

AMENDED IN ASSEMBLY APRIL 16, 2012

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 1504

Introduced by Assembly Member Morrell

January 10, 2012

An act to amend Sections 11342.548, 11346, 11346.3, and 11346.36 of, and to add Sections 11346.25 and 11346.37 to, the Government Code, relating to administrative regulations.

LEGISLATIVE COUNSEL'S DIGEST

AB 1504, as amended, Morrell. Administrative regulations.

The Administrative Procedure Act governs the procedures for the adoption, amendment, or repeal of regulations by state agencies and the review of those regulatory actions by the Office of Administrative Law. Existing law establishes procedures for notifying interested persons of the proposed adoption, amendment, or repeal of a regulation. Existing law requires a state agency that proposes to adopt, amend, or repeal an administrative regulation to assess the potential for adverse economic impact on California businesses and individuals, as prescribed.

This bill would require each state agency that is considering adopting, amending, or repealing a regulation, in addition to those existing economic impact analysis requirements, to complete an economic assessment of the proposed action at least 90 days prior to submitting a notice of proposed action to the office. The bill would subject the economic assessment to public comment. The bill would require the economic assessment to include specified analyses.

On and after November 1, 2013, existing law requires a state agency, proposing to adopt, amend, or repeal a regulation that will have an economic impact of more than \$50,000,000 on California businesses

and individuals, to conduct a standardized regulatory impact assessment, as specified, to be included in the initial statement of reasons for the regulation. Existing law requires the Department of Finance to adopt regulations for conducting the standardized regulatory impact assessment.

This bill would, on and after November 1, 2013, instead require a state agency to conduct a standardized regulatory impact assessment when the economic impact on California businesses and individuals exceeds \$25,000,000. The bill would require the standardized regulatory impact assessment to include an analysis of alternatives that meet the statutory purpose of the proposed regulation, 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 11342.548 of the Government Code is
2 amended to read:

3 11342.548. "Major regulation" means any proposed adoption,
4 amendment, or repeal of a regulation subject to review by the
5 Office of Administrative Law pursuant to Article 6 (commencing
6 with Section 11349) that will have an economic impact on
7 California business enterprises and individuals in an amount
8 exceeding twenty-five million dollars (\$25,000,000), as estimated
9 by the agency.

10 SEC. 2. Section 11346 of the Government Code is amended
11 to read:

12 11346. (a) It is the purpose of this chapter to establish basic
13 minimum procedural requirements for the adoption, amendment,
14 or repeal of administrative regulations. Except as provided in
15 Section 11346.1, the provisions of this chapter are applicable to
16 the exercise of any quasi-legislative power conferred by any statute
17 heretofore or hereafter enacted, but nothing in this chapter repeals
18 or diminishes additional requirements imposed by any statute. This
19 chapter shall not be superseded or modified by any subsequent
20 legislation except to the extent that the legislation shall do so
21 expressly.

22 (b) As provided in Sections 11346.25 and 11346.3, an agency
23 that is considering adopting, amending, or repealing a regulation

1 shall consult with interested persons before initiating regulatory
2 action pursuant to this article.

3 SEC. 3. Section 11346.25 is added to the Government Code,
4 to read:

5 11346.25. (a) An agency that is considering adopting,
6 amending, or repealing a regulation shall complete an economic
7 assessment of the proposed action 90 days prior to submitting a
8 notice of proposed action to the office.

9 (b) The economic assessment shall be subject to public comment
10 and shall include all of the following:

11 (1) ~~A cost-benefit analysis~~ *An assessment of the costs associated*
12 *with the proposed action*, including whether the proposed action,
13 if adopted, may result in the expenditure of moneys by any
14 individual, business, state government entity, or local government
15 entity.

16 (2) A description of the expenditure of any moneys identified
17 pursuant to paragraph (1), including examples of how the proposed
18 action may result in the expenditure of moneys by an individual,
19 business, state entity, or local entity.

20 (3) An analysis of how the proposed action shall implement or
21 meet the statutory purpose for which the proposed action is
22 necessary, and the reason for its necessity.

23 (4) An analysis that takes into consideration and addresses the
24 public comments received by the agency.

25 (5) In the case of a major regulation, an analysis that considers
26 alternative regulations, which shall also be included in the analysis
27 required under Section 11346.37.

28 (c) The agency shall notify the public of the public comment
29 period for the economic assessment 90 days prior to submitting a
30 notice of proposed action to the office, pursuant to the following:

31 (1) The agency shall identify all interested parties that may be
32 affected by the proposed regulation.

33 (2) The agency shall post that identification on its Internet Web
34 site along with a preliminary notice of proposed rulemaking and
35 initial statement of reasons.

36 (3) The agency shall make public all comments that are received
37 under this section.

38 (d) The economic assessment required by this section shall be
39 prepared in addition to the economic impact analysis required

1 under Section 11346.3, and shall be filed with the office with the
2 notice of proposed action.

3 SEC. 4. Section 11346.3 of the Government Code is amended
4 to read:

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

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

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

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

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

39 (A) The creation or elimination of jobs within the State of
40 California.

1 (B) The creation of new businesses or the elimination of existing
2 businesses within the State of California.

3 (C) The expansion of businesses currently doing business within
4 the State of California.

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

7 (2) This subdivision does 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 assessment may come from existing state
12 publications.

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

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

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

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

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

25 (E) The incentives for innovation in products, materials, or
26 processes.

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

31 (G) An analysis of reasonable alternatives as required under
32 Section 11346.37.

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

36 (3) Information required from state agencies for the purpose of
37 completing the assessment may be derived from existing state,
38 federal, or academic publications.

39 (d) Any administrative regulation adopted on or after January
40 1, 1993, that requires a report shall not apply to businesses, unless

1 the state agency adopting the regulation makes a finding that it is
2 necessary for the health, safety, or welfare of the people of the
3 state that the regulation apply to businesses.

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

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

30 SEC. 5. Section 11346.36 of the Government Code is amended
31 to read:

32 11346.36. (a) Prior to November 1, 2013, the Department of
33 Finance, in consultation with the office and other state agencies,
34 shall adopt regulations for conducting the standardized regulatory
35 impact analyses required by subdivision (c) of Section 11346.3.

36 (b) The regulations, at a minimum, shall assist the agencies in
37 specifying the methodologies for:

38 (1) Assessing and determining the benefits and costs of the
39 proposed regulation, expressed in monetary terms to the extent
40 feasible and appropriate. Assessing the value of nonmonetary

1 benefits such as the protection of public health and safety, worker
2 safety, or the environment, the prevention of discrimination, the
3 promotion of fairness or social equity, the increase in the openness
4 and transparency of business and government and other
5 nonmonetary benefits consistent with the statutory policy or other
6 provisions of law.

7 (2) Comparing proposed regulatory alternatives with an
8 established baseline so agencies can make analytical decisions for
9 the adoption, amendment, or repeal of regulations necessary to
10 determine that the proposed action is the most effective, or equally
11 effective and less burdensome, alternative in carrying out the
12 purpose for which the action is proposed, or the most cost-effective
13 alternative to the economy and to affected private persons that
14 would be equally effective in implementing the statutory policy
15 or other provision of law.

16 (3) Determining the impact of a regulatory proposal on the state
17 economy, businesses, and the public welfare, as described in
18 subdivision (c) of Section 11346.3.

19 (4) Assessing the effects of a regulatory proposal on the General
20 Fund and special funds of the state and affected local government
21 agencies attributable to the proposed regulation.

22 (5) Determining the cost of enforcement and compliance to the
23 agency and to affected business enterprises and individuals.

24 (6) Making the estimation described in Section 11342.548.

25 (7) Complying with the requirements under Section 11346.37.

26 (c) To the extent required by this chapter, the department shall
27 convene a public hearing or hearings and take public comment on
28 any draft regulation. Representatives from state agencies and the
29 public at large shall be afforded the opportunity to review and
30 comment on the draft regulation before the regulation is adopted
31 in final form.

32 (d) State agencies shall provide the Director of Finance and the
33 office ready access to their records and full information and
34 reasonable assistance in any matter requested for purposes of
35 developing the regulations required by this section. This
36 subdivision shall not be construed to authorize an agency to provide
37 access to records required by statute to be kept confidential.

38 (e) The standardized regulatory impact analysis prepared by the
39 proposing agency shall be included in the initial statement of

1 reasons for the regulation as provided in subdivision (b) of Section
2 11346.2.

3 (f) On or before November 1, 2013, the department shall submit
4 the adopted regulations to the Senate and Assembly Committees
5 on Governmental Organization and shall publish the adopted
6 regulations in the State Administrative Manual.

7 SEC. 6. Section 11346.37 is added to the Government Code,
8 to read:

9 11346.37. (a) An agency that proposes to adopt a major
10 regulation pursuant to Section 11346.3 shall include in its
11 standardized regulatory impact assessment both of the following:

12 (1) An assessment of the cost effectiveness of alternatives that
13 meet the statutory purpose of the proposed major regulation and
14 a determination of which alternative is the lowest cost alternative.

15 (2) A demonstration that the proposed major regulation is the
16 most cost-effective approach to meeting the statutory purpose of
17 the regulation as compared to all other alternatives.

18 (b) In implementing this section, an agency shall make a
19 substantial effort to engage all regulated and interested parties in
20 the development of alternatives that would satisfy the statutory
21 purpose of the proposed major regulation. Public comment under
22 Section 11346.25 shall be taken into consideration and utilized to
23 refine the analysis under this section and to develop additional
24 alternatives. The agency shall consider and address all comments
25 made during the public comment period under Section 11346.25
26 pertaining to its analysis of the alternatives, including why the
27 agency selected the proposed major regulation as compared to the
28 alternatives.

29 (c) The requirements of this section shall be in addition to the
30 analysis required under paragraph (5) of subdivision (b) of Section
31 11346.2.

32 (d) For purposes of this section, “alternative” means any other
33 alternative approach or project that could be, or could have been,
34 considered by the agency in lieu of the proposed major regulation.