

AMENDED IN ASSEMBLY MARCH 29, 2012

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

**ASSEMBLY BILL**

**No. 1444**

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**Introduced by Assembly Member Feuer**

January 4, 2012

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~~An act relating to environmental quality.~~ *An act to amend Section 21167.6 of, and to add Sections 21167.6.2 and 21167.6.3 to, the Public Resources Code, relating to environmental quality.*

LEGISLATIVE COUNSEL'S DIGEST

AB 1444, as amended, Feuer. Environmental quality: ~~expedited judicial review: public rail transit projects: record of proceedings.~~

*(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 (EIR) 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 also requires a lead agency to prepare a mitigated negative declaration for a project that may have a significant effect on the environment if revisions in the project would avoid or mitigate that effect and there is no substantial evidence that the project, as revised, would have a significant effect on the environment. CEQA establishes a procedure for the preparation and certification of the record of proceedings upon the filing of an action or proceeding challenging a lead agency's action on the grounds of noncompliance with CEQA.*

*This bill would require the lead agency, at the request of a project applicant and the agreement of the project applicant to bear the costs incurred by the lead agency, to, among other things, prepare a record*

*of proceedings concurrently with the preparation, and adoption or certification, of an environmental document. Because the bill would require a lead agency to prepare the record of proceedings as provided, this bill would impose a state-mandated local program. In an action or proceeding filed challenging the lead agency's action pursuant to CEQA, the bill would require the court to schedule a hearing within 30 days of the filing of the statement of issues regarding the record of proceedings.*

*(2) 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.*

~~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 (EIR) 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 also requires a lead agency to prepare a mitigated negative declaration for a project that may have a significant effect on the environment if revisions in the project would avoid or mitigate that effect and there is no substantial evidence that the project, as revised, would have a significant effect on the environment. The Jobs and Economic Improvement Through Environmental Leadership Act of 2011 amended CEQA to establish, until January 1, 2015, an expedited judicial review process and specifies procedures for the preparation and certification of the administrative record for an EIR of a project meeting specified requirements that has been certified by the Governor as an environmental leadership development project.~~

~~This bill would state the intent of the Legislature to enact legislation to provide the benefits provided by the Jobs and Economic Improvement Through Environmental Leadership Act of 2011 for new public rail transit infrastructure projects.~~

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~-yes.  
State-mandated local program: ~~no~~-yes.

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

1     **SECTION 1.** *Section 21167.6 of the Public Resources Code is*  
2 *amended to read:*

3     21167.6. Notwithstanding any other ~~provision~~ of law, in all  
4 actions or proceedings brought pursuant to Section 21167, except  
5 *as provided for in Section 21167.6.2* or those involving the Public  
6 Utilities Commission, all of the following shall apply:

7     (a) At the time that the action or proceeding is filed, the plaintiff  
8 or petitioner shall file a request that the respondent public agency  
9 prepare the record of proceedings relating to the subject of the  
10 action or proceeding. The request, together with the complaint or  
11 petition, shall be served personally upon the public agency not  
12 later than 10 business days from the date that the action or  
13 proceeding was filed.

14     (b) (1) The public agency shall prepare and certify the record  
15 of proceedings not later than 60 days from the date that the request  
16 specified in subdivision (a) was served upon the public agency.  
17 Upon certification, the public agency shall lodge a copy of the  
18 record of proceedings with the court and shall serve on the parties  
19 notice that the record of proceedings has been certified and lodged  
20 with the court. The parties shall pay any reasonable costs or fees  
21 imposed for the preparation of the record of proceedings in  
22 conformance with any law or rule of court.

23     (2) The plaintiff or petitioner may elect to prepare the record  
24 of proceedings or the parties may agree to an alternative method  
25 of preparation of the record of proceedings, subject to certification  
26 of its accuracy by the public agency, within the time limit specified  
27 in this subdivision.

28     (c) The time limit established by subdivision (b) may be  
29 extended only upon the stipulation of all parties who have been  
30 properly served in the action or proceeding or upon order of the  
31 court. Extensions shall be liberally granted by the court when the  
32 size of the record of proceedings renders infeasible compliance  
33 with that time limit. There is no limit on the number of extensions  
34 that may be granted by the court, but no single extension shall  
35 exceed 60 days unless the court determines that a longer extension  
36 is in the public interest.

37     (d) If the public agency fails to prepare and certify the record  
38 within the time limit established in paragraph (1) of subdivision

1 (b), or any continuances of that time limit, the plaintiff or petitioner  
2 may move for sanctions, and the court may, upon that motion,  
3 grant appropriate sanctions.

4 (e) The record of proceedings shall include, but is not limited  
5 to, all of the following items:

6 (1) All project application materials.

7 (2) All staff reports and related documents prepared by the  
8 respondent public agency with respect to its compliance with the  
9 substantive and procedural requirements of this division and with  
10 respect to the action on the project.

11 (3) All staff reports and related documents prepared by the  
12 respondent public agency and written testimony or documents  
13 submitted by any person relevant to any findings or statement of  
14 overriding considerations adopted by the respondent agency  
15 pursuant to this division.

16 (4) Any transcript or minutes of the proceedings at which the  
17 decisionmaking body of the respondent public agency heard  
18 testimony on, or considered any environmental document on, the  
19 project, and any transcript or minutes of proceedings before any  
20 advisory body to the respondent public agency that were presented  
21 to the decisionmaking body prior to action on the environmental  
22 documents or on the project.

23 (5) All notices issued by the respondent public agency to comply  
24 with this division or with any other law governing the processing  
25 and approval of the project.

26 (6) All written comments received in response to, or in  
27 connection with, environmental documents prepared for the project,  
28 including responses to the notice of preparation.

29 (7) All written evidence or correspondence submitted to, or  
30 transferred from, the respondent public agency with respect to  
31 compliance with this division or with respect to the project.

32 (8) Any proposed decisions or findings submitted to the  
33 decisionmaking body of the respondent public agency by its staff,  
34 or the project proponent, project opponents, or other persons.

35 (9) The documentation of the final public agency decision,  
36 including the final environmental impact report, mitigated negative  
37 declaration, or negative declaration, and all documents, in addition  
38 to those referenced in paragraph (3), cited or relied on in the  
39 findings or in a statement of overriding considerations adopted  
40 pursuant to this division.

1 (10) Any other written materials relevant to the respondent  
2 public agency's compliance with this division or to its decision on  
3 the merits of the project, including the initial study, any drafts of  
4 any environmental document, or portions thereof, that have been  
5 released for public review, and copies of studies or other documents  
6 relied upon in any environmental document prepared for the project  
7 and either made available to the public during the public review  
8 period or included in the respondent public agency's files on the  
9 project, and all internal agency communications, including staff  
10 notes and memoranda related to the project or to compliance with  
11 this division.

12 (11) The full written record before any inferior administrative  
13 decisionmaking body whose decision was appealed to a superior  
14 administrative decisionmaking body prior to the filing of litigation.

15 (f) In preparing the record of proceedings, the party preparing  
16 the record shall strive to do so at reasonable cost in light of the  
17 scope of the record.

18 (g) The clerk of the superior court shall prepare and certify the  
19 clerk's transcript on appeal not later than 60 days from the date  
20 that the notice designating the papers or records to be included in  
21 the clerk's transcript was filed with the superior court, if the party  
22 or parties pay any costs or fees for the preparation of the clerk's  
23 transcript imposed in conformance with any law or rules of court.  
24 Nothing in this subdivision precludes an election to proceed by  
25 appendix, as provided in Rule 8.124 of the California Rules of  
26 Court.

27 (h) Extensions of the period for the filing of any brief on appeal  
28 may be allowed only by stipulation of the parties or by order of  
29 the court for good cause shown. Extensions for the filing of a brief  
30 on appeal shall be limited to one 30-day extension for the  
31 preparation of an opening brief, and one 30-day extension for the  
32 preparation of a responding brief, except that the court may grant  
33 a longer extension or additional extensions if it determines that  
34 there is a substantial likelihood of settlement that would avoid the  
35 necessity of completing the appeal.

36 (i) At the completion of the filing of briefs on appeal, the  
37 appellant shall notify the court of the completion of the filing of  
38 briefs, whereupon the clerk of the reviewing court shall set the  
39 appeal for hearing on the first available calendar date.

1 SEC. 2. Section 21167.6.2 is added to the Public Resources  
2 Code, to read:

3 21167.6.2. (a) Notwithstanding Section 21167.6, at the request  
4 of the project applicant and the agreement of the project applicant  
5 to bear the costs incurred pursuant to this section prior to the  
6 release of a draft environmental document, the lead agency shall  
7 prepare the record of proceedings in the following manner:

8 (1) The lead agency for the project shall prepare the record of  
9 proceedings pursuant to this division concurrently with the  
10 administrative process.

11 (2) All documents and other materials placed in the record of  
12 proceedings shall be posted on, and be downloadable from, an  
13 Internet Web site maintained by the lead agency commencing with  
14 the date of the release of the draft environmental document.

15 (3) The lead agency shall make available to the public in a  
16 readily accessible electronic format the draft environmental  
17 document and all other documents submitted to, or relied on by,  
18 the lead agency in the preparation of the draft environmental  
19 document.

20 (4) A document prepared by the lead agency or submitted by  
21 the project applicant after the date of the release of the draft  
22 environmental document that is a part of the record of the  
23 proceedings shall be made available to the public in a readily  
24 accessible electronic format within five business days after the  
25 document is released or received by the lead agency.

26 (5) The lead agency shall encourage written comments on the  
27 project to be submitted in a readily accessible electronic format,  
28 and shall make any comment available to the public in a readily  
29 accessible electronic format within five days of its receipt.

30 (6) Within seven business days after the receipt of any comment  
31 that is not in an electronic format, the lead agency shall convert  
32 that comment into a readily accessible electronic format and make  
33 it available to the public in that format.

34 (7) The lead agency shall maintain the contents of the record  
35 of proceedings in chronological order based on the date received  
36 by the lead agency and shall electronically paginate the record of  
37 proceedings.

38 (b) The content of the record of proceedings shall be as specified  
39 in subdivision (e) of Section 21167.6.

1 (c) *The costs of preparing the record of proceedings pursuant*  
2 *to this section are not recoverable costs pursuant to Section 1033*  
3 *of the Code of Civil Procedures.*

4 (d) (1) *If an action or proceeding is brought pursuant to this*  
5 *division seeking review of the decision of the lead agency, the lead*  
6 *agency shall prepare and certify the record of proceedings and*  
7 *lodge the record of proceedings on a digital video disc or*  
8 *comparable electronic format with the court not later than five*  
9 *days from the date that the complaint or petition was served upon*  
10 *the lead agency.*

11 (2) *Concurrently with the certification and lodging of the record*  
12 *of proceedings with a court, the lead agency shall serve on the*  
13 *parties to the action or proceeding a notice that the record of*  
14 *proceedings has been certified and lodged with the court.*

15 (3) *The record of proceedings shall be in a readily accessible*  
16 *format.*

17 (4) *Upon a showing of good cause, the court may extend the*  
18 *time for the certification and lodging of the record of proceedings.*

19 (e) *Any dispute regarding the record of proceedings shall be*  
20 *resolved by the court in an action or proceeding brought pursuant*  
21 *to Section 21167.*

22 SEC. 3. *Section 21167.6.3 is added to the Public Resources*  
23 *Code, to read:*

24 21167.6.3. (a) *Within 30 days of the filing of the statement of*  
25 *issues by the respondents and real party in interest, the court shall*  
26 *schedule a hearing at which the parties shall do both of the*  
27 *following:*

28 (1) *Identify any objections to the record of proceedings.*

29 (2) *Agree upon a physical copy of those portions of the record*  
30 *of proceedings that the parties intend to refer to in their briefs.*

31 (b) *This section does not preclude a party from referring to*  
32 *other portions of the record of proceedings if an appendix is*  
33 *prepared and lodged containing copies of all relevant portions of*  
34 *the record.*

35 SEC. 4. *No reimbursement is required by this act pursuant to*  
36 *Section 6 of Article XIII B of the California Constitution because*  
37 *a local agency or school district has the authority to levy service*  
38 *charges, fees, or assessments sufficient to pay for the program or*  
39 *level of service mandated by this act, within the meaning of Section*  
40 *17556 of the Government Code.*

1 SECTION 1. ~~The Legislature finds and declares all of the~~  
2 ~~following:~~

3 ~~(a) Since 2007, the nation and the state have plunged into a~~  
4 ~~recession, and thousands of jobs have been lost. The unemployment~~  
5 ~~rate in California exceeds the national average at 11.8 percent, and~~  
6 ~~in certain regions of the state the rate exceeds 13 percent. The~~  
7 ~~construction industry in California has been particularly hard hit.~~  
8 ~~Some estimates put the percentage of construction workers who~~  
9 ~~are out of work as high as 40 percent. Still, California’s population~~  
10 ~~continues to grow and is projected to increase by 4.3 million over~~  
11 ~~the next decade. California needs to create an estimated 1.8 million~~  
12 ~~jobs to keep up with its population growth.~~

13 ~~(b) One of the results of the population growth in California~~  
14 ~~will be increased traffic congestion on the state’s streets and~~  
15 ~~highways and related adverse economic, environmental, and health~~  
16 ~~impacts.~~

17 ~~(c) To address both the need for jobs and the need to efficiently~~  
18 ~~move people and goods, it is imperative to plan for, and expedite~~  
19 ~~the construction of, new environmentally sound public rail transit~~  
20 ~~options as alternatives to private vehicle trips, as well as other~~  
21 ~~large infrastructure projects.~~

22 ~~(d) The California Environmental Quality Act (Division 13~~  
23 ~~(commencing with Section 21000) of the Public Resources Code)~~  
24 ~~requires that the environmental impacts of development projects~~  
25 ~~be identified and mitigated.~~

26 ~~(e) The act also guarantees the public an opportunity to review~~  
27 ~~and comment on the environmental impacts of a project and to~~  
28 ~~participate meaningfully in the development of mitigation measures~~  
29 ~~for potentially significant environmental impacts.~~

30 SEC. 2. ~~It is the intent of the Legislature to enact legislation~~  
31 ~~to provide the unique and unprecedented streamlining benefits~~  
32 ~~provided by the Jobs and Economic Improvement Through~~  
33 ~~Environmental Leadership Act of 2011 (Chapter 6.5 (commencing~~  
34 ~~with Section 21178) of Division 13 of the Public Resources Code)~~  
35 ~~for new public rail transit infrastructure projects that provide the~~  
36 ~~benefits specified in Section 1 of this act to put people to work as~~  
37 ~~soon as possible.~~

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