

AMENDED IN SENATE APRIL 9, 2008

AMENDED IN SENATE MARCH 28, 2008

SENATE BILL

No. 1165

Introduced by Senator Kuehl

February 7, 2008

An act to amend Sections 21082.1 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 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 require the lead agency to make available to members of the public 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~~ *when the draft EIR, negative declaration, or mitigated negative declaration is available for public comment.* 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 bill would prohibit a lead agency from relying on an EIR, ~~negative declaration, or mitigated negative declaration~~ that was certified more than 5 years ago and would require the document to be treated as an uncertified, draft environmental ~~document~~ *impact report* that must be recirculated for public review and comment and recertified by the lead agency before the agency may take an action ~~in reliance on the analyses and conclusions of the prior~~ *on that project based on that* environmental ~~document~~ *impact report*. 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) 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

1 division shall be prepared directly by, or under contract to, a lead
2 agency.

3 (b) A person may submit information or other comments to the
4 lead agency responsible for preparing an environmental report,
5 negative declaration, or mitigated negative declaration.
6 ~~Communications~~ *Written communications* to the lead agency or
7 its consultants regarding the project or its potential environmental
8 effects shall be considered and retained by the lead agency.

9 (c) The lead agency shall make available to the members of the
10 public administrative drafts ~~of its environmental impact reports,~~
11 ~~negative declarations, mitigated negative declarations, or portions~~
12 ~~of the reports or declarations that are circulated among the project~~
13 ~~applicant and public agencies, prior to the official release of the~~
14 ~~drafts for public comments. The agency shall provide public notice,~~
15 ~~by posting with the county clerk or the Office of Planning and~~
16 ~~Research, or to persons who have requested the notice of~~
17 ~~availability of any administrative draft of an environmental~~
18 ~~document of portions of the document that is being circulated, and~~
19 ~~provide the opportunity for the public to review it upon request.~~
20 *circulated to the project applicant, upon request, when the draft*
21 *environmental impact report, negative declaration, or mitigated*
22 *negative declaration is available to the public for comment.*

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

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

26 (2) Circulate draft documents that reflect its independent
27 judgment.

28 (3) As part of the adoption of a negative declaration or a
29 mitigated negative declaration, or certification of an environmental
30 impact report, find that the report or declaration reflects the
31 independent judgment of the lead agency.

32 (4) Submit a sufficient number of copies of the draft
33 environmental impact report, proposed negative declaration, or
34 proposed mitigated negative declaration, and a copy of the report
35 or declaration in an electronic form as required by the guidelines
36 adopted pursuant to Section 21083, to the State Clearinghouse for
37 review and comment by state agencies, if any of the following
38 apply:

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

40 (i) The lead agency.

- 1 (ii) A responsible agency.
- 2 (iii) A trustee agency.
- 3 (B) A state agency otherwise has jurisdiction by law with respect
- 4 to the project.
- 5 (C) The proposed project is of sufficient statewide, regional, or
- 6 areawide environmental significance as determined pursuant to
- 7 the guidelines certified and adopted pursuant to Section 21083.
- 8 (e) For the purposes of this section, “administrative draft” means
- 9 an environmental ~~document~~ *impact report, negative declaration,*
- 10 *or mitigated negative declaration, or a portion of those*
- 11 *environmental documents* that is circulated by the lead agency to
- 12 a responsible agency, or to other departments within the agency,
- 13 prior to providing public notice of the draft environmental impact
- 14 report, *negative declaration, or mitigated negative declaration*
- 15 pursuant to Section 21092.

16 SEC. 2. Section 21166 of the Public Resources Code is

17 amended to read:

18 21166. (a) When an environmental impact report, ~~negative~~

19 ~~declaration, or mitigated negative declaration~~ has been certified

20 for a project pursuant to this division within the past five years,

21 no subsequent or supplemental environmental impact report shall

22 be required by the lead agency or by a responsible agency, unless

23 one or more of the following events occurs:

- 24 (1) Substantial changes are proposed in the project which will
- 25 require major revisions of the environmental impact report.
- 26 (2) Substantial changes occur with respect to the circumstances
- 27 under which the project is being undertaken which will require
- 28 major revisions in the environmental impact report.
- 29 (3) New information, which was not known and could not have
- 30 been known at the time the environmental impact report was
- 31 certified as complete, becomes available.

32 (b) When ~~approving~~ *acting on* a project, a lead agency ~~shall not~~

33 ~~rely action shall not be based~~ on an environmental impact report;

34 ~~negative declaration, or mitigated negative declaration for that~~

35 ~~project~~ that was certified more than five years ago without treating

36 ~~the document that environmental impact report~~ as an uncertified,

37 draft environmental impact report under this division, circulating

38 ~~the document that environmental impact report~~ for public review

39 and comment, and recertifying ~~the document that environmental~~

40 ~~impact report~~ pursuant to this division before the agency may take

1 an action ~~in reliance on the analyses and conclusions of the~~ *on that*
2 *project based on that* environmental impact report, ~~negative~~
3 ~~declaration, or mitigated negative declaration.~~ This provision
4 *subdivision* does not prohibit the incorporation by reference or
5 tiering off of ~~the prior~~ *that* environmental impact report.

6 SEC. 3. No reimbursement is required by this act pursuant to
7 Section 6 of Article XIII B of the California Constitution because
8 a local agency or school district has the authority to levy service
9 charges, fees, or assessments sufficient to pay for the program or
10 level of service mandated by this act, within the meaning of Section
11 17556 of the Government Code.

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