

AMENDED IN SENATE MARCH 28, 2008

SENATE BILL

No. 1165

Introduced by Senator Kuehl

February 7, 2008

An act to amend Section 6254 of the Government Code, and to amend Sections 21082.1, ~~21166~~, and ~~21167.1~~ and 21166 of the Public Resources Code, relating to the environment.

LEGISLATIVE COUNSEL'S DIGEST

SB 1165, as amended, Kuehl. Environment: environmental impact report.

(1) The California Environmental Quality Act (CEQA) requires a lead agency, as defined, to prepare, or cause to be prepared by contract, and certify the completion of, an environmental impact report on a project, as defined, 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 does not prohibit a person from submitting information or other comments to a public agency responsible for preparing an environmental impact report (EIR), draft EIR, negative declaration, or mitigated negative declaration.

This bill would ~~require communications between the project applicant and the public agency or the preparers of the EIR to be in writing, or recorded in writing~~ *authorize a person to submit information or other comments to the lead agency and require the lead agency to consider and retain communications made to the lead agency or its consultants.* The bill would ~~authorize~~ *require* the ~~public~~ lead agency to make available to members of the public ~~preliminary administrative~~ drafts, *as defined*, of its EIR, negative declaration, or mitigated negative declarations that are circulated among the project applicant and any

public agencies prior to their official release for public comments. *The bill would require the lead agency, which includes a local agency, to make available and provide specified notice of the availability of any administrative draft, thereby imposing a state-mandated local program by requiring an increase in the level of service provided by a local agency.*

(2) CEQA does not require, except for under specified circumstances, a lead agency or a responsible agency to prepare a subsequent or supplemental EIR when an EIR has been prepared for a project.

This bill would, instead, require, except for under specified circumstances, a lead agency or a responsible agency to prepare a subsequent or a supplemental EIR for a project if the certification of the prior EIR for the project is more than 5 years old. ~~The public bill would prohibit a lead agency would be prohibited~~ from relying on an EIR ~~the certification of which is, negative declaration, or mitigated negative declaration that was certified more than 5 years old ago and would be required~~ require the document to ~~treat the EIR~~ be treated as an uncertified, draft ~~EIR environmental document~~ that must be recirculated for public review and comment and recertified by the ~~public~~ lead agency before the agency may take an action in reliance on the analyses and conclusions of the prior environmental document. By requiring a lead agency or a responsible agency, which includes a local agency, to recirculate an EIR whose certification is more than 5 years old for public review and comment, and recertification, this bill would increase the level of service provided by a local agency, thereby imposing a state-mandated local program.

(3) ~~CEQA requires superior courts in counties with a population of more than 200,000 to designate one or more judges to develop expertise in CEQA and other related laws, so that those judges will be available to hear and quickly resolve an action or proceeding brought under CEQA.~~

This bill would authorize a party to an action or proceeding brought pursuant to CEQA filed in these superior courts to request the presiding judge to assign or reassign the action or proceedings to the designated judges. Except for certain specified circumstances, upon the filing of a request for assignment or reassignment, the presiding judge would be required to use his or her best efforts to promptly assign or reassign the action or proceeding to one of the designated judges

(4)

(3) 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 6254 of the Government Code is amended~~
2 ~~to read:~~

3 ~~6254. Except as provided in Sections 6254.7 and 6254.13,~~
4 ~~nothing in this chapter shall be construed to require disclosure of~~
5 ~~records that are any of the following:~~

6 (a) ~~Preliminary drafts, notes, or interagency or intra-agency~~
7 ~~memoranda that are not retained by the public agency in the~~
8 ~~ordinary course of business, if the public interest in withholding~~
9 ~~those records clearly outweighs the public interest in disclosure.~~
10 ~~This subdivision does not apply to a preliminary draft of~~
11 ~~environmental documentation that is circulated among the project~~
12 ~~applicant and public agency prior to the official release of the draft~~
13 ~~for public comments and any other comments on the draft.~~

14 (b) ~~Records pertaining to pending litigation to which the public~~
15 ~~agency is a party, or to claims made pursuant to Division 3.6~~
16 ~~(commencing with Section 810), until the pending litigation or~~
17 ~~claim has been finally adjudicated or otherwise settled.~~

18 (c) ~~Personnel, medical, or similar files, the disclosure of which~~
19 ~~would constitute an unwarranted invasion of personal privacy.~~

20 (d) ~~Contained in or related to any of the following:~~

21 (1) ~~Applications filed with any state agency responsible for the~~
22 ~~regulation or supervision of the issuance of securities or of financial~~
23 ~~institutions, including, but not limited to, banks, savings and loan~~
24 ~~associations, industrial loan companies, credit unions, and~~
25 ~~insurance companies.~~

26 (2) ~~Examination, operating, or condition reports prepared by,~~
27 ~~on behalf of, or for the use of, any state agency referred to in~~
28 ~~paragraph (1).~~

1 ~~(3) Preliminary drafts, notes, or interagency or intra-agency~~
2 ~~communications prepared by, on behalf of, or for the use of, any~~
3 ~~state agency referred to in paragraph (1).~~

4 ~~(4) Information received in confidence by any state agency~~
5 ~~referred to in paragraph (1).~~

6 ~~(e) Geological and geophysical data, plant production data, and~~
7 ~~similar information relating to utility systems development, or~~
8 ~~market or crop reports, that are obtained in confidence from any~~
9 ~~person.~~

10 ~~(f) Records of complaints to, or investigations conducted by,~~
11 ~~or records of intelligence information or security procedures of,~~
12 ~~the office of the Attorney General and the Department of Justice,~~
13 ~~and any state or local police agency, or any investigatory or security~~
14 ~~files compiled by any other state or local police agency, or any~~
15 ~~investigatory or security files compiled by any other state or local~~
16 ~~agency for correctional, law enforcement, or licensing purposes.~~
17 ~~However, state and local law enforcement agencies shall disclose~~
18 ~~the names and addresses of persons involved in, or witnesses other~~
19 ~~than confidential informants to, the incident, the description of~~
20 ~~any property involved, the date, time, and location of the incident,~~
21 ~~all diagrams, statements of the parties involved in the incident, the~~
22 ~~statements of all witnesses, other than confidential informants, to~~
23 ~~the victims of an incident, or an authorized representative thereof,~~
24 ~~an insurance carrier against which a claim has been or might be~~
25 ~~made, and any person suffering bodily injury or property damage~~
26 ~~or loss, as the result of the incident caused by arson, burglary, fire,~~
27 ~~explosion, larceny, robbery, carjacking, vandalism, vehicle theft,~~
28 ~~or a crime as defined by subdivision (b) of Section 13951, unless~~
29 ~~the disclosure would endanger the safety of a witness or other~~
30 ~~person involved in the investigation, or unless disclosure would~~
31 ~~endanger the successful completion of the investigation or a related~~
32 ~~investigation. However, nothing in this division shall require the~~
33 ~~disclosure of that portion of those investigative files that reflects~~
34 ~~the analysis or conclusions of the investigating officer.~~

35 ~~Customer lists provided to a state or local police agency by an~~
36 ~~alarm or security company at the request of the agency shall be~~
37 ~~construed to be records subject to this subdivision.~~

38 ~~Notwithstanding any other provision of this subdivision, state~~
39 ~~and local law enforcement agencies shall make public the following~~
40 ~~information, except to the extent that disclosure of a particular~~

1 item of information would endanger the safety of a person involved
2 in an investigation or would endanger the successful completion
3 of the investigation or a related investigation:

4 (1) ~~The full name and occupation of every individual arrested~~
5 ~~by the agency, the individual's physical description including date~~
6 ~~of birth, color of eyes and hair, sex, height and weight, the time~~
7 ~~and date of arrest, the time and date of booking, the location of~~
8 ~~the arrest, the factual circumstances surrounding the arrest, the~~
9 ~~amount of bail set, the time and manner of release or the location~~
10 ~~where the individual is currently being held, and all charges the~~
11 ~~individual is being held upon, including any outstanding warrants~~
12 ~~from other jurisdictions and parole or probation holds.~~

13 (2) ~~Subject to the restrictions imposed by Section 841.5 of the~~
14 ~~Penal Code, the time, substance, and location of all complaints or~~
15 ~~requests for assistance received by the agency and the time and~~
16 ~~nature of the response thereto, including, to the extent the~~
17 ~~information regarding crimes alleged or committed or any other~~
18 ~~incident investigated is recorded, the time, date, and location of~~
19 ~~occurrence, the time and date of the report, the name and age of~~
20 ~~the victim, the factual circumstances surrounding the crime or~~
21 ~~incident, and a general description of any injuries, property, or~~
22 ~~weapons involved. The name of a victim of any crime defined by~~
23 ~~Section 220, 261, 261.5, 262, 264, 264.1, 265, 266, 266a, 266b,~~
24 ~~266c, 266e, 266f, 266j, 267, 269, 273a, 273d, 273.5, 285, 286,~~
25 ~~288, 288a, 288.2, 288.3, 288.5, 288.7, 289, 422.6, 422.7, 422.75,~~
26 ~~646.9 or 647.6 of the Penal Code may be withheld at the victim's~~
27 ~~request, or at the request of the victim's parent or guardian if the~~
28 ~~victim is a minor. When a person is the victim of more than one~~
29 ~~crime, information disclosing that the person is a victim of a crime~~
30 ~~defined in any of the sections of the Penal Code set forth in this~~
31 ~~subdivision may be deleted at the request of the victim, or the~~
32 ~~victim's parent or guardian if the victim is a minor, in making the~~
33 ~~report of the crime, or of any crime or incident accompanying the~~
34 ~~crime, available to the public in compliance with the requirements~~
35 ~~of this paragraph.~~

36 (3) ~~Subject to the restrictions of Section 841.5 of the Penal Code~~
37 ~~and this subdivision, the current address of every individual~~
38 ~~arrested by the agency and the current address of the victim of a~~
39 ~~crime, where the requester declares under penalty of perjury that~~
40 ~~the request is made for a scholarly, journalistic, political, or~~

1 governmental purpose, or that the request is made for investigation
2 purposes by a licensed private investigator as described in Chapter
3 11.3 (commencing with Section 7512) of Division 3 of the Business
4 and Professions Code. However, the address of the victim of any
5 crime defined by Section 220, 261, 261.5, 262, 264, 264.1, 265,
6 266, 266a, 266b, 266c, 266e, 266f, 266j, 267, 269, 273a, 273d,
7 273.5, 285, 286, 288, 288a, 288.2., 288.3, 288.5, 288.7, 289, 422.6,
8 422.7, 422.75, 646.9, or 647.6 of the Penal Code shall remain
9 confidential. Address information obtained pursuant to this
10 paragraph may not be used directly or indirectly, or furnished to
11 another, to sell a product or service to any individual or group of
12 individuals, and the requester shall execute a declaration to that
13 effect under penalty of perjury. Nothing in this paragraph shall be
14 construed to prohibit or limit a scholarly, journalistic, political, or
15 government use of address information obtained pursuant to this
16 paragraph.

17 (g) ~~Test questions, scoring keys, and other examination data~~
18 ~~used to administer a licensing examination, examination for~~
19 ~~employment, or academic examination, except as provided for in~~
20 ~~Chapter 3 (commencing with Section 99150) of Part 65 of Division~~
21 ~~14 of Title 3 of the Education Code.~~

22 (h) ~~The contents of real estate appraisals or engineering or~~
23 ~~feasibility estimates and evaluations made for or by the state or~~
24 ~~local agency relative to the acquisition of property, or to~~
25 ~~prospective public supply and construction contracts, until all of~~
26 ~~the property has been acquired or all of the contract agreement~~
27 ~~obtained. However, the law of eminent domain shall not be affected~~
28 ~~by this provision.~~

29 (i) ~~Information required from any taxpayer in connection with~~
30 ~~the collection of local taxes that is received in confidence and the~~
31 ~~disclosure of the information to other persons would result in unfair~~
32 ~~competitive disadvantage to the person supplying the information.~~

33 (j) ~~Library circulation records kept for the purpose of identifying~~
34 ~~the borrower of items available in libraries, and library and museum~~
35 ~~materials made or acquired and presented solely for reference or~~
36 ~~exhibition purposes. The exemption in this subdivision shall not~~
37 ~~apply to records of fines imposed on the borrowers.~~

38 (k) ~~Records, the disclosure of which is exempted or prohibited~~
39 ~~pursuant to federal or state law, including, but not limited to,~~
40 ~~provisions of the Evidence Code relating to privilege.~~

1 ~~(l) Correspondence of and to the Governor or employees of the~~
2 ~~Governor's office or in the custody of or maintained by the~~
3 ~~Governor's Legal Affairs Secretary. However, public records shall~~
4 ~~not be transferred to the custody of the Governor's Legal Affairs~~
5 ~~Secretary to evade the disclosure provisions of this chapter.~~

6 ~~(m) In the custody of or maintained by the Legislative Counsel,~~
7 ~~except those records in the public database maintained by the~~
8 ~~Legislative Counsel that are described in Section 10248.~~

9 ~~(n) Statements of personal worth or personal financial data~~
10 ~~required by a licensing agency and filed by an applicant with the~~
11 ~~licensing agency to establish his or her personal qualification for~~
12 ~~the license, certificate, or permit applied for.~~

13 ~~(o) Financial data contained in applications for financing under~~
14 ~~Division 27 (commencing with Section 44500) of the Health and~~
15 ~~Safety Code, where an authorized officer of the California Pollution~~
16 ~~Control Financing Authority determines that disclosure of the~~
17 ~~financial data would be competitively injurious to the applicant~~
18 ~~and the data is required in order to obtain guarantees from the~~
19 ~~United States Small Business Administration. The California~~
20 ~~Pollution Control Financing Authority shall adopt rules for review~~
21 ~~of individual requests for confidentiality under this section and for~~
22 ~~making available to the public those portions of an application that~~
23 ~~are subject to disclosure under this chapter.~~

24 ~~(p) Records of state agencies related to activities governed by~~
25 ~~Chapter 10.3 (commencing with Section 3512), Chapter 10.5~~
26 ~~(commencing with Section 3525), and Chapter 12 (commencing~~
27 ~~with Section 3560) of Division 4, that reveal a state agency's~~
28 ~~deliberative processes, impressions, evaluations, opinions,~~
29 ~~recommendations, meeting minutes, research, work products,~~
30 ~~theories, or strategy, or that provide instruction, advice, or training~~
31 ~~to employees who do not have full collective bargaining and~~
32 ~~representation rights under these chapters. Nothing in this~~
33 ~~subdivision shall be construed to limit the disclosure duties of a~~
34 ~~state agency with respect to any other records relating to the~~
35 ~~activities governed by the employee relations acts referred to in~~
36 ~~this subdivision.~~

37 ~~(q) Records of state agencies related to activities governed by~~
38 ~~Article 2.6 (commencing with Section 14081), Article 2.8~~
39 ~~(commencing with Section 14087.5), and Article 2.91~~
40 ~~(commencing with Section 14089) of Chapter 7 of Part 3 of~~

1 Division 9 of the Welfare and Institutions Code, that reveal the
2 special negotiator's deliberative processes, discussions,
3 communications, or any other portion of the negotiations with
4 providers of health care services, impressions, opinions,
5 recommendations, meeting minutes, research, work product,
6 theories, or strategy, or that provide instruction, advice, or training
7 to employees.

8 Except for the portion of a contract containing the rates of
9 payment, contracts for inpatient services entered into pursuant to
10 these articles, on or after April 1, 1984, shall be open to inspection
11 one year after they are fully executed. If a contract for inpatient
12 services that is entered into prior to April 1, 1984, is amended on
13 or after April 1, 1984, the amendment, except for any portion
14 containing the rates of payment, shall be open to inspection one
15 year after it is fully executed. If the California Medical Assistance
16 Commission enters into contracts with health care providers for
17 other than inpatient hospital services, those contracts shall be open
18 to inspection one year after they are fully executed.

19 Three years after a contract or amendment is open to inspection
20 under this subdivision, the portion of the contract or amendment
21 containing the rates of payment shall be open to inspection.

22 Notwithstanding any other provision of law, the entire contract
23 or amendment shall be open to inspection by the Joint Legislative
24 Audit Committee and the Legislative Analyst's Office. The
25 committee and that office shall maintain the confidentiality of the
26 contracts and amendments until the time a contract or amendment
27 is fully open to inspection by the public.

28 (r) Records of Native American graves, cemeteries, and sacred
29 places and records of Native American places, features, and objects
30 described in Sections 5097.9 and 5097.993 of the Public Resources
31 Code maintained by, or in the possession of, the Native American
32 Heritage Commission, another state agency, or a local agency.

33 (s) A final accreditation report of the Joint Commission on
34 Accreditation of Hospitals that has been transmitted to the State
35 Department of Health Care Services pursuant to subdivision (b)
36 of Section 1282 of the Health and Safety Code.

37 (t) Records of a local hospital district, formed pursuant to
38 Division 23 (commencing with Section 32000) of the Health and
39 Safety Code, or the records of a municipal hospital, formed
40 pursuant to Article 7 (commencing with Section 37600) or Article

1 ~~8 (commencing with Section 37650) of Chapter 5 of Part 2 of~~
2 ~~Division 3 of Title 4 of this code, that relate to any contract with~~
3 ~~an insurer or nonprofit hospital service plan for inpatient or~~
4 ~~outpatient services for alternative rates pursuant to Section 10133~~
5 ~~of the Insurance Code. However, the record shall be open to~~
6 ~~inspection within one year after the contract is fully executed.~~

7 ~~(u) (1) Information contained in applications for licenses to~~
8 ~~carry firearms issued pursuant to Section 12050 of the Penal Code~~
9 ~~by the sheriff of a county or the chief or other head of a municipal~~
10 ~~police department that indicates when or where the applicant is~~
11 ~~vulnerable to attack or that concerns the applicant's medical or~~
12 ~~psychological history or that of members of his or her family.~~

13 ~~(2) The home address and telephone number of peace officers,~~
14 ~~judges, court commissioners, and magistrates that are set forth in~~
15 ~~applications for licenses to carry firearms issued pursuant to~~
16 ~~Section 12050 of the Penal Code by the sheriff of a county or the~~
17 ~~chief or other head of a municipal police department.~~

18 ~~(3) The home address and telephone number of peace officers,~~
19 ~~judges, court commissioners, and magistrates that are set forth in~~
20 ~~licenses to carry firearms issued pursuant to Section 12050 of the~~
21 ~~Penal Code by the sheriff of a county or the chief or other head of~~
22 ~~a municipal police department.~~

23 ~~(v) (1) Records of the Managed Risk Medical Insurance Board~~
24 ~~related to activities governed by Part 6.3 (commencing with Section~~
25 ~~12695) and Part 6.5 (commencing with Section 12700) of Division~~
26 ~~2 of the Insurance Code, and that reveal the deliberative processes,~~
27 ~~discussions, communications, or any other portion of the~~
28 ~~negotiations with entities contracting or seeking to contract with~~
29 ~~the board, or the impressions, opinions, recommendations, meeting~~
30 ~~minutes, research, work product, theories, or strategy of the board~~
31 ~~or its staff, or records that provide instructions, advice, or training~~
32 ~~to employees.~~

33 ~~(2) (A) Except for the portion of a contract that contains the~~
34 ~~rates of payment, contracts for health coverage entered into~~
35 ~~pursuant to Part 6.3 (commencing with Section 12695) or Part 6.5~~
36 ~~(commencing with Section 12700) of Division 2 of the Insurance~~
37 ~~Code, on or after July 1, 1991, shall be open to inspection one year~~
38 ~~after their effective dates.~~

39 ~~(B) If a contract that is entered into prior to July 1, 1991, is~~
40 ~~amended on or after July 1, 1991, the amendment, except for any~~

1 portion containing the rates of payment, shall be open to inspection
2 one year after the amendment has been fully executed.

3 ~~(3) Three years after a contract or amendment is open to~~
4 ~~inspection pursuant to this subdivision, the portion of the contract~~
5 ~~or amendment containing the rates of payment shall be open to~~
6 ~~inspection.~~

7 ~~(4) Notwithstanding any other provision of law, the entire~~
8 ~~contract or amendments to a contract shall be open to inspection~~
9 ~~by the Joint Legislative Audit Committee. The committee shall~~
10 ~~maintain the confidentiality of the contracts and amendments~~
11 ~~thereto, until the contract or amendments to a contract is open to~~
12 ~~inspection pursuant to paragraph (3).~~

13 ~~(w) (1) Records of the Managed Risk Medical Insurance Board~~
14 ~~related to activities governed by Chapter 8 (commencing with~~
15 ~~Section 10700) of Part 2 of Division 2 of the Insurance Code, and~~
16 ~~that reveal the deliberative processes, discussions, communications,~~
17 ~~or any other portion of the negotiations with health plans, or the~~
18 ~~impressions, opinions, recommendations, meeting minutes,~~
19 ~~research, work product, theories, or strategy of the board or its~~
20 ~~staff, or records that provide instructions, advice, or training to~~
21 ~~employees.~~

22 ~~(2) Except for the portion of a contract that contains the rates~~
23 ~~of payment, contracts for health coverage entered into pursuant to~~
24 ~~Chapter 8 (commencing with Section 10700) of Part 2 of Division~~
25 ~~2 of the Insurance Code, on or after January 1, 1993, shall be open~~
26 ~~to inspection one year after they have been fully executed.~~

27 ~~(3) Notwithstanding any other provision of law, the entire~~
28 ~~contract or amendments to a contract shall be open to inspection~~
29 ~~by the Joint Legislative Audit Committee. The committee shall~~
30 ~~maintain the confidentiality of the contracts and amendments~~
31 ~~thereto, until the contract or amendments to a contract is open to~~
32 ~~inspection pursuant to paragraph (2).~~

33 ~~(x) Financial data contained in applications for registration, or~~
34 ~~registration renewal, as a service contractor filed with the Director~~
35 ~~of Consumer Affairs pursuant to Chapter 20 (commencing with~~
36 ~~Section 9800) of Division 3 of the Business and Professions Code,~~
37 ~~for the purpose of establishing the service contractor's net worth,~~
38 ~~or financial data regarding the funded accounts held in escrow for~~
39 ~~service contracts held in force in this state by a service contractor.~~

1 ~~(y) (1) Records of the Managed Risk Medical Insurance Board~~
2 ~~related to activities governed by Part 6.2 (commencing with Section~~
3 ~~12693) or Part 6.4 (commencing with Section 12699.50) of~~
4 ~~Division 2 of the Insurance Code, and that reveal the deliberative~~
5 ~~processes, discussions, communications, or any other portion of~~
6 ~~the negotiations with entities contracting or seeking to contract~~
7 ~~with the board, or the impressions, opinions, recommendations,~~
8 ~~meeting minutes, research, work product, theories, or strategy of~~
9 ~~the board or its staff, or records that provide instructions, advice,~~
10 ~~or training to employees.~~

11 ~~(2) (A) Except for the portion of a contract that contains the~~
12 ~~rates of payment, contracts entered into pursuant to Part 6.2~~
13 ~~(commencing with Section 12693) or Part 6.4 (commencing with~~
14 ~~Section 12699.50) of Division 2 of the Insurance Code, on or after~~
15 ~~January 1, 1998, shall be open to inspection one year after their~~
16 ~~effective dates.~~

17 ~~(B) If a contract entered into pursuant to Part 6.2 (commencing~~
18 ~~with Section 12693) or Part 6.4 (commencing with Section~~
19 ~~12699.50) of Division 2 of the Insurance Code is amended, the~~
20 ~~amendment shall be open to inspection one year after the~~
21 ~~amendment has been fully executed.~~

22 ~~(3) Three years after a contract or amendment is open to~~
23 ~~inspection pursuant to this subdivision, the portion of the contract~~
24 ~~or amendment containing the rates of payment shall be open to~~
25 ~~inspection.~~

26 ~~(4) Notwithstanding any other provision of law, the entire~~
27 ~~contract or amendments to a contract shall be open to inspection~~
28 ~~by the Joint Legislative Audit Committee. The committee shall~~
29 ~~maintain the confidentiality of the contracts and amendments~~
30 ~~thereto until the contract or amendments to a contract are open to~~
31 ~~inspection pursuant to paragraph (2) or (3).~~

32 ~~(5) The exemption from disclosure provided pursuant to this~~
33 ~~subdivision for the contracts, deliberative processes, discussions,~~
34 ~~communications, negotiations, impressions, opinions,~~
35 ~~recommendations, meeting minutes, research, work product,~~
36 ~~theories, or strategy of the board or its staff shall also apply to the~~
37 ~~contracts, deliberative processes, discussions, communications,~~
38 ~~negotiations, impressions, opinions, recommendations, meeting~~
39 ~~minutes, research, work product, theories, or strategy of applicants~~

1 pursuant to Part 6.4 (commencing with Section 12699.50) of
2 Division 2 of the Insurance Code.

3 (z) ~~Records obtained pursuant to paragraph (2) of subdivision~~
4 ~~(f) of Section 2891.1 of the Public Utilities Code.~~

5 (aa) ~~A document prepared by or for a state or local agency that~~
6 ~~assesses its vulnerability to terrorist attack or other criminal acts~~
7 ~~intended to disrupt the public agency's operations and that is for~~
8 ~~distribution or consideration in a closed session.~~

9 (ab) ~~Critical infrastructure information, as defined in Section~~
10 ~~131(3) of Title 6 of the United States Code, that is voluntarily~~
11 ~~submitted to the California Office of Homeland Security for use~~
12 ~~by that office, including the identity of the person who or entity~~
13 ~~that voluntarily submitted the information. As used in this~~
14 ~~subdivision, "voluntarily submitted" means submitted in the~~
15 ~~absence of the office exercising any legal authority to compel~~
16 ~~access to or submission of critical infrastructure information. This~~
17 ~~subdivision shall not affect the status of information in the~~
18 ~~possession of any other state or local governmental agency.~~

19 (ac) ~~All information provided to the Secretary of State by a~~
20 ~~person for the purpose of registration in the Advance Health Care~~
21 ~~Directive Registry, except that those records shall be released at~~
22 ~~the request of a health care provider, a public guardian, or the~~
23 ~~registrant's legal representative.~~

24 ~~Nothing in this section prevents any agency from opening its~~
25 ~~records concerning the administration of the agency to public~~
26 ~~inspection, unless disclosure is otherwise prohibited by law.~~

27 ~~Nothing in this section prevents any health facility from~~
28 ~~disclosing to a certified bargaining agent relevant financing~~
29 ~~information pursuant to Section 8 of the National Labor Relations~~
30 ~~Act (29 U.S.C. Sec. 158).~~

31 ~~SEC. 2.~~

32 ~~SECTION 1.~~ Section 21082.1 of the Public Resources Code is
33 amended to read:

34 21082.1. (a) A draft environmental impact report,
35 environmental impact report, negative declaration, or mitigated
36 negative declaration prepared pursuant to the requirements of this
37 division shall be prepared directly by, or under contract to, a public
38 *lead* agency.

39 (b) ~~This section is not intended to prohibit, and shall not be~~
40 ~~construed as prohibiting, a person from submitting information or~~

1 other comments to the public agency responsible for preparing an
2 environmental impact report, draft environmental impact report,
3 negative declaration, or mitigated negative declaration. The
4 information or other comments may be submitted in any format,
5 except that all communications between the project applicant and
6 the public agency or the preparers of the environmental impact
7 report regarding the environmental review documents shall be in
8 writing, or recorded in writing. All information or comments
9 submitted to the public agency regarding the project or its potential
10 environmental effects shall be considered and retained by the public
11 agency, and may be included, in whole or in part, in any report or
12 declaration.

13 (b) *A person may submit information or other comments to the*
14 *lead agency responsible for preparing an environmental report,*
15 *negative declaration, or mitigated negative declaration.*
16 *Communications to the lead agency or its consultants regarding*
17 *the project or its potential environmental effects shall be*
18 *considered and retained by the lead agency.*

19 (c) ~~The public agency may make preliminary lead agency shall~~
20 *make available to the members of the public administrative drafts*
21 *of its environmental impact reports, negative declarations, or*
22 *mitigated negative declarations, or portions of the reports or*
23 *declarations that are circulated among the project applicant and*
24 *public agencies, prior to the official release of the drafts for public*
25 *comments available to members of the public. The agency shall*
26 *provide public notice of the availability of a preliminary draft of*
27 *an environmental document, and the opportunity to comment on*
28 *the draft, in the same manner as provided pursuant to Section*
29 *21092: drafts for public comments. The agency shall provide public*
30 *notice, by posting with the county clerk or the Office of Planning*
31 *and Research, or to persons who have requested the notice of*
32 *availability of any administrative draft of an environmental*
33 *document of portions of the document that is being circulated, and*
34 *provide the opportunity for the public to review it upon request.*

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

36 (1) Independently review and analyze any report or declaration
37 required by this division.

38 (2) Circulate draft documents that reflect its independent
39 judgment.

1 (3) As part of the adoption of a negative declaration or a
2 mitigated negative declaration, or certification of an environmental
3 impact report, find that the report or declaration reflects the
4 independent judgment of the lead agency.

5 (4) Submit a sufficient number of copies of the draft
6 environmental impact report, proposed negative declaration, or
7 proposed mitigated negative declaration, and a copy of the report
8 or declaration in an electronic form as required by the guidelines
9 adopted pursuant to Section 21083, to the State Clearinghouse for
10 review and comment by state agencies, if any of the following
11 apply:

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

- 13 (i) The lead agency.
- 14 (ii) A responsible agency.
- 15 (iii) A trustee agency.

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

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

21 (e) *For the purposes of this section, “administrative draft”*
22 *means an environmental document that is circulated by the lead*
23 *agency to a responsible agency, or to other departments within*
24 *the agency, prior to providing public notice of the draft*
25 *environmental impact report pursuant to Section 21092.*

26 ~~SEC. 3.~~

27 *SEC. 2.* Section 21166 of the Public Resources Code is
28 amended to read:

29 21166. (a) When an environmental impact report, *negative*
30 *declaration, or mitigated negative declaration* has been certified
31 for a project pursuant to this division within the past five years,
32 no subsequent or supplemental environmental impact report shall
33 be required by the lead agency or by a responsible agency, unless
34 one or more of the following events occurs:

- 35 (1) Substantial changes are proposed in the project which will
36 require major revisions of the environmental impact report.
- 37 (2) Substantial changes occur with respect to the circumstances
38 under which the project is being undertaken which will require
39 major revisions in the environmental impact report.

1 (3) New information, which was not known and could not have
2 been known at the time the environmental impact report was
3 certified as complete, becomes available.

4 ~~(b) A public agency shall not rely on an environmental impact~~
5 ~~report the certification of which is more than five years old. Such~~
6 ~~an environmental impact report shall be treated as an uncertified,~~
7 ~~draft environmental impact report under this division by the agency,~~
8 ~~circulated for public review and comment, and recertified by the~~
9 ~~public agency pursuant to this division before the agency takes an~~
10 ~~action in reliance on the environmental impact report's analysis~~
11 ~~or conclusions.~~

12 *(b) When approving a project, a lead agency shall not rely on*
13 *an environmental impact report, negative declaration, or mitigated*
14 *negative declaration that was certified more than five years ago*
15 *without treating the document as an uncertified, draft*
16 *environmental impact report under this division, circulating the*
17 *document for public review and comment, and recertifying the*
18 *document pursuant to this division before the agency may take an*
19 *action in reliance on the analyses and conclusions of the*
20 *environmental impact report, negative declaration, or mitigated*
21 *negative declaration. This provision does not prohibit the*
22 *incorporation by reference or tiering off of the prior environmental*
23 *impact report.*

24 ~~SEC. 4. Section 21167.1 of the Public Resources Code is~~
25 ~~amended to read:~~

26 ~~21167.1. (a) In all actions or proceedings brought pursuant to~~
27 ~~Sections 21167, 21168, and 21168.5, including the hearing of an~~
28 ~~action or proceeding on appeal from a decision of a lower court,~~
29 ~~all courts in which the action or proceeding is pending shall give~~
30 ~~the action or proceeding preference over all other civil actions, in~~
31 ~~the matter of setting the action or proceeding for hearing or trial,~~
32 ~~and in hearing or trying the action or proceeding, so that the action~~
33 ~~or proceeding shall be quickly heard and determined. The court~~
34 ~~shall regulate the briefing schedule so that, to the extent feasible,~~
35 ~~the court shall commence hearings on an appeal within one year~~
36 ~~of the date of the filing of the appeal.~~

37 ~~(b) (1) To ensure that actions or proceedings brought pursuant~~
38 ~~to Sections 21167, 21168, and 21168.5 may be quickly heard and~~
39 ~~determined in the lower courts, the superior courts in all counties~~
40 ~~with a population of more than 200,000 shall designate one or~~

1 more judges to develop expertise in this division and related land
2 use and environmental laws, so that those judges will be available
3 to hear, and quickly resolve, actions or proceedings brought
4 pursuant to Sections 21167, 21168, and 21168.5.

5 (2) If an action or proceeding brought pursuant to Sections
6 21167, 21168, and 21168.5 is filed in a court that has designated
7 one or more judges pursuant to this subdivision but the case is
8 assigned to another judge of this court or the court has not made
9 an assignment, a party may request the presiding judge of the court
10 to assign or reassign the action or proceeding to a judge who has
11 been designated pursuant to this subdivision.

12 (3) A request for reassignment under paragraph (2) is not a
13 peremptory challenge made under Section 170.6 of the Code of
14 Civil Procedures, but shall be filed by the requesting party within
15 the time limits established by that section.

16 (4) Upon the filing of a request under paragraph (2), the
17 presiding judge shall use his or her best efforts to promptly assign
18 or reassign the case to a judge designated pursuant to this
19 subdivision, except that an assignment shall not be made to a judge
20 who has been the subject of a prior peremptory challenge in the
21 case or who has otherwise previously recused him or herself from
22 the matter.

23 (e) In an action or proceeding filed pursuant to this chapter that
24 is joined with any other cause of action, the court, upon a motion
25 by any party, may grant severance of the actions. In determining
26 whether to grant severance, the court shall consider such matters
27 as judicial economy, administrative economy, and prejudice to
28 any party.

29 ~~SEC. 5.~~

30 *SEC. 3.* 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 Section
35 17556 of the Government Code.