

Assembly Bill No. 1711

CHAPTER 779

An act to amend Sections 11346.2, 11346.3, and 11357 of the Government Code, relating to administrative regulations.

[Approved by Governor September 29, 2014. Filed with
Secretary of State September 29, 2014.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1711, Cooley. Administrative Procedures Act: economic impact assessment.

Existing law requires every state agency subject to the Administrative Procedure Act to provide an initial statement of reasons for proposing the adoption, amendment, or repeal of a regulation. The act requires the initial statement of reasons to include a standardized regulatory impact analysis prepared by each agency that proposes to adopt, amend, or repeal any major regulation, as defined, on or after November 1, 2013.

The act also requires every state agency proposing to adopt, amend, or repeal a regulation that is not a major regulation or that is a major regulation proposed prior to November 1, 2013, to prepare an economic impact assessment that makes specified assessments.

The bill would require an economic impact assessment to be included in the initial statement of reasons.

Existing law requires the Department of Finance to adopt and update, as necessary, instructions for inclusion in the State Administrative Manual prescribing the methods that an agency is required to use in making a determination that a regulation imposes a local mandate and an estimate of the cost or savings to any state agency, the cost to any local agency or school district that is required to be reimbursed, as specified, other nondiscretionary cost or savings imposed on local agencies, and the cost or savings in federal funding to the state.

The bill would instead require the Department of Finance to adopt and update, as necessary, instructions for inclusion in the State Administrative Manual prescribing the methods that an agency would be required to use in making the determinations and estimates of fiscal or economic impact required by specified provisions of the act. The bill would also exempt from the rulemaking provisions of the act any action by the Department of Finance to adopt and update, as necessary, instructions to a state agency on the preparation of an economic impact estimate or assessment of a proposed regulation.

This bill would incorporate additional changes to Section 11346.3 of the Government Code proposed by AB 2723 that would become operative if this bill and AB 2723 are both chaptered and this bill is chaptered last.

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

SECTION 1. Section 11346.2 of the Government Code 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, the problem the agency intends to address, and the rationale for the determination by the agency that each adoption, amendment, or repeal is reasonably necessary to carry out the purpose and address the problem for which it is proposed. The statement shall enumerate the benefits anticipated from the regulatory action, including the benefits or goals provided in the authorizing statute. These benefits may include, to the extent applicable, nonmonetary benefits such as the protection of public health and safety, worker safety, or the environment, the prevention of discrimination, the promotion of fairness or social equity, and the increase in openness and transparency in business and government, among other things. 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) (A) For a regulation that is not a major regulation, the economic impact assessment required by subdivision (b) of Section 11346.3.

(B) For a major regulation proposed on or after November 1, 2013, the standardized regulatory impact analysis required by subdivision (c) of Section 11346.3.

(3) 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.

(4) (A) A description of reasonable alternatives to the regulation and the agency's reasons for rejecting those alternatives. Reasonable alternatives to be considered include, but are not limited to, alternatives that are proposed as less burdensome and equally effective in achieving the purposes of the regulation in a manner that ensures full compliance with the authorizing statute or other law being implemented or made specific by the proposed regulation. In the case of a regulation that would mandate the use of specific technologies or equipment or prescribe specific actions or procedures, the imposition of performance standards shall be considered as an alternative.

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

(C) Notwithstanding subparagraph (A) or (B), an agency is not required to artificially construct alternatives or describe unreasonable alternatives.

(5) (A) Facts, evidence, documents, testimony, or other evidence on which the agency relies to support an initial determination that the action will not have a significant adverse economic impact on business.

(B) (i) If a proposed regulation is a building standard, the initial statement of reasons shall include the estimated cost of compliance, the estimated potential benefits, and the related assumptions used to determine the estimates.

(ii) The model codes adopted pursuant to Section 18928 of the Health and Safety Code shall be exempt from the requirements of this subparagraph. However, if an interested party has made a request in writing to the agency, at least 30 days before the submittal of the initial statement of reasons, to examine a specific section for purposes of estimating the cost of compliance and the potential benefits for that section, and including the related assumptions used to determine the estimates, then the agency shall comply with the requirements of this subparagraph with regard to that requested section.

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

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

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

(c) A state agency that adopts or amends a regulation mandated by federal law or regulations, the provisions of which are identical to a previously adopted or amended federal regulation, shall be deemed to have complied with subdivision (b) if a statement to the effect that a federally mandated regulation or amendment to a regulation is being proposed, together with a citation to where an explanation of the regulation can be found, is included

in the notice of proposed adoption or amendment prepared pursuant to Section 11346.5. However, the agency shall comply fully with this chapter with respect to any provisions in the regulation that the agency proposes to adopt or amend that are different from the corresponding provisions of the federal regulation.

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

SEC. 2. Section 11346.3 of the Government Code is amended to read:

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

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

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

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

(b) (1) A state agency proposing to adopt, amend, or repeal a regulation that is not a major regulation or that is a major regulation proposed prior to November 1, 2013, shall prepare an economic impact assessment that assesses whether and to what extent it will affect the following:

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

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

(C) The expansion of businesses currently doing business within the state.

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

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

(3) Information required from a state agency for the purpose of completing the assessment may come from existing state publications.

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

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

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

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

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

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

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

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

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

(d) Any administrative regulation adopted on or after January 1, 1993, that requires a report shall not apply to businesses, unless the state agency adopting the regulation makes a finding that it is necessary for the health, safety, or welfare of the people of the state that the regulation apply to businesses.

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

(f) Each state agency proposing to adopt, amend, or repeal a major regulation on or after November 1, 2013, and that has prepared a standardized regulatory impact analysis pursuant to subdivision (c), shall submit that analysis to the Department of Finance upon completion. The department shall comment, within 30 days of receiving that analysis, on the extent to which the analysis adheres to the regulations adopted pursuant to

Section 11346.36. Upon receiving the comments from the department, the agency may update its analysis to reflect any comments received from the department and shall summarize the comments and the response of the agency along with a statement of the results of the updated analysis for the statement required by paragraph (10) of subdivision (a) of Section 11346.5.

SEC. 2.5. Section 11346.3 of the Government Code is amended to read:

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

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

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

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

(b) (1) A state agency proposing to adopt, amend, or repeal a regulation that is not a major regulation or that is a major regulation proposed prior to November 1, 2013, shall prepare an economic impact assessment that assesses whether and to what extent it will affect the following:

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

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

(C) The expansion of businesses currently doing business within the state.

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

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

(3) Information required from a state agency for the purpose of completing the assessment may come from existing state publications.

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

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

(B) The creation of new businesses or the elimination of existing businesses within the state, including the impact on sole proprietorships and small businesses as defined by Section 11342.610.

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

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

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

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

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

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

(d) Any administrative regulation adopted on or after January 1, 1993, that requires a report shall not apply to businesses, unless the state agency adopting the regulation makes a finding that it is necessary for the health, safety, or welfare of the people of the state that the regulation apply to businesses.

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

(f) Each state agency proposing to adopt, amend, or repeal a major regulation on or after November 1, 2013, and that has prepared a standardized regulatory impact analysis pursuant to subdivision (c), shall submit that analysis to the Department of Finance upon completion. The department shall comment, within 30 days of receiving that analysis, on the extent to which the analysis adheres to the regulations adopted pursuant to Section 11346.36. Upon receiving the comments from the department, the

agency may update its analysis to reflect any comments received from the department and shall summarize the comments and the response of the agency along with a statement of the results of the updated analysis for the statement required by paragraph (10) of subdivision (a) of Section 11346.5.

SEC. 3. Section 11357 of the Government Code is amended to read:

11357. (a) The Department of Finance shall adopt and update, as necessary, instructions for inclusion in the State Administrative Manual prescribing the methods that an agency subject to this chapter shall use in making the determinations and the estimates of fiscal or economic impact required by Sections 11346.2, 11346.3, and 11346.5. The instructions shall include, but need not be limited to, the following:

(1) Guidelines governing the types of data or assumptions, or both, that may be used, and the methods that shall be used, to calculate the estimate of the cost or savings to public agencies mandated by the regulation for which the estimate is being prepared.

(2) The types of direct or indirect costs and savings that should be taken into account in preparing the estimate.

(3) The criteria that shall be used in determining whether the cost of a regulation must be funded by the state pursuant to Section 6 of Article XIII B of the California Constitution and Part 7 (commencing with Section 17500) of Division 4.

(4) The format the agency preparing the estimate shall follow in summarizing and reporting its estimate of the cost or savings to state and local agencies, school districts, and in federal funding of state programs that will result from the regulation and its estimate of the economic impact that will result from the regulation.

(b) An action by the Department of Finance to adopt and update, as necessary, instructions to any state or local agency for the preparation, development, or administration of the state budget, or instructions to a state agency on the preparation of an economic impact estimate or assessment of a proposed regulation, including any instructions included in the State Administrative Manual, shall be exempt from this chapter.

(c) The Department of Finance may review an estimate prepared pursuant to this section for content including, but not limited to, the data and assumptions used in its preparation.

SEC. 4. Section 2.5 of this bill incorporates amendments to Section 11346.3 of the Government Code proposed by both this bill and AB 2723. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2015, (2) each bill amends Section 11346.3 of the Government Code, and (3) this bill is enacted after AB 2723, in which case Section 2 of this bill shall not become operative.