

Introduced by Senator CalderonFebruary 24, 2012

An act to amend Sections 11346.2 and 11346.3 of, and to add and repeal Article 5.5 (commencing with Section 65958) of Chapter 4.5 of Division 1 of Title 7, of the Government Code, relating to state government, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

SB 1520, as introduced, Calderon. State government: administrative efficiency.

(1) 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. The act requires each agency that proposes to adopt, amend, or repeal any major regulation, as defined, on or after November 1, 2013, to prepare a standardized economic impact analysis. The act requires an agency that seeks to adopt, amend, or repeal a major regulation to release a notice of proposed action that includes, among other things, the standardized economic impact analysis. The act requires an agency to file with the office, when it files the notice of proposed action, an initial statement of reasons that includes, among other things, the standardized economic impact analysis for each major regulation proposed on or after January 1, 2013.

This bill would instead require that the statement of reasons include a standardized impact analysis for each major regulation proposed on or after November 1, 2013.

This bill would make various conforming changes to those provisions.

(2) Existing law sets forth generally the procedures for the review and approval of permits for development projects in the state.

This bill would, until January 1, 2014, establish the Streamlined Permit Review Team in state government, consisting of the Secretary of Business, Transportation and Housing, the Secretary for Environmental Protection, and the Secretary of the Natural Resources Agency. The bill would require the team, upon the request of a permit applicant, to convene permitting agencies, as defined, to perform various activities in making the application process more efficient. The bill would require the permitting agencies to determine the completeness of an application and act upon the application within specified time periods, subject to certain conditions. This bill would require the team, on or before March 1, 2014, to submit a report to the Governor and to the Legislature with prescribed information relating to the permitting activities of the team.

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

Vote: 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, as
2 amended by Section 2 of Chapter 496 of the Statutes of 2011, is
3 amended to read:
4 11346.2. Every agency subject to this chapter shall prepare,
5 submit to the office with the notice of the proposed action as
6 described in Section 11346.5, and make available to the public
7 upon request, all of the following:
8 (a) A copy of the express terms of the proposed regulation.
9 (1) The agency shall draft the regulation in plain, straightforward
10 language, avoiding technical terms as much as possible, and using
11 a coherent and easily readable style. The agency shall draft the
12 regulation in plain English.
13 (2) The agency shall include a notation following the express
14 terms of each California Code of Regulations section, listing the
15 specific statutes or other provisions of law authorizing the adoption
16 of the regulation and listing the specific statutes or other provisions
17 of law being implemented, interpreted, or made specific by that
18 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, the problem the agency intends to address,
9 and the rationale for the determination by the agency that each
10 adoption, amendment, or repeal is reasonably necessary to carry
11 out the purpose and address the problem for which it is proposed.
12 The statement shall enumerate the benefits anticipated from the
13 regulatory action, including the benefits or goals provided in the
14 authorizing statute. The benefits may include, to the extent
15 applicable, nonmonetary benefits such as the protection of public
16 health and safety, worker safety, or the environment, the prevention
17 of discrimination, the promotion of fairness or social equity, and
18 the increase in openness and transparency in business and
19 government, among other things.

20 (2) For a major regulation proposed on or after ~~January~~
21 *November* 1, 2013, the standardized regulatory impact analysis
22 required by Section 11346.3.

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

27 (4) Where the adoption or amendment of a regulation would
28 mandate the use of specific technologies or equipment, a statement
29 of the reasons why the agency believes these mandates or
30 prescriptive standards are required.

31 (5) (A) A description of reasonable alternatives to the regulation
32 and the agency's reasons for rejecting those alternatives.
33 Reasonable alternatives to be considered include, but are not
34 limited to, alternatives that are proposed as less burdensome and
35 equally effective in achieving the purposes of the regulation in a
36 manner that ensures full compliance with the authorizing statute
37 or other law being implemented or made specific by the proposed
38 regulation. In the case of a regulation that would mandate the use
39 of specific technologies or equipment or prescribe specific actions

1 or procedures, the imposition of performance standards shall be
2 considered as an alternative.

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

6 (C) Notwithstanding subparagraph (A) or (B), an agency is not
7 required to artificially construct alternatives or describe
8 unreasonable alternatives.

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

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

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

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

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

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

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

4 SEC. 2. Section 11346.3 of the Government Code is amended
5 to read:

6 11346.3. (a) State agencies proposing to adopt, amend, or
7 repeal any administrative regulation shall assess the potential for
8 adverse economic impact on California business enterprises and
9 individuals, avoiding the imposition of unnecessary or unreasonable
10 regulations or reporting, recordkeeping, or compliance
11 requirements. For purposes of this subdivision, assessing the
12 potential for adverse economic impact shall require agencies, when
13 proposing to adopt, amend, or repeal a regulation, to adhere to the
14 following requirements, to the extent that these requirements do
15 not conflict with other state or federal laws:

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

19 (2) The state agency, prior to submitting a proposal to adopt,
20 amend, or repeal a regulation to the office, shall consider the
21 proposal's impact on business, with consideration of industries
22 affected including the ability of California businesses to compete
23 with businesses in other states. For purposes of evaluating the
24 impact on the ability of California businesses to compete with
25 businesses in other states, an agency shall consider, but not be
26 limited to, information supplied by interested parties.

27 (3) An economic analysis prepared pursuant to this subdivision
28 for a proposed regulation that is not a major regulation or that is
29 a major regulation proposed prior to November 1, 2013, shall be
30 prepared in accordance with subdivision (b). An economic analysis
31 prepared pursuant to this subdivision for a major regulation
32 proposed on or after November 1, 2013, shall be prepared in
33 accordance with subdivision (c), and shall be included in the initial
34 statement of reasons as required by Section 11346.2.

35 (b) (1) All state agencies proposing to adopt, amend, or repeal
36 a regulation that is not a major regulation or that is a major
37 regulation proposed prior to November 1, 2013, shall prepare an
38 economic impact ~~analysis~~ *assessment* that assesses whether and
39 to what extent it will affect the following:

1 (A) The creation or elimination of jobs within the State of
2 California.

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

5 (C) The expansion of businesses currently doing business within
6 the State of California.

7 (D) The benefits of the regulation to the health and welfare of
8 California residents, worker safety, and the state's environment.

9 (2) This subdivision does not apply to the University of
10 California, the Hastings College of the Law, or the Fair Political
11 Practices Commission.

12 (3) Information required from state agencies for the purpose of
13 completing the assessment may come from existing state
14 publications.

15 (c) (1) Each state agency proposing to adopt, amend, or repeal
16 a major regulation on or after November 1, 2013, shall prepare a
17 standardized regulatory impact ~~assessment~~ *analysis* in the manner
18 prescribed by the Department of Finance pursuant to Section
19 11346.36. The standardized regulatory impact analysis shall
20 address all of the following:

21 (A) The creation or elimination of jobs within the state.

22 (B) The creation of new businesses or the elimination of existing
23 businesses within the state.

24 (C) The competitive advantages or disadvantages for businesses
25 currently doing business within the state.

26 (D) The increase or decrease of investment in the state.

27 (E) The incentives for innovation in products, materials, or
28 processes.

29 (F) The benefits of the regulations, including, but not limited
30 to, benefits to the health, safety, and welfare of California residents,
31 worker safety, and the state's environment and quality of life,
32 among any other benefits identified by the agency.

33 (2) This subdivision shall not apply to the University of
34 California, the Hastings College of the Law, or the Fair Political
35 Practices Commission.

36 (3) Information required from state agencies for the purpose of
37 completing the ~~assessment~~ *analysis* may be derived from existing
38 state, federal, or academic publications.

39 (d) Any administrative regulation adopted on or after January
40 1, 1993, that requires a report shall not apply to businesses, unless

1 the state agency adopting the regulation makes a finding that it is
2 necessary for the health, safety, or welfare of the people of the
3 state that the regulation apply to businesses.

4 (e) Analyses conducted pursuant to this section are intended to
5 provide agencies and the public with tools to determine whether
6 the regulatory proposal is an efficient and effective means of
7 implementing the policy decisions enacted in statute or by other
8 provisions of law in the least burdensome manner. Regulatory
9 impact analyses shall inform the agencies and the public of the
10 economic consequences of regulatory choices, not reassess
11 statutory policy. The baseline for the regulatory analysis shall be
12 the most cost-effective set of regulatory measures that are equally
13 effective in achieving the purpose of the regulation in a manner
14 that ensures full compliance with the authorizing statute or other
15 law being implemented or made specific by the proposed
16 regulation.

17 (f) Each state agency proposing to adopt, amend, or repeal a
18 major regulation on or after November 1, 2013, and that has
19 prepared a standardized regulatory impact ~~assessment~~ *analysis*
20 pursuant to subdivision (c), shall submit that ~~assessment~~ *analysis*
21 to the Department of Finance upon completion. The department
22 shall comment, within 30 days of receiving ~~such assessment~~ *that*
23 *analysis*, on the extent to which the ~~assessment~~ *analysis* adheres
24 to the regulations adopted pursuant to Section 11346.36. Upon
25 receiving the comments from the department, the agency may
26 update its analysis to reflect any comments received from the
27 department and shall summarize the comments and the response
28 of the agency along with a statement of the results of the updated
29 analysis for the statement required by paragraph (10) of subdivision
30 (a) of Section 11346.5.

31 SEC. 3. Article 5.5 (commencing with Section 65958) is added
32 to Chapter 4.5 of Division 1 of Title 7 of the Government Code,
33 to read:

34
35 Article 5.5. Streamlined Permit Review

36
37 65958. The Legislature finds and declares as follows:

38 (a) It is in the state's interest to assist those applicants needing
39 state permits or approvals by providing a consolidated, unified,
40 and coordinated state permit process whereby, upon request by a

1 permit applicant, agencies with lead and ancillary responsibilities
2 can be convened in a single process to coordinate and expedite
3 permit reviews and disposition of those permits.

4 (b) Bipartisan legislation enacted in 2006 applicable to
5 emergency flood protection levee repairs, and in 2009 relating to
6 “shovel ready” transportation projects, ensured that there was
7 coordination and sequencing of approvals to reduce or eliminate
8 delays and to ensure that all key regulatory approvals were made.

9 (c) It is the intent of the Legislature in enacting this article to
10 ensure that state agencies focus more directly on their duties as
11 prescribed by law so as to use scarce public dollars to more
12 efficiently implement the law, while achieving the same or greater
13 economic and public benefits, and to help ensure that state
14 government is working in a coordinated fashion to help get
15 businesses that create jobs a response so that they can proceed
16 with that job creation.

17 65958.2. (a) As used in this article, the term “permitting
18 agency” means any agency, department, office, board, or
19 commission within the Business, Transportation and Housing
20 Agency, the California Environmental Protection Agency, or the
21 Natural Resources Agency.

22 (b) The definitions contained in Article 2 (commencing with
23 Section 65925) shall also govern this article.

24 65958.5. (a) The Streamlined Permit Review Team is created
25 in state government, consisting of the following officials, one of
26 whom shall be designated as chairperson by the Governor:

27 (1) The Secretary of Business, Transportation and Housing.

28 (2) The Secretary for Environmental Protection.

29 (3) The Secretary of the Natural Resources Agency.

30 (b) Upon the request of a permit applicant, the team shall
31 convene, in a duly noticed public hearing, those permitting agencies
32 with jurisdiction over the project in question to coordinate actions
33 on permits, help reduce or eliminate unnecessary inconsistencies,
34 delay, duplication, overlap, or paperwork associated with issuance
35 of multiple permits, and assist in ensuring that permitting agencies
36 and the public have the information necessary to deem permit
37 applications complete and to act upon permits at the earliest
38 feasible date in accordance with the requirements of this chapter.

39 (c) A permitting agency for a project, no later than 30 days after
40 receiving an application for a permit, shall determine the

1 completeness of an application in accordance with the requirements
2 of this chapter or request additional information necessary to
3 determine the completeness of an application. The project applicant
4 shall provide to the permitting agency the requested additional
5 information.

6 (d) (1) A permitting agency for a project shall act on a permit
7 as soon as reasonably possible, but in any case no later than the
8 time permitted in accordance with the requirements of this chapter.

9 (2) If a permitting agency fails to act on a complete permit
10 application for a project as soon as reasonably possible, but in any
11 case no later than the time permitted in accordance with the
12 requirements of this chapter, the failure to act shall be deemed
13 approval of the permit application for the project in accordance
14 with the requirements of this chapter. However, the permitting
15 agency shall provide public notice when the project is approved
16 pursuant to this paragraph, in the same form and manner as it would
17 provide that notice under existing law.

18 (e) The time limits specified in this section may be extended
19 upon mutual written agreement of the lead agency and a permitting
20 agency.

21 (f) The time limits specified in this section shall not apply if
22 federal statutes, regulations, or delegation agreements establish
23 time schedules that differ from those time limits, and failure to
24 comply with federal time schedules could affect the disposition of
25 the project.

26 (g) Except as otherwise provided by this section, this section
27 does not affect in any manner the requirements, duties, or authority
28 of a permitting agency established by statute.

29 (h) Nothing in this chapter shall be construed to effect the
30 authority or requirement for an agency to adopt regulations as
31 provided by statute.

32 65958.7. (a) Except for the reporting requirement described
33 in subdivision (b), the provisions of this article shall become
34 inoperative on January 1, 2014.

35 (b) On or before March 1, 2015, the Streamlined Permit Review
36 Team shall report to the Governor and to the Legislature on the
37 number and types of development projects for which the process
38 established by this article was used, and the disposition of those
39 development projects.

1 (c)This article shall remain in effect only until March 15, 2015,
2 and as of that date is repealed, unless a later enacted statute, that
3 is enacted before March 15, 2015, deletes or extends that date.

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

8 In order to ensure that state agencies have clear direction on the
9 implementation of Chapter 496 of the Statutes of 2011, and to
10 streamline the state permit review process for development projects
11 at the earliest possible time, it is necessary that this bill take effect
12 immediately.