

AMENDED IN SENATE AUGUST 17, 2010

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~~ *add, and repeal* 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, ~~effective from~~ January 1, 2012, *until January 1, 2014*, 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.

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

1 necessary to carry out the purpose for which it is proposed. Where
2 the adoption or amendment of a regulation would mandate the use
3 of specific technologies or equipment, a statement of the reasons
4 why the agency believes these mandates or prescriptive standards
5 are required.

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

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

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

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

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

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

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

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

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

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

17 *(d) This section shall be inoperative from January 1, 2012, until*
18 *January 1, 2014.*

19 SEC. 2. Section 11346.2 is added to the Government Code, to
20 read:

21 11346.2. Every agency subject to this chapter shall prepare,
22 submit to the office with the notice of the proposed action as
23 described in Section 11346.5, and make available to the public
24 upon request, all of the following:

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

26 (1) The agency shall draft the regulation in plain, straightforward
27 language, avoiding technical terms as much as possible, and using
28 a coherent and easily readable style. The agency shall draft the
29 regulation in plain English.

30 (2) The agency shall include a notation following the express
31 terms of each California Code of Regulations section, listing the
32 specific statutes or other provisions of law authorizing the adoption
33 of the regulation and listing the specific statutes or other provisions
34 of law being implemented, interpreted, or made specific by that
35 section in the California Code of Regulations.

36 (3) The agency shall use underline or italics to indicate additions
37 to, and strikeout to indicate deletions from, the California Code
38 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.

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

12 (3) Where the adoption or amendment of a regulation would
13 mandate the use of specific technologies or equipment, a statement
14 of the reasons why the agency believes these mandates or
15 prescriptive standards are required.

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

18 (B) A description of any performance standard that was
19 considered as an alternative. In the case of a regulation that would
20 mandate the use of specific technologies or equipment or prescribe
21 specific actions or procedures, the imposition of performance
22 standards shall be considered as an alternative.

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

26 (D) Notwithstanding subparagraph (A), (B), or (C), an agency
27 is not required to artificially construct alternatives, describe
28 unreasonable alternatives, or justify why it has not described
29 alternatives.

30 (5) Facts, evidence, documents, testimony, or other evidence
31 on which the agency relies to support an initial determination that
32 the action will not have a significant adverse economic impact on
33 business.

34 (6) A department, board, or commission within the
35 Environmental Protection Agency, the Resources Agency, or the
36 Office of the State Fire Marshal shall describe its efforts, in
37 connection with a proposed rulemaking action, to avoid
38 unnecessary duplication or conflicts with federal regulations
39 contained in the Code of Federal Regulations addressing the same
40 issues. These agencies may adopt regulations different from federal

1 regulations contained in the Code of Federal Regulations
2 addressing the same issues upon a finding of one or more of the
3 following justifications:

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

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

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

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

22 (e) *This section shall remain in effect only until January 1, 2014,*
23 *and as of that date is repealed, unless a later enacted statute, that*
24 *is enacted before January 1, 2014, deletes or extends that date.*

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

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