

AMENDED IN SENATE JUNE 29, 2010

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

**ASSEMBLY BILL**

**No. 2738**

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**Introduced by Assembly Member Niello**

February 19, 2010

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

LEGISLATIVE COUNSEL'S DIGEST

AB 2738, as amended, 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~~ *that would require the use of specific technologies or equipment, require that the agency take certain actions. Specifically, 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~~ *and provide a detailed specification as to why certain technologies or equipment, or actions or procedures requiring the use of specific technologies or equipment, are necessary in order to meet the goals of the regulation.* 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, or actions; or procedures *that require the use of specific technologies or equipment*, 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 strikethrough to indicate deletions from, the California Code
- 20 of Regulations.

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

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

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

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

22 (B) In the case of a regulation that would mandate the use of  
23 specific technologies or equipment or prescribe specific actions  
24 or procedures *that would require the use of specific technologies*  
25 *or equipment*, the agency shall do all of the following:

26 (i) Acknowledge that the imposition of a performance standard  
27 is generally the preferred alternative to mandating specific methods  
28 of compliance.

29 (ii) Identify and describe the elements of a regulation that  
30 require, or may require through at least one alternative method of  
31 compliance, the use of specific technologies, equipment, ~~actions~~,  
32 *or actions* or procedures *that would require the use of specific*  
33 *technologies or equipment*, or other potentially proprietary  
34 compliance scheme, methodology, or process.

35 (iii) Provide a justification for departing from the acknowledged  
36 preference of imposing performance standards and a detailed  
37 specification as to why certain technologies, equipment, ~~actions~~,  
38 *or actions* or procedures ~~are required~~ *requiring the use of specific*  
39 *technologies or equipment, are necessary in order to meet the*  
40 goals of the regulation, instead of imposing a performance standard.

1 (C) A description of reasonable alternatives to the regulation  
2 that would lessen any adverse impact on small business and the  
3 agency’s reasons for rejecting those alternatives.

4 (D) Notwithstanding, ~~subparagraphs~~ *subparagraph* (A), (B), or  
5 (C) an agency is not required to artificially construct alternatives,  
6 describe unreasonable alternatives, or justify why it has not  
7 described alternatives.

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

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

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

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

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

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