

AMENDED IN ASSEMBLY APRIL 15, 2011

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 1322

Introduced by Assembly Member Bradford

February 18, 2011

An act to add Section 11340.15 to the Government Code, relating to regulations.

LEGISLATIVE COUNSEL’S DIGEST

AB 1322, as amended, Bradford. Regulations: principles of regulation.

Existing law, 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.

This bill would adopt the regulatory philosophy and the principles of regulation, as outlined in Presidential Executive Order 12866, in order to achieve the same regulatory benefits within the state, 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 11340.15 is added to the Government
- 2 Code, to read:
- 3 11340.15. (a) The Legislature finds and declares that this state
- 4 should seek to achieve the benefits associated with the regulatory
- 5 philosophy and principles of regulation described in Executive
- 6 Order 12866, to the extent that they supplement and are not
- 7 inconsistent with the existing provisions of this chapter.

(b) In order to achieve the benefits associated with Executive Order 12866, this state adopts the following regulatory philosophy, as outlined in Section 1(a) of Executive Order 12866:

(1) Agencies should promulgate only those regulations as are required by law, are necessary to interpret the law, or are made necessary by compelling public need, such as material failures of private markets to protect or improve the health and safety of the public, the environment, or the well-being of Californians.

(2) In deciding whether and how to regulate, agencies should assess all costs and benefits of available regulatory alternatives, including the alternative of not regulating. Costs and benefits shall be understood to include both quantifiable measures, to the fullest extent that these can be usefully estimated, and qualitative measures of costs and benefits that are difficult to quantify, but nevertheless essential to consider. Further, in choosing among alternative regulatory approaches, agencies should select those approaches that maximize net benefits, including potential economic, environmental, public health and safety, and other advantages, distributive impacts, and equity, unless a statute requires another regulatory approach.

(c) (1) In order to achieve the benefits associated with Executive Order 12866, this state adopts the principles of regulation contained in this subdivision, as outlined in Section 1(b) of Executive Order 12866.

(2) To ensure that the agencies' regulatory programs are consistent with the philosophy set forth above, agencies should adhere to the following principles to the extent permitted by law and where applicable:

(A) Each agency shall identify the problem that it intends to address, including, where applicable, the failures of private markets or public institutions that warrant new agency action, as well as assess the significance of that problem.

(B) Each agency shall examine whether existing regulations, or other law, have created, or contributed to, the problem that a new regulation is intended to correct and whether those regulations, or other law, should be modified to achieve the intended goal of regulation more effectively.

(C) Each agency shall identify and assess available alternatives to direct regulation, including providing economic incentives to encourage the desired behavior, such as user fees or marketable

1 permits, or providing information upon which choices can be made
2 by the public.

3 (D) In setting regulatory priorities, each agency shall consider,
4 to the extent reasonable, the degree and nature of the risks posed
5 by various substances or activities within its jurisdiction.

6 (E) When an agency determines that a regulation is the best
7 available method of achieving the regulatory objective, it shall
8 design its regulations in the most cost-effective manner to achieve
9 the regulatory objective. In doing so, each agency shall consider
10 incentives for innovation, consistency, predictability, the costs of
11 enforcement and compliance to the government, regulated entities,
12 and the public, and flexibility, distributive impacts, and equity.

13 (F) Each agency shall assess both the costs and the benefits of
14 the intended regulation and, recognizing that some costs and
15 benefits are difficult to quantify, propose or adopt a regulation
16 only upon a reasoned determination that the benefits of the intended
17 regulation justify its costs.

18 (G) Each agency shall base its decisions on the best reasonably
19 obtainable scientific, technical, economic, and other information
20 concerning the need for, and consequences of, the intended
21 regulation.

22 (H) Each agency shall identify and assess alternative forms of
23 regulation and shall, to the extent feasible, specify performance
24 objectives, rather than specifying the behavior or manner of
25 compliance that regulated entities must adopt.

26 (I) Wherever feasible, agencies shall seek views of appropriate
27 state, local, and tribal officials before imposing regulatory
28 requirements that might significantly or uniquely affect those
29 governmental entities. Each agency shall assess the effects of
30 ~~federal~~ state regulations on state, local, and tribal governments,
31 including specifically the availability of resources to carry out
32 those mandates, and seek to minimize those burdens that uniquely
33 or significantly affect those governmental entities, consistent with
34 achieving regulatory objectives. In addition, as appropriate,
35 agencies shall seek to harmonize ~~federal~~ state regulatory actions
36 with related state, local, and tribal regulatory and other
37 governmental functions.

38 (J) Each agency shall avoid regulations that are inconsistent,
39 incompatible, or duplicative with its other regulations or those of
40 other ~~federal~~ state agencies.

1 (K) Each agency shall tailor its regulations to impose the least
2 burden on society, including individuals, businesses of differing
3 sizes, and other entities, including small communities and
4 governmental entities, consistent with obtaining the regulatory
5 objectives, taking into account, among other things, and to the
6 extent practicable, the costs of cumulative regulations.

7 (L) Each agency shall draft its regulations to be simple and easy
8 to understand, with the goal of minimizing the potential for
9 uncertainty and litigation arising from such uncertainty.

10 *(d) Nothing in this chapter shall be construed to weaken or*
11 *undermine in any manner any human health, public or worker*
12 *rights, public welfare, environmental, or other protection*
13 *established under statute. Nothing in this chapter shall be*
14 *construed to effect the authority or requirement for an agency to*
15 *adopt regulations as provided by statute.*