

AMENDED IN ASSEMBLY MARCH 13, 2012

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 1537

Introduced by Assembly Member Cook

(Coauthors: Assembly Members Miller, Nestande, and Olsen)

(Coauthors: Senators Cannella, Dutton, Harman, Huff, and La Malfa)

January 24, 2012

An act to amend Section 11349.1 of, and to add Section 11346.15 to, the Government Code, relating to regulations.

LEGISLATIVE COUNSEL'S DIGEST

AB 1537, as amended, Cook. ~~Regulations: sunset date.~~ *Government Accountability Act of 2012.*

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 *enact the Government Accountability Act of 2012 and* require that a regulation proposed on or after January 1, 2013, that is estimated to have an adverse economic impact of more than \$1,000,000 in a year on businesses or individuals subject to the proposed regulation include a provision to repeal the regulation 2 years after the date that the regulation is approved by the office. The bill would require the office to return to an agency any proposed regulation that does not include the repeal provision. The bill would provide that the repeal date shall be void if the Legislature enacts a statute that expressly validates and approves the content of the 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. This act shall be known as the Government*
2 *Accountability Act of 2012.*

3 ~~SECTION 1.~~

4 *SEC. 2.* Section 11346.15 is added to the Government Code,
5 to read:

6 11346.15. (a) This section shall apply to any regulation
7 proposed on or after January 1, 2013, that is estimated to have an
8 adverse economic impact of more than one million dollars
9 (\$1,000,000) in a year on businesses or individuals subject to the
10 proposed regulation, as estimated pursuant to Section 11346.3.

11 (b) Every regulation described in subdivision (a) shall include
12 a provision that repeals the regulation two years after the date that
13 the regulation is approved by the office.

14 (c) If the Legislature enacts a statute expressly validating and
15 approving the content of a regulation, and the statute takes effect
16 prior to the repeal date designated for the regulation, then the repeal
17 date shall be void and the regulation shall continue in effect until
18 any later time as may be provided by the validating statute.

19 ~~SEC. 2.~~

20 *SEC. 3.* Section 11349.1 of the Government Code, as amended
21 by Section 9 of Chapter 496 of the Statutes of 2011, is amended
22 to read:

23 11349.1. (a) The office shall review all regulations adopted,
24 amended, or repealed pursuant to the procedure specified in Article
25 5 (commencing with Section 11346) and submitted to it for
26 publication in the California Code of Regulations Supplement and
27 for transmittal to the Secretary of State and make determinations
28 using all of the following standards:

- 29 (1) Necessity.
- 30 (2) Authority.
- 31 (3) Clarity.
- 32 (4) Consistency.
- 33 (5) Reference.
- 34 (6) Nonduplication.

35 In reviewing regulations pursuant to this section, the office shall
36 restrict its review to the regulation and the record of the rulemaking
37 proceeding. The office shall approve the regulation or order of

1 repeal if it complies with the standards set forth in this section and
2 with this chapter.

3 (b) In reviewing proposed regulations for the criteria in
4 subdivision (a), the office may consider the clarity of the proposed
5 regulation in the context of related regulations already in existence.

6 (c) The office shall adopt regulations governing the procedures
7 it uses in reviewing regulations submitted to it. The regulations
8 shall provide for an orderly review and shall specify the methods,
9 standards, presumptions, and principles the office uses, and the
10 limitations it observes, in reviewing regulations to establish
11 compliance with the standards specified in subdivision (a). The
12 regulations adopted by the office shall ensure that it does not
13 substitute its judgment for that of the rulemaking agency as
14 expressed in the substantive content of adopted regulations.

15 (d) The office shall return any regulation subject to this chapter
16 to the adopting agency if any of the following occur:

17 (1) The adopting agency has not prepared the estimate required
18 by paragraph (6) of subdivision (a) of Section 11346.5 and has not
19 included the data used and calculations made and the summary
20 report of the estimate in the file of the rulemaking.

21 (2) The agency has not complied with Section 11346.3.
22 “Noncompliance” means that the agency failed to complete the
23 economic impact assessment or standardized regulatory impact
24 analysis required by Section 11346.3 or failed to include the
25 assessment or analysis in the file of the rulemaking proceeding as
26 required by Section 11347.3.

27 (3) The adopting agency has prepared the estimate required by
28 paragraph (6) of subdivision (a) of Section 11346.5, the estimate
29 indicates that the regulation will result in a cost to local agencies
30 or school districts that is required to be reimbursed under Part 7
31 (commencing with Section 17500) of Division 4, and the adopting
32 agency fails to do any of the following:

33 (A) Cite an item in the Budget Act for the fiscal year in which
34 the regulation will go into effect as the source from which the
35 Controller may pay the claims of local agencies or school districts.

36 (B) Cite an accompanying bill appropriating funds as the source
37 from which the Controller may pay the claims of local agencies
38 or school districts.

39 (C) Attach a letter or other documentation from the Department
40 of Finance which states that the Department of Finance has

1 approved a request by the agency that funds be included in the
2 Budget Bill for the next following fiscal year to reimburse local
3 agencies or school districts for the costs mandated by the
4 regulation.

5 (D) Attach a letter or other documentation from the Department
6 of Finance which states that the Department of Finance has
7 authorized the augmentation of the amount available for
8 expenditure under the agency's appropriation in the Budget Act
9 which is for reimbursement pursuant to Part 7 (commencing with
10 Section 17500) of Division 4 to local agencies or school districts
11 from the unencumbered balances of other appropriations in the
12 Budget Act and that this augmentation is sufficient to reimburse
13 local agencies or school districts for their costs mandated by the
14 regulation.

15 (4) The proposed regulation conflicts with an existing state
16 regulation and the agency has not identified the manner in which
17 the conflict may be resolved.

18 (5) The agency did not make the alternatives determination as
19 required by paragraph (4) of subdivision (a) of Section 11346.9.

20 (6) The regulation does not include provisions for the repeal of
21 the regulation, as required by Section 11346.15.

22 (e) The office shall notify the Department of Finance of all
23 regulations returned pursuant to subdivision (d).

24 (f) The office shall return a rulemaking file to the submitting
25 agency if the file does not comply with subdivisions (a) and (b)
26 of Section 11347.3. Within three state working days of the receipt
27 of a rulemaking file, the office shall notify the submitting agency
28 of any deficiency identified. If no notice of deficiency is mailed
29 to the adopting agency within that time, a rulemaking file shall be
30 deemed submitted as of the date of its original receipt by the office.
31 A rulemaking file shall not be deemed submitted until each
32 deficiency identified under this subdivision has been corrected.

33 (g) Notwithstanding any other law, return of the regulation to
34 the adopting agency by the office pursuant to this section is the
35 exclusive remedy for a failure to comply with subdivision (c) of
36 Section 11346.3 or paragraph (10) of subdivision (a) of Section
37 11346.5.