

AMENDED IN SENATE MAY 23, 2002

AMENDED IN SENATE MAY 16, 2002

AMENDED IN SENATE MAY 1, 2002

**SENATE BILL**

**No. 1622**

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**Introduced by Senator Kuehl**

February 21, 2002

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An act to amend Sections 21080.5, 21151, 21159.9, and 21167.6 of, and to add Section 21167.6.5 to, the Public Resources Code, relating to environmental protection.

LEGISLATIVE COUNSEL'S DIGEST

SB 1622, as amended, Kuehl. California Environmental Quality Act.

(1) The existing California Environmental Quality Act (CEQA) requires a lead agency, as defined, to prepare, or cause to be prepared, and certify the completion of, an environmental impact report on a project that it proposes to carry out or approve that may have a significant effect on the environment, or to adopt a negative declaration if it finds that the project will not have that effect. CEQA authorizes a plan or other written documentation required by a certified regulatory program or state agency to be submitted in lieu of an environmental impact report pursuant to prescribed procedures.

This bill would require the Secretary of the Resources Agency, by July 1, 2003, to develop a protocol for reviewing the prospective application of certified regulatory programs to evaluate the consistency of those programs with the requirements of CEQA, and would require the secretary *to provide a report to the Senate Committee on Environmental Quality and the Assembly Committee on Natural*

*Resources regarding the need for a grant of additional statutory authority authorizing the secretary to undertake a review of the certified regulatory programs. The bill would also require the secretary to provide a significant opportunity for public participation in developing that protocol.*

(2) CEQA requires the Office of Planning and Research to implement a public assistance and information program that includes establishing a public education and training program, a data base to assist in the preparation of environmental documents, and a central repository for the collection, storage, retrieval, and dissemination of specified CEQA notices.

This bill would require, commencing January 1, 2003, that copies of any documents submitted in electronic format to the office pursuant to CEQA be furnished by the office to the California State Library, and would require the California State Library to be the repository for those documents and to make them available for viewing by the general public upon request.

(3) CEQA authorizes the appeal of the certification of an environmental impact report by a local lead agency that is not elected to that lead agency's elected decisionmaking body, if that body exists.

This bill would expand that authorization to include any environmental review document that is certified or authorized by a local lead agency that is not elected.

(4) CEQA requires, in any action or proceeding to attack, review, set aside, void, or annul specified actions by a public agency pursuant to CEQA, except the Public Utilities Commission, that the plaintiff or petitioner file a request that the public agency prepare a record of proceedings relating to the subject of the action or proceeding. CEQA also requires that the request, together with the complaint or petition, be served on the public agency not later than 10 business days from the date that the action or proceeding was filed.

This bill would require that request to be served personally on the state agency.

This bill would also require the petitioner or plaintiff to name any recipient of an approval that is the subject of the action or proceeding as a real party in interest, and to serve the petition or complaint on that real party in interest with the petition or complaint not later than 20 business days following service of the petition or complaint on the public agency. The bill would specify that a failure to name any other potential parties would not be grounds for dismissal of the action or



proceeding. The bill would also require the public agency to provide the petitioner or plaintiff, not later than 10 business days following service of the petition or complaint on the public agency, with a list of responsible agencies and public agencies with jurisdiction over a natural resource affected by the project, and would require the petitioner or plaintiff to provide those responsible agencies and public agencies with notice of the action or proceeding within 15 days of receipt of that list. By imposing additional duties on local public agencies, this bill would impose a state-mandated local program.

(5) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

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

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

1 SECTION 1. Section 21080.5 of the Public Resources Code  
2 is amended to read:  
3 21080.5. (a) Except as provided in Section 21158.1, when  
4 the regulatory program of a state agency requires a plan or other  
5 written documentation, containing environmental information  
6 and complying with paragraph (3) of subdivision (d), to be  
7 submitted in support of any activity listed in subdivision (b), the  
8 plan or other written documentation may be submitted in lieu of  
9 the environmental impact report required by this division if the  
10 Secretary of the Resources Agency has certified the regulatory  
11 program pursuant to this section.  
12 (b) This section applies only to regulatory programs or portions  
13 thereof which involve either of the following:  
14 (1) The issuance to a person of a lease, permit, license,  
15 certificate, or other entitlement for use.



1 (2) The adoption or approval of standards, rules, regulations,  
2 or plans for use in the regulatory program.

3 (c) A regulatory program certified pursuant to this section is  
4 exempt from Chapter 3 (commencing with Section 21100),  
5 Chapter 4 (commencing with Section 21150), and Section 21167,  
6 except as provided in Article 2 (commencing with Section 21157)  
7 of Chapter 4.5.

8 (d) To qualify for certification pursuant to this section, a  
9 regulatory program shall require the utilization of an  
10 interdisciplinary approach that will ensure the integrated use of the  
11 natural and social sciences in decisionmaking and that shall meet  
12 all of the following criteria:

13 (1) The enabling legislation of the regulatory program does  
14 both of the following:

15 (A) Includes protection of the environment among its principal  
16 purposes.

17 (B) Contains authority for the administering agency to adopt  
18 rules and regulations for the protection of the environment, guided  
19 by standards set forth in the enabling legislation.

20 (2) The rules and regulations adopted by the administering  
21 agency for the regulatory program do all of the following:

22 (A) Require that an activity will not be approved or adopted as  
23 proposed if there are feasible alternatives or feasible mitigation  
24 measures available that would substantially lessen any significant  
25 adverse effect which the activity may have on the environment.

26 (B) Include guidelines for the orderly evaluation of proposed  
27 activities and the preparation of the plan or other written  
28 documentation in a manner consistent with the environmental  
29 protection purposes of the regulatory program.

30 (C) Require the administering agency to consult with all public  
31 agencies that have jurisdiction, by law, with respect to the  
32 proposed activity.

33 (D) Require that final action on the proposed activity include  
34 the written responses of the issuing authority to significant  
35 environmental points raised during the evaluation process.

36 (E) Require the filing of a notice of the decision by the  
37 administering agency on the proposed activity with the Secretary  
38 of the Resources Agency. Those notices shall be available for  
39 public inspection, and a list of the notices shall be posted on a



1 weekly basis in the Office of the Resources Agency. Each list shall  
2 remain posted for a period of 30 days.

3 (F) Require notice of the filing of the plan or other written  
4 documentation to be made to the public and to any person who  
5 requests, in writing, notification. The notification shall be made in  
6 a manner that will provide the public or any person requesting  
7 notification with sufficient time to review and comment on the  
8 filing.

9 (3) The plan or other written documentation required by the  
10 regulatory program does both of the following:

11 (A) Includes a description of the proposed activity with  
12 alternatives to the activity, and mitigation measures to minimize  
13 any significant adverse effect on the environment of the activity.

14 (B) Is available for a reasonable time for review and comment  
15 by other public agencies and the general public.

16 (e) (1) The Secretary of the Resources Agency shall certify a  
17 regulatory program that the secretary determines meets all the  
18 qualifications for certification set forth in this section, and  
19 withdraw certification on determination that the regulatory  
20 program has been altered so that it no longer meets those  
21 qualifications. Certification and withdrawal of certification shall  
22 occur only after compliance with Chapter 3.5 (commencing with  
23 Section 11340) of Part 1 of Division 3 of Title 2 of the Government  
24 Code.

25 (2) In determining whether or not a regulatory program meets  
26 the qualifications for certification set forth in this section, the  
27 inquiry of the secretary shall extend only to the question of  
28 whether the regulatory program meets the generic requirements of  
29 subdivision (d). The inquiry shall not extend to individual  
30 decisions to be reached under the regulatory program, including  
31 the nature of specific alternatives or mitigation measures that  
32 might be proposed to lessen any significant adverse effect on the  
33 environment of the activity.

34 (3) If the secretary determines that the regulatory program  
35 submitted for certification does not meet the qualifications for  
36 certification set forth in this section, the secretary shall adopt  
37 findings setting forth the reasons for the determination.

38 (f) After a regulatory program has been certified pursuant to  
39 this section, any proposed change in the program that could affect  
40 compliance with the qualifications for certification specified in



1 subdivision (d) may be submitted to the Secretary of the Resources  
2 Agency for review and comment. The scope of the secretary's  
3 review shall extend only to the question of whether the regulatory  
4 program meets the generic requirements of subdivision (d). The  
5 review shall not extend to individual decisions to be reached under  
6 the regulatory program, including specific alternatives or  
7 mitigation measures which might be proposed to lessen any  
8 significant adverse effect on the environment of the activity. The  
9 secretary shall have 30 days from the date of receipt of the  
10 proposed change to notify the state agency whether the proposed  
11 change will alter the regulatory program so that it no longer meets  
12 the qualification for certification established in this section and  
13 will result in a withdrawal of certification as provided in this  
14 section.

15 (g) Any action or proceeding to attack, review, set aside, void,  
16 or annul a determination or decision of a state agency approving  
17 or adopting a proposed activity under a regulatory program that  
18 has been certified pursuant to this section on the basis that the plan  
19 or other written documentation prepared pursuant to paragraph (3)  
20 of subdivision (d) does not comply with this section shall be  
21 commenced not later than 30 days from the date of the filing of  
22 notice of the approval or adoption of the activity.

23 (h) (1) Any action or proceeding to attack, review, set aside,  
24 void, or annul a determination of the Secretary of the Resources  
25 Agency to certify a regulatory program pursuant to this section on  
26 the basis that the regulatory program does not comply with this  
27 section shall be commenced within 30 days from the date of  
28 certification by the secretary.

29 (2) In any action brought pursuant to paragraph (1), the inquiry  
30 shall extend only to whether there was a prejudicial abuse of  
31 discretion by the secretary. Abuse of discretion is established if the  
32 secretary has not proceeded in a manner required by law or if the  
33 determination is not supported by substantial evidence.

34 (i) For purposes of this section, any county agricultural  
35 commissioner is a state agency.

36 (j) For purposes of this section, any air quality management  
37 district or air pollution control district is a state agency, except that  
38 the approval, if any, by a district of a nonattainment area plan is  
39 subject to this section only if, and to the extent that, the approval  
40 adopts or amends rules or regulations.



1 (k) (1) The secretary, by July 1, 2003, shall develop a protocol  
2 for reviewing the prospective application of certified regulatory  
3 programs to evaluate the consistency of those programs with the  
4 requirements of this division. *Following the completion of the*  
5 *development of the protocol, the secretary shall provide a report*  
6 *to the Senate Committee on Environmental Quality and the*  
7 *Assembly Committee on Natural Resources regarding the need for*  
8 *a grant of additional statutory authority authorizing the secretary*  
9 *to undertake a review of the certified regulatory programs.*

10 (2) The secretary shall provide a significant opportunity for  
11 public participation in developing the protocol described in  
12 paragraph (1) including, but not limited to, at least ~~three~~ *two* public  
13 meetings with interested parties. A notice of each meeting shall be  
14 provided at least 10 days prior to the meeting to any person who  
15 files a written request for a notice with the agency.

16 SEC. 2. Section 21151 of the Public Resources Code is  
17 amended to read:

18 21151. (a) All local agencies shall prepare, or cause to be  
19 prepared by contract, and certify the completion of, an  
20 environmental impact report on any project that they intend to  
21 carry out or approve which may have a significant effect on the  
22 environment. When a report is required by Section 65402 of the  
23 Government Code, the environmental impact report may be  
24 submitted as a part of that report.

25 (b) For purposes of this section, any significant effect on the  
26 environment shall be limited to substantial, or potentially  
27 substantial, adverse changes in physical conditions which exist  
28 within the area as defined in Section 21060.5.

29 (c) If a nonelected decisionmaking body of a local lead agency  
30 certifies an environmental impact report, approves a negative  
31 declaration or mitigated negative declaration, or determines that  
32 a project is not subject to this division, that certification, approval,  
33 or determination may be appealed to the local lead agency's  
34 elected decisionmaking body, if any.

35 SEC. 3. Section 21159.9 of the Public Resources Code is  
36 amended to read:

37 21159.9. The Office of Planning and Research shall  
38 implement, utilizing existing resources, a public assistance and  
39 information program, to ensure efficient and effective  
40 implementation of this division, to do all of the following:



1 (a) Establish a public education and training program for  
2 planners, developers, and other interested parties to assist them in  
3 implementing this division.

4 (b) Establish and maintain a data base to assist in the  
5 preparation of environmental documents.

6 (c) Establish and maintain a central repository for the  
7 collection, storage, retrieval, and dissemination of notices of  
8 exemption, notices of preparation, notices of determination, and  
9 notices of completion provided to the office, and make the notices  
10 available through the Internet. The office may coordinate with  
11 another state agency for that agency to make the notices available  
12 through the Internet.

13 (d) Commencing January 1, 2003, copies of any documents  
14 submitted in electronic format to the Office of Planning and  
15 Research pursuant to this division shall be furnished by the office  
16 to the California State Library. The California State Library shall  
17 be the repository for those electronic documents, which shall be  
18 made available for viewing by the general public upon request.

19 SEC. 4. Section 21167.6 of the Public Resources Code is  
20 amended to read:

21 21167.6. Notwithstanding any other provision of law, in all  
22 actions or proceedings brought pursuant to Section 21167, except  
23 those involving the Public Utilities Commission, all of the  
24 following shall apply:

25 (a) At the time that the action or proceeding is filed, the plaintiff  
26 or petitioner shall file a request that the respondent public agency  
27 prepare the record of proceedings relating to the subject of the  
28 action or proceeding. The request, together with the complaint or  
29 petition, shall be served personally upon the public agency not  
30 later than 10 business days from the date that the action or  
31 proceeding was filed.

32 (b) (1) The public agency shall prepare and certify the record  
33 of proceedings not later than 60 days from the date that the request  
34 specified in subdivision (a) was served upon the public agency.  
35 Upon certification, the public agency shall lodge a copy of the  
36 record of proceedings with the court and shall serve on the parties  
37 notice that the record of proceedings has been certified and lodged  
38 with the court. The parties shall pay any costs or fees imposed for  
39 the preparation of the record of proceedings in conformance with  
40 any law or rule of court.



1 (2) The plaintiff or petitioner may elect to prepare the record of  
2 proceedings or the parties may agree to an alternative method of  
3 preparation of the record of proceedings, subject to certification of  
4 its accuracy by the public agency, within the time limit specified  
5 in this subdivision.

6 (c) The time limit established by subdivision (b) may be  
7 extended only upon the stipulation of all parties who have been  
8 properly served in the action or proceeding or upon order of the  
9 court. Extensions shall be liberally granted by the court when the  
10 size of the record of proceedings renders infeasible compliance  
11 with that time limit. There is no limit on the number of extensions  
12 which may be granted by the court, but no single extension shall  
13 exceed 60 days unless the court determines that a longer extension  
14 is in the public interest.

15 (d) If the public agency fails to prepare and certify the record  
16 within the time limit established in paragraph (1) of subdivision  
17 (b), or any continuances of that time limit, the plaintiff or  
18 petitioner may move for sanctions, and the court may, upon that  
19 motion, grant appropriate sanctions.

20 (e) The record of proceedings shall include, but is not limited  
21 to, all of the following items:

22 (1) All project application materials.

23 (2) All staff reports and related documents prepared by the  
24 respondent public agency with respect to its compliance with the  
25 substantive and procedural requirements of this division and with  
26 respect to the action on the project.

27 (3) All staff reports and related documents prepared by the  
28 respondent public agency and written testimony or documents  
29 submitted by any person relevant to any findings or statement of  
30 overriding considerations adopted by the respondent agency  
31 pursuant to this division.

32 (4) Any transcript or minutes of the proceedings at which the  
33 decisionmaking body of the respondent public agency heard  
34 testimony on, or considered any environmental document on, the  
35 project, and any transcript or minutes of proceedings before any  
36 advisory body to the respondent public agency that were presented  
37 to the decisionmaking body prior to action on the environmental  
38 documents or on the project.



1 (5) All notices issued by the respondent public agency to  
2 comply with this division or with any other law governing the  
3 processing and approval of the project.

4 (6) All written comments received in response to, or in  
5 connection with, environmental documents prepared for the  
6 project, including responses to the notice of preparation.

7 (7) All written evidence or correspondence submitted to, or  
8 transferred from, the respondent public agency with respect to  
9 compliance with this division or with respect to the project.

10 (8) Any proposed decisions or findings submitted to the  
11 decisionmaking body of the respondent public agency by its staff,  
12 or the project proponent, project opponents, or other persons.

13 (9) The documentation of the final public agency decision,  
14 including the final environmental impact report, mitigated  
15 negative declaration, or negative declaration, and all documents,  
16 in addition to those referenced in paragraph (3), cited or relied on  
17 in the findings or in a statement of overriding considerations  
18 adopted pursuant to this division.

19 (10) Any other written materials relevant to the respondent  
20 public agency's compliance with this division or to its decision on  
21 the merits of the project, including the initial study, any drafts of  
22 any environmental document, or portions thereof, that have been  
23 released for public review, and copies of studies or other  
24 documents relied upon in any environmental document prepared  
25 for the project and either made available to the public during the  
26 public review period or included in the respondent public agency's  
27 files on the project, and all internal agency communications,  
28 including staff notes and memoranda related to the project or to  
29 compliance with this division.

30 (11) The full written record before any inferior administrative  
31 decisionmaking body whose decision was appealed to a superior  
32 administrative decisionmaking body prior to the filing of  
33 litigation.

34 (f) In preparing the record of proceedings, the party preparing  
35 the record shall strive to do so at reasonable cost in light of the  
36 scope of the record.

37 (g) The clerk of the superior court shall prepare and certify the  
38 clerk's transcript on appeal not later than 60 days from the date that  
39 the notice designating the papers or records to be included in the  
40 clerk's transcript was filed with the superior court, if the party or



1 parties pay any costs or fees for the preparation of the clerk's  
2 transcript imposed in conformance with any law or rules of court.  
3 Nothing in this subdivision precludes an election to proceed by  
4 appendix, as provided in Rule 5.1 of the California Rules of Court.

5 (h) Extensions of the period for the filing of any brief on appeal  
6 may be allowed only by stipulation of the parties or by order of the  
7 court for good cause shown. Extensions for the filing of a brief on  
8 appeal shall be limited to one 30-day extension for the preparation  
9 of an opening brief, and one 30-day extension for the preparation  
10 of a responding brief, except that the court may grant a longer  
11 extension or additional extensions if it determines that there is a  
12 substantial likelihood of settlement that would avoid the necessity  
13 of completing the appeal.

14 (i) At the completion of the filing of briefs on appeal, the  
15 appellant shall notify the court of the completion of the filing of  
16 briefs, whereupon the clerk of the reviewing court shall set the  
17 appeal for hearing on the first available calendar date.

18 SEC. 5. Section 21167.6.5 is added to the Public Resources  
19 Code, to read:

20 21167.6.5. (a) The petitioner or plaintiff shall name, as a real  
21 party in interest, any recipient of an approval that is the subject of  
22 an action or proceeding brought pursuant to Section 21167, 21168,  
23 or 21168.5, and shall serve the petition or complaint on that real  
24 party in interest, by personal service, mail facsimile, or any other  
25 method permitted by law not later than 20 business days following  
26 service of the petition or complaint on the public agency.

27 (b) The public agency shall provide the petitioner or plaintiff,  
28 not later than 10 business days following service of the petition or  
29 complaint on the public agency, with a list of responsible agencies  
30 and any public agency having jurisdiction over a natural resource  
31 affected by the project.

32 (c) The petitioner or plaintiff shall provide the responsible  
33 agencies, and any public agency having jurisdiction over a natural  
34 resource affected by the project, with notice of the action or  
35 proceeding within 15 days of receipt of the list described in  
36 subdivision (b).

37 (d) Failure to name potential parties, other than those described  
38 in subdivision (a) or (b), is not grounds for dismissal pursuant to  
39 Section 389 of the Code of Civil Procedure.



1 SEC. 6. Notwithstanding Section 17610 of the Government  
2 Code, if the Commission on State Mandates determines that this  
3 act contains costs mandated by the state, reimbursement to local  
4 agencies and school districts for those costs shall be made pursuant  
5 to Part 7 (commencing with Section 17500) of Division 4 of Title  
6 2 of the Government Code. If the statewide cost of the claim for  
7 reimbursement does not exceed one million dollars (\$1,000,000),  
8 reimbursement shall be made from the State Mandates Claims  
9 Fund.

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