

AMENDED IN SENATE AUGUST 22, 2012

AMENDED IN SENATE AUGUST 6, 2012

AMENDED IN ASSEMBLY APRIL 10, 2012

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

**ASSEMBLY BILL**

**No. 1570**

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**Introduced by Assembly Member Perea**  
*(Principal coauthor: Senator Simitian)*

February 1, 2012

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An act to amend, repeal, and add Section 21167.6 of, and to amend Sections 21178, 21180, 21181, 21183, 21185, 21187, and 21189.2 of, and to add and repeal Section ~~21167.6.2~~ 21167.6.3 of, the Public Resources Code, relating to environmental quality.

LEGISLATIVE COUNSEL'S DIGEST

AB 1570, as amended, Perea. Environmental quality: California Environmental Quality Act: ~~record of proceedings.~~ *Act.*

(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~~ *specify*, until January 1, 2016, *the types of projects for which an applicant can request* the lead agency, ~~at the request of a project applicant~~, to, among other things, prepare a record of proceedings concurrently with the preparation of negative declarations, mitigated negative declarations, EIRs, or other environmental documents for specified projects. 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.

(2) *This bill would provide that the above provision would not become operative unless SB 984 of the 2011–12 Regular Session of the Legislature is enacted on or before January 1, 2013.*

(3) *The Jobs and Economic Improvement Through Environmental Leadership Act of 2011 (act) establishes alternative procedures for creating the administrative record and specified judicial review procedures for the judicial review of the EIR and approvals granted for a leadership project related to the development of a residential, retail, commercial, sports, cultural, entertainment, or recreational use project, or clean renewable energy or clean energy manufacturing project. The act authorizes the Governor, upon application, to certify a leadership project for streamlining pursuant to the act if certain conditions are met.*

*The act requires that the project result in a minimum investment of \$100,000,000 in California upon completion of construction and not result in any net additional emission of greenhouse gases, including greenhouse gas emissions from employee transportation.*

*This bill would require instead that a project result in a minimum investment of \$100,000,000 spent on planning, design, and construction of the project. The bill, in order to maximize public health, environmental, and employment benefits, would require a lead agency to place the highest priority on feasible measures that will reduce greenhouse gas emissions on the project site and in the neighboring communities of the project site.*

(4) *The act requires a party seeking judicial review of the EIR to bring concurrently other claims alleging a public agency has granted land use approvals or a leadership project in violation of relevant laws.*

*This bill would repeal this provision.*

(5) *The act requires the Judicial Council to report to the Legislature on or before January 1, 2015, on the effects of the act, including specific information on benefits, costs, and detriments.*

*The bill would require instead that the Judicial Council report to the Legislature on the effects of the act on the administration of justice. The bill also would make technical and clarifying changes.*

*Because a lead agency would be required to perform additional actions, this bill would impose a state-mandated local program.*

(2)

(6) *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 21167.6.3 is added to the Public*  
2 *Resources Code, to read:*

3 *21167.6.3. (a) Section 21167.6.2 applies to the record of*  
4 *proceedings for the preparation of a negative declaration,*  
5 *mitigated negative declaration, environmental impact report, or*  
6 *other environmental document prepared for any of the following:*  
7 *(1) A project determined to be of statewide, regional, or*  
8 *areawide environmental significance pursuant to subdivision (d)*  
9 *of Section 21083.*

10 *(2) A project subject to Section 21094.5 or Chapter 4.2*  
11 *(commencing with Section 21155) of Division 13.*

12 *(3) (A) A project, other than one described in paragraphs (1)*  
13 *and (2), for which the lead agency consents to prepare the record*  
14 *of proceeding pursuant to this paragraph.*

15 *(B) The lead agency shall respond to a request by the project*  
16 *applicant within 10 business days from the date that the request*  
17 *pursuant to subdivision (a) of Section 21167.6.2 is received by the*  
18 *lead agency.*

19 *(C) A project applicant and the lead agency may mutually agree,*  
20 *in writing, to extend the time period for the lead agency to respond*  
21 *pursuant to subparagraph (B), but they shall not extend that period*

1 *beyond the commencement of the public review period for the*  
2 *proposed negative declaration, mitigated negative declaration, or*  
3 *draft environmental impact report.*

4 *(D) The request to prepare a record of proceedings pursuant*  
5 *to this paragraph shall be deemed denied if the lead agency fails*  
6 *to respond within 10 business days of receiving the request or*  
7 *within the time period agreed upon pursuant to subparagraph (C),*  
8 *whichever ends later.*

9 *(b) The written request of the applicant submitted pursuant to*  
10 *subdivision (a) of Section 21167.6.2 shall include an agreement*  
11 *to pay all of the lead agency's costs of preparing and certifying*  
12 *the record of proceedings pursuant to Section 21167.6.2 and*  
13 *complying with the requirements of this section and Section*  
14 *21167.6.2, in a manner specified by the lead agency.*

15 *(c) The costs of preparing the record of proceedings pursuant*  
16 *to Section 21167.6.2 and complying with the requirements of this*  
17 *section and Section 21167.6.2 are not recoverable costs pursuant*  
18 *to Section 1033 of the Code of Civil Procedure.*

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

22 *SEC. 2. Section 21178 of the Public Resources Code is*  
23 *amended to read:*

24 21178. The Legislature finds and declares all of the following:

25 (a) The overall unemployment rate in California is 12 percent,  
26 and in certain regions of the state that rate exceeds 13 percent.

27 (b) The California Environmental Quality Act (Division 13  
28 (commencing with Section 21000) of the Public Resources Code)  
29 21100)) requires that the environmental impacts of development  
30 projects be identified and mitigated.

31 (c) The act also guarantees the public an opportunity to review  
32 and comment on the environmental impacts of a project and to  
33 participate meaningfully in the development of mitigation measures  
34 for potentially significant environmental impacts.

35 (d) There are large *public and private* projects under  
36 consideration in various regions of the state that would replace old  
37 and outmoded facilities with new job-creating facilities to meet  
38 those regions' needs while also establishing new, cutting-edge  
39 environmental benefits to those regions.

1 (e) These projects are *publicly financed*, privately financed, or  
2 financed from revenues generated from the projects themselves  
3 ~~and that~~ do not require taxpayer financing.

4 (f) These projects further will generate thousands of full-time  
5 jobs during construction and thousands of additional permanent  
6 jobs once they are constructed and operating.

7 (g) These projects also present an unprecedented opportunity  
8 to implement nation-leading innovative measures that will  
9 significantly reduce traffic, air-~~quality~~ *pollution*, and other  
10 significant environmental impacts, and fully mitigate the  
11 greenhouse gas emissions resulting from passenger vehicle trips  
12 attributed to the project.

13 (h) These pollution reductions will be the best in the nation  
14 compared to other comparable projects in the United States.

15 (i) The purpose of this act is to provide unique and  
16 unprecedented streamlining benefits under the California  
17 Environmental Quality Act for projects that provide the benefits  
18 described above for a limited period of time to put people to work  
19 as soon as possible.

20 *SEC. 3. Section 21180 of the Public Resources Code is*  
21 *amended to read:*

22 21180. For the purposes of this chapter, the following terms  
23 shall have the following meanings:

24 (a) “Applicant” means a public or private entity or its affiliates,  
25 or a person or entity that undertakes a public works-~~project, that~~  
26 *project or* proposes a project, and its successors, heirs, and  
27 assignees.

28 (b) (1) “Environmental leadership development project,”  
29 “leadership project,” or “project” means a project as described in  
30 Section 21065 that is one the following:

31 (1)

32 (A) A residential, retail, commercial, sports, cultural,  
33 entertainment, or recreational use project that is *designed to be*  
34 certified as LEED silver or better by the United States Green  
35 Building Council and, ~~where applicable~~, that achieves *and*  
36 *maintains* a 10-percent greater standard for transportation efficiency  
37 than for comparable projects. These projects ~~must~~ *shall* be located  
38 on an infill site. For a project that is within a metropolitan planning  
39 organization for which a sustainable communities strategy or  
40 alternative planning strategy is in effect, the infill project shall be

1 consistent with the general use designation, density, building  
2 intensity, and applicable policies specified for the project area in  
3 either a sustainable communities strategy or an alternative planning  
4 strategy, for which the State Air Resources Board, pursuant to  
5 subparagraph (H) of paragraph (2) of subdivision (b) of Section  
6 65080 of the Government Code, has accepted a metropolitan  
7 planning organization’s determination that the sustainable  
8 communities strategy or the alternative planning strategy would,  
9 if implemented, achieve the greenhouse gas emission reduction  
10 targets.

11 (2)

12 (B) A clean renewable energy project that generates electricity  
13 exclusively through wind or solar, but not including waste  
14 incineration or conversion.

15 (3)

16 (C) A clean energy manufacturing project that manufactures  
17 products, equipment, or components used for renewable energy  
18 generation, energy efficiency, or for the production of clean  
19 alternative fuel vehicles.

20 (2) *This subdivision does not affect any requirement for a project*  
21 *to comply with the California Green Building Standards Code*  
22 *(Part 11 of Title 24 of the California Code of Regulations), or any*  
23 *other applicable law or regulation.*

24 (c) “Transportation efficiency” means the number of ~~vehicle~~  
25 *private automobile* trips by employees, visitors, or customers of  
26 the residential, retail, commercial, sports, cultural, entertainment,  
27 or recreational use project divided by the total number of  
28 employees, visitors, and customers.

29 *SEC. 4. Section 21181 of the Public Resources Code is*  
30 *amended to read:*

31 21181. This chapter does not apply to a project if the applicant  
32 fails to notify a lead agency prior to the release of the draft  
33 environmental impact report for public comment that the applicant  
34 is electing to proceed pursuant to this chapter. The lead agency  
35 shall notify the Secretary of the Natural Resources Agency if the  
36 applicant ~~fails to provide~~ *provides* notification pursuant to this  
37 ~~section~~ *chapter*.

38 *SEC. 5. Section 21183 of the Public Resources Code is*  
39 *amended to read:*

1 21183. The Governor ~~may~~ *shall not* certify a leadership project  
2 for streamlining pursuant to this chapter ~~if~~ *unless* all the following  
3 conditions are met:

4 (a) The project will result in a minimum investment of one  
5 hundred million dollars (\$100,000,000) ~~in California upon~~  
6 ~~completion of construction~~ *spent on planning, design, and*  
7 *construction of the project.*

8 (b) The project creates high-wage, highly skilled jobs that pay  
9 prevailing wages and living wages and provide construction jobs  
10 and permanent jobs for Californians, and helps reduce  
11 unemployment.

12 (c) The project does not result in any net additional emission  
13 of greenhouse gases, including greenhouse gas emissions from  
14 employee transportation, as determined by the State Air Resources  
15 Board pursuant to Division 25.5 (commencing with Section 38500)  
16 of the Health and Safety Code. *To maximize public health,*  
17 *environmental, and employment benefits, the lead agency shall*  
18 *place the highest priority on feasible measures that will reduce*  
19 *greenhouse gas emissions on the project site and in the neighboring*  
20 *communities of the project site. Offset credits shall be employed*  
21 *by the applicant only after feasible local emission reduction*  
22 *measures have been implemented. The applicant shall, to the extent*  
23 *feasible, place the highest priority on the purchase of offset credits*  
24 *that produce emission reductions within the boundaries of an*  
25 *applicable air pollution control district or air quality management*  
26 *district.*

27 (d) The project applicant has entered into a binding and  
28 enforceable agreement that all mitigation measures required  
29 pursuant to this division to certify the project under this chapter  
30 shall be conditions of approval of the project, and those conditions  
31 will be fully enforceable by the lead agency or another agency  
32 designated by the lead agency. In the case of environmental  
33 mitigation measures, the applicant agrees, as an ongoing obligation,  
34 that those measures will be monitored and enforced by the lead  
35 agency for the life of the obligation.

36 (e) The project applicant agrees to pay the costs of the Court of  
37 Appeal in hearing and deciding any case, including payment of  
38 the costs for ~~the appointment of~~ a special master if deemed  
39 appropriate by the court, in a form and manner specified by the

1 Judicial Council, as provided in the Rules of Court adopted by the  
2 Judicial Council pursuant to subdivision ~~(f)~~ (b) of Section 21185.

3 (f) The project applicant agrees to pay the costs of preparing  
4 the administrative record for the project concurrent with review  
5 and consideration of the project pursuant to this division, in a form  
6 and manner specified by the lead agency for the project.

7 *SEC. 6. Section 21185 of the Public Resources Code is*  
8 *amended to read:*

9 21185. (a) Notwithstanding any other law, any action or  
10 proceeding alleging that a ~~public~~ *lead agency* ~~or~~ has approved or  
11 is undertaking a leadership project certified by the Governor in  
12 violation of this division shall be conducted in accordance with  
13 the following streamlining benefits:

14 (1) The action or proceeding shall be filed in the Court of Appeal  
15 with geographic jurisdiction over the project.

16 ~~(2) Any party bringing such a claim shall also file concurrently~~  
17 ~~any other claims alleging that a public agency has granted land~~  
18 ~~use approvals for the leadership project in violation of the law.~~  
19 ~~The Court of Appeal shall have original jurisdiction over all those~~  
20 ~~claims.~~

21 ~~(3)~~  
22 (2) The Court of Appeal shall issue its decision ~~in the case on~~  
23 ~~all petitions for writ of mandate filed pursuant to this subdivision~~  
24 within 175 days of the filing of the *last* petition.

25 ~~(4)~~  
26 (3) The court may appoint a master to assist the court in  
27 managing and processing the case.

28 ~~(5)~~  
29 (4) The court may ~~grant~~ *order* extensions of time only for good  
30 cause ~~shown~~ and in order to promote the interests of justice.

31 (b) On or before July 1, 2012, the Judicial Council shall adopt  
32 Rules of Court to implement this chapter.

33 *SEC. 7. Section 21187 of the Public Resources Code is*  
34 *amended to read:*

35 21187. The draft and final environmental impact report shall  
36 include a notice in no less than 12-point type stating the following:  
37

38 “THIS EIR IS SUBJECT TO CHAPTER 6.5 (COMMENCING  
39 WITH SECTION 21178) OF THE PUBLIC RESOURCES CODE,  
40 WHICH PROVIDES, AMONG OTHER THINGS, THAT ANY

1 JUDICIAL ACTION CHALLENGING THE CERTIFICATION  
 2 OF THE EIR OR THE APPROVAL OF THE PROJECT  
 3 DESCRIBED IN THE EIR IS SUBJECT TO THE PROCEDURES  
 4 SET FORTH IN ~~SECTION 21178.2 OF THE PUBLIC~~  
 5 ~~RESOURCES CODE CHAPTER 6.5~~ AND MUST BE FILED  
 6 WITH THE COURT OF APPEAL. A COPY OF CHAPTER 6.5  
 7 ~~OF THE PUBLIC RESOURCES CODE~~ IS INCLUDED IN THE  
 8 APPENDIX TO THIS EIR.”

9  
 10 *SEC. 8. Section 21189.2 of the Public Resources Code is*  
 11 *amended to read:*

12 21189.2. The Judicial Council shall report to the Legislature  
 13 on or before January 1, 2015, on the effects of this chapter, ~~which~~  
 14 ~~shall include, but not be limited to, a description of the benefits;~~  
 15 ~~costs, and detriments of the certification of leadership projects~~  
 16 ~~pursuant to this chapter on the administration of justice.~~

17 ~~SECTION 1. Section 21167.6 of the Public Resources Code~~  
 18 ~~is amended to read:~~

19 ~~21167.6. Notwithstanding any other law, in all actions or~~  
 20 ~~proceedings brought pursuant to Section 21167, except as provided~~  
 21 ~~for in Section 21167.6.2 or those involving the Public Utilities~~  
 22 ~~Commission, all of the following shall apply:~~

23 ~~(a) At the time that the action or proceeding is filed, the plaintiff~~  
 24 ~~or petitioner shall file a request that the respondent public agency~~  
 25 ~~prepare the record of proceedings relating to the subject of the~~  
 26 ~~action or proceeding. The request, together with the complaint or~~  
 27 ~~petition, shall be served personally upon the public agency not~~  
 28 ~~later than 10 business days from the date that the action or~~  
 29 ~~proceeding was filed.~~

30 ~~(b) (1) The public agency shall prepare and certify the record~~  
 31 ~~of proceedings not later than 60 days from the date that the request~~  
 32 ~~specified in subdivision (a) was served upon the public agency.~~  
 33 ~~Upon certification, the public agency shall lodge a copy of the~~  
 34 ~~record of proceedings with the court and shall serve on the parties~~  
 35 ~~notice that the record of proceedings has been certified and lodged~~  
 36 ~~with the court. The parties shall pay any reasonable costs or fees~~  
 37 ~~imposed for the preparation of the record of proceedings in~~  
 38 ~~conformance with any law or rule of court.~~

39 ~~(2) The plaintiff or petitioner may elect to prepare the record~~  
 40 ~~of proceedings or the parties may agree to an alternative method~~

1 of preparation of the record of proceedings, subject to certification  
2 of its accuracy by the public agency, within the time limit specified  
3 in this subdivision.

4 ~~(e) The time limit established by subdivision (b) may be~~  
5 ~~extended only upon the stipulation of all parties who have been~~  
6 ~~properly served in the action or proceeding or upon order of the~~  
7 ~~court. Extensions shall be liberally granted by the court when the~~  
8 ~~size of the record of proceedings renders infeasible compliance~~  
9 ~~with that time limit. There is no limit on the number of extensions~~  
10 ~~that may be granted by the court, but no single extension shall~~  
11 ~~exceed 60 days unless the court determines that a longer extension~~  
12 ~~is in the public interest.~~

13 ~~(d) If the public agency fails to prepare and certify the record~~  
14 ~~within the time limit established in paragraph (1) of subdivision~~  
15 ~~(b), or any continuances of that time limit, the plaintiff or petitioner~~  
16 ~~may move for sanctions, and the court may, upon that motion,~~  
17 ~~grant appropriate sanctions.~~

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

20 ~~(1) All project application materials.~~

21 ~~(2) All staff reports and related documents prepared by the~~  
22 ~~respondent public agency with respect to its compliance with the~~  
23 ~~substantive and procedural requirements of this division and with~~  
24 ~~respect to the action on the project.~~

25 ~~(3) All staff reports and related documents prepared by the~~  
26 ~~respondent public agency and written testimony or documents~~  
27 ~~submitted by any person relevant to any findings or statement of~~  
28 ~~overriding considerations adopted by the respondent agency~~  
29 ~~pursuant to this division.~~

30 ~~(4) Any transcript or minutes of the proceedings at which the~~  
31 ~~decisionmaking body of the respondent public agency heard~~  
32 ~~testimony on, or considered any environmental document on, the~~  
33 ~~project, and any transcript or minutes of proceedings before any~~  
34 ~~advisory body to the respondent public agency that were presented~~  
35 ~~to the decisionmaking body prior to action on the environmental~~  
36 ~~documents or on the project.~~

37 ~~(5) All notices issued by the respondent public agency to comply~~  
38 ~~with this division or with any other law governing the processing~~  
39 ~~and approval of the project.~~

1 ~~(6) All written comments received in response to, or in~~  
2 ~~connection with, environmental documents prepared for the project,~~  
3 ~~including responses to the notice of preparation.~~

4 ~~(7) All written evidence or correspondence submitted to, or~~  
5 ~~transferred from, the respondent public agency with respect to~~  
6 ~~compliance with this division or with respect to the project.~~

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

10 ~~(9) The documentation of the final public agency decision,~~  
11 ~~including the final environmental impact report, mitigated negative~~  
12 ~~declaration, or negative declaration, and all documents, in addition~~  
13 ~~to those referenced in paragraph (3), cited or relied on in the~~  
14 ~~findings or in a statement of overriding considerations adopted~~  
15 ~~pursuant to this division.~~

16 ~~(10) Any other written materials relevant to the respondent~~  
17 ~~public agency's compliance with this division or to its decision on~~  
18 ~~the merits of the project, including the initial study, any drafts of~~  
19 ~~any environmental document, or portions thereof, that have been~~  
20 ~~released for public review, and copies of studies or other documents~~  
21 ~~relied upon in any environmental document prepared for the project~~  
22 ~~and either made available to the public during the public review~~  
23 ~~period or included in the respondent public agency's files on the~~  
24 ~~project, and all internal agency communications, including staff~~  
25 ~~notes and memoranda related to the project or to compliance with~~  
26 ~~this division.~~

27 ~~(11) The full written record before any inferior administrative~~  
28 ~~decisionmaking body whose decision was appealed to a superior~~  
29 ~~administrative decisionmaking body prior to the filing of litigation.~~

30 ~~(f) In preparing the record of proceedings, the party preparing~~  
31 ~~the record shall strive to do so at reasonable cost in light of the~~  
32 ~~scope of the record.~~

33 ~~(g) The clerk of the superior court shall prepare and certify the~~  
34 ~~clerk's transcript on appeal not later than 60 days from the date~~  
35 ~~that the notice designating the papers or records to be included in~~  
36 ~~the clerk's transcript was filed with the superior court, if the party~~  
37 ~~or parties pay any costs or fees for the preparation of the clerk's~~  
38 ~~transcript imposed in conformance with any law or rules of court.~~  
39 ~~Nothing in this subdivision precludes an election to proceed by~~

1 appendix, as provided in Rule 8.124 of the California Rules of  
2 Court.

3 (h) ~~Extensions of the period for the filing of any brief on appeal  
4 may be allowed only by stipulation of the parties or by order of  
5 the court for good cause shown. Extensions for the filing of a brief  
6 on appeal shall be limited to one 30-day extension for the  
7 preparation of an opening brief, and one 30-day extension for the  
8 preparation of a responding brief, except that the court may grant  
9 a longer extension or additional extensions if it determines that  
10 there is a substantial likelihood of settlement that would avoid the  
11 necessity of completing the appeal.~~

12 (i) ~~At the completion of the filing of briefs on appeal, the  
13 appellant shall notify the court of the completion of the filing of  
14 briefs, whereupon the clerk of the reviewing court shall set the  
15 appeal for hearing on the first available calendar date.~~

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

19 ~~SEC. 2. Section 21167.6 is added to the Public Resources Code,  
20 to read:~~

21 ~~21167.6. Notwithstanding any other law, in all actions or  
22 proceedings brought pursuant to Section 21167, except those  
23 involving the Public Utilities Commission, all of the following  
24 shall apply:~~

25 (a) ~~At the time that the action or proceeding is filed, the plaintiff  
26 or petitioner shall file a request that the respondent public agency  
27 prepare the record of proceedings relating to the subject of the  
28 action or proceeding. The request, together with the complaint or  
29 petition, shall be served personally upon the public agency not  
30 later than 10 business days from the date that the action or  
31 proceeding was filed.~~

32 (b) ~~(1) The public agency shall prepare and certify the record  
33 of proceedings not later than 60 days from the date that the request  
34 specified in subdivision (a) was served upon the public agency.  
35 Upon certification, the public agency shall lodge a copy of the  
36 record of proceedings with the court and shall serve on the parties  
37 notice that the record of proceedings has been certified and lodged  
38 with the court. The parties shall pay any reasonable costs or fees  
39 imposed for the preparation of the record of proceedings in  
40 conformance with any law or rule of court.~~

1 ~~(2) The plaintiff or petitioner may elect to prepare the record~~  
2 ~~of proceedings or the parties may agree to an alternative method~~  
3 ~~of preparation of the record of proceedings, subject to certification~~  
4 ~~of its accuracy by the public agency, within the time limit specified~~  
5 ~~in this subdivision.~~

6 ~~(e) The time limit established by subdivision (b) may be~~  
7 ~~extended only upon the stipulation of all parties who have been~~  
8 ~~properly served in the action or proceeding or upon order of the~~  
9 ~~court. Extensions shall be liberally granted by the court when the~~  
10 ~~size of the record of proceedings renders infeasible compliance~~  
11 ~~with that time limit. There is no limit on the number of extensions~~  
12 ~~that may be granted by the court, but no single extension shall~~  
13 ~~exceed 60 days unless the court determines that a longer extension~~  
14 ~~is in the public interest.~~

15 ~~(d) If the public agency fails to prepare and certify the record~~  
16 ~~within the time limit established in paragraph (1) of subdivision~~  
17 ~~(b), or any continuances of that time limit, the plaintiff or petitioner~~  
18 ~~may move for sanctions, and the court may, upon that motion,~~  
19 ~~grant appropriate sanctions.~~

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

22 ~~(1) All project application materials.~~

23 ~~(2) All staff reports and related documents prepared by the~~  
24 ~~respondent public agency with respect to its compliance with the~~  
25 ~~substantive and procedural requirements of this division and with~~  
26 ~~respect to the action on the project.~~

27 ~~(3) All staff reports and related documents prepared by the~~  
28 ~~respondent public agency and written testimony or documents~~  
29 ~~submitted by any person relevant to any findings or statement of~~  
30 ~~overriding considerations adopted by the respondent agency~~  
31 ~~pursuant to this division.~~

32 ~~(4) Any transcript or minutes of the proceedings at which the~~  
33 ~~decisionmaking body of the respondent public agency heard~~  
34 ~~testimony on, or considered any environmental document on, the~~  
35 ~~project, and any transcript or minutes of proceedings before any~~  
36 ~~advisory body to the respondent public agency that were presented~~  
37 ~~to the decisionmaking body prior to action on the environmental~~  
38 ~~documents or on the project.~~

- 1     ~~(5) All notices issued by the respondent public agency to comply~~  
2     ~~with this division or with any other law governing the processing~~  
3     ~~and approval of the project.~~
- 4     ~~(6) All written comments received in response to, or in~~  
5     ~~connection with, environmental documents prepared for the project,~~  
6     ~~including responses to the notice of preparation.~~
- 7     ~~(7) All written evidence or correspondence submitted to, or~~  
8     ~~transferred from, the respondent public agency with respect to~~  
9     ~~compliance with this division or with respect to the project.~~
- 10    ~~(8) Any proposed decisions or findings submitted to the~~  
11    ~~decisionmaking body of the respondent public agency by its staff,~~  
12    ~~or the project proponent, project opponents, or other persons.~~
- 13    ~~(9) The documentation of the final public agency decision,~~  
14    ~~including the final environmental impact report, mitigated negative~~  
15    ~~declaration, or negative declaration, and all documents, in addition~~  
16    ~~to those referenced in paragraph (3), cited or relied on in the~~  
17    ~~findings or in a statement of overriding considerations adopted~~  
18    ~~pursuant to this division.~~
- 19    ~~(10) Any other written materials relevant to the respondent~~  
20    ~~public agency's compliance with this division or to its decision on~~  
21    ~~the merits of the project, including the initial study, any drafts of~~  
22    ~~any environmental document, or portions thereof, that have been~~  
23    ~~released for public review, and copies of studies or other documents~~  
24    ~~relied upon in any environmental document prepared for the project~~  
25    ~~and either made available to the public during the public review~~  
26    ~~period or included in the respondent public agency's files on the~~  
27    ~~project, and all internal agency communications, including staff~~  
28    ~~notes and memoranda related to the project or to compliance with~~  
29    ~~this division.~~
- 30    ~~(11) The full written record before any inferior administrative~~  
31    ~~decisionmaking body whose decision was appealed to a superior~~  
32    ~~administrative decisionmaking body prior to the filing of litigation.~~
- 33    ~~(f) In preparing the record of proceedings, the party preparing~~  
34    ~~the record shall strive to do so at reasonable cost in light of the~~  
35    ~~scope of the record.~~
- 36    ~~(g) The clerk of the superior court shall prepare and certify the~~  
37    ~~clerk's transcript on appeal not later than 60 days from the date~~  
38    ~~that the notice designating the papers or records to be included in~~  
39    ~~the clerk's transcript was filed with the superior court, if the party~~  
40    ~~or parties pay any costs or fees for the preparation of the clerk's~~

1 transcript imposed in conformance with any law or rules of court.  
2 Nothing in this subdivision precludes an election to proceed by  
3 appendix, as provided in Rule 8.124 of the California Rules of  
4 Court.

5 ~~(h) Extensions of the period for the filing of any brief on appeal  
6 may be allowed only by stipulation of the parties or by order of  
7 the court for good cause shown. Extensions for the filing of a brief  
8 on appeal shall be limited to one 30-day extension for the  
9 preparation of an opening brief, and one 30-day extension for the  
10 preparation of a responding brief, except that the court may grant  
11 a longer extension or additional extensions if it determines that  
12 there is a substantial likelihood of settlement that would avoid the  
13 necessity of completing the appeal.~~

14 ~~(i) At the completion of the filing of briefs on appeal, the  
15 appellant shall notify the court of the completion of the filing of  
16 briefs, whereupon the clerk of the reviewing court shall set the  
17 appeal for hearing on the first available calendar date.~~

18 ~~(j) This section shall become operative on January 1, 2016.~~

19 ~~SEC. 3. Section 21167.6.2 is added to the Public Resources  
20 Code, to read:~~

21 ~~21167.6.2. (a) Notwithstanding Section 21167.6, for a project  
22 described in subdivision (f), the lead agency, upon the written  
23 request of a project applicant received no later than 30 days after  
24 the date that the lead agency makes a determination pursuant to  
25 subdivision (a) of Section 21080.1, Section 21094.5, or Chapter  
26 4.2 (commencing with Section 21155), shall prepare and certify  
27 the record of proceedings in the following manner:~~

28 ~~(1) The lead agency for the project shall prepare the record of  
29 proceedings pursuant to this division concurrently with the  
30 administrative process.~~

31 ~~(2) All documents and other materials placed in the record of  
32 proceedings shall be posted on, and be downloadable from, an  
33 Internet Web site maintained by the lead agency commencing with  
34 the date of the release of the draft environmental document for a  
35 project specified in subdivision (f). If the lead agency cannot  
36 maintain an Internet Web site with the information required  
37 pursuant to this section, the lead agency shall provide a link on  
38 the agency's Internet Web site to that information.~~

39 ~~(3) Except as provided in subdivision (d) of Section 15120 of  
40 Title 14 of the California Code of Regulations, the lead agency~~

1 shall make available to the public in a readily accessible electronic  
2 format the draft environmental document for a project specified  
3 in subdivision (f), and all other documents submitted to, cited by,  
4 or relied on by, the lead agency in the preparation of the draft  
5 environmental document for a project specified in subdivision (f):

6 ~~(4) A document prepared by the lead agency or submitted by~~  
7 ~~the applicant after the date of the release of the draft environmental~~  
8 ~~document for a project specified in subdivision (f) that is a part of~~  
9 ~~the record of the proceedings shall be made available to the public~~  
10 ~~in a readily accessible electronic format within five business days~~  
11 ~~after the document is released or received by the lead agency.~~

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

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

20 ~~(7) The lead agency shall certify the record of proceedings~~  
21 ~~within 30 days after the filing of the notice required pursuant to~~  
22 ~~Section 21108 or 21152.~~

23 ~~(b) Any dispute regarding the record of proceedings shall be~~  
24 ~~resolved by the court in an action or proceeding brought pursuant~~  
25 ~~to subdivision (c) of Section 21167.~~

26 ~~(c) The content of the record of proceedings shall be as specified~~  
27 ~~in subdivision (c) of Section 21167.6.~~

28 ~~(d) Subdivisions (g) to (i), inclusive, of Section 21167.6 are~~  
29 ~~applicable to an appeal of a decision in an action or proceeding~~  
30 ~~brought pursuant to subdivision (c) of Section 21167.~~

31 ~~(e) The negative declaration, mitigated negative declaration,~~  
32 ~~draft and final environmental impact report, or other environmental~~  
33 ~~document for a project specified in subdivision (f) shall include a~~  
34 ~~notice in no less than 12-point type stating the following:~~

35  
36 ~~“THIS — NEGATIVE — DECLARATION, — MITIGATED~~  
37 ~~NEGATIVE DECLARATION, EIR, OR ENVIRONMENTAL~~  
38 ~~DOCUMENT IS SUBJECT TO SECTION 21167.6.2 OF THE~~  
39 ~~PUBLIC RESOURCES CODE, WHICH REQUIRES THE~~  
40 ~~RECORD OF PROCEEDINGS FOR THIS PROJECT TO BE~~

1 ~~PREPARED CONCURRENTLY WITH THE~~  
2 ~~ADMINISTRATIVE PROCESS, DOCUMENTS PREPARED~~  
3 ~~BY, OR SUBMITTED TO, THE LEAD AGENCY TO BE~~  
4 ~~POSTED ON THE LEAD AGENCY'S INTERNET WEB SITE,~~  
5 ~~AND THE LEAD AGENCY TO ENCOURAGE WRITTEN~~  
6 ~~COMMENTS ON THE PROJECT TO BE SUBMITTED TO THE~~  
7 ~~LEAD AGENCY IN A READILY ACCESSIBLE ELECTRONIC~~  
8 ~~FORMAT."~~  
9

10 (f) ~~This section applies to the record of proceedings for the~~  
11 ~~preparation of a negative declaration, mitigated negative~~  
12 ~~declaration, environmental impact report, or other environmental~~  
13 ~~document prepared for any of the following:~~

14 (1) ~~A project determined to be of statewide, regional, or~~  
15 ~~areawide environmental significance pursuant to subdivision (d)~~  
16 ~~of Section 21083.~~

17 (2) ~~A project subject to Section 21094.5 or Chapter 4.2~~  
18 ~~(commencing with Section 21155).~~

19 (3) (A) ~~A project, other than one described in paragraphs (1)~~  
20 ~~and (2), for which the lead agency consents to prepare the record~~  
21 ~~of proceeding pursuant to this paragraph.~~

22 (B) ~~The lead agency shall respond to a request by the project~~  
23 ~~applicant within 10 business days from the date that the request~~  
24 ~~pursuant to subdivision (a) is received by the lead agency.~~

25 (C) ~~A project applicant and the lead agency may mutually agree,~~  
26 ~~in writing, to extend the time period for the lead agency to respond~~  
27 ~~pursuant to subparagraph (B), but they shall not extend that period~~  
28 ~~beyond the commencement of the public review period for the~~  
29 ~~proposed negative declaration, mitigated negative declaration, or~~  
30 ~~draft environmental impact report.~~

31 (D) ~~The request to prepare a record of proceedings pursuant to~~  
32 ~~this paragraph shall be deemed denied if the lead agency fails to~~  
33 ~~respond within 10 business days of receiving the request or within~~  
34 ~~the time period agreed upon pursuant to subparagraph (C),~~  
35 ~~whichever ends later.~~

36 (g) ~~The project applicant shall reimburse the lead agency for~~  
37 ~~the costs incurred in compliance with this section in a manner~~  
38 ~~specified by the lead agency and a plaintiff or petitioner in an~~  
39 ~~action or proceeding filed pursuant to Section 21167, if any, is not~~  
40 ~~required to pay these costs.~~

1     ~~(h) The costs of preparing the record of proceedings pursuant~~  
2 ~~to this section and complying with the requirements of this section~~  
3 ~~are not recoverable costs pursuant to Section 1033 of the Code of~~  
4 ~~Civil Procedure.~~

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

8     ~~SEC. 9. Section 1 of this act shall not become operative unless~~  
9 ~~Senate Bill 984 of the 2011–12 Regular Session of the Legislature~~  
10 ~~is enacted on or before January 1, 2013.~~

11     ~~SEC. 4.~~

12     ~~SEC. 10. No reimbursement is required by this act pursuant to~~  
13 ~~Section 6 of Article XIII B of the California Constitution because~~  
14 ~~a local agency or school district has the authority to levy service~~  
15 ~~charges, fees, or assessments sufficient to pay for the program or~~  
16 ~~level of service mandated by this act, within the meaning of Section~~  
17 ~~17556 of the Government Code.~~