

**ASSEMBLY BILL**

**No. 1105**

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**Introduced by Assembly Member Hueso**

February 22, 2013

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An act to amend Section 11346.2 of the Government Code, relating to administrative regulations.

LEGISLATIVE COUNSEL'S DIGEST

AB 1105, as introduced, Hueso. Administrative practices.

Existing law requires every state agency subject to the Administrative Procedure Act to provide an initial statement of reasons for proposing the adoption, amendment, or repeal of a regulation. Existing law requires an initial statement of reasons for a regulation that is a building standard that impacts housing to include the estimated cost of compliance and the potential benefits of the regulation and the related assumptions used in determining that estimate, except as specified.

This bill would instead require an initial statement of reasons for any regulation that is a building standard, regardless of whether the building standard impacts housing, to include the information specified above.

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 11346.2 of the Government Code, as  
2 amended by Section 1.5 of Chapter 766 of the Statutes of 2012, 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

1 described in Section 11346.5, and make available to the public  
2 upon request, all of the following:

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

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

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

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

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

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

33 (2) For a major regulation proposed on or after November 1,  
34 2013, the standardized regulatory impact analysis required by  
35 Section 11346.3.

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

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

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

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

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

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

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

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

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

- 11 (A) The differing state regulations are authorized by law.
- 12 (B) The cost of differing state regulations is justified by the  
 13 benefit to human health, public safety, public welfare, or the  
 14 environment.

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

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

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

32 SEC. 2. Section 11346.2 of the Government Code, as amended  
 33 by Section 2 of Chapter 471 of the Statutes of 2012, is amended  
 34 to read:

35 11346.2. Every agency subject to this chapter shall prepare,  
 36 submit to the office with the notice of the proposed action as  
 37 described in Section 11346.5, and make available to the public  
 38 upon request, all of the following:

- 39 (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. These 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. Where the adoption or  
30 amendment of a regulation would mandate the use of specific  
31 technologies or equipment, a statement of the reasons why the  
32 agency believes these mandates or prescriptive standards are  
33 required.

34 (2) For a major regulation proposed on or after November 1,  
35 2013, the standardized regulatory impact analysis required by  
36 Section 11346.3.

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

1 (4) (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 (5) (A) Facts, evidence, documents, testimony, or other  
19 evidence on which the agency relies to support an initial  
20 determination that the action will not have a significant adverse  
21 economic impact on business.

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

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27 Health and Safety Code shall be exempt from the requirements of  
28 this subparagraph. However, if an interested party has made a  
29 request in writing to the agency, at least 30 days before the  
30 submittal of the initial statement of reasons, to examine a specific  
31 section for purposes of estimating the cost of compliance and the  
32 potential benefits for that section, and including the related  
33 assumptions used to determine the estimates, then the agency shall  
34 comply with the requirements of this subparagraph with regard to  
35 that requested section.

36 (6) A department, board, or commission within the  
37 Environmental Protection Agency, the Natural Resources Agency,  
38 or the Office of the State Fire Marshal shall describe its efforts, in  
39 connection with a proposed rulemaking action, to avoid  
40 unnecessary duplication or conflicts with federal regulations

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2 issues. These agencies may adopt regulations different from federal  
3 regulations contained in the Code of Federal Regulations  
4 addressing the same issues upon a finding of one or more of the  
5 following justifications:

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

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8 benefit to human health, public safety, public welfare, or the  
9 environment.

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

23 (d) This section shall be inoperative from January 1, 2012, until  
24 January 1, 2014.