

ASSEMBLY BILL

No. 1857

Introduced by Assembly Member Wayne

January 30, 2002

An act to amend Section 202 of the Fish and Game Code, and to amend Sections 11340.85, 11343, 11346.2, 11346.5, and 11347.6 of the Government Code, relating to administrative rulemaking.

LEGISLATIVE COUNSEL'S DIGEST

AB 1857, as introduced, Wayne. Administrative procedures.

(1) Existing law provides that the regulations adopted, amended, or repealed by the Fish and Game Commission are not subject to specified time periods prescribed in the Administrative Procedure Act relating to the adoption, amendment, or repeal of regulations.

This bill would further exempt the commission's regulations from the time period for adding specified documents to the rulemaking file after publication of the notice of the proposed regulatory action, where the state agency relies on the document in proposing the action.

(2) Existing law requires that every state agency subject to the act that maintains an Internet Web site or similar forum for the electronic publication or distribution of written material is required to publish on that Web site or other forum specified information regarding a proposed regulation or regulatory repeal or amendment.

This bill would require this information to include the text of a proposed emergency adoption, amendment, or repeal of a regulation and the date it was submitted to the Office of Administrative Law for review and filing with the Office of Administrative Law.

It would also require that a document that is required to be published electronically pursuant to these provisions be posted during the rulemaking process and for an additional period of not less than 15 days.

(3) Existing law requires every state agency subject to the act to submit, with the notice of the proposed adoption, amendment, or repeal of a regulation, an initial statement of reasons for proposing the adoption, amendment, or repeal of a regulation. Existing law also requires that the initial statement of reasons include, among other things, a description of any reasonable alternatives the agency has identified or that have otherwise been identified and brought to the attention of the agency that would lessen any adverse impact on small business.

This bill would also require this statement of reasons to include the state agency’s reasons for rejecting those reasonable alternatives.

(4) Existing law requires that the notice of the proposed amendment, adoption, or repeal of a regulation include the name and telephone number of the agency representative and designated backup contact person to whom inquiries concerning the proposed administrative action may be directed, as well as the name and telephone number of an agency person or persons designated to respond to questions on the substance of the proposed adoption, amendment, or repeal of a regulation.

This bill would delete the requirement for inclusion of the name and telephone number of an agency person or persons designated to respond to questions on the substance of the proposed adoption, amendment, or repeal of a regulation, but would, instead, require that if the agency representative receives an inquiry regarding the proposed action that he or she cannot answer, the agency representative shall refer the inquiry to another person in the agency for a prompt response.

(5) The bill would also make various technical or clarifying 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 202 of the Fish and Game Code is
2 amended to read:
3 202. The commission shall exercise its powers under this
4 article by regulations made and promulgated pursuant to this
5 article. Regulations adopted pursuant to this article shall not be



1 subject to the time periods for the adoption, amendment, or repeal
2 of regulations prescribed in Sections 11343.4, 11346.4, ~~and~~
3 11346.8, *and 11347.1* of the Government Code.

4 SEC. 2. Section 11340.85 of the Government Code is
5 amended to read:

6 11340.85. (a) As used in this section, “electronic
7 communication” includes electronic transmission of written or
8 graphical material by electronic mail, facsimile, or other means,
9 but does not include voice communication.

10 (b) Notwithstanding any other provision of this chapter that
11 refers to mailing or to oral or written communication:

12 (1) An agency may permit and encourage use of electronic
13 communication, but may not require use of electronic
14 communication.

15 (2) An agency may publish or distribute a document required
16 by this chapter or by a regulation implementing this chapter by
17 means of electronic communication, but shall not make that the
18 exclusive means by which the document is published or
19 distributed.

20 (3) A notice required or authorized by this chapter or by a
21 regulation implementing this chapter may be delivered to a person
22 by means of electronic communication if the person has expressly
23 indicated a willingness to receive the notice by means of electronic
24 communication.

25 (4) A comment regarding a regulation may be delivered to an
26 agency by means of electronic communication.

27 (5) A petition regarding a regulation may be delivered to an
28 agency by means of electronic communication if the agency has
29 expressly indicated a willingness to receive a petition by means of
30 electronic communication.

31 (c) An agency that maintains an Internet Web site or other
32 similar forum for the electronic publication or distribution of
33 written material shall publish on that Web site or other forum
34 information regarding a proposed regulation or regulatory repeal
35 or amendment, that includes, but is not limited to, the following:

36 (1) Any public notice required by this chapter or by a regulation
37 implementing this chapter.

38 (2) The initial statement of reasons prepared pursuant to
39 subdivision (b) of Section 11346.2.



1 (3) The final statement of reasons prepared pursuant to
2 subdivision (a) of Section 11346.9.

3 (4) Notice of a decision not to proceed prepared pursuant to
4 Section 11347.

5 (5) The text of a proposed action or instructions on how to
6 obtain a copy of the text.

7 (6) A statement of any decision made by the office regarding
8 a proposed action.

9 (7) The date a rulemaking action is filed with the Secretary of
10 State.

11 (8) The effective date of a rulemaking action.

12 (9) A statement to the effect that a business or person
13 submitting a comment regarding a proposed action has the right to
14 request a copy of the final statement of reasons.

15 *(10) The text of a proposed emergency adoption, amendment,*
16 *or repeal of a regulation pursuant to Section 11346.1 and the date*
17 *it was submitted to the office for review and filing.*

18 (d) *A document that is required to be posted pursuant to*
19 *subdivision (c) shall be posted during the rulemaking process to*
20 *which the document relates and for an additional period of not less*
21 *than 15 days.* Publication under subdivision (c) supplements any
22 other required form of publication or distribution. Failure to
23 comply with this section is not grounds for disapproval of a
24 proposed regulation. Subdivision (c) does not require an agency
25 to establish or maintain a Web site or other forum for the electronic
26 publication or distribution of written material.

27 (e) Nothing in this section precludes the office from requiring
28 that the material submitted to the office for publication in the
29 California Code of Regulations or the California Regulatory
30 Notice Register be submitted in electronic form.

31 (f) This section is intended to make the regulatory process more
32 user-friendly and to improve communication between interested
33 parties and the regulatory agencies.

34 SEC. 3. Section 11343 of the Government Code is amended
35 to read:

36 11343. Every state agency shall:

37 (a) Transmit to the office for filing with the Secretary of State
38 a certified copy of every regulation adopted or amended by it
39 except one that is a building standard.



1 (b) Transmit to the office for filing with the Secretary of State
2 a certified copy of every order of repeal of a regulation required
3 to be filed under subdivision (a).

4 (c) Deliver to the office, at the time of transmittal for filing a
5 regulation or order of repeal six duplicate copies of the regulation
6 or order of repeal, together with a citation of the authority pursuant
7 to which it or any part thereof was adopted.

8 (d) Deliver to the office a copy of the notice of proposed action
9 required by Section 11346.4.

10 (e) Transmit to the California Building Standards Commission
11 for approval a certified copy of every regulation, or order of repeal
12 of a regulation, that is a building standard, together with a citation
13 of authority pursuant to which it or any part thereof was adopted,
14 a copy of the notice of proposed action required by Section
15 11346.4, and any other records prescribed by the State Building
16 Standards Law (Part 2.5 (commencing with Section 18901) of
17 Division 13 of the Health and Safety Code).

18 (f) Whenever a certification is required by this section, it shall
19 be made by the head of the state agency ~~or his or her designee~~
20 ~~which~~ that is adopting, amending, or repealing the regulation, *or*
21 *by a designee of the agency head*, and the certification and
22 delegation shall be in writing.

23 SEC. 4. Section 11346.2 of the Government Code is amended
24 to read:

25 11346.2. Every agency subject to this chapter shall prepare,
26 submit to the office with the notice of the proposed action as
27 described in Section 11346.5, and make available to the public
28 upon request, all of the following:

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

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

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



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

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

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

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

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

25 (B) A description of ~~any~~ reasonable alternatives ~~the agency has~~
26 ~~identified or that have otherwise been identified and brought to the~~
27 ~~attention of the agency to the regulation~~ that would lessen any
28 adverse impact on small business *and the agency's reasons for*
29 *rejecting those alternatives.* ~~It is not the intent of this paragraph to~~
30 ~~require the agency~~

31 (C) *Notwithstanding subparagraph (A) or (B), an agency is not*
32 *required to artificially construct alternatives, describe*
33 *unreasonable alternatives, or to justify why it has not identified*
34 *described alternatives.*

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

39 (5) A department, board, or commission within the
40 Environmental Protection Agency, the Resources Agency, or the



1 Office of the State Fire Marshal shall describe its efforts, in
2 connection with a proposed rulemaking action, to avoid
3 unnecessary duplication or conflicts with federal regulations
4 contained in the Code of Federal Regulations addressing the same
5 issues. These agencies may adopt regulations different from
6 federal regulations contained in the Code of Federal Regulations
7 addressing the same issues upon a finding of one or more of the
8 following justifications:

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

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

13 (c) A state agency that adopts or amends a regulation mandated
14 by federal law or regulations, the provisions of which are identical
15 to a previously adopted or amended federal regulation, shall be
16 deemed to have complied with subdivision (b) if a statement to the
17 effect that a federally mandated regulation or amendment to a
18 regulation is being proposed, together with a citation to where an
19 explanation of the provisions of the regulation can be found, is
20 included in the notice of proposed adoption or amendment
21 prepared pursuant to Section 11346.5. However, the agency shall
22 comply fully with this chapter with respect to any provisions in the
23 regulation that the agency proposes to adopt or amend that are
24 different from the corresponding provisions of the federal
25 regulation.

26 SEC. 5. Section 11346.5 of the Government Code is amended
27 to read:

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

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

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

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



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

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

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

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

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

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

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

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

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

38 (B) A description of the projected reporting, recordkeeping,
39 and other compliance requirements that would result from the
40 proposed action.



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

10 (i) The establishment of differing compliance or reporting
11 requirements or timetables that take into account the resources
12 available to businesses.

13 (ii) Consolidation or simplification of compliance and
14 reporting requirements for businesses.

15 (iii) The use of performance standards rather than prescriptive
16 standards.

17 (iv) Exemption or partial exemption from the regulatory
18 requirements for businesses.”

19 (8) If a state agency, in adopting, amending, or repealing any
20 administrative regulation, makes an initial determination that the
21 action will not have a significant, statewide adverse economic
22 impact directly affecting business, including the ability of
23 California businesses to compete with businesses in other states,
24 it shall make a declaration to that effect in the notice of proposed
25 action. In making this declaration, the agency shall provide in the
26 record facts, evidence, documents, testimony, or other evidence
27 upon which the agency relies to support its initial determination.

28 An agency’s initial determination and declaration that a
29 proposed adoption, amendment, or repeal of a regulation may have
30 or will not have a significant, adverse impact on businesses,
31 including the ability of California businesses to compete with
32 businesses in other states, shall not be grounds for the office to
33 refuse to publish the notice of proposed action.

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

38 If no cost impacts are known to the agency, it shall state the
39 following:



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

4 (10) A statement of the results of the assessment required by
5 subdivision (b) of Section 11346.3.

6 (11) The finding prescribed by subdivision (c) of Section
7 11346.3, if required.

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

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

22 (14) The name and telephone number of the following:

23 ~~(A) The agency representative and designated backup contact~~
24 ~~person to whom inquiries concerning the proposed administrative~~
25 ~~action may be directed.~~

26 ~~(B) An agency person or persons designated to respond to~~
27 ~~questions on the substance of the proposed regulations, where~~
28 ~~appropriate.~~

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

34 (16) Reference to the fact that the agency proposing the action
35 has prepared a statement of the reasons for the proposed action, has
36 available all the information upon which its proposal is based, and
37 has available the express terms of the proposed action, pursuant to
38 subdivision (b).

39 (17) A statement that if a public hearing is not scheduled, any
40 interested person or his or her duly authorized representative may



1 request, no later than 15 days prior to the close of the written
2 comment period, a public hearing pursuant to Section 11346.8.

3 (18) A statement indicating that the full text of a regulation
4 changed pursuant to Section 11346.8 will be available for at least
5 15 days prior to the date on which the agency adopts, amends, or
6 repeals the resulting regulation.

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

10 (20) If the agency maintains an Internet ~~website~~ *Web site* or
11 other similar forum for the electronic publication or distribution
12 of written material, a statement explaining how materials
13 published or distributed through that forum can be accessed.

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

23 (c) This section shall not be construed in any manner that
24 results in the invalidation of a regulation because of the alleged
25 inadequacy of the notice content or the summary or cost estimates,
26 or the alleged inadequacy or inaccuracy of the housing cost
27 estimates, if there has been substantial compliance with those
28 requirements.

29 SEC. 6. Section 11347.6 of the Government Code is amended
30 to read:

31 11347.6. Each state agency that adopts regulations shall, in
32 the final statement of reasons, separately identify comments made
33 by the Office of Small Business Advocate and the *Technology,*
34 *Trade, and Commerce Agency* pursuant to subdivision (e) of
35 Section 15363.6 and respond to each and every comment made by
36 that office or agency directed at the proposed action or at the
37 procedures followed by the agency in proposing or adopting the



- 1 action, including providing a basis for why those comments were
- 2 rejected, if applicable.

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