

AMENDED IN SENATE MAY 6, 2008
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 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~~ *For projects that involve the issuance to a person of a lease, permit, license, certificate, or other entitlement for use, the* bill would prohibit a lead agency from relying on an EIR that was certified more than 5 years ago and would require the document to be treated as an uncertified, draft environmental impact report that must be recirculated for public review and comment and recertified by the lead agency before the agency may take an action on that project based on that environmental 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. Written
6 communications to the lead agency or its consultants regarding
7 the project or its potential environmental effects shall be considered
8 and retained by the lead agency.

9 (c) The lead agency shall make available to the members of the
10 public administrative drafts circulated to the project applicant,
11 upon request, when the draft environmental impact report, negative
12 declaration, or mitigated negative declaration is available to the
13 public for comment.

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

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

17 (2) Circulate draft documents that reflect its independent
18 judgment.

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

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 any of the following
29 apply:

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

31 (i) The lead agency.

32 (ii) A responsible agency.

33 (iii) A trustee agency.

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

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

39 (e) For the purposes of this section, “administrative draft” means
40 an environmental impact report, negative declaration, or mitigated

1 negative declaration, or a portion of those environmental
2 documents, that is circulated by the lead agency to a responsible
3 agency, or to other departments within the agency, prior to
4 providing public notice of the draft environmental impact report,
5 negative declaration, or mitigated negative declaration pursuant
6 to Section 21092.

7 SEC. 2. Section 21166 of the Public Resources Code is
8 amended to read:

9 21166. (a) When an environmental impact report has been
10 certified for a project pursuant to this division within the past five
11 years, no subsequent or supplemental environmental impact report
12 shall be required by the lead agency or by a responsible agency,
13 unless one or more of the following events occurs:

14 (1) Substantial changes are proposed in the project which will
15 require major revisions of the environmental impact report.

16 (2) Substantial changes occur with respect to the circumstances
17 under which the project is being undertaken which will require
18 major revisions in the environmental impact report.

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

22 (b) When acting on a project, *as described pursuant to*
23 *subdivision (c) of Section 21065*, a lead agency action shall not be
24 based on an environmental impact report for that project that was
25 certified more than five years ago without treating that
26 environmental impact report as an uncertified, draft environmental
27 impact report under this division, circulating that environmental
28 impact report for public review and comment, and recertifying
29 that environmental impact report pursuant to this division before
30 the agency may take an action on that project based on that
31 environmental impact report. This subdivision does not prohibit
32 the incorporation by reference or tiering off of that environmental
33 impact report.

34 SEC. 3. No reimbursement is required by this act pursuant to
35 Section 6 of Article XIII B of the California Constitution because
36 a local agency or school district has the authority to levy service
37 charges, fees, or assessments sufficient to pay for the program or

- 1 level of service mandated by this act, within the meaning of Section
- 2 17556 of the Government Code.

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