

AMENDED IN ASSEMBLY MARCH 20, 2014

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

**ASSEMBLY BILL**

**No. 1711**

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**Introduced by Assembly Member Cooley**

February 13, 2014

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An act to amend Sections 11346.2 and 11346.3 of, *and to add Section 11358 to*, the Government Code, relating to administrative regulations.

LEGISLATIVE COUNSEL'S DIGEST

AB 1711, as amended, Cooley. Administrative Procedures Act: economic impact assessment.

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. The act requires the initial statement of reasons to include a standardized regulatory impact analysis prepared by each agency that proposes to adopt, amend, or repeal any major regulation, as defined, on or after November 1, 2013.

The act also requires every state agency 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, to prepare an economic impact assessment that makes specified ~~assessments~~. ~~This~~ *assessments*.

*The bill would require an economic impact assessment to be included in the initial statement of reasons.*

*The bill would also require the Department of Finance to adopt and update, as necessary, instructions for inclusion in the State Administrative Manual prescribing the methods that an agency would be required to use in preparing the economic impact assessment, as specified.*

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 is  
2 amended to read:

3 11346.2. Every agency subject to this chapter shall prepare,  
4 submit to the office with the notice of the proposed action as  
5 described in Section 11346.5, and make available to the public  
6 upon request, all of the following:

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

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

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

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

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

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

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

6 (2) (A) For a regulation that is not a major regulation, the  
7 economic impact assessment required by subdivision (b) of Section  
8 11346.3.

9 (B) For a major regulation proposed on or after November 1,  
10 2013, the standardized regulatory impact analysis required by  
11 subdivision (c) of Section 11346.3.

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

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

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

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

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

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

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

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

- 21 (A) The differing state regulations are authorized by law.
- 22 (B) The cost of differing state regulations is justified by the  
 23 benefit to human health, public safety, public welfare, or the  
 24 environment.

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

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

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

1 11346.3. (a) A state agency proposing to adopt, amend, or  
2 repeal any administrative regulation shall assess the potential for  
3 adverse economic impact on California business enterprises and  
4 individuals, avoiding the imposition of unnecessary or unreasonable  
5 regulations or reporting, recordkeeping, or compliance  
6 requirements. For purposes of this subdivision, assessing the  
7 potential for adverse economic impact shall require agencies, when  
8 proposing to adopt, amend, or repeal a regulation, to adhere to the  
9 following requirements, to the extent that these requirements do  
10 not conflict with other state or federal laws:

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

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

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

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

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

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

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

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

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

8 (3) Information required from a state agency for the purpose of  
9 completing the assessment may come from existing state  
10 publications.

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

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

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

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

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

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

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

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

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

35 (d) Any administrative regulation adopted on or after January  
36 1, 1993, that requires a report shall not apply to businesses, unless  
37 the state agency adopting the regulation makes a finding that it is  
38 necessary for the health, safety, or welfare of the people of the  
39 state that the regulation apply to businesses.

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

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

27 *SEC. 3. Section 11358 is added to the Government Code, to*  
28 *read:*

29 *11358. (a) The Department of Finance shall adopt and update,*  
30 *as necessary, instructions for inclusion in the State Administrative*  
31 *Manual prescribing the methods that an agency subject to this*  
32 *chapter shall use in preparing the economic impact assessment*  
33 *required by subdivision (b) of Section 11346.3. The instructions*  
34 *shall include, but need not be limited to, the following:*

35 *(1) Guidelines governing the types of data or assumptions, or*  
36 *both, that may be used, and the methods that shall be used, to*  
37 *calculate the estimate of the economic impact mandated by the*  
38 *regulation for which the estimate is being prepared.*

39 *(2) The types of direct or indirect economic impacts that should*  
40 *be taken into account in preparing the estimate.*

- 1     (3) *The format the agency preparing the estimate shall follow*
- 2     *in summarizing and reporting its economic impact assessment*
- 3     *upon businesses and individuals.*
- 4     (b) *The Department of Finance may review any economic impact*
- 5     *assessment prepared pursuant to this section for content including,*
- 6     *but not limited to, the data and assumptions used in its preparation.*