

AMENDED IN SENATE AUGUST 15, 2012

AMENDED IN SENATE JUNE 12, 2012

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

**ASSEMBLY BILL**

**No. 2041**

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**Introduced by Assembly Member Swanson**

February 23, 2012

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An act to amend Section 11346.5 of the Government Code, relating to regulations.

LEGISLATIVE COUNSEL'S DIGEST

AB 2041, as amended, Swanson. Regulations: adoption: disability access.

Existing state and federal law prohibits the exclusion of a qualified individual with a disability, by reason of that disability, from participation in or equal access to the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by a public entity. Federal regulations require a public entity to take appropriate steps to ensure that communications with participants and members of the public with disabilities are as effective as communications with others. These regulations also require a public entity to furnish appropriate auxiliary aids and services where necessary to afford an individual with a disability an equal opportunity to participate in, and enjoy the benefits of, a service, program, or activity conducted by a public entity.

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 publish a notice

of proposed action that includes specified information, at least 45 days prior to a hearing and the close of the public comment period. Existing law requires an agency that proposes certain regulations, upon a request from a person with a visual disability or other disability for which effective communication is required under state or federal law, to provide that person a narrative description of the proposed regulation, as prescribed, and requires an extended public comment period for that person.

This bill would require an agency that proposes specified types of regulations to include within the notice of proposed action a specified statement regarding the availability of narrative descriptions for persons with visual or other specified disabilities.

*This bill would incorporate additional changes in Section 11346.5 of the Government Code, proposed by AB 1612 to be operative only if AB 1612, and this bill are both chaptered and become effective on or before January 1, 2013, and this bill is chaptered last.*

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 11346.5 of the Government Code is  
2 amended to read:  
3 11346.5. (a) The notice of proposed adoption, amendment, or  
4 repeal of a regulation shall include the following:  
5 (1) A statement of the time, place, and nature of proceedings  
6 for adoption, amendment, or repeal of the regulation.  
7 (2) Reference to the authority under which the regulation is  
8 proposed and a reference to the particular code sections or other  
9 provisions of law that are being implemented, interpreted, or made  
10 specific.  
11 (3) An informative digest drafted in plain English in a format  
12 similar to the Legislative Counsel's digest on legislative bills. The  
13 informative digest shall include the following:  
14 (A) A concise and clear summary of existing laws and  
15 regulations, if any, related directly to the proposed action and of  
16 the effect of the proposed action.  
17 (B) If the proposed action differs substantially from an existing  
18 comparable federal regulation or statute, a brief description of the

1 significant differences and the full citation of the federal regulations  
2 or statutes.

3 (C) A policy statement overview explaining the broad objectives  
4 of the regulation and the specific benefits anticipated by the  
5 proposed adoption, amendment, or repeal of a regulation, including,  
6 to the extent applicable, nonmonetary benefits such as the  
7 protection of public health and safety, worker safety, or the  
8 environment, the prevention of discrimination, the promotion of  
9 fairness or social equity, and the increase in openness and  
10 transparency in business and government, among other things.

11 (D) An evaluation of whether the proposed regulation is  
12 inconsistent or incompatible with existing state regulations.

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

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

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

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

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

38 (A) Identification of the types of businesses that would be  
39 affected.

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

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

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

16 (ii) Consolidation or simplification of compliance and reporting  
17 requirements for businesses.

18 (iii) The use of performance standards rather than prescriptive  
19 standards.

20 (iv) Exemption or partial exemption from the regulatory  
21 requirements for businesses.”

22 (8) If a state agency, in adopting, amending, or repealing any  
23 administrative regulation, makes an initial determination that the  
24 action will not have a significant, statewide adverse economic  
25 impact directly affecting business, including the ability of  
26 California businesses to compete with businesses in other states,  
27 it shall make a declaration to that effect in the notice of proposed  
28 action. In making this declaration, the agency shall provide in the  
29 record facts, evidence, documents, testimony, or other evidence  
30 upon which the agency relies to support its initial determination.

31 An agency’s initial determination and declaration that a proposed  
32 adoption, amendment, or repeal of a regulation may have or will  
33 not have a significant, adverse impact on businesses, including the  
34 ability of California businesses to compete with businesses in other  
35 states, shall not be grounds for the office to refuse to publish the  
36 notice of proposed action.

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

1 If no cost impacts are known to the agency, it shall state the  
2 following:

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

6 (10) A statement of the results of the economic impact  
7 assessment required by subdivision (b) of Section 11346.3 or the  
8 standardized regulatory impact analysis if required by subdivision  
9 (c) of Section 11346.3, a summary of any comments submitted to  
10 the agency pursuant to subdivision (f) of Section 11346.3 and the  
11 agency’s response to those comments.

12 (11) The finding prescribed by subdivision (d) of Section  
13 11346.3, if required.

14 (12) A statement that the action would have a significant effect  
15 on housing costs, if a state agency, in adopting, amending, or  
16 repealing any administrative regulation, makes an initial  
17 determination that the action would have that effect. In addition,  
18 the agency officer designated in paragraph (14), shall make  
19 available to the public, upon request, the agency’s evaluation, if  
20 any, of the effect of the proposed regulatory action on housing  
21 costs.

22 (13) A statement that the adopting agency must determine that  
23 no reasonable alternative considered by the agency or that has  
24 otherwise been identified and brought to the attention of the agency  
25 would be more effective in carrying out the purpose for which the  
26 action is proposed, would be as effective and less burdensome to  
27 affected private persons than the proposed action, or would be  
28 more cost effective to affected private persons and equally effective  
29 in implementing the statutory policy or other provision of law. For  
30 a major regulation, as defined by Section 11342.548, proposed on  
31 or after November 1, 2013, the statement shall be based, in part,  
32 upon the standardized regulatory impact analysis of the proposed  
33 regulation, as required by Section 11346.3, as well as upon the  
34 benefits of the proposed regulation identified pursuant to  
35 subparagraph (C) of paragraph (3).

36 (14) The name and telephone number of the agency  
37 representative and designated backup contact person to whom  
38 inquiries concerning the proposed administrative action may be  
39 directed.

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

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

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

15 (18) A statement indicating that the full text of a regulation  
16 changed pursuant to Section 11346.8 will be available for at least  
17 15 days prior to the date on which the agency adopts, amends, or  
18 repeals the resulting regulation.

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

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

26 (21) If the proposed regulation is subject to Section 11346.6, a  
27 statement that the agency shall provide, upon request, a description  
28 of the proposed changes included in the proposed action, in the  
29 manner provided by Section 11346.6, to accommodate a person  
30 with a visual or other disability for which effective communication  
31 is required under state or federal law and that providing the  
32 description of proposed changes may require extending the period  
33 of public comment for the proposed action.

34 (b) The agency representative designated in paragraph (14) of  
35 subdivision (a) shall make available to the public upon request the  
36 express terms of the proposed action. The representative shall also  
37 make available to the public upon request the location of public  
38 records, including reports, documentation, and other materials,  
39 related to the proposed action. If the representative receives an  
40 inquiry regarding the proposed action that the representative cannot

1 answer, the representative shall refer the inquiry to another person  
2 in the agency for a prompt response.

3 (c) This section shall not be construed in any manner that results  
4 in the invalidation of a regulation because of the alleged inadequacy  
5 of the notice content or the summary or cost estimates, or the  
6 alleged inadequacy or inaccuracy of the housing cost estimates, if  
7 there has been substantial compliance with those requirements.

8 *SEC. 1.5. Section 11346.5 of the Government Code is amended*  
9 *to read:*

10 11346.5. (a) The notice of proposed adoption, amendment, or  
11 repeal of a regulation shall include the following:

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

14 (2) Reference to the authority under which the regulation is  
15 proposed and a reference to the particular code sections or other  
16 provisions of law that are being implemented, interpreted, or made  
17 specific.

18 (3) An informative digest drafted in plain English in a format  
19 similar to the Legislative Counsel's digest on legislative bills. The  
20 informative digest shall include the following:

21 (A) A concise and clear summary of existing laws and  
22 regulations, if any, related directly to the proposed action and of  
23 the effect of the proposed action.

24 (B) If the proposed action differs substantially from an existing  
25 comparable federal regulation or statute, a brief description of the  
26 significant differences and the full citation of the federal regulations  
27 or statutes.

28 (C) A policy statement overview explaining the broad objectives  
29 of the regulation and the specific benefits anticipated by the  
30 proposed adoption, amendment, or repeal of a regulation, including,  
31 to the extent applicable, nonmonetary benefits such as the  
32 protection of public health and safety, worker safety, or the  
33 environment, the prevention of discrimination, the promotion of  
34 fairness or social equity, and the increase in openness and  
35 transparency in business and government, among other things.

36 (D) An evaluation of whether the proposed regulation is  
37 inconsistent or incompatible with existing state regulations.

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

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

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

12 For purposes of this paragraph, “cost or savings” means  
13 additional costs or savings, both direct and indirect, that a public  
14 agency necessarily incurs in reasonable compliance with  
15 regulations.

16 (7) If a state agency, in proposing to adopt, amend, or repeal  
17 any administrative regulation, makes an initial determination that  
18 the action may have a significant, statewide adverse economic  
19 impact directly affecting business, including the ability of  
20 California businesses to compete with businesses in other states,  
21 it shall include the following information in the notice of proposed  
22 action:

23 (A) Identification of the types of businesses that would be  
24 affected.

25 (B) A description of the projected reporting, recordkeeping, and  
26 other compliance requirements that would result from the proposed  
27 action.

28 (C) The following statement: “The (name of agency) has made  
29 an initial determination that the (adoption/amendment/repeal) of  
30 this regulation may have a significant, statewide adverse economic  
31 impact directly affecting business, including the ability of  
32 California businesses to compete with businesses in other states.  
33 The (name of agency) (has/has not) considered proposed  
34 alternatives that would lessen any adverse economic impact on  
35 business and invites you to submit proposals. Submissions may  
36 include the following considerations:

37 (i) The establishment of differing compliance or reporting  
38 requirements or timetables that take into account the resources  
39 available to businesses.

1 (ii) Consolidation or simplification of compliance and reporting  
2 requirements for businesses.

3 (iii) The use of performance standards rather than prescriptive  
4 standards.

5 (iv) Exemption or partial exemption from the regulatory  
6 requirements for businesses.”

7 (8) If a state agency, in adopting, amending, or repealing any  
8 administrative regulation, makes an initial determination that the  
9 action will not have a significant, statewide adverse economic  
10 impact directly affecting business, including the ability of  
11 California businesses to compete with businesses in other states,  
12 it shall make a declaration to that effect in the notice of proposed  
13 action. In making this declaration, the agency shall provide in the  
14 record facts, evidence, documents, testimony, or other evidence  
15 upon which the agency relies to support its initial determination.

16 An agency’s initial determination and declaration that a proposed  
17 adoption, amendment, or repeal of a regulation may have or will  
18 not have a significant, adverse impact on businesses, including the  
19 ability of California businesses to compete with businesses in other  
20 states, shall not be grounds for the office to refuse to publish the  
21 notice of proposed action.

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

26 If no cost impacts are known to the agency, it shall state the  
27 following:

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

31 (10) A statement of the results of the economic impact  
32 assessment required by subdivision (b) of Section 11346.3 or the  
33 standardized regulatory impact analysis if required by subdivision  
34 (c) of Section 11346.3, a summary of any comments submitted to  
35 the agency pursuant to subdivision (f) of Section 11346.3 and the  
36 agency’s response to those comments.

37 (11) The finding prescribed by subdivision (d) of Section  
38 11346.3, if required.

39 (12) (A) A statement that the action would have a significant  
40 effect on housing costs, if a state agency, in adopting, amending,

1 or repealing any administrative regulation, makes an initial  
2 determination that the action would have that effect. ~~In addition,~~  
3 ~~the agency officer designated in paragraph (14), shall make~~  
4 ~~available to the public, upon request, the agency's evaluation, if~~  
5 ~~any, of the effect of the proposed regulatory action on housing~~  
6 ~~costs.~~

7 *(B) The agency officer designated in paragraph (14) shall make*  
8 *available to the public, upon request, the agency's evaluation, if*  
9 *any, of the effect of the proposed regulatory action on housing*  
10 *costs.*

11 *(C) The statement described in subparagraph (A) shall also*  
12 *include the estimated costs of compliance and potential benefits*  
13 *of a building standard, if any, that were included in the initial*  
14 *statement of reasons.*

15 *(D) For purposes of model codes adopted pursuant to Section*  
16 *18928 of the Health and Safety Code, the agency shall comply*  
17 *with the requirements of this paragraph only if an interested party*  
18 *has made a request to the agency to examine a specific section for*  
19 *purposes of estimating the costs of compliance and potential*  
20 *benefits for that section, as described in Section 11346.2.*

21 (13) A statement that the adopting agency must determine that  
22 no reasonable alternative considered by the agency or that has  
23 otherwise been identified and brought to the attention of the agency  
24 would be more effective in carrying out the purpose for which the  
25 action is proposed, would be as effective and less burdensome to  
26 affected private persons than the proposed action, or would be  
27 ~~more cost-effective~~ *cost effective* to affected private persons and  
28 equally effective in implementing the statutory policy or other  
29 provision of law. For a major regulation, as defined by Section  
30 11342.548, proposed on or after November 1, 2013, the statement  
31 shall be based, in part, upon the standardized regulatory impact  
32 analysis of the proposed regulation, as required by Section 11346.3,  
33 as well as upon the benefits of the proposed regulation identified  
34 pursuant to subparagraph (C) of paragraph (3).

35 (14) The name and telephone number of the agency  
36 representative and designated backup contact person to whom  
37 inquiries concerning the proposed administrative action may be  
38 directed.

39 (15) The date by which comments submitted in writing must  
40 be received to present statements, arguments, or contentions in

1 writing relating to the proposed action in order for them to be  
2 considered by the state agency before it adopts, amends, or repeals  
3 a regulation.

4 (16) Reference to the fact that the agency proposing the action  
5 has prepared a statement of the reasons for the proposed action,  
6 has available all the information upon which its proposal is based,  
7 and has available the express terms of the proposed action, pursuant  
8 to subdivision (b).

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

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

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

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

24 (21) *If the proposed regulation is subject to Section 11346.6, a*  
25 *statement that the agency shall provide, upon request, a description*  
26 *of the proposed changes included in the proposed action, in the*  
27 *manner provided by Section 11346.6, to accommodate a person*  
28 *with a visual or other disability for which effective communication*  
29 *is required under state or federal law and that providing the*  
30 *description of proposed changes may require extending the period*  
31 *of public comment for the proposed action.*

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

1 (c) This section shall not be construed in any manner that results  
2 in the invalidation of a regulation because of the alleged inadequacy  
3 of the notice content or the summary or cost estimates, or the  
4 alleged inadequacy or inaccuracy of the housing cost estimates, if  
5 there has been substantial compliance with those requirements.

6 *SEC. 2. Section 1.5 of this bill incorporates amendments to*  
7 *Section 11346.5 of the Government Code proposed by both this*  
8 *bill and Assembly Bill 1612. It shall only become operative if (1)*  
9 *both bills are enacted and become effective on or before January*  
10 *1, 2013, (2) each bill amends Section 11346.5 of the Government*  
11 *Code, and (3) this bill is enacted after Assembly Bill 1612, in which*  
12 *case Section 1 of this bill shall not become operative.*