

Senate Bill No. 1520

CHAPTER 766

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.

[Approved by Governor September 29, 2012. Filed with
Secretary of State September 29, 2012.]

LEGISLATIVE COUNSEL'S DIGEST

SB 1520, 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.

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

The people of the State of California do enact as follows:

SECTION 1. Section 11346.2 of the Government Code, as amended by Section 2 of Chapter 496 of the Statutes of 2011, is amended to read:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SEC. 1.5. Section 11346.2 of the Government Code, as amended by Section 2 of Chapter 496 of the Statutes of 2011, is amended to read:

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

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

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

(2) The agency shall include a notation following the express terms of each California Code of Regulations section, listing the specific statutes or

other provisions of law authorizing the adoption of the regulation and listing the specific statutes or other provisions of law being implemented, interpreted, or made specific by that section in the California Code of Regulations.

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

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

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

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

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

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

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

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

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

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

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

(ii) The model codes adopted pursuant to Section 18928 of the Health and Safety Code shall be exempt from the requirements of this subparagraph. However, if an interested party has made a request in writing to the agency, at least 30 days before the submittal of the initial statement of reasons, to examine a specific section for purposes of estimating the cost of compliance and the potential benefits for that section, and including the related assumptions used to determine the estimates, then the agency shall comply with the requirements of this subparagraph with regard to that requested section.

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

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

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

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

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

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

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

11346.3. (a) State agencies proposing to adopt, amend, or repeal any administrative regulation shall assess the potential for adverse economic impact on California business enterprises and individuals, avoiding the imposition of unnecessary or unreasonable regulations or reporting, recordkeeping, or compliance requirements. For purposes of this subdivision, assessing the potential for adverse economic impact shall require agencies,

when proposing to adopt, amend, or repeal a regulation, to adhere to the following requirements, to the extent that these requirements do not conflict with other state or federal laws:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SEC. 3. Section 1.5 of this bill incorporates amendments to Section 11346.2 of the Government Code, as amended by Section 2 of Chapter 496 of the Statutes of 2011, proposed by both this bill and Assembly Bill 1612. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2013, but this bill becomes operative first, (2) each bill amends Section 11346.2 of the Government Code, as amended by Section 2 of Chapter 496 of the Statutes of 2011, and (3) this bill is enacted after Assembly Bill 1612, in which case Section 11346.2 of the Government Code, as amended by Section 2 of Chapter 496 of the Statutes of 2011, and as amended by Section 1 of this bill, shall remain operative

only until the operative date of Assembly Bill 1612, at which time Section 1.5 of this bill shall become operative.

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

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