

AMENDED IN SENATE AUGUST 2, 2010

AMENDED IN SENATE JUNE 29, 2010

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

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, *and declaring the urgency thereof, to take effect immediately.*

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, in the case of a regulation that would mandate the use of specific technologies or equipment or prescribe specific actions or procedures that would require the use of specific technologies or

equipment, require that the agency take certain actions. Specifically, this bill would require that the agency acknowledge that performance standards are generally the preferred alternative to mandating specific methods of compliance, provide a justification for departing from that acknowledged preference, 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.

This bill would declare that it is to take effect immediately as an urgency statute.

Vote: ~~majority~~^{2/3}. 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.

1 (3) The agency shall use underline or italics to indicate additions
2 to, and strikethrough to indicate deletions from, the California Code
3 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 empirical
16 study, report, or similar document, if any, upon which the agency
17 relies in proposing the adoption, amendment, or repeal of a
18 regulation.

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

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

29 (i) Acknowledge that the imposition of a performance standard
30 is generally the preferred alternative to mandating specific methods
31 of compliance.

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

38 (iii) Provide a justification for departing from the acknowledged
39 preference of imposing performance standards and a detailed
40 specification as to why certain technologies, equipment, or actions

1 or procedures requiring the use of specific technologies or
2 equipment, are necessary in order to meet the goals of the
3 regulation, instead of imposing a performance standard.

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

7 (D) Notwithstanding, subparagraph (A), (B), or (C) an agency
8 is not required to artificially construct alternatives, describe
9 unreasonable alternatives, or justify why it has not described
10 alternatives.

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

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

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

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

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

1 different from the corresponding provisions of the federal
2 regulation.

3 *SEC. 2. This act is an urgency statute necessary for the*
4 *immediate preservation of the public peace, health, or safety within*
5 *the meaning of Article IV of the Constitution and shall go into*
6 *immediate effect. The facts constituting the necessity are:*

7 *In order to provide regulatory agencies with maximum lead time*
8 *on the change in law, it is necessary for this act to take effect*
9 *immediately. This will result in a codified statute as early as*
10 *possible, and the affected agencies will have sufficient time to*
11 *adjust their practices.*

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