

AMENDED IN ASSEMBLY JUNE 2, 2003

AMENDED IN ASSEMBLY APRIL 3, 2003

CALIFORNIA LEGISLATURE—2003–04 REGULAR SESSION

ASSEMBLY BILL

No. 406

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

February 14, 2003

An act to amend Sections 21082.1, 21089, and 21160 of, *and to add Section 21099 to*, 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, *or mitigated 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~~ *impact report, environmental impact report, proposed negative declaration, proposed mitigated negative declaration*, 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, 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~~ *The bill would not apply the prohibition to a public agency that prepares those environmental documents for another public agency under contract, or to a project that the public agency intends to carry out itself.*

(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~~ *a lead agency responsible for reviewing the project to recover charge and collect a reasonable fee* from the project applicant *to cover 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, including the cost of retaining environmental consultants, for preparing and reviewing a draft environmental impact report, environmental impact report, negative declaration, or mitigated negative declaration.*

(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~~ *require* access to a project site ~~that is under CEQA review to prepare an environmental review document, and upon reasonable notice, require the project applicant to grant access to the project site~~ *be granted to the employees of, or consultants retained by, a public agency or a consultant retained by the agency carrying out its CEQA responsibilities.* The bill would prohibit a project applicant from ~~imposing on~~ *enforcing against* its consultants a confidentiality ~~requirement~~ *agreement* that inhibits or prevents the disclosure of *data and* information regarding *baseline environmental conditions*, 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 *and other specified records* 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~~ *become operative on July 1, 2004.*

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

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

- 1 SECTION 1. *The Legislature finds and declares the*
- 2 *following:*
- 3 (a) *In order to fulfill the purpose of the California*
- 4 *Environmental Quality Act to provide public agencies and the*
- 5 *general public with detailed and accurate information about the*
- 6 *environmental impacts of a proposed project and to identify*
- 7 *alternatives to the project or ways to mitigate or avoid the*
- 8 *environmental impacts, it is essential that California*
- 9 *Environmental Quality Act documents be prepared in a full, fair,*
- 10 *and impartial manner.*
- 11 (b) *Confidentiality agreements between project proponents*
- 12 *and their consultants can impair the ability of public agencies and*
- 13 *the general public to know and understand the potential*
- 14 *environmental impacts of a proposed project. Therefore, it is the*
- 15 *intent of the Legislature to restrict the use of confidentiality*



1 *agreements in connection with the California Environmental*
2 *Quality Act.*

3 *SEC. 2.* Section 21082.1 of the Public Resources Code is
4 amended to read:

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

20 ~~(b) Upon reasonable notice to the project applicant, when a~~
21 ~~public agency requires access to the project site to prepare an~~
22 ~~environmental impact report or other environmental review~~
23 ~~document, the project applicant shall grant the requested access to~~
24 ~~the project site by the public agency or a consultant retained by the~~
25 ~~public agency. project.~~

26 *(b) Notwithstanding subdivision (a), this section is not*
27 *intended to prohibit, and may not be construed as prohibiting, a*
28 *public agency from preparing a draft environmental impact report,*
29 *environmental impact report, negative declaration, or mitigated*
30 *negative declaration that the public agency prepares for another*
31 *public agency pursuant to a contract with that public agency or for*
32 *a project that the public agency intends to carry out itself.*

33 (c) This section is not intended to prohibit, and may not be
34 construed as prohibiting, a person, ~~including the project applicant,~~
35 ~~from submitting information or other comments about the project~~
36 ~~setting, the project description, the project's potential~~
37 ~~environmental impacts, or potentially feasible mitigation~~
38 ~~measures or alternatives to reduce those impacts,~~ to the public
39 agency responsible for preparing ~~an environmental review~~
40 ~~document~~ *a draft environmental impact report, environmental*



1 *impact report, negative declaration, or mitigated negative*
2 *declaration* 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, from an~~
6 ~~entity, other than a responsible or trustee agency, before the~~
7 ~~document is released for public review.~~

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

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

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

14 ~~(3)~~

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

17 ~~(4)~~

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

22 ~~(5)~~

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

30 ~~(A) A state agency is a lead agency, a responsible agency, or a~~
31 ~~trustee agency for the project.~~

32 ~~(B)~~

33 (A) A state agency is any of the following:

34 (i) The lead agency.

35 (ii) A responsible agency.

36 (iii) A trustee agency.

37 (B) A state agency otherwise has jurisdiction by law with
38 respect to the project.



1 (C) The proposed project is of sufficient statewide, regional, or
2 areawide environmental significance as determined pursuant to
3 the guidelines certified and adopted pursuant to Section 21083.

4 ~~SEC. 2.~~

5 *SEC. 3.* Section 21089 of the Public Resources Code is
6 amended to read:

7 21089. (a) A lead agency may charge and collect a
8 reasonable fee from a person proposing a project subject to this
9 division ~~in order to recover~~ *to cover* the estimated costs incurred
10 by the lead agency in preparing ~~an environmental review~~
11 ~~document required by this division~~ *and reviewing a draft*
12 *environmental impact report, environmental impact report,*
13 *negative declaration, or mitigated negative declaration* for the
14 project and for other related work necessary to comply with this
15 division ~~on~~ *in connection with* the project. *The fee may include the*
16 *cost to the public agency of retaining environmental consultants.*
17 Litigation expenses, costs, and fees incurred in actions alleging
18 noncompliance with this division under Section 21167 are not
19 recoverable under this section.

20 (b) The Department of Fish and Game may charge and collect
21 filing fees, as provided in Section 711.4 of the Fish and Game
22 Code. Notwithstanding Section 21080.1, a finding required under
23 Section 21081, or any project approved under a certified
24 regulatory program authorized pursuant to Section 21080.5 is not
25 operative, vested, or final until the filing fees required pursuant to
26 Section 711.4 of the Fish and Game Code are paid.

27 ~~SEC. 3.~~

28 *SEC. 4.* Section 21099 is added to the Public Resources Code,
29 to read:

30 21099. *Access to the site of a project under review pursuant*
31 *to this division shall be granted to employees of, or consultants*
32 *retained by, a public agency carrying out its responsibilities*
33 *pursuant to this division under the terms of, and subject to the*
34 *conditions specified in, Section 65105 of the Government Code.*

35 *SEC. 5.* Section 21160 of the Public Resources Code is
36 amended to read:

37 21160. (a) Whenever a person applies to a public agency for
38 a lease, permit, license, certificate, or other entitlement for use, the
39 public agency may require that person to submit data and
40 information that may be necessary to enable the public agency to



1 determine whether the proposed project may have a significant
 2 effect on the environment ~~or to prepare an~~, or that may be
 3 necessary to prepare a draft environmental impact report,
 4 environmental impact report, negative declaration, or mitigated
 5 negative declaration.

6 ~~(a) If any or all of the information so submitted is a “trade~~
 7 *(b) If a portion of the data and information submitted*
 8 *constitutes a “trade secret” as defined in Section 6254.7 of the*
 9 *Government Code by those submitting that information, it, that*
 10 *portion may not be included in the draft environmental impact*
 11 *report, environmental impact report, negative declaration, or*
 12 *mitigated negative declaration, or otherwise disclosed by a public*
 13 *agency. This section may not be construed to prohibit the exchange*
 14 *of properly designated trade secrets between public agencies that*
 15 *have lawful jurisdiction over the preparation of the impact report.*

16 ~~(b) A project applicant may not impose upon its own draft~~
 17 *environmental impact report, environmental impact report,*
 18 *negative declaration, or mitigated negative declaration.*

19 *(c) When a person applies to a public agency for a lease,*
 20 *permit, license, certificate, or other entitlement for use that is*
 21 *subject to this division, the project applicant may not enforce*
 22 *against its own consultants a confidentiality requirement*
 23 *agreement that inhibits or prevents the disclosure to the public*
 24 *agency or, except for trade secrets, as defined in Section 6254.7 of*
 25 *the Government Code, or records protected under Section 6254.10*
 26 *of the Government Code, to the public of data and information*
 27 *regarding a baseline environmental conditions, potential*
 28 *environmental impact impacts of the project, potential mitigation*
 29 *measures, or project alternatives.*

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

36 *SEC. 6. (a) Section 2 of this act is intended specifically to*
 37 *supersede the court’s decision in Friends of La Vina v. County of*
 38 *Los Angeles (1991) 232 Cal.App.3d 1446, that the California*
 39 *Environmental Quality Act (Division 13 (commencing with*
 40 *Section 21000) of the Public Resources Code) authorizes a project*



1 applicant to prepare, or employ others to prepare, a draft
2 environmental impact report, environmental impact report,
3 negative declaration, or mitigated negative declaration. Section 2
4 of this act is not intended to affect any other part of that decision
5 or any rights or obligations of the parties to that case or any other
6 case decided on the basis of those decisions before the operative
7 date of this act.

8 (b) This act is not intended to require a public agency to incur
9 additional, unreimbursed costs in instances in which it is both the
10 lead agency and the project applicant for a project under review
11 pursuant to the California Environmental Quality Act (Division 13
12 commencing with Section 21000) of the Public Resources Code.

13 SEC. 7. This act shall become operative on July 1, 2004.

