

AMENDED IN SENATE MAY 15, 2008  
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, *and to add Section 21166.5 to*, 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~~ *retain, in the ordinary course of business*, 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~~ *retain* 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. 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. *The bill would provide that the above prohibition does not apply to incorporation by reference or tiering-off of the prior EIR or the issuance by a state agency to another state agency of a lease, permit, license, certificate, or other entitlement.*~~

(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  
6 division shall be prepared directly by, or under contract to, a lead  
7 agency.

8 (b) A person may submit information or other comments to the  
9 lead agency responsible for preparing an environmental report,  
10 negative declaration, or mitigated negative declaration. Written  
11 communications to the lead agency or its consultants regarding  
12 the project or its potential environmental effects shall be considered  
13 and retained by the lead agency.

14 (c) The lead agency shall ~~make available to the members of the~~  
15 ~~public retain, in the ordinary course of business,~~ administrative  
16 drafts circulated to the project applicant, ~~upon request, when the~~  
17 ~~draft environmental impact report, negative declaration, or~~  
18 ~~mitigated negative declaration is available to the public for~~  
19 ~~comment.~~

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

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

23 (2) Circulate draft documents that reflect its independent  
24 judgment.

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

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

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

37 (i) The lead agency.

38 (ii) A responsible agency.

1 (iii) A trustee agency.  
 2 (B) A state agency otherwise has jurisdiction by law with respect  
 3 to the project.

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

7 (e) For the purposes of this section, “administrative draft” means  
 8 an environmental impact report, negative declaration, or mitigated  
 9 negative declaration, or a portion of those environmental  
 10 documents, that is circulated by the lead agency to a responsible  
 11 agency, or to other departments within the agency, prior to  
 12 providing public notice of the draft environmental impact report,  
 13 negative declaration, or mitigated negative declaration pursuant  
 14 to Section 21092.

15 SEC. 2. Section 21166 of the Public Resources Code is  
 16 amended to read:

17 21166. ~~(a)~~ When an environmental impact report has been  
 18 certified for a project pursuant to this division ~~within the past five~~  
 19 ~~years, no~~, a subsequent or supplemental environmental impact  
 20 report shall be required by the lead agency or by a responsible  
 21 agency, ~~unless if~~ one or more of the following events ~~occurs~~: *occur*:

22 ~~(1)~~  
 23 (a) Substantial changes are proposed in the project which will  
 24 require major revisions of the environmental impact report.

25 ~~(2)~~  
 26 (b) 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)~~  
 30 (c) New information, which was not known and could not have  
 31 been known at the time the environmental impact report was  
 32 certified as complete, becomes available.

33 ~~(b)~~ When acting on a project, as described pursuant to  
 34 subdivision ~~(c)~~ of Section 21065, a lead agency action shall not  
 35 be based on an environmental impact report for that project that  
 36 was certified more than five years ago without treating that  
 37 environmental impact report as an uncertified, draft environmental  
 38 impact report under this division, circulating that environmental  
 39 impact report for public review and comment, and recertifying  
 40 that environmental impact report pursuant to this division before

1 the agency may take an action on that project based on that  
2 environmental impact report. This subdivision does not prohibit  
3 the incorporation by reference or tiering off of that environmental  
4 impact report.

5 *SEC. 3. Section 21166.5 is added to the Public Resources Code,*  
6 *to read:*

7 *21166.5. (a) Before a lead agency may take an action on a*  
8 *project, as described pursuant to subdivision (c) of Section 21065,*  
9 *that is based on a prior environmental impact report that was*  
10 *certified more than five years ago, the lead agency shall do all of*  
11 *the following:*

12 *(1) Treat the prior environmental impact report as an uncertified*  
13 *draft environmental impact report under this division.*

14 *(2) Circulate the prior environmental impact report for public*  
15 *review and comment.*

16 *(3) Recertify the prior environmental impact report pursuant*  
17 *to this division.*

18 *(b) Subdivision (a) does not apply to either of the following:*

19 *(1) Incorporation by reference or tiering-off of the prior*  
20 *environmental impact report.*

21 *(2) The issuance of a lease, permit, license, certificate, or other*  
22 *entitlement by a state agency to another state agency.*

23 ~~SEC. 3.~~

24 *SEC. 4. No reimbursement is required by this act pursuant to*  
25 *Section 6 of Article XIII B of the California Constitution because*  
26 *a local agency or school district has the authority to levy service*  
27 *charges, fees, or assessments sufficient to pay for the program or*  
28 *level of service mandated by this act, within the meaning of Section*  
29 *17556 of the Government Code.*