

AMENDED IN SENATE MAY 22, 2012

SENATE BILL

No. 1520

Introduced by Senator Calderon

February 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~~ *and to add Section 65923.7 to*, the Government Code, relating to state government, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

SB 1520, as amended, 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.~~

(2) The Permit Streamlining Act requires a state agency that is the lead agency for a development project to provide a permit applicant specified information relating to the permitting approval process. Existing law creates the Office of Planning and Research in the Governor's office for the purpose of serving as the comprehensive state planning agency.

This bill would require the Office of Planning and Research to provide specified information to a permit applicant and authorize the office to call a conference or mediate disputes regarding a permit application.

(3) 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, 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.

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

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

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

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

17 (1) A statement of the specific purpose of each adoption,
18 amendment, or repeal, the problem the agency intends to address,
19 and the rationale for the determination by the agency that each
20 adoption, amendment, or repeal is reasonably necessary to carry
21 out the purpose and address the problem for which it is proposed.
22 The statement shall enumerate the benefits anticipated from the
23 regulatory action, including the benefits or goals provided in the
24 authorizing statute. The benefits may include, to the extent
25 applicable, nonmonetary benefits such as the protection of public
26 health and safety, worker safety, or the environment, the prevention
27 of discrimination, the promotion of fairness or social equity, and
28 the increase in openness and transparency in business and
29 government, among other things.

30 (2) For a major regulation proposed on or after November 1,
31 2013, the standardized regulatory impact analysis required by
32 Section 11346.3.

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

37 (4) Where the adoption or amendment of a regulation would
38 mandate the use of specific technologies or equipment, a statement
39 of the reasons why the agency believes these mandates or
40 prescriptive standards are required.

1 (5) (A) A description of reasonable alternatives to the regulation
2 and the agency’s reasons for rejecting those alternatives.
3 Reasonable alternatives to be considered include, but are not
4 limited to, alternatives that are proposed as less burdensome and
5 equally effective in achieving the purposes of the regulation in a
6 manner that ensures full compliance with the authorizing statute
7 or other law being implemented or made specific by the proposed
8 regulation. In the case of a regulation that would mandate the use
9 of specific technologies or equipment or prescribe specific actions
10 or procedures, the imposition of performance standards shall be
11 considered as an alternative.

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

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

18 (6) 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 (7) A department, board, or commission within the
23 Environmental Protection Agency, the Natural Resources Agency,
24 or the 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 become operative on January 1, 2012.

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

13 SEC. 2. Section 11346.3 of the Government Code is amended
14 to read:

15 11346.3. (a) State agencies proposing to adopt, amend, or
16 repeal any administrative regulation shall assess the potential for
17 adverse economic impact on California business enterprises and
18 individuals, avoiding the imposition of unnecessary or unreasonable
19 regulations or reporting, recordkeeping, or compliance
20 requirements. For purposes of this subdivision, assessing the
21 potential for adverse economic impact shall require agencies, when
22 proposing to adopt, amend, or repeal a regulation, to adhere to the
23 following requirements, to the extent that these requirements do
24 not conflict with other state or federal laws:

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

28 (2) The state agency, prior to submitting a proposal to adopt,
29 amend, or repeal a regulation to the office, shall consider the
30 proposal's impact on business, with consideration of industries
31 affected including the ability of California businesses to compete
32 with businesses in other states. For purposes of evaluating the
33 impact on the ability of California businesses to compete with
34 businesses in other states, an agency shall consider, but not be
35 limited to, information supplied by interested parties.

36 (3) An economic ~~analysis~~ *assessment* prepared pursuant to this
37 subdivision for a proposed regulation that is not a major regulation
38 or that is a major regulation proposed prior to November 1, 2013,
39 shall be prepared in accordance with subdivision (b). An economic
40 ~~analysis~~ *assessment* prepared pursuant to this subdivision for a

1 major regulation proposed on or after November 1, 2013, shall be
2 prepared in accordance with subdivision (c), and shall be included
3 in the initial statement of reasons as required by Section 11346.2.

4 (b) (1) All state agencies proposing to adopt, amend, or repeal
5 a regulation that is not a major regulation or that is a major
6 regulation proposed prior to November 1, 2013, shall prepare an
7 economic impact assessment that assesses whether and to what
8 extent it will affect the following:

9 (A) The creation or elimination of jobs within the ~~State of~~
10 ~~California.~~ *state.*

11 (B) The creation of new businesses or the elimination of existing
12 businesses within the ~~State of California.~~ *state.*

13 (C) The expansion of businesses currently doing business within
14 the ~~State of California.~~ *state.*

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

17 (2) This subdivision does not apply to the University of
18 California, the Hastings College of the Law, or the Fair Political
19 Practices Commission.

20 (3) Information required from state agencies for the purpose of
21 completing the assessment may come from existing state
22 publications.

23 (c) (1) Each state agency proposing to adopt, amend, or repeal
24 a major regulation on or after November 1, 2013, shall prepare a
25 standardized regulatory impact analysis in the manner prescribed
26 by the Department of Finance pursuant to Section 11346.36. The
27 standardized regulatory impact analysis shall address all of the
28 following:

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

30 (B) The creation of new businesses or the elimination of existing
31 businesses within the state.

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

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

35 (E) The incentives for innovation in products, materials, or
36 processes.

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

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

4 (3) Information required from state agencies for the purpose of
5 completing the analysis may be derived from existing state, federal,
6 or academic publications.

7 (d) Any administrative regulation adopted on or after January
8 1, 1993, that requires a report shall not apply to businesses, unless
9 the state agency adopting the regulation makes a finding that it is
10 necessary for the health, safety, or welfare of the people of the
11 state that the regulation apply to businesses.

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

25 (f) Each state agency proposing to adopt, amend, or repeal a
26 major regulation on or after November 1, 2013, and that has
27 prepared a standardized regulatory impact analysis pursuant to
28 subdivision (c), shall submit that analysis to the Department of
29 Finance upon completion. The department shall comment, within
30 30 days of receiving that analysis, on the extent to which the
31 analysis adheres to the regulations adopted pursuant to Section
32 11346.36. Upon receiving the comments from the department, the
33 agency may update its analysis to reflect any comments received
34 from the department and shall summarize the comments and the
35 response of the agency along with a statement of the results of the
36 updated analysis for the statement required by paragraph (10) of
37 subdivision (a) of Section 11346.5.

38 ~~SEC. 3. Article 5.5 (commencing with Section 65958) is added~~
39 ~~to Chapter 4.5 of Division 1 of Title 7 of the Government Code,~~
40 ~~to read:~~

Article 5.5. Streamlined Permit Review

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~~65958. The Legislature finds and declares as follows:~~

~~(a) It is in the state’s interest to assist those applicants needing state permits or approvals by providing a consolidated, unified, and coordinated state permit process whereby, upon request by a permit applicant, agencies with lead and ancillary responsibilities can be convened in a single process to coordinate and expedite permit reviews and disposition of those permits.~~

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

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

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

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

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

- ~~(1) The Secretary of Business, Transportation and Housing.~~
- ~~(2) The Secretary for Environmental Protection.~~
- ~~(3) The Secretary of the Natural Resources Agency.~~

~~(b) Upon the request of a permit applicant, the team shall convene, in a duly noticed public hearing, those permitting agencies with jurisdiction over the project in question to coordinate actions on permits, help reduce or eliminate unnecessary inconsistencies, delay, duplication, overlap, or paperwork associated with issuance~~

1 of multiple permits, and assist in ensuring that permitting agencies
2 and the public have the information necessary to deem permit
3 applications complete and to act upon permits at the earliest
4 feasible date in accordance with the requirements of this chapter.

5 (e) A permitting agency for a project, no later than 30 days after
6 receiving an application for a permit, shall determine the
7 completeness of an application in accordance with the requirements
8 of this chapter or request additional information necessary to
9 determine the completeness of an application. The project applicant
10 shall provide to the permitting agency the requested additional
11 information.

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

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

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

27 (f) The time limits specified in this section shall not apply if
28 federal statutes, regulations, or delegation agreements establish
29 time schedules that differ from those time limits, and failure to
30 comply with federal time schedules could affect the disposition of
31 the project.

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

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

38 65958.7.— (a) Except for the reporting requirement described
39 in subdivision (b), the provisions of this article shall become
40 inoperative on January 1, 2014.

1 ~~(b) On or before March 1, 2015, the Streamlined Permit Review~~
 2 ~~Team shall report to the Governor and to the Legislature on the~~
 3 ~~number and types of development projects for which the process~~
 4 ~~established by this article was used, and the disposition of those~~
 5 ~~development projects.~~

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

9 *SEC. 3. Section 65923.7 is added to the Government Code, to*
 10 *read:*

11 *65923.7. (a) The Office of Planning and Research shall provide*
 12 *information to an applicant for a permit explaining the permit*
 13 *approval process and assist an applicant for a permit in identifying*
 14 *any permit required by a state agency for a proposed development*
 15 *project.*

16 *(b) The Office of Planning and Research is authorized to call*
 17 *a conference of parties at the state level to resolve questions or*
 18 *mediate disputes arising from a permit application for a*
 19 *development project.*

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

24 *In order to ensure that state agencies have clear direction on the*
 25 *implementation of Chapter 496 of the Statutes of 2011, and to*
 26 *streamline the state permit review process for development projects*
 27 *at the earliest possible time, it is necessary that this bill take effect*
 28 *immediately.*