

SB 400 (Dutton) – Regulations: Impact on Businesses

Introduced February 16, 2011

This bill would require state agencies to submit economic assessments for certain regulations to the Office of Administrative Law for a review and determination if the assessment is based upon sound economic knowledge, methods, and practices.

Specifically, this bill:

- 1) Requires a state agency proposing to adopt, amend or repeal a regulation to estimate the impact of the regulations on business.
- 2) Specifies that the economic impact statement additionally assess whether and to what extent it will affect (1) short term and long term creation or elimination of jobs in individual sectors within the state, and (2) the cost of enforcement to the agency and regulated entities.
- 3) Requires the adopting agency to:
 - a) Assess whether the proposed regulation is inconsistent with or incompatible with, or duplicative of, the regulations of the agency, or other federal, state or local regulatory agencies.
 - b) Determine, with supporting information, that no alternative considered by the agency would be more effective in carrying out the purpose for which the regulation is proposed or would be equally effective and less burdensome to affected private persons than the proposed regulation.
 - c) Explain its reasons for rejecting any proposed alternatives that would lessen the adverse impact on small business.
- 4) Requires an adopting agency, prior to releasing a notice of proposed regulatory action, to submit the above assessment to OAL, which shall do the following:
 - a) For a proposed regulation with an estimated impact of \$100 million or more, OAL shall determine within 30 days whether the economic assessment is based on sound economic knowledge, methods and practices. OAL is authorized to contract with a third party reviewer to assist in this evaluation.
 - b) For a proposed regulation with an estimated impact less than \$100 million, a stakeholder may petition OAL to review the agency's economic assessment, and the OAL director shall have the sole discretion to approve or deny the stakeholder petition. If the petition is approved, OAL shall review the economic assessment as if it had an estimated impact greater than \$100 million.
- 5) Requires OAL to reject a regulation that is based upon an economic assessment that it determines is not based on sound economic knowledge, methods, and practices.

Introduced by Senator DuttonFebruary 16, 2011

An act to amend Section 11346.3 of the Government Code, relating to regulations.

LEGISLATIVE COUNSEL'S DIGEST

SB 400, as introduced, Dutton. Regulations: impact on businesses.

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. Existing law requires an agency that is proposing to adopt, amend, or repeal a regulation to perform an assessment of the potential for adverse economic impact on California business enterprises and individuals, as specified.

This bill would require that the impact assessment include specified additional criteria. The bill would also require the agency to submit economic assessments for certain regulations to the office for purposes of reviewing them and determining whether the assessment is based upon sound economic knowledge, methods, and practices, as specified. The bill would also require the office to reject a regulation that is based upon an economic assessment that was determined to not be based on sound economic knowledge, methods, and practices, 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 11346.3 of the Government Code is
2 amended to read:

1 11346.3. (a) State agencies proposing to adopt, amend, or
2 repeal any administrative regulation shall assess the potential for
3 adverse economic impact on California business enterprises and
4 individuals, avoiding the imposition of unnecessary or unreasonable
5 regulations or reporting, recordkeeping, or compliance
6 requirements. For purposes of this subdivision, assessing the
7 potential for adverse economic impact shall require agencies, when
8 proposing to adopt, amend, or repeal a regulation, to adhere to the
9 following requirements, to the extent that these requirements do
10 not conflict with other state or federal laws:

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

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

22 ~~It is not the intent of this section to impose additional criteria on~~
23 ~~agencies, above that which exists in current law, in assessing~~
24 ~~adverse economic impact on California business enterprises, but~~
25 ~~only to assure that the assessment is made early in the process of~~
26 ~~initiation and development of a proposed adoption, amendment,~~
27 ~~or repeal of a regulation.~~

28 (b) (1) All state agencies proposing to adopt, amend, or repeal
29 any administrative regulations shall ~~assess whether~~ *do the*
30 *following*:

31 (A) *Assess whether* and to what extent it will affect the
32 following:

33 ~~(A)~~

34 (i) *The short-term and long-term creation or elimination of jobs*
35 *in individual sectors* within the State of California.

36 ~~(B)~~

37 (ii) *The creation of new businesses or the elimination of existing*
38 *businesses* within the State of California.

39 ~~(C)~~

1 (iii) The expansion of businesses currently doing business within
2 the State of California.

3 (iv) *The cost of enforcement to the agency and regulated entities.*

4 (B) *Assess whether the proposed regulation is inconsistent or*
5 *incompatible with, or duplicative of, the regulations of the agency*
6 *or other federal, state, or local regulatory entity.*

7 (C) *Make a determination, with supporting information, that*
8 *no alternative considered by the agency would be more effective*
9 *in carrying out the purpose for which the regulation is proposed*
10 *or would be 9 equally effective and less burdensome to effected*
11 *private persons than the proposed regulation.*

12 (D) *An explanation setting forth the reasons for rejecting any*
13 *proposed alternatives that would lessen the adverse economic*
14 *impact on small businesses.*

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

18 (3) Information required from state agencies for the purpose of
19 completing the assessment may come from existing state
20 publications.

21 (c) No administrative regulation adopted on or after January 1,
22 1993, that requires a report shall apply to businesses, unless the
23 state agency adopting the regulation makes a finding that it is
24 necessary for the health, safety, or welfare of the people of the
25 state that the regulation apply to businesses.

26 (d) (1) *Prior to releasing a notice of proposed action as*
27 *described by Section 11346.5, the agency shall submit the*
28 *assessment required by this section to the office. For purposes of*
29 *a proposed regulation with an estimated impact of one hundred*
30 *million dollars (\$100,000,000) or more, the office shall review the*
31 *economic assessment and determine, within 30 days, whether it is*
32 *based upon sound economic knowledge, methods, and practices.*
33 *The office shall be authorized to contract with a third-party*
34 *reviewer to conduct the review in the manner described in this*
35 *paragraph and adopt the findings of that third-party reviewer.*

36 (2) *A stakeholder may petition the office to review the*
37 *assessment for a proposed regulation that has an estimated cost*
38 *below one hundred million dollars (\$100,000,000). The director*
39 *of the office shall be authorized, in his or her sole discretion, to*
40 *approve or deny the petition. If the petition is approved, the*

1 *assessment shall be reviewed in the same manner prescribed by*
2 *paragraph (1).*
3 *(e) Pursuant to Section 11349.3, the office shall not approve a*
4 *regulation that does not satisfy the requirements of this section,*
5 *including, but not limited to, conducting the assessment required*
6 *by subdivisions (a) and (b) and the review of the assessment*
7 *required by subdivision (d). The office shall also reject a regulation*
8 *that is submitted to the office for approval, if the office determined,*
9 *based on the assessment review it conducted or the assessment*
10 *review conducted by a third-party reviewer and adopted by the*
11 *office, that the assessment was not based upon sound economic*
12 *knowledge, methods, and practices, and the submitting agency did*
13 *not revise its assessment to address the deficiencies.*