

AMENDED IN ASSEMBLY MARCH 19, 2002

CALIFORNIA LEGISLATURE—2001–02 REGULAR SESSION

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 amended, 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(1) Existing law provides that the regulations adopted, amended, or repealed by the Fish and Game Commission are not subject to specified time periods prescribed in the Administrative Procedure Act relating to the adoption, amendment,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~~ *within a reasonable time after issuance of the document* and ~~for an additional period of not less than~~ *remain posted for at least 15 days after the rulemaking action is filed with the Secretary of State or notice of a decision not to proceed with the proposal action is published by the agency.*

(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
6 subject to the time periods for the adoption, amendment, or repeal
7 of regulations prescribed in Sections 11343.4, 11346.4, 11346.8,
8 and 11347.1 of the Government Code.

9 SEC. 2. Section 11340.85 of the Government Code is
10 amended to read:

11 11340.85. (a) As used in this section, “electronic
12 communication” includes electronic transmission of written or
13 graphical material by electronic mail, facsimile, or other means,
14 but does not include voice communication.

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

17 (1) An agency may permit and encourage use of electronic
18 communication, but may not require use of electronic
19 communication.

20 (2) An agency may publish or distribute a document required
21 by this chapter or by a regulation implementing this chapter by
22 means of electronic communication, but shall not make that the
23 exclusive means by which the document is published or
24 distributed.

25 (3) A notice required or authorized by this chapter or by a
26 regulation implementing this chapter may be delivered to a person
27 by means of electronic communication if the person has expressly
28 indicated a willingness to receive the notice by means of electronic
29 communication.

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

32 (5) A petition regarding a regulation may be delivered to an
33 agency by means of electronic communication if the agency has
34 expressly indicated a willingness to receive a petition by means of
35 electronic communication.

36 (c) An agency that maintains an Internet Web site or other
37 similar forum for the electronic publication or distribution of
38 written material shall publish on that Web site or other forum



1 information regarding a proposed regulation or regulatory repeal
2 or amendment, that includes, but is not limited to, the following:

3 (1) Any public notice required by this chapter or by a regulation
4 implementing this chapter.

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

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

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

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

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

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

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

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

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

24 (d) A document that is required to be posted pursuant to
25 subdivision (c) shall be posted ~~during the rulemaking process to~~
26 ~~which the document relates and for an additional period of not less~~
27 ~~than 15 days within a reasonable time after issuance of the~~
28 ~~document and shall remain posted until at least 15 days after~~

29 *(1) the rulemaking action is filed with the Secretary of State, or*

30 *(2) notice of a decision not to proceed is published pursuant to*

31 *Section 11347.* Publication under subdivision (c) supplements any
32 other required form of publication or distribution. Failure to
33 comply with this section is not grounds for disapproval of a
34 proposed regulation. Subdivision (c) does not require an agency
35 to establish or maintain a Web site or other forum for the electronic
36 publication or distribution of written material.

37 (e) Nothing in this section precludes the office from requiring
38 that the material submitted to the office for publication in the
39 California Code of Regulations or the California Regulatory
40 Notice Register be submitted in electronic form.



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

4 SEC. 3. Section 11343 of the Government Code is amended
5 to read:

6 11343. Every state agency shall:

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

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

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

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

19 (e) Transmit to the California Building Standards Commission
20 for approval a certified copy of every regulation, or order of repeal
21 of a regulation, that is a building standard, together with a citation
22 of authority pursuant to which it or any part thereof was adopted,
23 a copy of the notice of proposed action required by Section
24 11346.4, and any other records prescribed by the State Building
25 Standards Law (Part 2.5 (commencing with Section 18901) of
26 Division 13 of the Health and Safety Code).

27 (f) Whenever a certification is required by this section, it shall
28 be made by the head of the state agency that is adopting, amending,
29 or repealing the regulation, or by a designee of the agency head,
30 and the certification and delegation shall be in writing.

31 SEC. 4. Section 11346.2 of the Government Code is amended
32 to read:

33 11346.2. Every agency subject to this chapter shall prepare,
34 submit to the office with the notice of the proposed action as
35 described in Section 11346.5, and make available to the public
36 upon request, all of the following:

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

38 (1) The agency shall draft the regulation in plain,
39 straightforward language, avoiding technical terms as much as



1 possible, and using a coherent and easily readable style. The
2 agency shall draft the regulation in plain English.

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

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

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

15 (1) A statement of the specific purpose of each adoption,
16 amendment, or repeal and the rationale for the determination by
17 the agency that each adoption, amendment, or repeal is reasonably
18 necessary to carry out the purpose for which it is proposed. Where
19 the adoption or amendment of a regulation would mandate the use
20 of specific technologies or equipment, a statement of the reasons
21 why the agency believes these mandates or prescriptive standards
22 are required.

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

27 (3) (A) A description of reasonable alternatives to the
28 regulation and the agency's reasons for rejecting those
29 alternatives. In the case of a regulation that would mandate the use
30 of specific technologies or equipment or prescribe specific actions
31 or procedures, the imposition of performance standards shall be
32 considered as an alternative.

33 (B) A description of reasonable alternatives to the regulation
34 that would lessen any adverse impact on small business and the
35 agency's reasons for rejecting those alternatives.

36 (C) Notwithstanding subparagraph (A) or (B), an agency is not
37 required to artificially construct alternatives, describe
38 unreasonable alternatives, or justify why it has not described
39 alternatives.



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

5 (5) A department, board, or commission within the
6 Environmental Protection Agency, the Resources Agency, or the
7 Office of the State Fire Marshal shall describe its efforts, in
8 connection with a proposed rulemaking action, to avoid
9 unnecessary duplication or conflicts with federal regulations
10 contained in the Code of Federal Regulations addressing the same
11 issues. These agencies may adopt regulations different from
12 federal regulations contained in the Code of Federal Regulations
13 addressing the same issues upon a finding of one or more of the
14 following justifications:

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

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

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

32 SEC. 5. Section 11346.5 of the Government Code is amended
33 to read:

34 11346.5. (a) The notice of proposed adoption, amendment,
35 or repeal of a regulation shall include the following:

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

38 (2) Reference to the authority under which the regulation is
39 proposed and a reference to the particular code sections or other



1 provisions of law that are being implemented, interpreted, or made
2 specific.

3 (3) An informative digest drafted in plain English in a format
4 similar to the Legislative Counsel’s digest on legislative bills. The
5 informative digest shall include the following:

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

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

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

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

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

23 (6) An estimate, prepared in accordance with instructions
24 adopted by the Department of Finance, of the cost or savings to any
25 state agency, the cost to any local agency or school district that is
26 required to be reimbursed under Part 7 (commencing with Section
27 17500) of Division 4, other nondiscretionary cost or savings
28 imposed on local agencies, and the cost or savings in federal
29 funding to the state.

30 For purposes of this paragraph, “cost or savings” means
31 additional costs or savings, both direct and indirect, that a public
32 agency necessarily incurs in reasonable compliance with
33 regulations.

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



1 (A) Identification of the types of businesses that would be
2 affected.

3 (B) A description of the projected reporting, recordkeeping,
4 and other compliance requirements that would result from the
5 proposed action.

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

15 (i) The establishment of differing compliance or reporting
16 requirements or timetables that take into account the resources
17 available to businesses.

18 (ii) Consolidation or simplification of compliance and
19 reporting requirements for businesses.

20 (iii) The use of performance standards rather than prescriptive
21 standards.

22 (iv) Exemption or partial exemption from the regulatory
23 requirements for businesses.”

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

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

39 (9) A description of all cost impacts, known to the agency at the
40 time the notice of proposed action is submitted to the office, that



1 a representative private person or business would necessarily incur
2 in reasonable compliance with the proposed action.

3 If no cost impacts are known to the agency, it shall state the
4 following:

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

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

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

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

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

26 (14) The name and telephone number of the agency
27 representative and designated backup contact person to whom
28 inquiries concerning the proposed administrative action may be
29 directed.

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

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



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

5 (18) A statement indicating that the full text of a regulation
6 changed pursuant to Section 11346.8 will be available for at least
7 15 days prior to the date on which the agency adopts, amends, or
8 repeals the resulting regulation.

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

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

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

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

31 SEC. 6. Section 11347.6 of the Government Code is amended
32 to read:

33 11347.6. Each state agency that adopts regulations shall, in
34 the final statement of reasons, separately identify comments made
35 by the Office of Small Business Advocate and the Technology,
36 Trade, and Commerce Agency pursuant to subdivision (e) of
37 Section 15363.6 and respond to each and every comment made by
38 that office or agency directed at the proposed action or at the
39 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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