

AMENDED IN SENATE AUGUST 11, 2010

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, *repeal, and add* 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 *and that the initial statement of reasons include a statement of reasons why the agency believes that mandates or prescriptive standards are required.*

~~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, effective January 1, 2012, recast these provisions and require that the initial statement of reasons also include a description of any performance standard that was considered as an alternative to the proposed adoption, amendment, or repeal of the regulation.

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

Vote: $\frac{2}{3}$. 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.

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

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

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

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

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

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

31 ~~(B) In the case of a regulation that would mandate the use of~~
32 ~~specific technologies or equipment or prescribe specific actions~~
33 ~~or procedures that would require the use of specific technologies~~
34 ~~or equipment, the agency shall do all of the following:~~

35 ~~(i) Acknowledge that the imposition of a performance standard~~
36 ~~is generally the preferred alternative to mandating specific methods~~
37 ~~of compliance.~~

38 ~~(ii) Identify and describe the elements of a regulation that~~
39 ~~require, or may require through at least one alternative method of~~
40 ~~compliance, the use of specific technologies, equipment, or actions~~

1 or procedures that would require the use of specific technologies
2 or equipment, or other potentially proprietary compliance scheme,
3 methodology, or process.

4 (iii) Provide a justification for departing from the acknowledged
5 preference of imposing performance standards and a detailed
6 specification as to why certain technologies, equipment, or actions
7 or procedures requiring the use of specific technologies or
8 equipment, are necessary in order to meet the goals of the
9 regulation, instead of imposing a performance standard.

10 (C)

11 (B) A description of reasonable alternatives to the regulation
12 that would lessen any adverse impact on small business and the
13 agency’s reasons for rejecting those alternatives.

14 (D) Notwithstanding subparagraph (A), (B), or (C) an agency

15 (C) Notwithstanding subparagraph (A) or (B), an agency is not
16 required to artificially construct alternatives, describe unreasonable
17 alternatives, or justify why it has not described alternatives.

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

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

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

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

36 (c) A state agency that adopts or amends a regulation mandated
37 by federal law or regulations, the provisions of which are identical
38 to a previously adopted or amended federal regulation, shall be
39 deemed to have complied with subdivision (b) if a statement to
40 the effect that a federally mandated regulation or amendment to a

1 regulation is being proposed, together with a citation to where an
2 explanation of the provisions of the regulation can be found, is
3 included in the notice of proposed adoption or amendment prepared
4 pursuant to Section 11346.5. However, the agency shall comply
5 fully with this chapter with respect to any provisions in the
6 regulation that the agency proposes to adopt or amend that are
7 different from the corresponding provisions of the federal
8 regulation.

9 *(d) This section shall remain in effect only until January 1, 2012,*
10 *and as of that date is repealed, unless a later enacted statute, that*
11 *is enacted before January 1, 2012, deletes or extends that date.*

12 *SEC. 2. Section 11346.2 is added to the Government Code, to*
13 *read:*

14 *11346.2. Every agency subject to this chapter shall prepare,*
15 *submit to the office with the notice of the proposed action as*
16 *described in Section 11346.5, and make available to the public*
17 *upon request, all of the following:*

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

19 *(1) The agency shall draft the regulation in plain,*
20 *straightforward language, avoiding technical terms as much as*
21 *possible, and using a coherent and easily readable style. The*
22 *agency shall draft the regulation in plain English.*

23 *(2) The agency shall include a notation following the express*
24 *terms of each California Code of Regulations section, listing the*
25 *specific statutes or other provisions of law authorizing the adoption*
26 *of the regulation and listing the specific statutes or other provisions*
27 *of law being implemented, interpreted, or made specific by that*
28 *section in the California Code of Regulations.*

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

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

35 *(1) A statement of the specific purpose of each adoption,*
36 *amendment, or repeal and the rationale for the determination by*
37 *the agency that each adoption, amendment, or repeal is reasonably*
38 *necessary to carry out the purpose for which it is proposed.*

39 *(2) An identification of each technical, theoretical, and empirical*
40 *study, report, or similar document, if any, upon which the agency*

1 *relies in proposing the adoption, amendment, or repeal of a*
2 *regulation.*

3 *(3) Where the adoption or amendment of a regulation would*
4 *mandate the use of specific technologies or equipment, a statement*
5 *of the reasons why the agency believes these mandates or*
6 *prescriptive standards are required.*

7 *(4) (A) A description of reasonable alternatives to the regulation*
8 *and the agency's reasons for rejecting those alternatives.*

9 *(B) A description of any performance standard that was*
10 *considered as an alternative. In the case of a regulation that would*
11 *mandate the use of specific technologies or equipment or prescribe*
12 *specific actions or procedures, the imposition of performance*
13 *standards shall be considered as an alternative.*

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

17 *(D) Notwithstanding subparagraph (A), (B), or (C), an agency*
18 *is not required to artificially construct alternatives, describe*
19 *unreasonable alternatives, or justify why it has not described*
20 *alternatives.*

21 *(5) Facts, evidence, documents, testimony, or other evidence*
22 *on which the agency relies to support an initial determination that*
23 *the action will not have a significant adverse economic impact on*
24 *business.*

25 *(6) A department, board, or commission within the*
26 *Environmental Protection Agency, the Resources Agency, or the*
27 *Office of the State Fire Marshal shall describe its efforts, in*
28 *connection with a proposed rulemaking action, to avoid*
29 *unnecessary duplication or conflicts with federal regulations*
30 *contained in the Code of Federal Regulations addressing the same*
31 *issues. These agencies may adopt regulations different from federal*
32 *regulations contained in the Code of Federal Regulations*
33 *addressing the same issues upon a finding of one or more of the*
34 *following justifications:*

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

36 *(B) The cost of differing state regulations is justified by the*
37 *benefit to human health, public safety, public welfare, or the*
38 *environment.*

39 *(c) A state agency that adopts or amends a regulation mandated*
40 *by federal law or regulations, the provisions of which are identical*

1 to a previously adopted or amended federal regulation, shall be
2 deemed to have complied with subdivision (b) if a statement to the
3 effect that a federally mandated regulation or amendment to a
4 regulation is being proposed, together with a citation to where an
5 explanation of the provisions of the regulation can be found, is
6 included in the notice of proposed adoption or amendment
7 prepared pursuant to Section 11346.5. However, the agency shall
8 comply fully with this chapter with respect to any provisions in
9 the regulation that the agency proposes to adopt or amend that
10 are different from the corresponding provisions of the federal
11 regulation.

12 (d) This section shall become operative on January 1, 2012.

13 ~~SEC. 2.~~

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

18 In order to provide regulatory agencies with maximum lead time
19 on the change in law, it is necessary for this act to take effect
20 immediately. This will result in a codified statute as early as
21 possible, and the affected agencies will have sufficient time to
22 adjust their practices.