

Senate Bill No. 1456

CHAPTER 496

An act to amend, repeal, and add Section 66032 of the Government Code, to amend, repeal, and add Sections 21094, 21167.4, 21167.8, and 21177 of, and to add and repeal Sections 21167.10 and 21169.11 of, the Public Resources Code, relating to environmental quality, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 29, 2010. Filed with
Secretary of State September 29, 2010.]

LEGISLATIVE COUNSEL'S DIGEST

SB 1456, Simitian. Environmental quality: cumulative effects and mediation.

(1) The 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 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 allows a lead agency to use a tiered environmental impact report when a prior environmental impact report has been prepared and certified for a program, plan, policy, or ordinance and a later project meets certain requirements. Existing law provides that the report on the later project is not required to examine those effects that the lead agency determines were, among other things, examined at a sufficient level of detail in the prior environmental impact report.

This bill, until January 1, 2016, would provide that if a lead agency determines that a cumulative effect has been adequately addressed in a prior environmental impact report, in accordance with a specified procedure, that cumulative effect is not required to be examined in a later environmental impact report, mitigated negative declaration, or negative declaration.

(2) CEQA imposes requirements for an attempted settlement upon a public agency that has been served a petition or complaint for noncompliance with CEQA. CEQA provides that the settlement meeting is intended to be conducted concurrently with any judicial proceedings.

Existing law also provides that an action brought in a superior court relating to certain subjects, including an act or decision of a public agency made pursuant to CEQA, may be subject to a mediation proceeding.

Existing law specifies procedures for bringing an action under CEQA for noncompliance with that act. An organization formed after the approval of a project is allowed to maintain an action for noncompliance if a member

of that organization has presented the alleged grounds for noncompliance to the public agency in a specified manner.

This bill, until January 1, 2016, would provide that a mediation proceeding also is intended to be conducted concurrently with any judicial proceedings.

This bill, until January 1, 2016, would authorize a person wishing to bring an action or proceeding pursuant to CEQA to file with the lead agency and the real party in interest a notice requesting mediation within 5 business days from the date of the filing of a notice of determination occurring on or after July 1, 2011. The bill would provide that the notice for mediation is deemed to be denied if the lead agency fails to respond within 5 business days of receiving the request for mediation. The bill would authorize a court to impose a penalty on a party making a frivolous claim in the course of an action brought under CEQA on or before December 31, 2015.

This bill, until January 1, 2016, additionally would require a member of that organization to have objected to the approval of the project orally or in writing.

This bill, until January 1, 2016, also would authorize the Attorney General to file a motion with the court seeking an expedited schedule for resolution of an action or proceeding alleging noncompliance.

This bill would make conforming changes.

(3) This bill would incorporate additional changes to Section 21094 of the Public Resources Code proposed by this bill and AB 231, to be operative only if this bill and AB 231 are both enacted and become effective on or before January 1, 2011, and this bill is enacted last.

(4) This bill would declare that it is to take effect immediately as an urgency statute.

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

SECTION 1. Section 66032 of the Government Code is amended to read:

66032. (a) Except as provided in subdivision (c) of Section 21167.8 of the Public Resources Code, all time limits with respect to an action shall be tolled while the mediator conducts the mediation, pursuant to this chapter.

(b) Mediations conducted by a mediator pursuant to this chapter that involve less than a quorum of a legislative body or a state body shall not be considered meetings of a legislative body pursuant to the Ralph M. Brown Act (Chapter 9 (commencing with Section 54950) of Part 1 of Division 2 of Title 5), nor shall they be considered meetings of a state body pursuant to the Bagley-Keene Open Meeting Act (Article 9 (commencing with Section 11120) of Chapter 1 of Part 1 of Division 3 of Title 2).

(c) Any action taken regarding mediation conducted pursuant to this chapter shall be taken in accordance with the provisions of current law.

(d) Ninety days after the commencement of the mediation, and every 90 days thereafter, the action shall be reactivated unless the parties to the action do either of the following:

(1) Arrive at a settlement and implement it in accordance with the provisions of current law.

(2) Agree by written stipulation to extend the mediation for another 90-day period.

(e) Section 703.5 and Chapter 2 (commencing with Section 1115) of Division 9 of the Evidence Code apply to any mediation conducted pursuant to this chapter.

(f) This section shall remain in effect only until January 1, 2016, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2016, deletes or extends that date.

SEC. 2. Section 66032 is added to the Government Code, to read:

66032. (a) Notwithstanding any provision of law to the contrary, all time limits with respect to an action shall be tolled while the mediator conducts the mediation, pursuant to this chapter.

(b) Mediations conducted by a mediator pursuant to this chapter that involve less than a quorum of a legislative body or a state body shall not be considered meetings of a legislative body pursuant to the Ralph M. Brown Act (Chapter 9 (commencing with Section 54950) of Part 1 of Division 2 of Title 5), nor shall they be considered meetings of a state body pursuant to the Bagley-Keene Open Meeting Act (Article 9 (commencing with Section 11120) of Chapter 1 of Part 1 of Division 3 of Title 2).

(c) Any action taken regarding mediation conducted pursuant to this chapter shall be taken in accordance with the provisions of current law.

(d) Ninety days after the commencement of the mediation, and every 90 days thereafter, the action shall be reactivated unless the parties to the action do either of the following:

(1) Arrive at a settlement and implement it in accordance with the provisions of current law.

(2) Agree by written stipulation to extend the mediation for another 90-day period.

(e) Section 703.5 and Chapter 2 (commencing with Section 1115) of Division 9 of the Evidence Code apply to any mediation conducted pursuant to this chapter.

(f) This section shall become operative on January 1, 2016.

SEC. 3. Section 21094 of the Public Resources Code is amended to read:

21094. (a) Where a prior environmental impact report has been prepared and certified for a program, plan, policy, or ordinance, the lead agency for a later project that meets the requirements of this section shall examine significant effects of the later project upon the environment by using a tiered environmental impact report, except that the report on the later project is not required to examine those effects that the lead agency determines were either of the following:

(1) Mitigated or avoided pursuant to paragraph (1) of subdivision (a) of Section 21081 as a result of the prior environmental impact report.

(2) Examined at a sufficient level of detail in the prior environmental impact report to enable those effects to be mitigated or avoided by

site-specific revisions, the imposition of conditions, or by other means in connection with the approval of the later project.

(b) This section applies only to a later project that the lead agency determines is all of the following:

(1) Consistent with the program, plan, policy, or ordinance for which an environmental impact report has been prepared and certified.

(2) Consistent with applicable local land use plans and zoning of the city, county, or city and county in which the later project would be located.

(3) Not subject to Section 21166.

(c) For purposes of compliance with this section, an initial study shall be prepared to assist the lead agency in making the determinations required by this section. The initial study shall analyze whether the later project may cause significant effects on the environment that were not examined in the prior environmental impact report.

(d) All public agencies that propose to carry out or approve the later project may utilize the prior environmental impact report and the environmental impact report on the later project to fulfill the requirements of Section 21081.

(e) (1) If a lead agency determines pursuant to this subdivision that a cumulative effect has been adequately addressed in a prior environmental impact report, that cumulative effect is not required to be examined in a later environmental impact report, mitigated negative declaration, or negative declaration for purposes of paragraph (2) of subdivision (a).

(2) When assessing whether there is a new significant cumulative effect, the lead agency shall consider whether the incremental effects of the project are cumulatively considerable.

(3) (A) For purposes of paragraph (2), if the lead agency determines the incremental effects of the project are significant when viewed in connection with the effects of past, present, and probable future projects, the incremental effects of a project are cumulatively considerable.

(B) If the lead agency determines incremental effects of a project are cumulatively considerable, the later environmental impact report, mitigated negative declaration, or negative declaration shall examine those effects.

(4) If the lead agency makes one of the following determinations, the cumulative effects of a project are adequately addressed for purposes of paragraph (1):

(A) The cumulative effect has been mitigated or avoided as a result of the prior environmental impact report and findings adopted pursuant to paragraph (1) of subdivision (a) of Section 21081 as a result of the prior environmental impact report.

(B) The cumulative effect has been examined at a sufficient level of detail in the prior environmental impact report to enable the effect to be mitigated or avoided by site-specific revisions, the imposition of conditions, or by other means in connection with the approval of the later project.

(f) When tiering is used pursuant to this section, an environmental impact report prepared for a later project shall refer to the prior environmental

impact report and state where a copy of the prior environmental impact report may be examined.

(g) This section shall remain in effect only until January 1, 2016, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2016, deletes or extends that date.

SEC. 3.5. Section 21094 of the Public Resources Code is amended to read:

21094. (a) (1) If a prior environmental impact report has been prepared and certified for a program, plan, policy, or ordinance, the lead agency for a later project that meets the requirements of this section shall examine significant effects of the later project upon the environment by using a tiered environmental impact report, except that the report on the later project is not required to examine those effects that the lead agency determines were either of the following:

(A) Mitigated or avoided pursuant to paragraph (1) of subdivision (a) of Section 21081 as a result of the prior environmental impact report.

(B) Examined at a sufficient level of detail in the prior environmental impact report to enable those effects to be mitigated or avoided by site-specific revisions, the imposition of conditions, or by other means in connection with the approval of the later project.

(2) If a prior environmental impact report has been prepared and certified for a program, plan, policy, or ordinance, and the lead agency makes a finding of overriding consideration pursuant to subdivision (b) of Section 21081, the lead agency for a later project that uses a tiered environmental impact report from that program, plan, policy, or ordinance may incorporate by reference that finding of overriding consideration if all of the following conditions are met:

(A) The lead agency determines that the project's significant impacts on the environment are not greater than or different from those identified in the prior environmental impact report.

(B) The lead agency incorporates into the later project all the applicable mitigation measures identified by the prior environmental impact report.

(C) The prior finding of overriding considerations was not based on a determination that mitigation measures should be identified and approved in a subsequent environmental review.

(D) The prior environmental impact report was certified not more than three years before the date findings are made pursuant to Section 21081 for the later project.

(E) The lead agency has determined that the mitigation measures or alternatives found to be infeasible in the prior environmental impact report pursuant to paragraph (3) of subdivision (a) of Section 21081 remain infeasible based on the criteria set forth in that section.

(3) On and after January 1, 2016, a lead agency shall not take action pursuant to paragraph (2) with regard to incorporating by reference a prior finding of overriding consideration, and paragraph (2) shall become inoperative on January 1, 2016.

(b) This section applies only to a later project that the lead agency determines is all of the following:

(1) Consistent with the program, plan, policy, or ordinance for which an environmental impact report has been prepared and certified.

(2) Consistent with applicable local land use plans and zoning of the city, county, or city and county in which the later project would be located.

(3) Not subject to Section 21166.

(c) For purposes of compliance with this section, an initial study shall be prepared to assist the lead agency in making the determinations required by this section. The initial study shall analyze whether the later project may cause significant effects on the environment that were not examined in the prior environmental impact report.

(d) All public agencies that propose to carry out or approve the later project may utilize the prior environmental impact report and the environmental impact report on the later project to fulfill the requirements of Section 21081.

(e) (1) If a lead agency determines pursuant to this subdivision that a cumulative effect has been adequately addressed in a prior environmental impact report, that cumulative effect is not required to be examined in a later environmental impact report, mitigated negative declaration, or negative declaration for purposes of subparagraph (B) of paragraph (1) of subdivision (a).

(2) When assessing whether there is new significant cumulative effect, the lead agency shall consider whether the incremental effects of the project are cumulatively considerable.

(3) (A) For purposes of paragraph (2), if the lead agency determines the incremental effects of the project are significant when viewed in connection with the effects of past, present, and probable future projects, the incremental effects of a project are cumulatively considerable.

(B) If the lead agency determines incremental effects of a project are cumulatively considerable, the later environmental impact report, mitigated negative declaration, or negative declaration shall examine those effects.

(4) If the lead agency makes one of the following determinations, the cumulative effects of a project are adequately addressed for purposes of paragraph (1):

(A) The cumulative effect has been mitigated or avoided as a result of the prior environmental impact report and findings adopted pursuant to paragraph (1) of subdivision (a) of Section 21081 as a result of the prior environmental impact report.

(B) The cumulative effect has been examined at a sufficient level of detail in the prior environmental impact report to enable the effect to be mitigated or avoided by site-specific revisions, the imposition of conditions, or by other means in connection with the approval of the later project.

(f) If tiering is used pursuant to this section, an environmental impact report prepared for a later project shall refer to the prior environmental impact report and state where a copy of the prior environmental impact report may be examined.

(g) This section shall remain in effect only until January 1, 2016, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2016, deletes or extends that date.

SEC. 4. Section 21094 is added to the Public Resources Code, to read:

21094. (a) Where a prior environmental impact report has been prepared and certified for a program, plan, policy, or ordinance, the lead agency for a later project that meets the requirements of this section shall examine significant effects of the later project upon the environment by using a tiered environmental impact report, except that the report on the later project is not required to examine those effects that the lead agency determines were either of the following:

(1) Mitigated or avoided pursuant to paragraph (1) of subdivision (a) of Section 21081 as a result of the prior environmental impact report.

(2) Examined at a sufficient level of detail in the prior environmental impact report to enable those effects to be mitigated or avoided by site-specific revisions, the imposition of conditions, or by other means in connection with the approval of the later project.

(b) This section applies only to a later project that the lead agency determines is all of the following:

(1) Consistent with the program, plan, policy, or ordinance for which an environmental impact report has been prepared and certified.

(2) Consistent with applicable local land use plans and zoning of the city, county, or city and county in which the later project would be located.

(3) Not subject to Section 21166.

(c) For purposes of compliance with this section, an initial study shall be prepared to assist the lead agency in making the determinations required by this section. The initial study shall analyze whether the later project may cause significant effects on the environment that were not examined in the prior environmental impact report.

(d) All public agencies that propose to carry out or approve the later project may utilize the prior environmental impact report and the environmental impact report on the later project to fulfill the requirements of Section 21081.

(e) When tiering is used pursuant to this section, an environmental impact report prepared for a later project shall refer to the prior environmental impact report and state where a copy of the prior environmental impact report may be examined.

(f) This section shall become operative on January 1, 2016.

SEC. 5. Section 21167.4 of the Public Resources Code is amended to read:

21167.4. (a) In any action or proceeding alleging noncompliance with this division, the petitioner shall request a hearing within 90 days from the date of filing the petition or shall be subject to dismissal on the court's own motion or on the motion of any party interested in the action or proceeding.

(b) The petitioner shall serve a notice of the request for a hearing on all parties at the time that the petitioner files the request for a hearing.

(c) Upon the filing of a request by the petitioner for a hearing and upon application by any party, the court shall establish a briefing schedule and a hearing date. In the absence of good cause, briefing shall be completed within 90 days from the date that the request for a hearing is filed, and the hearing, to the extent feasible, shall be held within 30 days thereafter. Good cause may include, but shall not be limited to, the conduct of discovery, determination of the completeness of the record of proceedings, the complexity of the issues, and the length of the record of proceedings and the timeliness of its production. The parties may stipulate to a briefing schedule or hearing date that differs from the schedule set forth in this subdivision if the stipulation is approved by the court.

(d) In an action or proceeding alleging noncompliance with this division, the Attorney General may file a motion with the court seeking an expedited schedule for resolution of the case upon the grounds that it would be in the public interest to do so. This subdivision does not affect the rights of any party under existing law to seek an expedited schedule for resolution of the case.

(e) This section shall remain in effect only until January 1, 2016, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2016, deletes or extends that date.

SEC. 6. Section 21167.4 is added to the Public Resources Code, to read:

21167.4. (a) In any action or proceeding alleging noncompliance with this division, the petitioner shall request a hearing within 90 days from the date of filing the petition or shall be subject to dismissal on the court's own motion or on the motion of any party interested in the action or proceeding.

(b) The petitioner shall serve a notice of the request for a hearing on all parties at the time that the petitioner files the request for a hearing.

(c) Upon the filing of a request by the petitioner for a hearing and upon application by any party, the court shall establish a briefing schedule and a hearing date. In the absence of good cause, briefing shall be completed within 90 days from the date that the request for a hearing is filed, and the hearing, to the extent feasible, shall be held within 30 days thereafter. Good cause may include, but shall not be limited to, the conduct of discovery, determination of the completeness of the record of proceedings, the complexity of the issues, and the length of the record of proceedings and the timeliness of its production. The parties may stipulate to a briefing schedule or hearing date that differs from the schedule set forth in this subdivision if the stipulation is approved by the court.

(d) This section shall become operative on January 1, 2016.

SEC. 7. Section 21167.8 of the Public Resources Code is amended to read:

21167.8. (a) Not later than 20 days from the date of service upon a public agency of a petition or complaint brought pursuant to Section 21167, the public agency shall file with the court a notice setting forth the time and place at which all parties shall meet and attempt to settle the litigation. The meeting shall be scheduled and held not later than 45 days from the date of service of the petition or complaint upon the public agency. The notice of

the settlement meeting shall be served by mail upon the counsel for each party. If the public agency does not know the identity of counsel for a party, the notice shall be served by mail upon the party for whom counsel is not known.

(b) At the time and place specified in the notice filed with the court, the parties shall meet and confer regarding anticipated issues to be raised in the litigation and shall attempt in good faith to settle the litigation and the dispute that forms the basis of the litigation. The settlement meeting discussions shall be comprehensive in nature and shall focus on the legal issues raised by the parties concerning the project that is the subject of the litigation.

(c) The settlement meeting may be continued from time to time without postponing or otherwise delaying other applicable time limits in the litigation. The settlement meeting, or a mediation proceeding that is conducted pursuant to Chapter 9.3 (commencing with Section 66030) of Division 1 of Title 7 of the Government Code, is intended to be conducted concurrently with any judicial proceedings.

(d) If the litigation is not settled, the court, in its discretion, may, or at the request of a party, shall, schedule a further settlement conference before a judge of the superior court. If the petition or complaint is later heard on its merits, the judge hearing the matter shall not be the same judge conducting the settlement conference, except in counties that have only one judge of the superior court.

(e) The failure of a party, who was notified pursuant to subdivision (a), to participate in the litigation settlement process, without good cause, may result in an imposition of sanctions by the court.

(f) Not later than 30 days from the date that notice of certification of the record of proceedings was filed and served in accordance with Section 21167.6, the petitioner or plaintiff shall file and serve on all other parties a statement of issues that the petitioner or plaintiff intends to raise in a brief or at a hearing or trial. Not later than 10 days from the date on which the respondent or real party in interest has been served with the statement of issues from the petitioner or plaintiff, each respondent and real party in interest shall file and serve on all other parties a statement of issues which that party intends to raise in a brief or at a hearing or trial.

(g) This section shall remain in effect only until January 1, 2016, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2016, deletes or extends that date.

SEC. 8. Section 21167.8 is added to the Public Resources Code, to read:

21167.8. (a) Not later than 20 days from the date of service upon a public agency of a petition or complaint brought pursuant to Section 21167, the public agency shall file with the court a notice setting forth the time and place at which all parties shall meet and attempt to settle the litigation. The meeting shall be scheduled and held not later than 45 days from the date of service of the petition or complaint upon the public agency. The notice of the settlement meeting shall be served by mail upon the counsel for each party. If the public agency does not know the identity of counsel for any

party, the notice shall be served by mail upon the party for whom counsel is not known.

(b) At the time and place specified in the notice filed with the court, the parties shall meet and confer regarding anticipated issues to be raised in the litigation and shall attempt in good faith to settle the litigation and the dispute which forms the basis of the litigation. The settlement meeting discussions shall be comprehensive in nature and shall focus on the legal issues raised by the parties concerning the project that is the subject of the litigation.

(c) The settlement meeting may be continued from time to time without postponing or otherwise delaying other applicable time limits in the litigation. The settlement meeting is intended to be conducted concurrently with any judicial proceedings.

(d) If the litigation is not settled, the court, in its discretion, may, or at the request of any party, shall, schedule a further settlement conference before a judge of the superior court. If the petition or complaint is later heard on its merits, the judge hearing the matter shall not be the same judge conducting the settlement conference, except in counties that have only one judge of the superior court.

(e) The failure of any party, who was notified pursuant to subdivision (a), to participate in the litigation settlement process, without good cause, may result in an imposition of sanctions by the court.

(f) Not later than 30 days from the date that notice of certification of the record of proceedings was filed and served in accordance with Section 21167.6, the petitioner or plaintiff shall file and serve on all other parties a statement of issues which the petitioner or plaintiff intends to raise in any brief or at any hearing or trial. Not later than 10 days from the date on which the respondent or real party in interest has been served with the statement of issues from the petitioner or plaintiff, each respondent and real party in interest shall file and serve on all other parties a statement of issues which that party intends to raise in any brief or at any hearing or trial.

(g) This section shall become operative on January 1, 2016.

SEC. 9. Section 21167.10 is added to the Public Resources Code, to read:

21167.10. (a) Within five business days of the filing of a notice required by subdivision (a) or (b) of Section 21108, or subdivision (a) or (b) of Section 21152 by the lead agency, a person wishing to bring an action or a proceeding pursuant to Section 21167, 21168, or 21168.5 may file with the lead agency and the real party in interest a notice requesting mediation.

(b) Within five business days of the receipt of the notice requesting mediation, a lead agency may respond to the person by accepting the request for mediation and proceed with mediation.

(c) The request for mediation is deemed denied if the lead agency fails to respond within five business days of receiving the request for mediation.

(d) The limitation periods provided pursuant to this chapter shall be tolled until the completion of the mediation conducted pursuant to this section.

(e) This section shall apply to notices that are filed on or after July 1, 2011.

(f) This section does not apply in cases where the lead agency has not filed the notice required by subdivision (a) or (b) of Section 21108, or subdivision (a) or (b) of Section 21152.

(g) (1) Except as set forth in paragraph (2), this section shall remain in effect only until January 1, 2016, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2016, deletes or extends that date.

(2) Notwithstanding paragraph (1), the tolling of the limitation periods provided pursuant to subdivision (d) shall apply if a mediation conducted pursuant to this section is completed on or after January 1, 2016.

SEC. 10. Section 21169.11 is added to the Public Resources Code, to read:

21169.11. (a) At any time after a petition has been filed pursuant to this division, but at least 30 days before the hearing on the merits, a party may file a motion requesting the court to impose a sanction for a frivolous claim made in the course of an action brought pursuant to this division.

(b) If the court determines that a claim is frivolous, the court may impose an appropriate sanction, in an amount up to ten thousand dollars (\$10,000), upon the attorneys, law firms, or parties responsible for the violation.

(c) For purposes of this section, “frivolous” means totally and completely without merit.

(d) (1) This section shall remain in effect only until January 1, 2016, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2016, deletes or extends that date.

(2) Notwithstanding paragraph (1), the sanction provided pursuant to this section shall apply to an action filed on or before December 31, 2015.

SEC. 11. Section 21177 of the Public Resources Code is amended to read:

21177. (a) An action or proceeding shall not be brought pursuant to Section 21167 unless the alleged grounds for noncompliance with this division were presented to the public agency orally or in writing by any person during the public comment period provided by this division or prior to the close of the public hearing on the project before the issuance of the notice of determination.

(b) A person shall not maintain an action or proceeding unless that person objected to the approval of the project orally or in writing during the public comment period provided by this division or prior to the close of the public hearing on the project before the filing of the notice of determination pursuant to Sections 21108 and 21152.

(c) This section does not preclude any organization formed after the approval of a project from maintaining an action pursuant to Section 21167 if a member of that organization has complied with subdivisions (a) and (b).

(b). The grounds for noncompliance may have been presented directly by a member or by a member agreeing with or supporting the comments of another person.

(d) This section does not apply to the Attorney General.

(e) This section does not apply to any alleged grounds for noncompliance with this division for which there was no public hearing or other opportunity for members of the public to raise those objections orally or in writing prior to the approval of the project, or if the public agency failed to give the notice required by law.

(f) This section shall remain in effect only until January 1, 2016, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2016, deletes or extends that date.

SEC. 12. Section 21177 is added to the Public Resources Code, to read:

21177. (a) An action or proceeding shall not be brought pursuant to Section 21167 unless the alleged grounds for noncompliance with this division were presented to the public agency orally or in writing by any person during the public comment period provided by this division or prior to the close of the public hearing on the project before the issuance of the notice of determination.

(b) A person shall not maintain an action or proceeding unless that person objected to the approval of the project orally or in writing during the public comment period provided by this division or prior to the close of the public hearing on the project before the filing of notice of determination pursuant to Sections 21108 and 21152.

(c) This section does not preclude any organization formed after the approval of a project from maintaining an action pursuant to Section 21167 if a member of that organization has complied with subdivision (b).

(d) This section does not apply to the Attorney General.

(e) This section does not apply to any alleged grounds for noncompliance with this division for which there was no public hearing or other opportunity for members of the public to raise those objections orally or in writing prior to the approval of the project, or if the public agency failed to give the notice required by law.

(f) This section shall become operative on January 1, 2016.

SEC. 13. Section 3.5 of this bill incorporates amendments to Section 21094 of the Public Resources Code proposed by both this bill and AB 231. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2011, (2) each bill amends Section 21094 of the Public Resources Code, and (3) this bill is enacted after AB 231, in which case Section 3 of this bill shall not become operative.

SEC. 14. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to protect the environment and public health at the earliest possible time, it is necessary for this act to take effect immediately.