

AMENDED IN ASSEMBLY APRIL 15, 2011

AMENDED IN ASSEMBLY MARCH 31, 2011

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 691

Introduced by Assembly Member Perea
(Coauthors: Assembly Members Galgiani and Olsen)

February 17, 2011

An act to add Article 10 (commencing with Section 590) to Chapter 3 of Part 1 of Division 1 of the Food and Agricultural Code, *and to amend Sections 11346.2, 11346.3, 11346.5, and 11346.9 of the Government Code*, relating to ~~permitting~~ *regulations*.

LEGISLATIVE COUNSEL'S DIGEST

AB 691, as amended, Perea. ~~Department of Food and Agriculture: ombudsman.~~ *Agency regulations and economic impact.*

Existing law requires the Department of Food and Agriculture to regulate various laws regulating agriculture and farmland in the state. Existing law provides that the department is under the control of a civil executive officer known as the Secretary of Food and Agriculture and authorizes the department to provide for the issuance and renewal on a ~~two-year~~ *2-year* basis of licenses, certificates of registration, or other indicia of authority issued by the department or any agency in the department.

This bill would designate the secretary as the ombudsman for ~~the department~~ *all state agriculture regulations* and would require the ombudsman to provide assistance in understanding the process for obtaining permits, assistance in the expeditious completion of the process for obtaining permits, and ~~agriculture-related~~ *agriculture-related*

information and education to assist policy development regarding agricultural issues. The bill would make the ombudsman responsible for reviewing and identifying ~~duplicate~~ agriculture regulations that exist within the state and other government agencies, and to conduct a cumulative impact report prior to any new agriculture regulation. ~~The bill would authorize the ombudsman to initiate the review of duplicate regulations by the Office of Administrative Law, as provided and that may have a negative impact on the agricultural industry, and make recommendations regarding changes necessary to alleviate those negative impacts. The bill would also require the ombudsman to report these recommendations to the President pro Tempore of the Senate and to the Speaker of the Assembly on an annual basis, as specified.~~

Existing law sets forth procedures for the adoption of administrative regulations. Among other requirements, these provisions require that every agency submit an initial statement of reasons for proposing the adoption, amendment, or repeal of a regulation, including facts, evidence, documents, testimony, or other evidence on which the agency relies to support an initial determination that the action will not have a significant adverse economic impact on business.

This bill would repeal the requirement that every agency include in the initial statement facts, evidence, documents, testimony, or other evidence on which the agency relies to support an initial determination that the action will not have a significant adverse economic impact on business.

Existing law requires that the notice of proposed adoption, amendment, or repeal of a regulation include specified information, including, if the agency makes an initial determination that the action will not have a significant statewide adverse economic impact directly affecting business, a declaration to that effect. Existing law also requires every agency to prepare and submit with an adopted regulation a final statement of reasons that includes, among other things, an explanation setting forth the reasons for rejecting any proposed alternatives that would lessen the adverse economic impact on small businesses.

Existing law also requires state agencies proposing to adopt, amend, or repeal any administrative regulation to assess the potential for adverse economic impact on California business enterprises and individuals, as specified.

The bill would also revise these requirements with respect to the final statement to require that it include an explanation setting forth the

reasons for rejecting any proposed alternatives that would lessen the adverse economic impact on any business, rather than small businesses.

The bill would also require an agency to provide in the notice of proposed action documentation of the assessment described above to include cumulative adverse economic impacts, as defined, in addition to other adverse impacts, on California business.

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. Article 10 (commencing with Section 590) is
2 added to Chapter 3 of Part 1 of Division 1 of the Food and
3 Agricultural Code, to read:

4
5
6

Article 10. Ombudsman

7 590. (a) *The Legislature finds and declares that although many*
8 *state agencies are responsible for regulating agriculture in this*
9 *state, none are responsible for determining the cumulative effect*
10 *of their activities on agriculture.*

11 *(b) The secretary is hereby designated as the ombudsman for*
12 *the Department of Food and Agriculture. The ombudsman shall*
13 *for state agriculture regulations. The ombudsman shall provide*
14 *all of the following:*

15 (1) Assistance in understanding the process for obtaining permits
16 required by the ~~department~~ *state*, and in resolving concerns with
17 that process.

18 (2) Appropriate direction and assistance in the expeditious
19 completion of the process for obtaining permits required by the
20 ~~department~~ *state*.

21 (3) Agriculture-related information and education to assist policy
22 development regarding agricultural issues.

23 ~~(b)~~

24 (c) The ombudsman shall be responsible for the following:

25 (1) Reviewing and identifying ~~—duplicative~~ agricultural
26 regulations that exist within the state and ~~other government~~
27 agencies. ~~The ombudsman may initiate review of a duplicative~~
28 ~~regulations by the Office of Administrative Law pursuant to the~~
29 ~~process specified in Article 7 (commencing with Section 11349.7)~~

1 of Chapter 3.5 of Part 1 of Division 3 of Title 2 of the Government
2 Code.

3 ~~(2) Conducting a cumulative impact report prior to the enactment~~
4 ~~of any new agricultural regulation that may have a negative impact~~
5 ~~on the agricultural industry in this state, including, but not limited~~
6 ~~to, duplicative regulations, and making recommendations~~
7 ~~regarding necessary changes to state statutes or regulations to~~
8 ~~alleviate those negative impacts.~~

9 (2) *The ombudsman shall report to the President pro Tempore*
10 *of the Senate and the Speaker of the Assembly on or before January*
11 *1, 2013, and on and before January 1, each year thereafter;*
12 *regarding the recommendations made pursuant to paragraph (1).*

13 (3) *A report submitted pursuant to paragraph (2) shall be*
14 *submitted in compliance with Section 9795 of the Government*
15 *Code.*

16 *SEC. 2. Section 11346.2 of the Government Code, as added*
17 *by Section 2 of Chapter 398 of the Statutes of 2010, is amended*
18 *to read:*

19 11346.2. Every agency subject to this chapter shall prepare,
20 submit to the office with the notice of the proposed action as
21 described in Section 11346.5, and make available to the public
22 upon request, all of the following:

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

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

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

34 (3) The agency shall use underline or italics to indicate additions
35 to, and strikeout to indicate deletions from, the California Code
36 of Regulations.

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

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

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

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

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

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

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

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

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

31 ~~(6)~~

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

1 addressing the same issues upon a finding of one or more of the
2 following justifications:

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

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

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

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

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

24 *SEC. 3. Section 11346.3 of the Government Code is amended*
25 *to read:*

26 11346.3. (a) State agencies proposing to adopt, amend, or
27 repeal any administrative regulation shall assess the potential for
28 adverse economic impact on California business enterprises and
29 individuals, avoiding the imposition of unnecessary or unreasonable
30 regulations or reporting, recordkeeping, or compliance
31 requirements. For purposes of this subdivision, assessing the
32 potential for adverse economic impact shall require agencies, when
33 proposing to adopt, amend, or repeal a regulation, to adhere to the
34 following requirements, to the extent that these requirements do
35 not conflict with other state or federal laws:

36 (1) The proposed adoption, amendment, or repeal of a regulation
37 shall be based on adequate information concerning the need for,
38 and consequences of, proposed governmental action.

39 (2) The state agency, prior to submitting a proposal to adopt,
40 amend, or repeal a regulation to the office, shall consider the

1 proposal's impact on business, with consideration of industries
2 affected including the ability of California businesses to compete
3 with businesses in other states. For purposes of evaluating the
4 impact on the ability of California businesses to compete with
5 businesses in other states, an agency shall consider, but not be
6 limited to, information supplied by interested parties.

7 ~~It is not the intent of this section to impose additional criteria on~~
8 ~~agencies, above that which exists in current law, in assessing~~
9 ~~adverse economic impact on California business enterprises, but~~
10 ~~only to assure that the assessment is made early in the process of~~
11 ~~initiation and development of a proposed adoption, amendment,~~
12 ~~or repeal of a regulation.~~

13 (b) (1) All state agencies proposing to adopt, amend, or repeal
14 any administrative regulations shall assess whether and to what
15 extent it will affect the following:

16 (A) The creation or elimination of jobs within the State of
17 California.

18 (B) The creation of new businesses or the elimination of existing
19 businesses within the State of California.

20 (C) The expansion of businesses currently doing business within
21 the State of California.

22 (2) This subdivision does not apply to the University of
23 California, the Hastings College of the Law, or the Fair Political
24 Practices Commission.

25 (3) Information required from state agencies for the purpose of
26 completing the assessment may come from existing state
27 publications.

28 (c) No administrative regulation adopted on or after January 1,
29 1993, that requires a report shall apply to businesses, unless the
30 state agency adopting the regulation makes a finding that it is
31 necessary for the health, safety, or welfare of the people of the
32 state that the regulation apply to businesses.

33 *SEC. 4. Section 11346.5 of the Government Code is amended*
34 *to read:*

35 11346.5. (a) The notice of proposed adoption, amendment, or
36 repeal of a regulation shall include the following:

37 (1) A statement of the time, place, and nature of proceedings
38 for adoption, amendment, or repeal of the regulation.

39 (2) Reference to the authority under which the regulation is
40 proposed and a reference to the particular code sections or other

1 provisions of law that are being implemented, interpreted, or made
2 specific.

3 (3) An informative digest drafted in plain English in a format
4 similar to the Legislative Counsel’s digest on legislative bills. The
5 informative digest shall include the following:

6 (A) A concise and clear summary of existing laws and
7 regulations, if any, related directly to the proposed action and of
8 the effect of the proposed action.

9 (B) If the proposed action differs substantially from an existing
10 comparable federal regulation or statute, a brief description of the
11 significant differences and the full citation of the federal regulations
12 or statutes.

13 (C) A policy statement overview explaining the broad objectives
14 of the regulation and, if appropriate, the specific objectives.

15 (4) Any other matters as are prescribed by statute applicable to
16 the specific state agency or to any specific regulation or class of
17 regulations.

18 (5) A determination as to whether the regulation imposes a
19 mandate on local agencies or school districts and, if so, whether
20 the mandate requires state reimbursement pursuant to Part 7
21 (commencing with Section 17500) of Division 4.

22 (6) An estimate, prepared in accordance with instructions
23 adopted by the Department of Finance, of the cost or savings to
24 any state agency, the cost to any local agency or school district
25 that is required to be reimbursed under Part 7 (commencing with
26 Section 17500) of Division 4, other nondiscretionary cost or
27 savings imposed on local agencies, and the cost or savings in
28 federal funding to the state.

29 For purposes of this paragraph, “cost or savings” means
30 additional costs or savings, both direct and indirect, that a public
31 agency necessarily incurs in reasonable compliance with
32 regulations.

33 (7) If a state agency, in proposing to adopt, amend, or repeal
34 any administrative regulation, makes an initial determination that
35 the action may have a significant, statewide adverse economic
36 impact directly affecting business, including the ability of
37 California businesses to compete with businesses in other states,
38 it shall include the following information in the notice of proposed
39 action:

1 (A) Identification of the types of businesses that would be
2 affected.

3 (B) A description of the projected reporting, recordkeeping, and
4 other compliance requirements that would result from the proposed
5 action.

6 (C) The following statement: “The (name of agency) has made
7 an initial determination that the (adoption/amendment/repeal) of
8 this regulation may have a significant, statewide adverse economic
9 impact directly affecting business, including the ability of
10 California businesses to compete with businesses in other states.
11 The (name of agency) (has/has not) considered proposed
12 alternatives that would lessen any adverse economic impact on
13 business and invites you to submit proposals. Submissions may
14 include the following considerations:

15 (i) The establishment of differing compliance or reporting
16 requirements or timetables that take into account the resources
17 available to businesses.

18 (ii) Consolidation or simplification of compliance and reporting
19 requirements for businesses.

20 (iii) The use of performance standards rather than prescriptive
21 standards.

22 (iv) Exemption or partial exemption from the regulatory
23 requirements for businesses.”

24 (8) (A) If a state agency, in adopting, amending, or repealing
25 any administrative regulation, makes an initial determination that
26 the action will not have a significant, statewide adverse economic
27 impact directly affecting business, including the ability of
28 California businesses to compete with businesses in other states,
29 it shall make a declaration to that effect in the notice of proposed
30 action. In making this declaration, the agency shall provide in the
31 ~~record~~ notice facts, evidence, documents, testimony, or other
32 evidence upon which the agency relies to support its initial
33 determination. *The agency shall provide in the notice*
34 *documentation of the assessment made pursuant to subdivision*
35 *(a) of Section 11346.3 that shall include cumulative adverse*
36 *economic impacts, in addition to other adverse economic impacts,*
37 *on California business.*

38 ~~An~~

39 (B) *An* agency’s initial determination and declaration that a
40 proposed adoption, amendment, or repeal of a regulation may have

1 or will not have a significant, adverse impact on businesses,
2 including the ability of California businesses to compete with
3 businesses in other states, shall not be grounds for the office to
4 refuse to publish the notice of proposed action.

5 (C) *For purposes of this paragraph, the phrase “cumulative*
6 *adverse economic impact” refers to the impact on the economy*
7 *which results from the incremental economic impact of the*
8 *regulations when added to other past, present, and reasonably*
9 *foreseeable future regulations regardless of which agency adopts*
10 *those regulations. In addition, cumulative adverse economic*
11 *impacts may result from individually minor but collectively*
12 *significant regulations taking place over a period of time.*

13 (9) (A) A description of all cost impacts, known to the agency
14 at the time the notice of proposed action is submitted to the office,
15 that a representative private person or business would necessarily
16 incur in reasonable compliance with the proposed action.

17 If

18 (B) *If no cost impacts are known to the agency, it shall state the*
19 *following:*

20 “The agency is not aware of any cost impacts that a
21 representative private person or business would necessarily incur
22 in reasonable compliance with the proposed action.”

23 (10) A statement of the results of the assessment required by
24 subdivision (b) of Section 11346.3.

25 (11) The finding prescribed by subdivision (c) of Section
26 11346.3, if required.

27 (12) A statement that the action would have a significant effect
28 on housing costs, if a state agency, in adopting, amending, or
29 repealing any administrative regulation, makes an initial
30 determination that the action would have that effect. In addition,
31 the agency officer designated in paragraph (14), shall make
32 available to the public, upon request, the agency’s evaluation, if
33 any, of the effect of the proposed regulatory action on housing
34 costs.

35 (13) A statement that the adopting agency must determine that
36 no reasonable alternative considered by the agency or that has
37 otherwise been identified and brought to the attention of the agency
38 would be more effective in carrying out the purpose for which the
39 action is proposed or would be as effective and less burdensome
40 to affected private persons than the proposed action.

1 (14) The name and telephone number of the agency
2 representative and designated backup contact person to whom
3 inquiries concerning the proposed administrative action may be
4 directed.

5 (15) The date by which comments submitted in writing must
6 be received to present statements, arguments, or contentions in
7 writing relating to the proposed action in order for them to be
8 considered by the state agency before it adopts, amends, or repeals
9 a regulation.

10 (16) Reference to the fact that the agency proposing the action
11 has prepared a statement of the reasons for the proposed action,
12 has available all the information upon which its proposal is based,
13 and has available the express terms of the proposed action, pursuant
14 to subdivision (b).

15 (17) A statement that if a public hearing is not scheduled, any
16 interested person or his or her duly authorized representative may
17 request, no later than 15 days prior to the close of the written
18 comment period, a public hearing pursuant to Section 11346.8.

19 (18) A statement indicating that the full text of a regulation
20 changed pursuant to Section 11346.8 will be available for at least
21 15 days prior to the date on which the agency adopts, amends, or
22 repeals the resulting regulation.

23 (19) A statement explaining how to obtain a copy of the final
24 statement of reasons once it has been prepared pursuant to
25 subdivision (a) of Section 11346.9.

26 (20) If the agency maintains an Internet Web site or other similar
27 forum for the electronic publication or distribution of written
28 material, a statement explaining how materials published or
29 distributed through that forum can be accessed.

30 (b) The agency representative designated in paragraph (14) of
31 subdivision (a) shall make available to the public upon request the
32 express terms of the proposed action. The representative shall also
33 make available to the public upon request the location of public
34 records, including reports, documentation, and other materials,
35 related to the proposed action. If the representative receives an
36 inquiry regarding the proposed action that the representative cannot
37 answer, the representative shall refer the inquiry to another person
38 in the agency for a prompt response.

39 (c) This section shall not be construed in any manner that results
40 in the invalidation of a regulation because of the alleged inadequacy

1 of the notice content or the summary or cost estimates, or the
2 alleged inadequacy or inaccuracy of the housing cost estimates, if
3 there has been substantial compliance with those requirements.

4 *SEC. 5. Section 11346.9 of the Government Code is amended*
5 *to read:*

6 11346.9. Every agency subject to this chapter shall do the
7 following:

8 (a) Prepare and submit to the office with the adopted regulation
9 a final statement of reasons that shall include all of the following:

10 (1) An update of the information contained in the initial
11 statement of reasons. If the update identifies any data or any
12 technical, theoretical or empirical study, report, or similar
13 document on which the agency is relying in proposing the adoption,
14 amendment, or repeal of a regulation that was not identified in the
15 initial statement of reasons, or which was otherwise not identified
16 or made available for public review prior to the close of the public
17 comment period, the agency shall comply with Section 11347.1.

18 (2) A determination as to whether adoption, amendment, or
19 repeal of the regulation imposes a mandate on local agencies or
20 school districts. If the determination is that adoption, amendment,
21 or repeal of the regulation would impose a local mandate, the
22 agency shall state whether the mandate is reimbursable pursuant
23 to Part 7 (commencing with Section 17500) of Division 4. If the
24 agency finds that the mandate is not reimbursable, it shall state the
25 reasons for that finding.

26 (3) A summary of each objection or recommendation made
27 regarding the specific adoption, amendment, or repeal proposed,
28 together with an explanation of how the proposed action has been
29 changed to accommodate each objection or recommendation, or
30 the reasons for making no change. This requirement applies only
31 to objections or recommendations specifically directed at the
32 agency's proposed action or to the procedures followed by the
33 agency in proposing or adopting the action. The agency may
34 aggregate and summarize repetitive or irrelevant comments as a
35 group, and may respond to repetitive comments or summarily
36 dismiss irrelevant comments as a group. For the purposes of this
37 paragraph, a comment is "irrelevant" if it is not specifically directed
38 at the agency's proposed action or to the procedures followed by
39 the agency in proposing or adopting the action.

1 (4) A determination with supporting information that no
2 alternative considered by the agency would be more effective in
3 carrying out the purpose for which the regulation is proposed or
4 would be as effective and less burdensome to affected private
5 persons than the adopted regulation.

6 (5) An explanation setting forth the reasons for rejecting any
7 proposed alternatives that would lessen the adverse economic
8 impact on ~~small businesses~~ *any business*.

9 (b) Prepare and submit to the office with the adopted regulation
10 an updated informative digest containing a clear and concise
11 summary of the immediately preceding laws and regulations, if
12 any, relating directly to the adopted, amended, or repealed
13 regulation and the effect of the adopted, amended, or repealed
14 regulation. The informative digest shall be drafted in a format
15 similar to the Legislative Counsel's Digest on legislative bills.

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

29 (d) If an agency determines that a requirement of this section
30 can be satisfied by reference to an agency statement made pursuant
31 to Sections 11346.2 to 11346.5, inclusive, the agency may satisfy
32 the requirement by incorporating the relevant statement by
33 reference.

O