

AMENDED IN ASSEMBLY APRIL 3, 2003

CALIFORNIA LEGISLATURE—2003–04 REGULAR SESSION

**ASSEMBLY BILL**

**No. 406**

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**Introduced by Assembly Member Jackson**  
*(Coauthor: Assembly Member Pavley)*

February 14, 2003

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An act to amend Sections 21082.1, 21089, and 21160 of the Public Resources Code, relating to environmental quality.

LEGISLATIVE COUNSEL'S DIGEST

AB 406, as amended, Jackson. Environmental quality.

(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 (EIR) 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 requires a lead agency to prepare a mitigated negative declaration for a project that may have a significant effect on the environment if revisions in the project would avoid or mitigate that effect and there is no substantial evidence that the project, as revised, would have a significant effect on the environment.

CEQA requires any draft EIR, EIR, or negative declaration prepared pursuant to CEQA be prepared directly by, or under contract to, a public agency, and requires the lead agency to circulate draft documents that reflect its independent judgment to appropriate state agencies and to the public for review and comments.

This bill would prohibit a person, including the project applicant or applicant's retained consultant, from submitting a draft environmental review document, *or part thereof*, to the public agency responsible for reviewing the project. The bill would prohibit a public agency responsible for reviewing environmental documents from accepting *specified* comments on a draft document, or part thereof, ~~until commencement of the comment period~~ *before the document is released for public review*. The bill would require the lead agency to independently review and analyze all evidence before adopting findings and conclusions and to base those findings and conclusions on substantial evidence in the record. By imposing additional duties on local agencies, this bill would impose a state-mandated local program.

(2) CEQA permits a lead agency to charge and collect a reasonable fee from a project applicant in order to recover estimated costs incurred by the lead agency in preparing a negative declaration or an environmental impact report for the project.

This bill would specifically authorize the public agency responsible for reviewing the project to recover from the project applicant the cost of hiring an independent environmental consultant to assist in preparing any environmental review document for a project. The bill would also permit a lead agency to recover estimated costs incurred in preparing any environmental review document as required for a project and for other related work.

(3) CEQA declares that it is the policy of the state that persons and organizations interested in a project must make available, as soon as possible, all information relevant to the significant effects of a project, alternatives to the project, and mitigation measures that substantially reduce the project's negative environmental effects.

This bill would, when a public agency requires access to a project site to prepare an environmental review document, and upon reasonable notice, ~~prohibit~~ *require* the project applicant ~~from interfering with~~ *to grant* access to the project site ~~by~~ *to* the public agency or a consultant retained by the agency ~~who is accompanied by a representative of the public agency~~. The bill would ~~also~~ prohibit a project applicant from imposing on its consultants a confidentiality requirement that inhibits or prevents the disclosure of information regarding potential environmental impacts, potential mitigation measures, or project alternatives to the public agency or to the public. The bill would protect the project applicant's trade secrets from disclosure to the public.



(4) 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.

This bill would provide that no reimbursement is required by this act for a specified reason.

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 21082.1 of the Public Resources Code  
2 is amended to read:

3 21082.1. (a) A draft environmental impact report,  
4 environmental impact report, negative declaration, or mitigated  
5 negative declaration prepared pursuant to the requirements of this  
6 division shall be prepared directly by, or under contract to, a public  
7 agency. No other person, including the project applicant or a  
8 consultant retained by the project applicant, may submit a draft of  
9 an environmental review document, *or part thereof*, required by  
10 this division to the public agency responsible for review of the  
11 project. Consistent with Section 21089, that public agency may  
12 charge the project applicant for the cost of producing and  
13 reviewing an environmental review document required by this  
14 division, including the cost of retaining independent  
15 environmental consultants.

16 (b) Upon reasonable notice to the project applicant, when a  
17 public agency requires access to the project site to prepare an  
18 environmental impact report or other environmental ~~reviewed~~  
19 ~~review~~ document, the project applicant ~~may not interfere with or~~  
20 ~~otherwise affect~~ *shall grant the requested* access to the project site  
21 by the public agency or a consultant retained by the public agency  
22 ~~who is accompanied by a representative of the public agency at the~~  
23 ~~project site~~.

24 (c) This section is not intended to prohibit, and may not be  
25 construed as prohibiting, a person, *including the project applicant,*  
26 *from submitting information or other comments about the project*  
27 *setting, the project description, the project's potential*  
28 *environmental impacts, or potentially feasible mitigation*  
29 *measures or alternatives to reduce those impacts,* to the public



1 agency responsible for preparing an environmental review  
2 document required by this division. However, the public agency  
3 responsible for preparing environmental review documents may  
4 not accept comments on *the content and conclusions contained in*  
5 *a draft environmental review document, or part thereof, until the*  
6 ~~commencement of the comment period required by this division~~  
7 *from an entity, other than a responsible or trustee agency, before*  
8 *the document is released for public review.*

9 (d) The lead agency shall do all of the following:

10 (1) Independently review and analyze all evidence, including  
11 each report or declaration required by this division, before  
12 adopting findings or conclusions.

13 (2) Base its findings and conclusions on substantial evidence in  
14 the record.

15 (3) Circulate draft documents that reflect its independent  
16 judgment.

17 (4) As part of the adoption of a negative declaration, a  
18 mitigated negative declaration, or certification of an  
19 environmental impact report, find that the report or declaration  
20 reflects the independent judgment of the lead agency.

21 (5) Submit a sufficient number of copies of the draft  
22 environmental impact report, proposed negative declaration, or  
23 proposed mitigated negative declaration, and a copy of the report  
24 or declaration in an electronic form as required by the guidelines  
25 adopted pursuant to Section 21083, to the State Clearinghouse for  
26 review and comment by state agencies, if either of the following  
27 apply:

28 (A) A state agency is a lead agency, a responsible agency, or a  
29 trustee agency for the project.

30 (B) The proposed project is of sufficient statewide, regional, or  
31 areawide environmental significance as determined pursuant to  
32 the guidelines certified and adopted pursuant to Section 21083.

33 SEC. 2. Section 21089 of the Public Resources Code is  
34 amended to read:

35 21089. (a) A lead agency may charge and collect a  
36 reasonable fee from a person proposing a project subject to this  
37 division in order to recover the estimated costs incurred by the lead  
38 agency in preparing an environmental review document required  
39 by this division for the project and for other related work necessary  
40 to comply with this division on the project. Litigation expenses,



1 costs, and fees incurred in actions alleging noncompliance with  
2 this division under Section 21167 are not recoverable under this  
3 section.

4 (b) The Department of Fish and Game may charge and collect  
5 filing fees, as provided in Section 711.4 of the Fish and Game  
6 Code. Notwithstanding Section 21080.1, a finding required under  
7 Section 21081, or any project approved under a certified  
8 regulatory program authorized pursuant to Section 21080.5 is not  
9 operative, vested, or final until the filing fees required pursuant to  
10 Section 711.4 of the Fish and Game Code are paid.

11 SEC. 3. Section 21160 of the Public Resources Code is  
12 amended to read:

13 21160. Whenever a person applies to a public agency for a  
14 lease, permit, license, certificate, or other entitlement for use, the  
15 public agency may require that person to submit data and  
16 information ~~which~~ *that* may be necessary to enable the public  
17 agency to determine whether the proposed project may have a  
18 significant effect on the environment or to prepare an  
19 environmental impact report.

20 (a) If any or all of the information so submitted is a “trade  
21 secret” as defined in Section 6254.7 of the Government Code by  
22 those submitting that information, it may not be included in the  
23 impact report or otherwise disclosed by ~~any~~ *a* public agency. This  
24 section may not be construed to prohibit the exchange of properly  
25 designated trade secrets between public agencies ~~who~~ *that* have  
26 lawful jurisdiction over the preparation of the impact report.

27 (b) A project applicant may not impose upon its own  
28 consultants a confidentiality requirement that inhibits or prevents  
29 the disclosure to the public agency or, except for trade secrets, to  
30 the public of information regarding a potential environmental  
31 impact of the project, potential mitigation measures, or project  
32 alternatives.

33 SEC. 4. No reimbursement is required by this act pursuant to  
34 Section 6 of Article XIII B of the California Constitution because  
35 a local agency or school district has the authority to levy service  
36 charges, fees, or assessments sufficient to pay for the program or  
37 level of service mandated by this act, within the meaning of  
38 Section 17556 of the Government Code.

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