

**ASSEMBLY BILL**

**No. 866**

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**Introduced by Assembly Member Linder**

February 21, 2013

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An act to amend Sections 11342.548, 11346.3, 11346.45, and 11349.1 of the Government Code, relating to regulations.

LEGISLATIVE COUNSEL'S DIGEST

AB 866, as introduced, Linder. Regulations.

(1) The Administrative Procedure Act generally sets forth the requirements for the adoption, publication, review, and implementation of regulations by state agencies, and for review of those regulatory actions by the Office of Administrative Law. The act requires an agency, prior to submitting a proposal to adopt, amend, or repeal an administrative regulation, to determine the economic impact of the regulation by preparing an economic impact analysis. The act defines a major regulation as a regulation that the agency determines has an expected economic impact on California business enterprises and individuals in an amount exceeding \$50,000,000. Existing law requires an agency proposing to adopt, amend, or repeal a major regulation to also prepare a standardized regulatory impact analysis.

This bill would instead define a major regulation as a regulation that the agency determines has an expected economic impact on California business enterprises and individuals in an amount exceeding \$15,000,000.

This bill would modify the requirements that an adopting agency must meet when preparing the economic impact analysis and the standardized regulatory impact analysis.

(2) The act requires that state agencies proposing to adopt regulations, prior to publication of the notice of proposed action, involve parties that would be subject to the proposed regulations in public discussions regarding those proposed regulations, when the proposed regulations involve complex proposals or a large number of proposals that cannot easily be reviewed during the comment period. The act also provides that these requirements are not subject to judicial review or a specified review by the office.

This bill would instead make that requirement applicable to all proposed regulations. The bill would repeal the provisions that exempt these requirements from judicial review and review by the office. The bill would require the office to return the regulation to the agency if the agency does not comply with these requirements.

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. The Legislature finds and declares all of the  
2 following:  
3 (a) Robust jobs and economic growth are the key to repairing  
4 California's chronic budget problems and generating adequate  
5 revenues to fund vital programs like education, infrastructure, and  
6 public safety.  
7 (b) California's jobs, business, and economic climate have been  
8 in dire straits for several years, resulting in higher unemployment,  
9 and a reduction in the number of businesses, small businesses in  
10 particular, operating in the state and concomitant decline in state  
11 revenues.  
12 (c) California's regulatory burdens are often cited as one of the  
13 main causes of stagnant job and economic growth and why many  
14 businesses decide to expand in other states instead of California.  
15 In fact, in 2011 CEO magazine ranked California last among states  
16 where companies prefer to do business for the seventh straight  
17 year.  
18 (d) A large part of the problem is that too much authority over  
19 the California economy and jobs climate has been ceded to the  
20 unelected state bureaucracy. Regulations adopted by state agencies  
21 often impose unnecessary burdens on California's economic and

1 jobs climate at a time when California can least afford to  
2 discourage economic and job growth.

3 (e) Today, instead of using due diligence in analyzing the  
4 economic impacts of proposed regulations, state agencies often  
5 merely fill out a four-page economic questionnaire that provides  
6 little more than one-word answers and checked-off boxes and is  
7 devoid of supporting data. On top of that, this information is not  
8 currently required to be made available to the public.

9 (f) More sunshine and public input is needed in the regulatory  
10 rulemaking process. Those subject to regulations are often in the  
11 best position to determine the actual costs of regulations, and also  
12 to identify equally effective but less burdensome alternatives.

13 (g) Additionally, the connection between those that adopt laws  
14 and those that implement them has been eroded. Stronger and more  
15 direct oversight of the regulatory rulemaking process by the  
16 Legislature, as the body conferring authority to adopt regulations,  
17 will improve the regulatory rulemaking process.

18 (h) It is not the intent of this act to unduly impede the regulatory  
19 rulemaking process. It is rather to provide greater sunshine and  
20 public participation in the fastest-growing area of government and  
21 to develop the most thoughtful, economically efficient, and least  
22 burdensome regulations on jobs and businesses when carrying out  
23 the intent of authorizing statutes.

24 (i) Under this act, if a state agency has sufficiently involved the  
25 public in the rulemaking process and conducted a thorough analysis  
26 of a regulation's economic impacts, this act should have no adverse  
27 effect on the regulatory rulemaking process.

28 (j) Further, the purpose of this act is not to prevent or postpone  
29 the adoption of any particular type of regulation or regulations but  
30 simply to ensure that accurate and honest information about a  
31 proposed regulation's true economic impact is prepared and made  
32 available to the public and the legislative and executive branches  
33 of government.

34 SEC. 2. Section 11342.548 of the Government Code is amended  
35 to read:

36 11342.548. "Major regulation" means any proposed adoption,  
37 amendment, or repeal of a regulation subject to review by the  
38 Office of Administrative Law pursuant to Article 6 (commencing  
39 with Section 11349) that will have an economic impact on  
40 California business enterprises and individuals in an amount

1 exceeding ~~forty~~ *fifteen* million dollars ~~(\$50,000,000)~~, *(\$15,000,000)*,  
2 as estimated by the ~~agency~~; *agency in the economic impact analysis*  
3 *prepared pursuant to Section 11346.3*.

4 SEC. 3. Section 11346.3 of the Government Code is amended  
5 to read:

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

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

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

27 (3) An economic ~~assessment~~ *analysis* prepared pursuant to this  
28 subdivision for a proposed regulation that is not a major regulation  
29 or that is a major regulation proposed ~~prior to~~ *before* November  
30 1, ~~2013~~ *2014*, shall be prepared ~~in accordance with~~ *pursuant to*  
31 subdivision (b). An economic ~~assessment~~ *analysis* prepared  
32 pursuant to this subdivision for a major regulation proposed on or  
33 after November 1, ~~2013~~ *2014*, shall be prepared ~~in accordance~~  
34 *with pursuant to* subdivision (c), and shall be included in the initial  
35 statement of reasons as required by Section 11346.2.

36 (b) (1) All state agencies proposing to adopt, amend, or repeal  
37 a regulation that is not a major regulation or that is a major  
38 regulation proposed ~~prior to~~ *before* November 1, ~~2013~~ *2014*, shall  
39 prepare an economic impact ~~assessment~~ *analysis* that ~~assesses~~

1 ~~whether and to what extent it will affect~~ *meets all of the following:*  
2 *following requirements:*

3 (A) *Estimates the total actual costs of compliance for affected*  
4 *small businesses, large businesses, and other parties subject to*  
5 *the regulation or group of regulations. The creation or elimination*  
6 *economic impact analysis shall, at a minimum, estimate the costs*  
7 *of jobs within individual compliance for a representative small*  
8 *business, large business, and other party subject to the state.*  
9 *regulation as well as the cumulative statewide cost of compliance.*

10 (B) ~~The creation~~ *If an agency declares that it is not aware of*  
11 ~~new businesses~~ *any cost impact that a representative small*  
12 *business, large business, or other party subject to the elimination*  
13 *regulation would incur in compliance with the regulation, or group*  
14 *of existing businesses within regulations authorized by the state.*  
15 *same statute, the economic impact analysis shall include an express*  
16 *statement to that effect as well as a detailed statement describing*  
17 *how a small business, large business, or other party subject to the*  
18 *regulation could comply with the regulation or group of regulations*  
19 *without incurring cost.*

20 (C) ~~The expansion~~ *If an economic impact analysis prepared*  
21 *pursuant to this section finds that the cumulative statewide cost*  
22 *of businesses currently doing business within compliance of any*  
23 *regulation, or group of regulations authorized by the state. same*  
24 *statute, exceeds fifteen million dollars (\$15,000,000) then the*  
25 *regulation or group of regulations shall be deemed to be a major*  
26 *regulation. If reasonable doubt exists as to whether the cumulative*  
27 *statewide cost of compliance of any regulation or group of*  
28 *regulations authorized by the same statute exceeds fifteen million*  
29 *dollars (\$15,000,000), the doubt shall be resolved in favor of*  
30 *finding that the regulation or group of regulations authorized by*  
31 *the same statute qualifies as a major regulation.*

32 (D) *Each economic impact analysis that an agency prepares*  
33 *shall be maintained in the agency's records and shall be made*  
34 *available to the office and the Governor's Office of Planning and*  
35 *Research, the Director of Finance, the Legislative Analyst, the*  
36 *State Auditor, the Controller, the President pro Tempore of the*  
37 *Senate, the Minority Floor Leader of the Senate, the Speaker of*  
38 *the Assembly, the Minority Floor Leader of the Assembly, and the*  
39 *chair and ranking minority party member of the appropriate fiscal*

1 *and policy committees of the Senate and the Assembly, upon*  
2 *request.*

3 *(E) An adopting agency shall prepare a standardized regulatory*  
4 *impact analysis for any regulation that the agency determines is*  
5 *a major regulation.*

6 ~~(D) The~~

7 *(F) Each economic impact analysis shall assess the benefits of*  
8 *the regulation to the health and welfare of California residents,*  
9 *worker safety, and the state's environment.*

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

13 *(3) Information required from state agencies for the purpose of*  
14 *completing the assessment may come from existing state*  
15 *publications.*

16 *(c) (1) Each state agency proposing to adopt, amend, or repeal*  
17 *a major regulation on or after November 1, 2013 2014, shall*  
18 *prepare a standardized regulatory impact analysis assessment in*  
19 *the manner prescribed by the Department of Finance pursuant to*  
20 *Section 11346.36. The standardized regulatory impact analysis*  
21 *shall address contain all of the following:*

22 *(A) A detailed estimate, in both the short term and long term,*  
23 *of the average individual cost of compliance for small businesses,*  
24 *large businesses, and other parties subject to the major regulation.*

25 *(B) A detailed estimate, in both the short term and long term,*  
26 *of the cumulative statewide cost of compliance with the major*  
27 *regulation for small businesses, large businesses, and other parties.*

28 *(C) A detailed distributional assessment that evaluates, in both*  
29 *the short term and long term, how certain industries, income*  
30 *groups, and geographic regions are likely to experience benefits*  
31 *or costs as a consequence of the major regulation.*

32 ~~(A) The~~

33 *(D) A detailed estimate of the short-term and long-term creation*  
34 *or elimination of jobs within in individual sectors as a result of*  
35 *the state major regulation.*

36 *(E) A detailed estimate, in both the short term and long term,*  
37 *of the potential for economic leakage as a result of the major*  
38 *regulation in which economic activity is relocated from California*  
39 *to another state or country.*

40 ~~(B) The creation~~

1 (F) A detailed estimate, in both the short term and long term,  
2 of ~~new~~ the impact on the ability of California businesses ~~or to~~  
3 compete with businesses in other states and California's ability  
4 to attract businesses to locate in the ~~elimination of existing~~  
5 ~~businesses within state as a result of the state.~~ major regulation.

6 (G) A detailed estimate, in both the short term and long term,  
7 of the effects on excise tax, sales and use tax, income tax,  
8 corporation tax, and other tax revenue to the General Fund, and  
9 fee revenues to special funds, as a result of the major regulation  
10 and changes in economic activity as a result of the major  
11 regulation.

12 ~~(C) The competitive advantages~~

13 (H) A precise statement enumerating the benefits, in both the  
14 short term and long term, anticipated from the major regulation,  
15 including the benefits ~~or disadvantages for businesses currently~~  
16 ~~doing business within the state.~~ goals provided in the authorizing  
17 statutes. Where applicable, the statement shall include the failures  
18 in private markets or public institutions that warrant the proposed  
19 major regulation, in a manner consistent with the guidelines  
20 published by the federal Office of Management and Budget in  
21 OMB Circular No. A-94, Revised.

22 ~~(D) The increase~~

23 (I) An identification of each technical, theoretical, and empirical  
24 study, report, or ~~decrease of investment~~ similar document, if any,  
25 upon which the agency relies in proposing the ~~state.~~ major  
26 regulation.

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

29 (J) A copy of the economic impact analysis prepared pursuant  
30 to subdivision (b).

31 ~~(F) The~~

32 (K) A description of the benefits of the ~~regulations,~~ regulation,  
33 including, but not limited to, benefits to the health, safety, and  
34 welfare of California residents, worker safety, and the state's  
35 environment and quality of life, among any other benefits identified  
36 by the agency.

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

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

4 (d) Any administrative regulation adopted on or after January  
5 1, 1993, that requires a report shall not apply to businesses, unless  
6 the state agency adopting the regulation makes a finding that it is  
7 necessary for the health, safety, or welfare of the people of the  
8 state that the regulation apply to businesses.

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

22 (f) Each state agency proposing to adopt, amend, or repeal a  
23 major regulation on or after November 1, ~~2013~~ *2014*, and that has  
24 prepared a standardized regulatory impact ~~analysis~~ *assessment*  
25 pursuant to subdivision (c), shall submit that ~~analysis~~ *assessment*  
26 to the Department of Finance upon completion. The department  
27 shall comment, within 30 days of receiving ~~that analysis, the~~  
28 *assessment*, on the extent to which the ~~analysis~~ *assessment* adheres  
29 to the regulations adopted pursuant to Section 11346.36. Upon  
30 receiving the comments from the department, the agency may  
31 update its analysis to reflect any comments received from the  
32 department and shall summarize the comments and the response  
33 of the agency along with a statement of the results of the updated  
34 analysis for the statement required by paragraph (10) of subdivision  
35 (a) of Section 11346.5.

36 SEC. 4. Section 11346.45 of the Government Code is amended  
37 to read:

38 11346.45. (a) In order to increase public participation and  
39 improve the quality of regulations, state agencies proposing to  
40 adopt regulations shall, ~~prior to~~ *before* publication of the notice



1 required by Section 11346.5, involve parties who would be subject  
2 to the proposed regulations in public discussions regarding those  
3 proposed regulations, when the proposed regulations involve  
4 complex proposals or a large number of proposals that cannot  
5 easily be reviewed during the comment period. *regulations.*

6 (b) This section ~~does~~ *shall* not apply to a state agency in any  
7 instance where that state agency is required to implement federal  
8 law and regulations for which there is little or no discretion on the  
9 part of the state to vary.

10 (c) If the agency does not or cannot comply with the provisions  
11 of subdivision (a), it shall state the reasons for noncompliance with  
12 reasonable specificity in the rulemaking record.

13 ~~(d) The provisions of this section shall not be subject to judicial~~  
14 ~~review or to the provisions of Section 11349.1.~~

15 SEC. 5. Section 11349.1 of the Government Code is amended  
16 to read:

17 11349.1. (a) The office shall review all regulations adopted,  
18 amended, or repealed pursuant to the procedure specified in Article  
19 5 (commencing with Section 11346) and submitted to it for  
20 publication in the California Code of Regulations Supplement and  
21 for transmittal to the Secretary of State and make determinations  
22 using all of the following standards:

- 23 (1) Necessity.
- 24 (2) Authority.
- 25 (3) Clarity.
- 26 (4) Consistency.
- 27 (5) Reference.
- 28 (6) Nonduplication.

29 In reviewing regulations pursuant to this section, the office shall  
30 restrict its review to the regulation and the record of the rulemaking  
31 proceeding. The office shall approve the regulation or order of  
32 repeal if it complies with the standards set forth in this section and  
33 with this chapter.

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

37 (c) The office shall adopt regulations governing the procedures  
38 it uses in reviewing regulations submitted to it. The regulations  
39 shall provide for an orderly review and shall specify the methods,  
40 standards, presumptions, and principles the office uses, and the

1 limitations it observes, in reviewing regulations to establish  
2 compliance with the standards specified in subdivision (a). The  
3 regulations adopted by the office shall ensure that it does not  
4 substitute its judgment for that of the rulemaking agency as  
5 expressed in the substantive content of adopted regulations.

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

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

12 (2) The *adopting* agency has not complied with Section 11346.3.  
13 “Noncompliance” means that the agency failed to complete the  
14 economic impact assessment or standardized regulatory impact  
15 analysis required by Section 11346.3 or failed to include the  
16 assessment or analysis in the file of the rulemaking proceeding as  
17 required by Section 11347.3.

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

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

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

30 (C) Attach a letter or other documentation from the Department  
31 of Finance which states that the Department of Finance has  
32 approved a request by the agency that funds be included in the  
33 Budget Bill for the next following fiscal year to reimburse local  
34 agencies or school districts for the costs mandated by the  
35 regulation.

36 (D) Attach a letter or other documentation from the Department  
37 of Finance which states that the Department of Finance has  
38 authorized the augmentation of the amount available for  
39 expenditure under the agency’s appropriation in the Budget Act  
40 which is for reimbursement pursuant to Part 7 (commencing with

1 Section 17500) of Division 4 to local agencies or school districts  
2 from the unencumbered balances of other appropriations in the  
3 Budget Act and that this augmentation is sufficient to reimburse  
4 local agencies or school districts for their costs mandated by the  
5 regulation.

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

9 (5) The *adopting* agency did not make the alternatives  
10 determination as required by paragraph (4) of subdivision (a) of  
11 Section 11346.9.

12 (6) *The adopting agency did not comply with Section 11346.10.*

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

15 (f) The office shall return a rulemaking file to the submitting  
16 agency if the file does not comply with subdivisions (a) and (b)  
17 of Section 11347.3. Within three state working days of the receipt  
18 of a rulemaking file, the office shall notify the submitting agency  
19 of any deficiency identified. If no notice of deficiency is mailed  
20 to the adopting agency within that time, a rulemaking file shall be  
21 deemed submitted as of the date of its original receipt by the office.  
22 A rulemaking file shall not be deemed submitted until each  
23 deficiency identified under this subdivision has been corrected.

24 (g) Notwithstanding any other law, return of the regulation to  
25 the adopting agency by the office pursuant to this section is the  
26 exclusive remedy for a failure to comply with subdivision (c) of  
27 Section 11346.3 or paragraph (10) of subdivision (a) of Section  
28 11346.5.