

Introduced by Senator Correa

February 18, 2011

An act to amend Sections 11346.2 and 11346.5 of the Government Code, relating to administrative regulations.

LEGISLATIVE COUNSEL'S DIGEST

SB 643, as introduced, Correa. Administrative procedures.

(1) Existing law requires every state agency subject to the Administrative Procedures Act to provide an initial statement of reasons for proposing the adoption, amendment, or repeal of a regulation. Existing law also requires that the initial statement of reasons include, among other things, facts, evidence, documents, testimony, or other evidence on which the agency relies to support a specified determination.

This bill would additionally require that if the proposed regulation impacts housing, the initial statement of reasons include the estimated cost of compliance and the related assumptions used in determining that estimate.

(2) Existing law requires every state agency to provide notice of the proposed adoption, amendment, or repeal of a regulation and requires a designated agency officer to make publicly available the agency's evaluation, if any, of the effect of the proposed regulatory action on housing costs.

The bill would require that in making the evaluation available to the public, the agency officer include the estimated costs of compliance.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. Section 11346.2 of the Government Code, as amended by Section 1 of Chapter 398 of the Statutes of 2010, is amended to read:

11346.2. Every agency subject to this chapter shall prepare, submit to the office with the notice of the proposed action as described in Section 11346.5, and make available to the public upon request, all of the following:

(a) A copy of the express terms of the proposed regulation.

(1) The agency shall draft the regulation in plain, straightforward language, avoiding technical terms as much as possible, and using a coherent and easily readable style. The agency shall draft the regulation in plain English.

(2) The agency shall include a notation following the express terms of each California Code of Regulations section, listing the specific statutes or other provisions of law authorizing the adoption of the regulation and listing the specific statutes or other provisions of law being implemented, interpreted, or made specific by that section in the California Code of Regulations.

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

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

(1) A statement of the specific purpose of each adoption, amendment, or repeal and the rationale for the determination by the agency that each adoption, amendment, or repeal is reasonably necessary to carry out the purpose for which it is proposed. Where the adoption or amendment of a regulation would mandate the use of specific technologies or equipment, a statement of the reasons why the agency believes these mandates or prescriptive standards are required.

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

(3) (A) A description of reasonable alternatives to the regulation and the agency's reasons for rejecting those alternatives. In the

1 case of a regulation that would mandate the use of specific
2 technologies or equipment or prescribe specific actions or
3 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, describe unreasonable
10 alternatives, or justify why it has not described alternatives.

11 (4) Facts, evidence, documents, testimony, or other evidence
12 on which the agency relies to support an initial determination that
13 the action will not have a significant adverse economic impact on
14 business. *If the proposed regulation impacts housing, the initial*
15 *statement of reasons shall include the estimated cost of compliance*
16 *and the related assumptions used in determining that estimate.*

17 (5) A department, board, or commission within the
18 Environmental Protection Agency, the Resources Agency, or the
19 Office of the State Fire Marshal shall describe its efforts, in
20 connection with a proposed rulemaking action, to avoid
21 unnecessary duplication or conflicts with federal regulations
22 contained in the Code of Federal Regulations addressing the same
23 issues. These agencies may adopt regulations different from federal
24 regulations contained in the Code of Federal Regulations
25 addressing the same issues upon a finding of one or more of the
26 following justifications:

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

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

31 (c) A state agency that adopts or amends a regulation mandated
32 by federal law or regulations, the provisions of which are identical
33 to a previously adopted or amended federal regulation, shall be
34 deemed to have complied with subdivision (b) if a statement to
35 the effect that a federally mandated regulation or amendment to a
36 regulation is being proposed, together with a citation to where an
37 explanation of the provisions of the regulation can be found, is
38 included in the notice of proposed adoption or amendment prepared
39 pursuant to Section 11346.5. However, the agency shall comply
40 fully with this chapter with respect to any provisions in the

1 regulation that the agency proposes to adopt or amend that are
2 different from the corresponding provisions of the federal
3 regulation.

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

6 SEC. 2. Section 11346.2 of the Government Code, as added
7 by Section 2 of Chapter 398 of the Statutes of 2010, is amended
8 to read:

9 11346.2. Every agency subject to this chapter shall prepare,
10 submit to the office with the notice of the proposed action as
11 described in Section 11346.5, and make available to the public
12 upon request, all of the following:

13 (a) A copy of the express terms of the proposed regulation.

14 (1) The agency shall draft the regulation in plain, straightforward
15 language, avoiding technical terms as much as possible, and using
16 a coherent and easily readable style. The agency shall draft the
17 regulation in plain English.

18 (2) The agency shall include a notation following the express
19 terms of each California Code of Regulations section, listing the
20 specific statutes or other provisions of law authorizing the adoption
21 of the regulation and listing the specific statutes or other provisions
22 of law being implemented, interpreted, or made specific by that
23 section in the California Code of Regulations.

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

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

30 (1) A statement of the specific purpose of each adoption,
31 amendment, or repeal and the rationale for the determination by
32 the agency that each adoption, amendment, or repeal is reasonably
33 necessary to carry out the purpose for which it is proposed.

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

38 (3) Where the adoption or amendment of a regulation would
39 mandate the use of specific technologies or equipment, a statement

1 of the reasons why the agency believes these mandates or
2 prescriptive standards are required.

3 (4) (A) A description of reasonable alternatives to the regulation
4 and the agency's reasons for rejecting those alternatives.

5 (B) A description of any performance standard that was
6 considered as an alternative. In the case of a regulation that would
7 mandate the use of specific technologies or equipment or prescribe
8 specific actions or procedures, the imposition of performance
9 standards shall be considered as an alternative.

10 (C) A description of reasonable alternatives to the regulation
11 that would lessen any adverse impact on small business and the
12 agency's reasons for rejecting those alternatives.

13 (D) Notwithstanding subparagraph (A), (B), or (C), an agency
14 is not required to artificially construct alternatives, describe
15 unreasonable alternatives, or justify why it has not described
16 alternatives.

17 (5) Facts, evidence, documents, testimony, or other evidence
18 on which the agency relies to support an initial determination that
19 the action will not have a significant adverse economic impact on
20 business. *If the proposed regulation impacts housing, the initial*
21 *statement of reasons shall include the estimated cost of compliance*
22 *and the related assumptions used in determining that estimate.*

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

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

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

37 (c) A state agency that adopts or amends a regulation mandated
38 by federal law or regulations, the provisions of which are identical
39 to a previously adopted or amended federal regulation, shall be
40 deemed to have complied with subdivision (b) if a statement to

1 the effect that a federally mandated regulation or amendment to a
2 regulation is being proposed, together with a citation to where an
3 explanation of the provisions of the regulation can be found, is
4 included in the notice of proposed adoption or amendment prepared
5 pursuant to Section 11346.5. However, the agency shall comply
6 fully with this chapter with respect to any provisions in the
7 regulation that the agency proposes to adopt or amend that are
8 different from the corresponding provisions of the federal
9 regulation.

10 (d) This section shall become operative on January 1, 2012.

11 (e) This section shall remain in effect only until January 1, 2014,
12 and as of that date is repealed, unless a later enacted statute, that
13 is enacted before January 1, 2014, deletes or extends that date.

14 SEC. 3. Section 11346.5 of the Government Code is amended
15 to read:

16 11346.5. (a) The notice of proposed adoption, amendment, or
17 repeal of a regulation shall include the following:

18 (1) A statement of the time, place, and nature of proceedings
19 for adoption, amendment, or repeal of the regulation.

20 (2) Reference to the authority under which the regulation is
21 proposed and a reference to the particular code sections or other
22 provisions of law that are being implemented, interpreted, or made
23 specific.

24 (3) An informative digest drafted in plain English in a format
25 similar to the Legislative Counsel's digest on legislative bills. The
26 informative digest shall include the following:

27 (A) A concise and clear summary of existing laws and
28 regulations, if any, related directly to the proposed action and of
29 the effect of the proposed action.

30 (B) If the proposed action differs substantially from an existing
31 comparable federal regulation or statute, a brief description of the
32 significant differences and the full citation of the federal regulations
33 or statutes.

34 (C) A policy statement overview explaining the broad objectives
35 of the regulation and, if appropriate, the specific objectives.

36 (4) Any other matters as are prescribed by statute applicable to
37 the specific state agency or to any specific regulation or class of
38 regulations.

39 (5) A determination as to whether the regulation imposes a
40 mandate on local agencies or school districts and, if so, whether

the mandate requires state reimbursement pursuant to Part 7 (commencing with Section 17500) of Division 4.

(6) An estimate, prepared in accordance with instructions adopted by the Department of Finance, of the cost or savings to any state agency, the cost to any local agency or school district that is required to be reimbursed under Part 7 (commencing with Section 17500) of Division 4, other nondiscretionary cost or savings imposed on local agencies, and the cost or savings in federal funding to the state.

For purposes of this paragraph, “cost or savings” means additional costs or savings, both direct and indirect, that a public agency necessarily incurs in reasonable compliance with regulations.

(7) If a state agency, in proposing to adopt, amend, or repeal any administrative regulation, makes an initial determination that the action may have a significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states, it shall include the following information in the notice of proposed action:

(A) Identification of the types of businesses that would be affected.

(B) A description of the projected reporting, recordkeeping, and other compliance requirements that would result from the proposed action.

(C) The following statement: “The (name of agency) has made an initial determination that the (adoption/amendment/repeal) of this regulation may have a significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. The (name of agency) (has/has not) considered proposed alternatives that would lessen any adverse economic impact on business and invites you to submit proposals. Submissions may include the following considerations:

(i) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to businesses.

(ii) Consolidation or simplification of compliance and reporting requirements for businesses.

1 (iii) The use of performance standards rather than prescriptive
2 standards.

3 (iv) Exemption or partial exemption from the regulatory
4 requirements for businesses.”

5 (8) If a state agency, in adopting, amending, or repealing any
6 administrative regulation, makes an initial determination that the
7 action will not have a significant, statewide adverse economic
8 impact directly affecting business, including the ability of
9 California businesses to compete with businesses in other states,
10 it shall make a declaration to that effect in the notice of proposed
11 action. In making this declaration, the agency shall provide in the
12 record facts, evidence, documents, testimony, or other evidence
13 upon which the agency relies to support its initial determination.

14 An agency’s initial determination and declaration that a proposed
15 adoption, amendment, or repeal of a regulation may have or will
16 not have a significant, adverse impact on businesses, including the
17 ability of California businesses to compete with businesses in other
18 states, shall not be grounds for the office to refuse to publish the
19 notice of proposed action.

20 (9) A description of all cost impacts, known to the agency at
21 the time the notice of proposed action is submitted to the office,
22 that a representative private person or business would necessarily
23 incur in reasonable compliance with the proposed action.

24 If no cost impacts are known to the agency, it shall state the
25 following:

26 “The agency is not aware of any cost impacts that a
27 representative private person or business would necessarily incur
28 in reasonable compliance with the proposed action.”

29 (10) A statement of the results of the assessment required by
30 subdivision (b) of Section 11346.3.

31 (11) The finding prescribed by subdivision (c) of Section
32 11346.3, if required.

33 (12) A statement that the action would have a significant effect
34 on housing costs, if a state agency, in adopting, amending, or
35 repealing any administrative regulation, makes an initial
36 determination that the action would have that effect. In addition,
37 the agency officer designated in paragraph (14), shall make
38 available to the public, upon request, the agency’s evaluation, if
39 any, of the effect of the proposed regulatory action on housing
40 costs, *including the estimated cost of compliance*.

1 (13) A statement that the adopting agency must determine that
2 no reasonable alternative considered by the agency or that has
3 otherwise been identified and brought to the attention of the agency
4 would be more effective in carrying out the purpose for which the
5 action is proposed or would be as effective and less burdensome
6 to affected private persons than the proposed action.

7 (14) The name and telephone number of the agency
8 representative and designated backup contact person to whom
9 inquiries concerning the proposed administrative action may be
10 directed.

11 (15) The date by which comments submitted in writing must
12 be received to present statements, arguments, or contentions in
13 writing relating to the proposed action in order for them to be
14 considered by the state agency before it adopts, amends, or repeals
15 a regulation.

16 (16) Reference to the fact that the agency proposing the action
17 has prepared a statement of the reasons for the proposed action,
18 has available all the information upon which its proposal is based,
19 and has available the express terms of the proposed action, pursuant
20 to subdivision (b).

21 (17) A statement that if a public hearing is not scheduled, any
22 interested person or his or her duly authorized representative may
23 request, no later than 15 days prior to the close of the written
24 comment period, a public hearing pursuant to Section 11346.8.

25 (18) A statement indicating that the full text of a regulation
26 changed pursuant to Section 11346.8 will be available for at least
27 15 days prior to the date on which the agency adopts, amends, or
28 repeals the resulting regulation.

29 (19) A statement explaining how to obtain a copy of the final
30 statement of reasons once it has been prepared pursuant to
31 subdivision (a) of Section 11346.9.

32 (20) If the agency maintains an Internet Web site or other similar
33 forum for the electronic publication or distribution of written
34 material, a statement explaining how materials published or
35 distributed through that forum can be accessed.

36 (b) The agency representative designated in paragraph (14) of
37 subdivision (a) shall make available to the public upon request the
38 express terms of the proposed action. The representative shall also
39 make available to the public upon request the location of public
40 records, including reports, documentation, and other materials,

1 related to the proposed action. If the representative receives an
2 inquiry regarding the proposed action that the representative cannot
3 answer, the representative shall refer the inquiry to another person
4 in the agency for a prompt response.

5 (c) This section shall not be construed in any manner that results
6 in the invalidation of a regulation because of the alleged inadequacy
7 of the notice content or the summary or cost estimates, or the
8 alleged inadequacy or inaccuracy of the housing cost estimates, if
9 there has been substantial compliance with those requirements.