

AMENDED IN ASSEMBLY AUGUST 23, 2012

AMENDED IN ASSEMBLY AUGUST 20, 2012

AMENDED IN SENATE MAY 30, 2012

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 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) *This bill would incorporate additional changes in Section 11346.2 of the Government Code, proposed by AB 1612, to be operative only if AB 1612 and this bill are chaptered and become effective on or before January 1, 2013, and this bill is chaptered last.*

~~(2)~~

(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.

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.

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

22 (b) An initial statement of reasons for proposing the adoption,
 23 amendment, or repeal of a regulation. This statement of reasons
 24 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, the problem the agency intends to address,
3 and the rationale for the determination by the agency that each
4 adoption, amendment, or repeal is reasonably necessary to carry
5 out the purpose and address the problem for which it is proposed.
6 The statement shall enumerate the benefits anticipated from the
7 regulatory action, including the benefits or goals provided in the
8 authorizing statute. The benefits may include, to the extent
9 applicable, nonmonetary benefits such as the protection of public
10 health and safety, worker safety, or the environment, the prevention
11 of discrimination, the promotion of fairness or social equity, and
12 the increase in openness and transparency in business and
13 government, among other things.

14 (2) For a major regulation proposed on or after November 1,
15 2013, the standardized regulatory impact analysis required by
16 Section 11346.3.

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

21 (4) Where the adoption or amendment of a regulation would
22 mandate the use of specific technologies or equipment, a statement
23 of the reasons why the agency believes these mandates or
24 prescriptive standards are required.

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

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

1 (C) Notwithstanding subparagraph (A) or (B), an agency is not
2 required to artificially construct alternatives or describe
3 unreasonable alternatives.

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

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

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

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

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

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

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

1 *SEC. 1.5. Section 11346.2 of the Government Code, as amended*
2 *by Section 2 of Chapter 496 of the Statutes of 2011, is amended*
3 *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.

19 (3) The agency shall use underline or italics to indicate additions
20 to, and strikethrough to indicate deletions from, the California Code
21 of Regulations.

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

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

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

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

5 (4) Where the adoption or amendment of a regulation would
6 mandate the use of specific technologies or equipment, a statement
7 of the reasons why the agency believes these mandates or
8 prescriptive standards are required.

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

20 (B) 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 (C) Notwithstanding subparagraph (A) or (B), an agency is not
24 required to artificially construct alternatives or describe
25 unreasonable alternatives.

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

30 (B) (i) *If a proposed regulation that is a building standard*
31 *impacts housing, the initial statement of reasons shall include the*
32 *estimated cost of compliance, the estimated potential benefits, and*
33 *the related assumptions used to determine the estimates.*

34 (ii) *The model codes adopted pursuant to Section 18928 of the*
35 *Health and Safety Code shall be exempt from the requirements of*
36 *this subparagraph. However, if an interested party has made a*
37 *request in writing to the agency, at least 30 days before the*
38 *submission of the initial statement of reasons, to examine a specific*
39 *section for purposes of estimating the cost of compliance and the*
40 *potential benefits for that section, and including the related*

1 *assumptions used to determine the estimates, then the agency shall*
2 *comply with the requirements of this subparagraph with regard*
3 *to that requested section.*

4 (7) A department, board, or commission within the *California*
5 Environmental Protection Agency, the Natural Resources Agency,
6 or the Office of the State Fire Marshal shall describe its efforts, in
7 connection with a proposed rulemaking action, to avoid
8 unnecessary duplication or conflicts with federal regulations
9 contained in the Code of Federal Regulations addressing the same
10 issues. These agencies may adopt regulations different from federal
11 regulations contained in the Code of Federal Regulations
12 addressing the same issues upon a finding of one or more of the
13 following justifications:

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

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

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

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

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

35 SEC. 2. Section 11346.3 of the Government Code is amended
36 to read:

37 11346.3. (a) State agencies proposing to adopt, amend, or
38 repeal any administrative regulation shall assess the potential for
39 adverse economic impact on California business enterprises and
40 individuals, avoiding the imposition of unnecessary or unreasonable

1 regulations or reporting, recordkeeping, or compliance
2 requirements. For purposes of this subdivision, assessing the
3 potential for adverse economic impact shall require agencies, when
4 proposing to adopt, amend, or repeal a regulation, to adhere to the
5 following requirements, to the extent that these requirements do
6 not conflict with other state or federal laws:

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

10 (2) The state agency, prior to submitting a proposal to adopt,
11 amend, or repeal a regulation to the office, shall consider the
12 proposal's impact on business, with consideration of industries
13 affected including the ability of California businesses to compete
14 with businesses in other states. For purposes of evaluating the
15 impact on the ability of California businesses to compete with
16 businesses in other states, an agency shall consider, but not be
17 limited to, information supplied by interested parties.

18 (3) An economic assessment prepared pursuant to this
19 subdivision for a proposed regulation that is not a major regulation
20 or that is a major regulation proposed prior to November 1, 2013,
21 shall be prepared in accordance with subdivision (b). An economic
22 assessment prepared pursuant to this subdivision for a major
23 regulation proposed on or after November 1, 2013, shall be
24 prepared in accordance with subdivision (c), and shall be included
25 in the initial statement of reasons as required by Section 11346.2.

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

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

32 (B) The creation of new businesses or the elimination of existing
33 businesses within the state.

34 (C) The expansion of businesses currently doing business within
35 the state.

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

38 (2) This subdivision does not apply to the University of
39 California, the Hastings College of the Law, or the Fair Political
40 Practices Commission.

1 (3) Information required from state agencies for the purpose of
2 completing the assessment may come from existing state
3 publications.

4 (c) (1) Each state agency proposing to adopt, amend, or repeal
5 a major regulation on or after November 1, 2013, shall prepare a
6 standardized regulatory impact analysis in the manner prescribed
7 by the Department of Finance pursuant to Section 11346.36. The
8 standardized regulatory impact analysis shall address all of the
9 following:

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

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

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

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

16 (E) The incentives for innovation in products, materials, or
17 processes.

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

22 (2) This subdivision shall 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 analysis may be derived from existing state, federal,
27 or academic publications.

28 (d) Any administrative regulation adopted on or after January
29 1, 1993, that requires a report shall not apply to businesses, unless
30 the 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 (e) Analyses conducted pursuant to this section are intended to
34 provide agencies and the public with tools to determine whether
35 the regulatory proposal is an efficient and effective means of
36 implementing the policy decisions enacted in statute or by other
37 provisions of law in the least burdensome manner. Regulatory
38 impact analyses shall inform the agencies and the public of the
39 economic consequences of regulatory choices, not reassess
40 statutory policy. The baseline for the regulatory analysis shall be

1 the most cost-effective set of regulatory measures that are equally
2 effective in achieving the purpose of the regulation in a manner
3 that ensures full compliance with the authorizing statute or other
4 law being implemented or made specific by the proposed
5 regulation.

6 (f) Each state agency proposing to adopt, amend, or repeal a
7 major regulation on or after November 1, 2013, and that has
8 prepared a standardized regulatory impact analysis pursuant to
9 subdivision (c), shall submit that analysis to the Department of
10 Finance upon completion. The department shall comment, within
11 30 days of receiving that analysis, on the extent to which the
12 analysis adheres to the regulations adopted pursuant to Section
13 11346.36. Upon receiving the comments from the department, the
14 agency may update its analysis to reflect any comments received
15 from the department and shall summarize the comments and the
16 response of the agency along with a statement of the results of the
17 updated analysis for the statement required by paragraph (10) of
18 subdivision (a) of Section 11346.5.

19 *SEC. 3. Section 1.5 of this bill incorporates amendments to*
20 *Section 11346.2 of the Government Code, as amended by Section*
21 *2 of Chapter 496 of the Statutes of 2011, proposed by both this*
22 *bill and Assembly Bill 1612. It shall only become operative if (1)*
23 *both bills are enacted and become effective on or before January*
24 *1, 2013, but this bill becomes operative first, (2) each bill amends*
25 *Section 11346.2 of the Government Code, as amended by Section*
26 *2 of Chapter 496 of the Statutes of 2011, and (3) this bill is enacted*
27 *after Assembly Bill 1612, in which case Section 11346.2 of the*
28 *Government Code, as amended by Section 2 of Chapter 496 of the*
29 *Statutes of 2011, and as amended by Section 1 of this bill, shall*
30 *remain operative only until the operative date of Assembly Bill*
31 *1612, at which time Section 1.5 of this bill shall become operative.*

32 ~~SEC. 3:~~

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

37 In order to ensure that state agencies have clear direction on the
38 implementation of Chapter 496 of the Statutes of 2011, and to
39 streamline the state permit review process for development projects

- 1 at the earliest possible time, it is necessary that this bill take effect
- 2 immediately.

O