

AMENDED IN SENATE AUGUST 21, 2014
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, 11346.3, and 11357 of 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 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 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.

This bill would incorporate additional changes to Section 11346.3 of the Government Code proposed by AB 2723 that would become operative if this bill and AB 2723 are both chaptered and this bill is chaptered last.

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

1 of law being implemented, interpreted, or made specific by that
2 section in the California Code of Regulations.

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

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

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

26 (2) (A) For a regulation that is not a major regulation, the
27 economic impact assessment required by subdivision (b) of Section
28 11346.3.

29 (B) For a major regulation proposed on or after November 1,
30 2013, the standardized regulatory impact analysis required by
31 subdivision (c) of Section 11346.3.

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

36 (4) (A) A description of reasonable alternatives to the regulation
37 and the agency's reasons for rejecting those alternatives.
38 Reasonable alternatives to be considered include, but are not
39 limited to, alternatives that are proposed as less burdensome and
40 equally effective in achieving the purposes of the regulation in a

1 manner that ensures full compliance with the authorizing statute
2 or other law being implemented or made specific by the proposed
3 regulation. In the case of a regulation that would mandate the use
4 of specific technologies or equipment or prescribe specific actions
5 or procedures, the imposition of performance standards shall be
6 considered as an alternative.

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

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

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

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

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

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

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

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

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

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

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

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

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

34 (2) The state agency, prior to submitting a proposal to adopt,
35 amend, or repeal a regulation to the office, shall consider the
36 proposal's impact on business, with consideration of industries
37 affected including the ability of California businesses to compete
38 with businesses in other states. For purposes of evaluating the
39 impact on the ability of California businesses to compete with

1 businesses in other states, an agency shall consider, but not be
2 limited to, information supplied by interested parties.

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

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

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

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

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

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

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

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

31 (c) (1) Each state agency proposing to adopt, amend, or repeal
32 a major regulation on or after November 1, 2013, shall prepare a
33 standardized regulatory impact analysis in the manner prescribed
34 by the Department of Finance pursuant to Section 11346.36. The
35 standardized regulatory impact analysis shall address all of the
36 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 competitive advantages or disadvantages for businesses
2 currently doing business within the state.

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

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

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

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

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

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

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

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

1 11346.36. Upon receiving the comments from the department, the
 2 agency may update its analysis to reflect any comments received
 3 from the department and shall summarize the comments and the
 4 response of the agency along with a statement of the results of the
 5 updated analysis for the statement required by paragraph (10) of
 6 subdivision (a) of Section 11346.5.

7 *SEC. 2.5. Section 11346.3 of the Government Code is amended*
 8 *to read:*

9 11346.3. (a) ~~State agencies~~ *A state agency* proposing to adopt,
 10 amend, or repeal any administrative regulation shall assess the
 11 potential for adverse economic impact on California business
 12 enterprises and individuals, avoiding the imposition of unnecessary
 13 or unreasonable regulations or reporting, recordkeeping, or
 14 compliance requirements. For purposes of this subdivision,
 15 assessing the potential for adverse economic impact shall require
 16 agencies, when proposing to adopt, amend, or repeal a regulation,
 17 to adhere to the following requirements, to the extent that these
 18 requirements do not conflict with other state or federal laws:

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

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

30 (3) An economic *impact* assessment prepared pursuant to this
 31 subdivision for a proposed regulation that is not a major regulation
 32 or that is a major regulation proposed prior to November 1, 2013,
 33 shall be prepared in accordance with subdivision ~~(b)~~ *(b)*, and shall
 34 *be included in the initial statement of reasons as required by*
 35 *Section 11346.2.* An economic assessment prepared pursuant to
 36 this subdivision for a major regulation proposed on or after
 37 November 1, 2013, shall be prepared in accordance with
 38 subdivision (c), and shall be included in the initial statement of
 39 reasons as required by Section 11346.2.

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

- 6 (A) The creation or elimination of jobs within the state.
- 7 (B) The creation of new businesses or the elimination of existing
8 businesses within the state.
- 9 (C) The expansion of businesses currently doing business within
10 the state.
- 11 (D) The benefits of the regulation to the health and welfare of
12 California residents, worker safety, and the state's environment.

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

16 (3) Information required from ~~a state agencies~~ *agency* for the
17 purpose of completing the assessment may come from existing
18 state publications.

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

- 25 (A) The creation or elimination of jobs within the state.
- 26 (B) The creation of new businesses or the elimination of existing
27 businesses within the ~~state~~ *state, including the impact on sole*
28 *proprietorships and small businesses as defined by Section*
29 *11342.610.*
- 30 (C) The competitive advantages or disadvantages for businesses
31 currently doing business within the state.
- 32 (D) The increase or decrease of investment in the state.
- 33 (E) The incentives for innovation in products, materials, or
34 processes.
- 35 (F) The benefits of the regulations, including, but not limited
36 to, benefits to the health, safety, and welfare of California residents,
37 worker safety, and the state's environment and quality of life,
38 among any other benefits identified by the agency.

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

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

7 (d) Any administrative regulation adopted on or after January
8 1, 1993, that requires a report shall not apply to businesses, unless
9 the state agency adopting the regulation makes a finding that it is
10 necessary for the health, safety, or welfare of the people of the
11 state that the regulation apply to businesses.

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

25 (f) Each state agency proposing to adopt, amend, or repeal a
26 major regulation on or after November 1, 2013, and that has
27 prepared a standardized regulatory impact analysis pursuant to
28 subdivision (c), shall submit that analysis to the Department of
29 Finance upon completion. The department shall comment, within
30 30 days of receiving that analysis, on the extent to which the
31 analysis adheres to the regulations adopted pursuant to Section
32 11346.36. Upon receiving the comments from the department, the
33 agency may update its analysis to reflect any comments received
34 from the department and shall summarize the comments and the
35 response of the agency along with a statement of the results of the
36 updated analysis for the statement required by paragraph (10) of
37 subdivision (a) of Section 11346.5.

38 SEC. 3. Section 11357 of the Government Code is amended
39 to read:

1 11357. (a) The Department of Finance shall adopt and update,
2 as necessary, instructions for inclusion in the State Administrative
3 Manual prescribing the methods that an agency subject to this
4 chapter shall use in making the determinations and the estimates
5 of fiscal or economic impact required by Sections 11346.2,
6 11346.3, and 11346.5. The instructions shall include, but need not
7 be limited to, the following:

8 (1) Guidelines governing the types of data or assumptions, or
9 both, that may be used, and the methods that shall be used, to
10 calculate the estimate of the cost or savings to public agencies
11 mandated by the regulation for which the estimate is being
12 prepared.

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

15 (3) The criteria that shall be used in determining whether the
16 cost of a regulation must be funded by the state pursuant to Section
17 6 of Article XIII B of the California Constitution and Part 7
18 (commencing with Section 17500) of Division 4.

19 (4) The format the agency preparing the estimate shall follow
20 in summarizing and reporting its estimate of the cost or savings
21 to state and local agencies, school districts, and in federal funding
22 of state programs that will result from the regulation and its
23 estimate of the economic impact that will result from the regulation.

24 (b) An action by the Department of Finance to adopt and update,
25 as necessary, instructions to any state or local agency for the
26 preparation, development, or administration of the state budget,
27 or instructions to a state agency on the preparation of an economic
28 impact estimate or assessment of a proposed regulation, including
29 any instructions included in the State Administrative Manual, shall
30 be exempt from this chapter.

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

34 *SEC. 4. Section 2.5 of this bill incorporates amendments to*
35 *Section 11346.3 of the Government Code proposed by both this*
36 *bill and AB 2723. It shall only become operative if (1) both bills*
37 *are enacted and become effective on or before January 1, 2015,*
38 *(2) each bill amends Section 11346.3 of the Government Code,*
39 *and (3) this bill is enacted after AB 2723, in which case Section 2*
40 *of this bill shall not become operative.*

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