on
12 page 1 of the regulation, 2000, Section (e), the definition
13 of "economic impact." In here, you say that it means costs
14 or benefits both direct and induced.

15 I would say suggest that economic impact would be
16 defined to not include "induced," or I think that you also
17 want to include indirect there. Otherwise, it's going to
18 catch a lot of regulations.

19 I don't think a \$25 million cost is necessarily a
20 major regulation. To me it doesn't seem like when you have
21 such a definition of a major regulation in Section (g)
22 defined as 50, that it should include the multiplier effect
23 for the direct and indirect effects.

24 So I would just change the language to say "Economic
25 impact means direct costs or benefits," and delete the

1 language that says "and induced and both."

2 That would be my suggestion.

3 **MR. RYAN:** Great. Thank you. Anything else?

4 **MS. ISAAC:** Also, if you keep the language in
5 Section (e), you are going to probably have to revise your
6 399, because I don't think three positions in all state
7 agencies would be reflective of the true economic impact on
8 the agencies.

9 I think we're going to have a lot more work to do than
10 with the simulation analysis, and the extra work that's
11 entailed in a SRIA analysis versus a basic economic impact.

12 **MR. RYAN:** Thank you.

13 **MS. ISAAC:** Yeah.

14 **MR. RYAN:** Okay. Kara Cross, Personal Insurance
15 Federation of California.

16 After Kara, I have a Gary Fernstrom.

17 **MS. CROSS:** Should I give it to you now?

18 **MR. RYAN:** Perfect, yeah. Thank you.

19 **MS. CROSS:** Sure.

20 **MR. RYAN:** Please state your name for the record.

21 **MS. CROSS:** My name is Kara Cross. I'm the general
22 counsel for the Personal Insurance Federation of California.
23 I have provided comments to Chris in written form and I have
24 summarized what we have but will not read them.

25 First, we want to commend the department for all of

1 its efforts on the regulations. I know there's been a lot of
2 work put into them.

3 We do have two concerns or two comments that we think
4 need to be addressed to help increase the effectiveness of
5 617 and the regulations, and they both go to "clarity."

6 One is with respect to the definition of economic
7 impact. We think it needs to be clarified that scope
8 includes entities doing business in California.

9 And what I mean by that is that when you look at the
10 definition of economic impact, it talks about the impact on
11 California business enterprises, but doesn't define what is
12 meant by California business enterprises.

13 From what I understand of the statute, the intent was
14 to improve California's business climate, and there was a lot
15 of companies in regulating that do business in California,
16 but may not be specifically domiciled in California.

17 The second issue had to do with public input. Again,
18 we commend the department for making sure that there's public
19 input in this process. We do think, however, that there is
20 something missing here.

21 I would note that in Section 2001 there is a provision
22 for public input regarding alternatives, but there's no
23 provision for public input or input by those that will be
24 potentially impacted by the regulations with respect to the
25 initial determination of something that's even a major

1 regulation.

2 So we're concerned that there is a loophole there,
3 that a regulation may not even make it to the Department of
4 Finance's list of major regulations because there hasn't been
5 the expertise of those that will be regulated to be able to
6 provide input to help demonstrate that it may in fact be a
7 major regulation.

8 That summarizes basically what our written comments
9 say.

10 **MR. RYAN:** Great. Thank you.

11 **MS. CROSS:** Thank you very much.

12 **MR. RYAN:** Mr. Fernstrom from PG&E.

13 **MR. FERNSTROM:** Good morning. I'm Gary Fernstrom
14 representing the Pacific, Gas & Electric Company.

15 PG&E and the other California investor-owned utilities
16 are authorized by the California Public Utilities Commission
17 to advocate with the California Energy Commission for new and
18 improved energy efficiency standards for the state, and PG&E
19 supports the California Energy Commission comments in this
20 rulemaking.

21 Thank you.

22 **MR. RYAN:** Thank you.

23 Next speaking request I have is from Pippin Brehler.
24 Could you state your name last name for the record?

25 **MR. BREHLER:** Yes. Good morning. My name is Pippin

1 Brehler and I'm a senior attorney with the California Energy
2 Commission. With me today is Pierre du Vair, senior climate
3 policy analyst with the commission.

4 The energy commission is the state's primary energy
5 policy and planning agency. Its responsibilities include
6 adopting energy efficiency standards, collecting information
7 necessary to establish the state's energy policies and
8 licensing power plants.

9 In the course of fulfilling its responsibilities the
10 energy commission adopts regulations, some of which may be
11 considered to be major under SB 617.

12 We have long conducted detailed economic analyses of
13 the regulations, as required by our own statutory directives,
14 and drawing on this experience we offer our comments on your
15 proposed regulations for conducting standardized regulatory
16 impact assessments.

17 We're pleased that many of our comments to the initial
18 draft are reflected in the proposed regulations. We also
19 thank you for all the hard work that you put into it. We
20 know it's been quite an undertaking.

21 While we have continuing concerns with aspects of the
22 proposed regulations, as reflected in our written comments
23 dated August 17, and a couple of suggested changes to the
24 proposed regulations. So we're here today simply to
25 underscore some of our concerns and highlight our comments on

1 a couple of sections.

2 In Section 2000, under the definition, the proposed
3 definition of economic impact for costs or benefits, direct
4 or induced. But the proposed regulatory definition of a
5 major regulation which includes the term economic impact is
6 limited to costs.

7 We feel these definitions conflict and they conflict
8 with that of cost impact and Government Code
9 Section 11342.535, which refers only to a reasonable range of
10 direct costs on a representative private person or business.

11 And more importantly is as made clear by SB 617 the
12 proposed regulatory definition of economic impact, as well as
13 other aspects of the proposed regulations such as
14 Section 2002(c)(5), 2003(a)(3), (c), (e)(3) and (4), (f) and
15 the (g), the calculation of the economic impact to determine
16 whether a regulation is major we feel should not be made
17 without regard to benefits.

18 This is a critical consideration for many of our
19 programs. For example, our appliance efficiency regulations
20 with that Mr. Fernstrom referenced require manufacturers
21 improve the efficiency of the products. The cost doing so is
22 often passed along to consumers, who also recover more than
23 that cost through energy savings over the life of the device.

24 The definition of major regulations should not
25 preclude us from these and other relevant factors. In

1 addition, the definition of major regulation -- and other
2 regulations for completing the SRIA -- we feel do not provide
3 sufficient guidance on estimating whether a regulation is
4 major as a threshold.

5 The proposed regulations describing how to conduct the
6 SRIA focus on other aspects of the proposed regulation and on
7 analyzing alternatives.

8 We recommend and ask for additional guidance on how to
9 determine at the threshold whether a proposed regulation is
10 major or perhaps specifying criteria for how the department
11 will evaluate an agency's determination that a proposed
12 regulation is or is not major.

13 In addition, there are three generally accepted
14 components of economic impacts: Direct, indirect, and
15 induced. The proposed regulations inconsistently refer to
16 all three. This should be remedied; different phrases should
17 be used such as "cost impact" instead of "economic impact" to
18 refer to cost-only assessments rather than cost-benefit
19 assessments.

20 And we also support using any single 12-month period
21 to clarify the definition of a major regulation and its
22 threshold of an economic impact exceeding \$50 million, as
23 opposed to the alternates of the 12-month or calendar year.

24 In Section 2001, under notification and public input,
25 the list of potential major regulations that must be

1 submitted by February 1, should be no more than necessary to
2 provide the department and the public with advanced notice of
3 anticipated major regulations.

4 The preliminary notice should not require either a
5 detailed summary of proposed regulations that have not yet
6 been developed or a quantified estimate of economic impact.
7 In doing so, it's problematic.

8 Often insufficient information is available about
9 proposed regulations so far in advance to conduct a complex
10 assessment. Regulatory text is often inchoate and undergoes
11 significant revision, considering the numerous alternatives
12 being released to the public as proposed regulations.

13 Providing detailed assessments and descriptions at
14 such an early point would disseminate unreliable information,
15 create false expectations, and cover significant resources on
16 the Department of Agencies responding to inquires, and we
17 feel it is inconsistent with the regulatory notice calendar
18 required by Government Code Section 11017.6.

19 In addition, the requirement to notify the department
20 at least 60 days before filing a notice of proposed action of
21 a major regulation that was not anticipated until after
22 February 1, coincides with the requirement to submit the
23 standardized regulatory impact itself to the department and
24 thus serves no additional purpose.

25 This requirement should be deleted, or if it's

1 retained then agencies should be given more time to submit
2 the SRIA to the department.

3 Under Section 2003, the methodology for making
4 estimates, the proposed regulations concerning the
5 alternatives are problematic for two reasons:

6 One, the alternatives analyses required for economic
7 impact assessment should compare with other potential
8 regulations and not with no regulations at all, as
9 regulations are the appropriate means for state agencies to
10 implement, interpret, and make specific policy decisions made
11 by the legislature. The proposed regulations improperly
12 require a consideration of the "no action" alternative;

13 And second, and my last point, the regulation should
14 be clear that all economic impact assessments and comparisons
15 of "regulatory alternatives" are only of alternatives that
16 were actually considered, but rejected in favor of the
17 proposed regulations.

18 As currently drafted, using the phrase "proposed
19 regulatory alternatives" suggest that agencies must actually
20 propose competing regulatory, and conduct multiple impact
21 assessments of these competing alternatives. This is not
22 contemplated by SB 617 and should not be required by the
23 regulations.

24 Thank you.

25 **MR. RYAN:** Thank you for your comments.

1 So at this time, I don't have any other speakers
2 requested. If there's anyone who wants to step up, please
3 take the podium.

4 **MR. MARGOLIS:** Good morning. I'm Geoff Margolis,
5 deputy commissioner and special counsel of the California
6 Department of Insurance.

7 **MR. RYAN:** Okay.

8 **MR. MARGOLIS:** I just wanted to come today and
9 indicate that we submitted written comments.

10 I have also provided just out of an abundance of
11 governmental caution a copy to the submit here today and
12 incorporate by reference to my oral comments, a letter that's
13 written by George Teekell, one of our attorneys. He'll also
14 be making a couple of comments after I finish.

15 And in addition to our letter, which I will not go
16 into the substance of, I just wanted to also indicate that
17 the Department of Insurance is one of the top four, according
18 to OAL statistics, is one of the top four filers of
19 promulgators of regulations among state agencies.

20 And therefore we're very interested in your work on
21 this and have appreciated the opportunity to assist you in
22 the development. Despite the fact that SB 617 requires us to
23 do so, we would be happy to do so nevertheless, and look
24 forward to continuing to work with the Department of Finance
25 on this project.

1 And with that I'd like to invite George Teekell, as I
2 mentioned, up to raise a specific issue that we didn't
3 completely cover in our written comments.

4 **MR. RYAN:** Great.

5 **MR. MARGOLIS:** Thank you.

6 **MR. TEEKELL:** Good morning. I'm George Teekell with
7 the Department of Insurance. Thank you very much for the
8 opportunity to address you this morning.

9 We have now handed over our eight pages of comments,
10 nine legal concerns and seven technical concerns, which we
11 will not repeat this morning.

12 One point that was perhaps not made as forcefully as
13 perhaps it should have in our written comments is the fact
14 that much of the area of the reg which appears to be outside
15 the scope of the legislation, SB 617 -- and I'm talking
16 specifically about the special Department of Finance
17 rulemaking calendar -- for instance, that's talked about in
18 Section 2001, the alternatives analysis that is required to
19 be submitted to the department is talked about in
20 Section 2002, and certain requirements relating to the
21 alternatives analysis that is to be included as part of the
22 SRIA. I'm talking about specifically Sections 2002(c)(7) and
23 (c)(8), and various other requirements in 2003.

24 I'm not sure whether -- and I mentioned this in my
25 comments -- in Section 2003, there's a whole lot of material

1 having to do with the alternatives analysis, but I can't tell
2 by looking at the regulation text whether this is material
3 that needs to be included in the SRIA or not. My view is
4 that it should not since that's not what's part of the SRIA
5 as specified in the enabling legislation.

6 But the point that I wanted to make today is it seems
7 to me that much of what is behind this move to perhaps
8 establish a new rulemaking requirement is, you know, quite
9 understandable. You need, there's a certain physical impact,
10 there's a certain staffing requirement that needs to be
11 managed.

12 My suggestion would be that perhaps these steps are
13 unnecessary, because the department is not required by the
14 legislation to pass on the agency's alternatives analysis.
15 That's work that is not required of your agency to do.

16 Therefore, since there is no requirement to do it in
17 law, it's not, I'm uncertain that there is a necessity to
18 require this calendar. I might say the same thing about the
19 attempt to pretty much move the whole rulemaking process into
20 a prenotice event so that it can be passed on by the
21 department is unnecessary.

22 There is a formal rulemaking process that still exists
23 after SB 617, a whole other 45 days, where interested parties
24 are entitled to put forth their alternatives.

25 It's sort of impossible for our Department of Finance

1 to actually do the thing it appears to try to be doing, which
2 is to judge the whole package altogether, but the process
3 isn't done. There are still going to be alternatives
4 suggested during the formal rulemaking process.

5 So I believe that the material, much of the material
6 in Section 2003, pertaining to the alternatives analysis,
7 would be just fine by the authority standard, if it did not
8 have to be submitted with the SRIA.

9 Am I making myself clear?

10 The problem is the alternatives analysis does not need
11 to be completed by the agency until the end of the process.
12 Only in the final statement of reasons is the agency required
13 to pass on the economic comparison of alternatives.

14 In the initial filing documents, the initial statement
15 of reasons that is filed with OAL at the same time the notice
16 is filed, the agency is required to state that it must at the
17 end of the process determine, for instance, that the
18 alternative it has chosen is the most cost-effective
19 alternative.

20 Agencies are not required to do that analysis until
21 the end. And there's a reasons for that, because the
22 rulemaking process allows 45 days at least for interested
23 parties to suggest alternatives, once they have the benefit
24 of seeing or having available to them the agency's
25 standardized regulatory impact analysis which, in other

1 words, the statute talks about the impact on business and the
2 benefits to be derived from the regulations.

3 I won't go on further, unless you have further
4 questions.

5 **MS. SCURI:** As a person who used to work for the
6 Department of Consumer Affairs, and now the Department of
7 Insurance, I know how alternatives come to be considered or
8 not considered.

9 Do you have any suggestion for how, as an alternative,
10 alternatives could be -- the goal here is to push the
11 alternative consideration to the beginning of the process and
12 not the end of the process.

13 Do you have any thoughts or suggestions on how that
14 could be achieved, if not through the method that's listed in
15 the regulations?

16 **MR. TEEKELL:** Well not under current law I don't.

17 **MS. SCURI:** Okay.

18 **MR. TEEKELL:** But the alternatives analysis is not
19 required to be completed by agencies until the end of the
20 process, the final statement of reasons, and SB 617 did not
21 change that.

22 **MS. SCURI:** Does it not make sense, however, to try to
23 consider alternatives up-front, so that you can have a more
24 cost-effective type of regulation than doing it at the end of
25 the process?

1 **MR. TEEKELL:** Well, obviously, to a certain degree --

2 **MS. SCURI:** Okay.

3 **MR. TEEKELL:** -- it makes sense; but I think to at
4 least an equal degree it doesn't make sense, because it's
5 necessarily incomplete.

6 During the comment period people will be bringing
7 forth suggested alternatives, and your regulations can and
8 should apply to those.

9 But if it's all -- and this goes back to my original
10 statement -- who knows how many alternatives may be
11 suggested, who knows how much this may impact DOF's workload?

12 There's just no requirement in the statute that DOF
13 passed on the alternatives analysis or commented upon it or
14 have its written comments published in the agency's notice of
15 proposed action.

16 **MS. SCURI:** Thank you.

17 **MR. TEEKELL:** You're most welcome.

18 **MR. RYAN:** Thank you.

19 Is there anyone else who has comments at this time?

20 **MR. FERNSTROM:** Gary Fernstrom again representing
21 PG&E. If I could make a comment directed to your last
22 question.

23 It's our experience, in the past ten or 15 years in
24 abdicating for energy efficiency improvements with the
25 California Energy Commission that opponents to these

1 improvements in these regulations wait until the last minute
2 to make their contribution in an endeavor to perhaps delay
3 the process.

4 So I believe it's admirable to request alternatives
5 and suggestions in the beginning of the process, but you may
6 find that you'll be getting these recommendations at the last
7 minute anyway.

8 **MR. RYAN:** Thank you.

9 Does anyone else have any comments at this time?

10 **MS. ASMUNDSON:** I'm sorry.

11 Can I ask a clarifying question?

12 **MR. RYAN:** Sure.

13 **MS. ASMUNDSON:** You had said that many opponents of
14 the regulations wait until the end to propose alternatives.

15 Do they truly come up with alternatives that you would
16 not have considered or that a consultative group would not
17 have come up with?

18 **MR. FERNSTROM:** That's an excellent question.

19 I think I would respond by saying that opponents often
20 come up with obstacles --

21 **MS. ASMUNDSON:** Okay.

22 **MR. FERNSTROM:** -- not so much viable alternatives.

23 However, regardless of how you wish to define it --

24 **MS. ASMUNDSON:** Uh-huh.

25 **MR. FERNSTROM:** -- frequently, they do come at the last

1 moment. As an example, the California Energy Commission
2 asked for data information --

3 **MS. ASMUNDSON:** Uh-huh.

4 **MR. FERNSTROM:** -- relative to the market and energy
5 efficiency performance, and so on --

6 **MS. ASMUNDSON:** Uh-huh.

7 **MR. FERNSTROM:** -- and often these submittals are
8 coming at the last minute.

9 **MS. ASMUNDSON:** Okay. Thank you.

10 **MR. RYAN:** Anyone else with comments? We've got the
11 room until noon.

12 Okay. So if there's no one else wishing to provide
13 testimony or comments at this time, we will consider the
14 hearing closed.

15 **MS. SCURI:** Thank you all for coming.

16 **MR. RYAN:** Thank you.

17 (Proceedings concluded.)

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