

ASSEMBLY BILL

No. 2738

Introduced by Assembly Member Niello

February 19, 2010

An act to amend Section 11346.2 of the Government Code, relating to regulations.

LEGISLATIVE COUNSEL'S DIGEST

AB 2738, as introduced, Niello. Regulations: agency statement of reasons.

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 an agency to submit to the office, among other things, an initial statement of reasons for proposing the adoption, amendment, or repeal of a regulation that includes, among other things, a description of reasonable alternatives to the regulation. Existing law requires, for a regulation that would mandate the use of specific technologies or equipment or prescribe specific actions or procedures, that the imposition of performance standards be considered as an alternative.

This bill would delete the requirement, in the case of a regulation that would mandate the use of specific technologies or equipment or prescribe specific actions or procedures, that the imposition of performance standards be considered as an alternative. This bill would instead require that the agency acknowledge that performance standards are generally the preferred alternative to mandating specific methods of compliance and would require the agency to provide a justification

for departing from that acknowledged preference, as specified. The bill would also require the agency to identify and describe the elements of a regulation that require, or may require through at least one alternative method of compliance, the use of specific technologies, equipment, actions, or procedures, or other potentially proprietary compliance scheme, methodology, or process.

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 11346.2 of the Government Code is
2 amended to read:
3 11346.2. Every agency subject to this chapter shall prepare,
4 submit to the office with the notice of the proposed action as
5 described in Section 11346.5, and make available to the public
6 upon request, all of the following:
7 (a) A copy of the express terms of the proposed regulation.
8 (1) The agency shall draft the regulation in plain, straightforward
9 language, avoiding technical terms as much as possible, and using
10 a coherent and easily readable style. The agency shall draft the
11 regulation in plain English.
12 (2) The agency shall include a notation following the express
13 terms of each California Code of Regulations section, listing the
14 specific statutes or other provisions of law authorizing the adoption
15 of the regulation and listing the specific statutes or other provisions
16 of law being implemented, interpreted, or made specific by that
17 section in the California Code of Regulations.
18 (3) The agency shall use underline or italics to indicate additions
19 to, and strikeout to indicate deletions from, the California Code
20 of Regulations.
21 (b) An initial statement of reasons for proposing the adoption,
22 amendment, or repeal of a regulation. This statement of reasons
23 shall include, but not be limited to, all of the following:
24 (1) A statement of the specific purpose of each adoption,
25 amendment, or repeal and the rationale for the determination by
26 the agency that each adoption, amendment, or repeal is reasonably
27 necessary to carry out the purpose for which it is proposed. Where
28 the adoption or amendment of a regulation would mandate the use
29 of specific technologies or equipment, a statement of the reasons

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

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

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

13 (B) *In the case of a regulation that would mandate the use of
14 specific technologies or equipment or prescribe specific actions
15 or procedures, the agency shall do all of the following:*

16 (i) *Acknowledge that the imposition of a performance standard
17 is generally the preferred alternative to mandating specific methods
18 of compliance.*

19 (ii) *Identify and describe the elements of a regulation that
20 require, or may require through at least one alternative method
21 of compliance, the use of specific technologies, equipment, actions,
22 or procedures, or other potentially proprietary compliance scheme,
23 methodology, or process.*

24 (iii) *Provide a justification for departing from the acknowledged
25 preference of imposing performance standards and a detailed
26 specification as to why certain technologies, equipment, actions,
27 or procedures are required to meet the goals of the regulation,
28 instead of imposing a performance standard.*

29 ~~(B)~~

30 (C) A description of reasonable alternatives to the regulation
31 that would lessen any adverse impact on small business and the
32 agency's reasons for rejecting those alternatives.

33 ~~(C)~~

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

38 (4) Facts, evidence, documents, testimony, or other evidence
39 on which the agency relies to support an initial determination that

1 the action will not have a significant adverse economic impact on
2 business.

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

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

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

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