

AMENDED IN ASSEMBLY APRIL 3, 2014
AMENDED IN ASSEMBLY MARCH 20, 2014
CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 1711

Introduced by Assembly Member Cooley

February 13, 2014

An act to amend Sections ~~11346.2 and 11346.3~~ 11346.2, 11346.3, and 11357 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.

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

Existing law requires the Department of Finance to adopt and update, as necessary, instructions for inclusion in the State Administrative

Manual prescribing the methods that an agency is required to use in making a determination that a regulation imposes a local mandate and an estimate of the cost or savings to any state agency, the cost to any local agency or school district that is required to be reimbursed, as specified, other nondiscretionary cost or savings imposed on local agencies, and the cost or savings in federal funding to the state.

The bill would ~~also~~ instead 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.~~ *making the determinations and estimates of fiscal or economic impact required by specified provisions of the act. The bill would also exempt from the rulemaking provisions of the act any action by the Department of Finance to adopt and update, as necessary, instructions to a state agency on the preparation of an economic impact estimate or assessment of a proposed regulation.*

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.

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

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

7 (1) A statement of the specific purpose of each adoption,
8 amendment, or repeal, the problem the agency intends to address,
9 and the rationale for the determination by the agency that each
10 adoption, amendment, or repeal is reasonably necessary to carry
11 out the purpose and address the problem for which it is proposed.
12 The statement shall enumerate the benefits anticipated from the
13 regulatory action, including the benefits or goals provided in the
14 authorizing statute. These benefits may include, to the extent
15 applicable, nonmonetary benefits such as the protection of public
16 health and safety, worker safety, or the environment, the prevention
17 of discrimination, the promotion of fairness or social equity, and
18 the increase in openness and transparency in business and
19 government, among other things. Where the adoption or
20 amendment of a regulation would mandate the use of specific
21 technologies or equipment, a statement of the reasons why the
22 agency believes these mandates or prescriptive standards are
23 required.

24 (2) (A) For a regulation that is not a major regulation, the
25 economic impact assessment required by subdivision (b) of Section
26 11346.3.

27 (B) For a major regulation proposed on or after November 1,
28 2013, the standardized regulatory impact analysis required by
29 subdivision (c) of Section 11346.3.

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

34 (4) (A) A description of reasonable alternatives to the regulation
35 and the agency's reasons for rejecting those alternatives.
36 Reasonable alternatives to be considered include, but are not
37 limited to, alternatives that are proposed as less burdensome and
38 equally effective in achieving the purposes of the regulation in a
39 manner that ensures full compliance with the authorizing statute
40 or other law being implemented or made specific by the proposed

1 regulation. In the case of a regulation that would mandate the use
2 of specific technologies or equipment or prescribe specific actions
3 or procedures, the imposition of performance standards shall be
4 considered as an alternative.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 (3) An economic impact assessment prepared pursuant to this
2 subdivision for a proposed regulation that is not a major regulation
3 or that is a major regulation proposed prior to November 1, 2013,
4 shall be prepared in accordance with subdivision (b), and shall be
5 included in the initial statement of reasons as required by Section
6 11346.2. An economic assessment prepared pursuant to this
7 subdivision for a major regulation proposed on or after November
8 1, 2013, shall be prepared in accordance with subdivision (c), and
9 shall be included in the initial statement of reasons as required by
10 Section 11346.2.

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

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

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

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

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

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

26 (3) Information required from a state agency for the purpose of
27 completing the assessment may come from existing state
28 publications.

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

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

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

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

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

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

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

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

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

13 (d) Any administrative regulation adopted on or after January
14 1, 1993, that requires a report shall not apply to businesses, unless
15 the state agency adopting the regulation makes a finding that it is
16 necessary for the health, safety, or welfare of the people of the
17 state that the regulation apply to businesses.

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

31 (f) Each state agency proposing to adopt, amend, or repeal a
32 major regulation on or after November 1, 2013, and that has
33 prepared a standardized regulatory impact analysis pursuant to
34 subdivision (c), shall submit that analysis to the Department of
35 Finance upon completion. The department shall comment, within
36 30 days of receiving that analysis, on the extent to which the
37 analysis adheres to the regulations adopted pursuant to Section
38 11346.36. Upon receiving the comments from the department, the
39 agency may update its analysis to reflect any comments received
40 from the department and shall summarize the comments and the

1 response of the agency along with a statement of the results of the
2 updated analysis for the statement required by paragraph (10) of
3 subdivision (a) of Section 11346.5.

4 ~~SEC. 3. Section 11358 is added to the Government Code, to~~
5 ~~read:~~

6 ~~11358. (a) The Department of Finance shall adopt and update,~~
7 ~~as necessary, instructions for inclusion in the State Administrative~~
8 ~~Manual prescribing the methods that an agency subject to this~~
9 ~~chapter shall use in preparing the economic impact assessment~~
10 ~~required by subdivision (b) of Section 11346.3. The instructions~~
11 ~~shall include, but need not be limited to, the following:~~

12 ~~(1) Guidelines governing the types of data or assumptions, or~~
13 ~~both, that may be used, and the methods that shall be used, to~~
14 ~~calculate the estimate of the economic impact mandated by the~~
15 ~~regulation for which the estimate is being prepared.~~

16 ~~(2) The types of direct or indirect economic impacts that should~~
17 ~~be taken into account in preparing the estimate.~~

18 ~~(3) The format the agency preparing the estimate shall follow~~
19 ~~in summarizing and reporting its economic impact assessment~~
20 ~~upon businesses and individuals.~~

21 ~~(b) The Department of Finance may review any economic~~
22 ~~impact assessment prepared pursuant to this section for content~~
23 ~~including, but not limited to, the data and assumptions used in its~~
24 ~~preparation.~~

25 ~~SEC. 3. Section 11357 of the Government Code is amended to~~
26 ~~read:~~

27 ~~11357. (a) The Department of Finance shall adopt and update,~~
28 ~~as necessary, instructions for inclusion in the State Administrative~~
29 ~~Manual prescribing the methods that any an agency subject to this~~
30 ~~chapter shall use in making the determination required by~~
31 ~~paragraph (5) and the estimate required by paragraph (6) of~~
32 ~~subdivision (a) of Section *determinations and the estimates of*~~
33 ~~*fiscal or economic impact required by Sections 11346.2, 11346.3,*~~
34 ~~*and 11346.5. The instructions shall include, but need not be limited*~~
35 ~~to, the following:~~

36 ~~(1) Guidelines governing the types of data or assumptions, or~~
37 ~~both, that may be used, and the methods that shall be used, to~~
38 ~~calculate the estimate of the cost or savings to public agencies~~
39 ~~mandated by the regulation for which the estimate is being~~
40 ~~prepared.~~

1 (2) The types of direct or indirect costs and savings that should
2 be taken into account in preparing the estimate.

3 (3) The criteria that shall be used in determining whether the
4 cost of a regulation must be funded by the state pursuant to Section
5 6 of Article XIII B of the California Constitution and Part 7
6 (commencing with Section 17500) of Division 4.

7 (4) The format the agency preparing the estimate shall follow
8 in summarizing and reporting its estimate of the cost or savings
9 to state and local agencies, school districts, and in federal funding
10 of state programs that will result from the regulation *and its*
11 *estimate of the economic impact that will result from the regulation.*

12 (b) ~~Any~~ An action by the Department of Finance to adopt and
13 update, as necessary, instructions to any state or local agency for
14 the preparation, development, or administration of the state budget,
15 *or instructions to a state agency on the preparation of an economic*
16 *impact estimate or assessment of a proposed regulation*, including
17 any instructions included in the State Administrative Manual, shall
18 be exempt from this chapter.

19 (c) The Department of Finance may review ~~any~~ an estimate
20 prepared pursuant to this section for content including, but not
21 limited to, the data and assumptions used in its preparation.