

AMENDED IN ASSEMBLY MAY 28, 2010

AMENDED IN ASSEMBLY APRIL 14, 2010

CALIFORNIA LEGISLATURE—2009–10 REGULAR SESSION

ASSEMBLY BILL

No. 2529

Introduced by Assembly Member Fuentes

February 19, 2010

~~An act to amend Sections 11343.4 and 11346.5 of, and to add Sections 11346.35 and 11349.35 to, the Government Code, relating to regulations. An act to add and repeal Section 11346.35 of the Government Code, relating to regulations.~~

LEGISLATIVE COUNSEL'S DIGEST

AB 2529, as amended, Fuentes. State agencies: regulations: review.

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. ~~Under existing law, a regulation that is approved, or deemed approved, by the office shall be filed with the Secretary of State and shall take effect on the 30th day after that filing, except as specified.~~

~~Existing law establishes the Bureau of State Audits, which is headed by the State Auditor and has specified statutory duties. Existing law establishes the State Audit Fund, which is continuously appropriated for the expenses of the State Auditor.~~

~~This bill would require the State Auditor, using information submitted by an agency proposing a regulation, to conduct a cost benefit analysis of the regulation that includes certain determinations, as specified. This bill would require the agency to include this cost benefit analysis in its~~

~~notice of proposed action for the proposed regulation. To the extent that this bill imposes additional duties on the State Auditor that are funded through a continuously appropriated fund, this bill would make an appropriation.~~

~~This bill would require the office, if a proposed regulation is approved or deemed approved, to provide a prescribed notification to specified committees in the Legislature if the State Auditor's cost benefit analysis determines that the regulation has an annual statewide economic cost of more than \$10,000,000 or that the benefits of the regulation do not equal or exceed the costs of the regulation.~~

~~This bill would require the specified legislative committees to conduct a public hearing to review each regulation for which it receives a notification from the office and to issue a recommendation as to whether the regulation should be invalidated by statute.~~

~~This bill would extend the effective date of a regulation that the office has submitted to the Secretary of State until the 60th day after the filing.~~

This bill would require the State Air Resources Board, Energy Commission, Department of Fish and Game, and the Department of Housing and Community Development to complete a related economic impacts analysis, as defined, for any proposed regulation that will have an adverse economic impact on California business enterprises and individuals in an amount exceeding \$10,000,000, as specified. This bill would also require these entities to submit the related economic impacts analysis to a prescribed peer review process, if certain conditions occur.

The bill would require the office to notify specified committees in the Legislature of each major proposed regulation that is approved or deemed approved by the office.

This bill would repeal its provisions on January 1, 2016, as specified.

Vote: $\frac{2}{3}$ -majority. Appropriation: ~~yes~~-no. Fiscal committee: yes. State-mandated local program: no.

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

- 1 SECTION 1. Section 11346.35 is added to the Government
- 2 Code, to read:
- 3 11346.35. (a) For purposes of this section, the following terms
- 4 have the following meanings:
- 5 (1) "Agency" means only the State Air Resources Board, the
- 6 Energy Commission, the Department of Fish and Game, and the
- 7 Department of Housing and Community Development.

1 (2) “Major proposed regulation” means a proposed adoption,
2 amendment, or repeal of a regulation that will have an adverse
3 economic impact on California business enterprises and individuals
4 in an amount exceeding ten million dollars (\$10,000,000), as
5 estimated by the agency in the assessment required pursuant to
6 Section 11346.3.

7 (3) “Related economic impacts analysis” means an analysis of
8 the reasonably identifiable and significant impacts of a major
9 proposed regulation, that are premised upon, or derived from,
10 empirical data or other scientific or economic findings,
11 conclusions, or assumptions, including, but not limited to:

12 (A) Short-term and long-term jobs within this state in individual
13 sectors of the economy affected by the major proposed regulation.

14 (B) The revenues to the General Fund and special funds that
15 result from changes in economic activity attributable to the major
16 proposed regulation.

17 (b) The agency shall complete, and include within the notice of
18 proposed action required pursuant to Section 11346.5, a related
19 economic impacts analysis for a major proposed regulation.

20 (c) An agency shall enter into an agreement with the National
21 Bureau of Economic Research, the University of California, the
22 California State University, or a group of economists of
23 comparable stature and qualifications to conduct an external peer
24 review of the related economic impacts analysis of the major
25 proposed regulation if each of the following conditions occur:

26 (1) Within 15 days of the public disclosure of the notice of
27 proposed action pursuant to Section 11346.4, a person submits,
28 in the manner prescribed by the agency, a request for the agency
29 to submit the related economic impacts analysis for external peer
30 review pursuant to this section.

31 (2) The requester pays an administrative fee to the agency to
32 cover the administrative costs of processing the request. The
33 administrative fee shall be in an amount determined by the agency,
34 not to exceed the administrative costs of processing the requests,
35 and in no event to exceed five hundred dollars (\$500).

36 (3) The requester and the agency, within 30 calendar days of
37 the date that the request is submitted, enter into a contract whereby
38 the requester shall be required to fully reimburse the agency for
39 the nonadministrative costs incurred by the agency to obtain the
40 completed peer review from the peer review entity.

1 (d) (1) *Except as otherwise provided in this subdivision, the*
2 *agency shall select external peer reviewers using the process*
3 *established pursuant to Section 57004 of the Health and Safety*
4 *Code.*

5 (2) *A person shall not serve as an external peer reviewer if that*
6 *person participated in the development of the related economic*
7 *impacts analysis of the major proposed regulation, or if that person*
8 *has a financial interest in an entity or person that would be subject*
9 *to the major proposed regulation or has any other conflict of*
10 *interest.*

11 (3) *The person who requests the external peer review pursuant*
12 *to this section, a person affiliated with that requester, and*
13 *personnel of the adopting agency shall not participate in the*
14 *selection of the individual external peer reviewers or contact or*
15 *communicate with the individual external peer reviewer during*
16 *the peer review.*

17 (4) *Notwithstanding paragraph (3), the agency may contact or*
18 *communicate with an external peer reviewer for the purpose of*
19 *entering into the contract with the reviewer as described in*
20 *subdivision (c), and for purposes of providing the information*
21 *described in paragraph (1) of subdivision (e).*

22 (5) *The identity of the individual external peer reviewers shall*
23 *remain confidential until the external peer reviewer submits the*
24 *written report to the specified department or commission.*

25 (e) *If the requirements of subdivision (c) are met, the agency*
26 *shall not take any action to adopt the final version of a major*
27 *proposed regulation unless all of the following conditions are met:*

28 (1) *The agency submits to the external peer reviewer for*
29 *evaluation the text of the major proposed regulation, the related*
30 *economic impacts analysis for the major proposed regulation, and*
31 *other appropriate materials on which the related economic impacts*
32 *analysis is based.*

33 (2) *The external peer review entity prepares a written report*
34 *that contains an evaluation of the related economic impacts*
35 *analysis within a timeframe determined by the agency. If the*
36 *external peer review entity finds that the related economic impacts*
37 *analysis prepared by the agency is not based upon sound economic*
38 *knowledge, methods, or practices, the report shall state that finding*
39 *and the reasons supporting that finding.*

1 (3) *The agency accepts the findings of the external peer review*
2 *entity, in whole or in part, and revises the major proposed*
3 *regulation accordingly, or rejects the finding. If the agency*
4 *disagrees with any aspect of the findings of the external peer review*
5 *entity, it shall explain, and include as part of the rulemaking*
6 *record, its basis for the disagreement, including support for its*
7 *determination that the related economic impacts analysis is based*
8 *on sound economic knowledge, methods, and practices.*

9 (4) *A public hearing is conducted to provide opportunity for*
10 *public comment on the written report prepared by the external*
11 *peer review entity or, as appropriate, the agency explanation*
12 *relating to its disagreement with the written report. The public*
13 *hearing conducted pursuant to this paragraph shall be in addition*
14 *to any public hearing for purposes of adopting the final version*
15 *of a major proposed regulation. The agency shall not issue notice*
16 *of a public hearing on adoption of the final version of the major*
17 *proposed regulation until the public hearing described in this*
18 *paragraph has concluded.*

19 (f) *In the event that the external peer review entity fails to*
20 *provide a written report to the agency by the deadline prescribed*
21 *by paragraph (2) of subdivision (e), an agency shall not be required*
22 *to comply with the remaining requirements of subdivision (e) and*
23 *may proceed with the adoption of the final version of the major*
24 *proposed regulation.*

25 (g) *The requirements of this section shall not apply to an*
26 *emergency regulation adopted pursuant to Section 11346.1.*

27 (h) *This section shall not be construed to limit the authority of*
28 *an agency to adopt a regulation pursuant to the requirements of*
29 *any other law that authorizes or requires the adoption of the*
30 *regulation.*

31 (i) *Once an external peer review of the related economic impacts*
32 *analysis has been completed for a major proposed regulation, the*
33 *agency shall not be required to conduct additional peer reviews*
34 *pursuant to this section for that major proposed regulation.*

35 (j) *The office shall notify the fiscal committees of each house of*
36 *the Legislature and the Joint Legislative Budget Committee of*
37 *each major proposed regulation that is approved or deemed*
38 *approved by the office pursuant to Section 11349.3. The*
39 *notification shall include the text of the regulation, the related*

1 *economic impacts analysis conducted by the agency, and the*
2 *written report, if any, of the external peer reviewer.*

3 *(k) This section shall remain in effect only until January 1, 2016,*
4 *and as of that date is repealed, unless a later enacted statute, that*
5 *is enacted before January 1, 2016, deletes or extends that date.*

6 ~~SECTION 1. Section 11343.4 of the Government Code is~~
7 ~~amended to read:~~

8 ~~11343.4. A regulation or an order of repeal required to be filed~~
9 ~~with the Secretary of State shall become effective on the 60th day~~
10 ~~after the date of filing unless:~~

11 ~~(a) Otherwise specifically provided by the statute pursuant to~~
12 ~~which the regulation or order of repeal was adopted, in which event~~
13 ~~it becomes effective on the day prescribed by the statute.~~

14 ~~(b) A later date is prescribed by the state agency in a written~~
15 ~~instrument filed with, or as part of, the regulation or order of repeal.~~

16 ~~(c) The agency makes a written request to the office~~
17 ~~demonstrating good cause for an earlier effective date, in which~~
18 ~~case the office may prescribe an earlier date.~~

19 ~~SEC. 2. Section 11346.35 is added to the Government Code,~~
20 ~~to read:~~

21 ~~11346.35. (a) The State Auditor shall, within a reasonable~~
22 ~~time, conduct a cost benefit analysis of any proposed regulation~~
23 ~~before the agency issues a notice of proposed action pursuant to~~
24 ~~Section 11346.4. Based on the results of the cost benefit analysis,~~
25 ~~the State Auditor shall make a determination, to be included in the~~
26 ~~cost benefit analysis, as to both of the following:~~

27 ~~(1) Whether the proposed regulation will have an annual~~
28 ~~statewide economic cost of at least ten million dollars~~
29 ~~(\$10,000,000):~~

30 ~~(2) Whether the proposed regulation, considered in its totality,~~
31 ~~has regulatory benefits that equal or exceed the overall economic~~
32 ~~costs:~~

33 ~~(b) The agency proposing the regulation shall provide the State~~
34 ~~Auditor with any information that the State Auditor deems~~
35 ~~necessary to conduct the cost benefit analysis, including, but not~~
36 ~~limited to, any information that the agency is required to include~~
37 ~~in the notice of proposed action pursuant to Section 11346.5.~~

38 ~~(c) The agency shall not issue the notice of proposed action~~
39 ~~pursuant to Section 11346.4 until the State Auditor completes the~~
40 ~~cost benefit analysis.~~

1 SEC. 3.—Section 11346.5 of the Government Code is amended
2 to read:

3 11346.5. (a) The notice of proposed adoption, amendment, or
4 repeal of a regulation shall include the following:

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

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

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

14 (A) A concise and clear summary of existing laws and
15 regulations, if any, related directly to the proposed action and of
16 the effect of the proposed action.

17 (B) If the proposed action differs substantially from an existing
18 comparable federal regulation or statute, a brief description of the
19 significant differences and the full citation of the federal regulations
20 or statutes.

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

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

26 (5) A determination as to whether the regulation imposes a
27 mandate on local agencies or school districts and, if so, whether
28 the mandate requires state reimbursement pursuant to Part 7
29 (commencing with Section 17500) of Division 4.

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

37 For purposes of this paragraph, "cost or savings" means
38 additional costs or savings, both direct and indirect, that a public
39 agency necessarily incurs in reasonable compliance with
40 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.~~

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

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

~~(8) If a state agency, in adopting, amending, or repealing any administrative regulation, makes an initial determination that the action will not 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 make a declaration to that effect in the notice of proposed action. In making this declaration, the agency shall provide in the record facts, evidence, documents, testimony, or other evidence upon which the agency relies to support its initial determination.~~

1 An agency's initial determination and declaration that a proposed
2 adoption, amendment, or repeal of a regulation may have or will
3 not have a significant, adverse impact on businesses, including the
4 ability of California businesses to compete with businesses in other
5 states, shall not be grounds for the office to refuse to publish the
6 notice of proposed action.

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

11 If no cost impacts are known to the agency, it shall state the
12 following:

13 —
14 “The agency is not aware of any cost impacts that a
15 representative private person or business would necessarily incur
16 in reasonable compliance with the proposed action.”
17 —

18 ~~(10) A statement of the results of the assessment required by~~
19 ~~subdivision (b) of Section 11346.3.~~

20 ~~(11) The finding prescribed by subdivision (c) of Section~~
21 ~~11346.3, if required.~~

22 ~~(12) A statement that the action would have a significant effect~~
23 ~~on housing costs, if a state agency, in adopting, amending, or~~
24 ~~repealing any administrative regulation, makes an initial~~
25 ~~determination that the action would have that effect. In addition,~~
26 ~~the agency officer designated in paragraph (14), shall make~~
27 ~~available to the public, upon request, the agency's evaluation, if~~
28 ~~any, of the effect of the proposed regulatory action on housing~~
29 ~~costs.~~

30 ~~(13) A statement that the adopting agency must determine that~~
31 ~~no reasonable alternative considered by the agency or that has~~
32 ~~otherwise been identified and brought to the attention of the agency~~
33 ~~would be more effective in carrying out the purpose for which the~~
34 ~~action is proposed or would be as effective and less burdensome~~
35 ~~to affected private persons than the proposed action.~~

36 ~~(14) The name and telephone number of the agency~~
37 ~~representative and designated backup contact person to whom~~
38 ~~inquiries concerning the proposed administrative action may be~~
39 ~~directed.~~

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

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

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

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

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

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

~~(21) The results of the cost benefit analysis issued by the State Auditor pursuant to Section 11346.35.~~

~~(b) The agency representative designated in paragraph (14) of subdivision (a) shall make available to the public upon request the express terms of the proposed action. The representative shall also make available to the public upon request the location of public records, including reports, documentation, and other materials, related to the proposed action. If the representative receives an inquiry regarding the proposed action that the representative cannot answer, the representative shall refer the inquiry to another person in the agency for a prompt response.~~

~~(c) This section shall not be construed in any manner that results in the invalidation of a regulation because of the alleged inadequacy of the notice content or the summary or cost estimates, or the~~

1 alleged inadequacy or inaccuracy of the housing cost estimates, if
2 there has been substantial compliance with those requirements.

3 SEC. 4. ~~Section 11349.35 is added to the Government Code,~~
4 ~~to read:~~

5 ~~11349.35. (a) The office shall identify, for each proposed~~
6 ~~regulation that is approved or deemed approved by the office~~
7 ~~pursuant to Section 11349.3, the determinations made by the State~~
8 ~~Auditor in the cost benefit analysis conducted pursuant to Section~~
9 ~~11346.35. The office shall notify the Committee on Appropriations~~
10 ~~of each house of the Legislature of each regulation for which the~~
11 ~~State Auditor determined that the regulation will have an annual~~
12 ~~statewide economic cost of at least ten million dollars~~
13 ~~(\$10,000,000) or that the regulation's benefits do not equal or~~
14 ~~exceed the overall economic costs. The notification shall include,~~
15 ~~but not be limited to, the text of the regulation and the cost benefit~~
16 ~~analysis conducted by the State Auditor.~~

17 ~~(b) The Committee on Appropriations of each house of the~~
18 ~~Legislature shall conduct a public hearing to review each regulation~~
19 ~~for which it receives a notification from the office and shall issue~~
20 ~~a recommendation as to whether the regulation should be~~
21 ~~invalidated by statute.~~