

ASSEMBLY BILL

No. 2669

Introduced by Committee on Natural Resources (Assembly Members Chesbro (Chair), Brownley, Dickinson, Halderman, Huffman, Monning, and Skinner)

March 5, 2012

An act to amend Sections 21080, 21080.5, 21080.23, 21080.24, 21083.05, 21084, 21091, 21092.6, 21094, 21151.1, 21159.9, and 21167.10 of, and to repeal Sections 21169, 21170, 21171, 21172, 21172.5, 21175, and 21176 of, the Public Resources Code, relating to environmental quality.

LEGISLATIVE COUNSEL'S DIGEST

AB 2669, as introduced, Committee on Natural Resources. Environmental quality: California Environmental Quality Act.

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.

This bill would repeal obsolete and duplicative provisions from CEQA.

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

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

1 SECTION 1. Section 21080 of the Public Resources Code is
2 amended to read:
3 21080. (a) Except as otherwise provided in this division, this
4 division shall apply to discretionary projects proposed to be carried
5 out or approved by public agencies, including, but not limited to,
6 the enactment and amendment of zoning ordinances, the issuance
7 of zoning variances, the issuance of conditional use permits, and
8 the approval of tentative subdivision maps unless the project is
9 exempt from this division.
10 (b) This division does not apply to any of the following
11 activities:
12 (1) Ministerial projects proposed to be carried out or approved
13 by public agencies.
14 (2) Emergency repairs to public service facilities necessary to
15 maintain service.
16 (3) Projects undertaken, carried out, or approved by a public
17 agency to maintain, repair, restore, demolish, or replace property
18 or facilities damaged or destroyed as a result of a disaster in a
19 disaster-stricken area in which a state of emergency has been
20 proclaimed by the Governor pursuant to Chapter 7 (commencing
21 with Section 8550) of Division 1 of Title 2 of the Government
22 Code.
23 (4) Specific actions necessary to prevent or mitigate an
24 emergency.
25 (5) Projects which a public agency rejects or disapproves.
26 (6) Actions undertaken by a public agency relating to any
27 thermal powerplant site or facility, including the expenditure,
28 obligation, or encumbrance of funds by a public agency for
29 planning, engineering, or design purposes, or for the conditional
30 sale or purchase of equipment, fuel, water (except groundwater),
31 steam, or power for a thermal powerplant, if the powerplant site
32 and related facility will be the subject of an environmental impact
33 report, negative declaration, or other document, prepared pursuant
34 to a regulatory program certified pursuant to Section 21080.5,
35 which will be prepared by the State Energy Resources Conservation

1 and Development Commission, by the Public Utilities Commission,
2 or by the city or county in which the powerplant and related facility
3 would be located if the environmental impact report, negative
4 declaration, or document includes the environmental impact, if
5 any, of the action described in this paragraph.

6 (7) Activities or approvals necessary to the bidding for, hosting
7 or staging of, and funding or carrying out of, an Olympic games
8 under the authority of the International Olympic Committee, except
9 for the construction of facilities necessary for the Olympic games.

10 (8) The establishment, modification, structuring, restructuring,
11 or approval of rates, tolls, fares, or other charges by public agencies
12 which the public agency finds are for the purpose of (A) meeting
13 operating expenses, including employee wage rates and fringe
14 benefits, (B) purchasing or leasing supplies, equipment, or
15 materials, (C) meeting financial reserve needs and requirements,
16 (D) obtaining funds for capital projects necessary to maintain
17 service within existing service areas, or (E) obtaining funds
18 necessary to maintain those intracity transfers as are authorized
19 by city charter. The public agency shall incorporate written findings
20 in the record of any proceeding in which an exemption under this
21 paragraph is claimed setting forth with specificity the basis for the
22 claim of exemption.

23 (9) All classes of projects designated pursuant to Section 21084.

24 (10) A project for the institution or increase of passenger or
25 commuter services on rail or highway rights-of-way already in
26 use, including modernization of existing stations and parking
27 facilities.

28 (11) A project for the institution or increase of passenger or
29 commuter service on high-occupancy vehicle lanes already in use,
30 including the modernization of existing stations and parking
31 facilities.

32 (12) Facility extensions not to exceed four miles in length which
33 are required for the transfer of passengers from or to exclusive
34 public mass transit guideway or busway public transit services.

35 (13) A project for the development of a regional transportation
36 improvement program, the state transportation improvement
37 program, or a congestion management program prepared pursuant
38 to Section 65089 of the Government Code.

39 (14) Any project or portion thereof located in another state
40 which will be subject to environmental impact review pursuant to

1 the National Environmental Policy Act of 1969 (42 U.S.C. Sec.
2 4321 et seq.) or similar state laws of that state. Any emissions or
3 discharges that would have a significant effect on the environment
4 in this state are subject to this division.

5 (15) Projects undertaken by a local agency to implement a rule
6 or regulation imposed by a state agency, board, or commission
7 under a certified regulatory program pursuant to Section 21080.5.
8 Any site-specific effect of the project which was not analyzed as
9 a significant effect on the environment in the plan or other written
10 documentation required by Section 21080.5 is subject to this
11 division.

12 ~~(16) The selection, credit, and transfer of emission credits by~~
13 ~~the South Coast Air Quality Management District pursuant to~~
14 ~~Section 40440.14 of the Health and Safety Code, until the repeal~~
15 ~~of that section on January 1, 2012, or a later date.~~

16 (c) If a lead agency determines that a proposed project, not
17 otherwise exempt from this division, would not have a significant
18 effect on the environment, the lead agency shall adopt a negative
19 declaration to that effect. The negative declaration shall be prepared
20 for the proposed project in either of the following circumstances:

21 (1) There is no substantial evidence, in light of the whole record
22 before the lead agency, that the project may have a significant
23 effect on the environment.

24 (2) An initial study identifies potentially significant effects on
25 the environment, but (A) revisions in the project plans or proposals
26 made by, or agreed to by, the applicant before the proposed
27 negative declaration and initial study are released for public review
28 would avoid the effects or mitigate the effects to a point where
29 clearly no significant effect on the environment would occur, and
30 (B) there is no substantial evidence, in light of the whole record
31 before the lead agency, that the project, as revised, may have a
32 significant effect on the environment.

33 (d) If there is substantial evidence, in light of the whole record
34 before the lead agency, that the project may have a significant
35 effect on the environment, an environmental impact report shall
36 be prepared.

37 (e) (1) For the purposes of this section and this division,
38 substantial evidence includes fact, a reasonable assumption
39 predicated upon fact, or expert opinion supported by fact.

1 (2) Substantial evidence is not argument, speculation,
2 unsubstantiated opinion or narrative, evidence that is clearly
3 inaccurate or erroneous, or evidence of social or economic impacts
4 that do not contribute to, or are not caused by, physical impacts
5 on the environment.

6 (f) As a result of the public review process for a mitigated
7 negative declaration, including administrative decisions and public
8 hearings, the lead agency may conclude that certain mitigation
9 measures identified pursuant to paragraph (2) of subdivision (c)
10 are infeasible or otherwise undesirable. In those circumstances,
11 the lead agency, prior to approving the project, may delete those
12 mitigation measures and substitute for them other mitigation
13 measures that the lead agency finds, after holding a public hearing
14 on the matter, are equivalent or more effective in mitigating
15 significant effects on the environment to a less than significant
16 level and that do not cause any potentially significant effect on the
17 environment. If those new mitigation measures are made conditions
18 of project approval or are otherwise made part of the project
19 approval, the deletion of the former measures and the substitution
20 of the new mitigation measures shall not constitute an action or
21 circumstance requiring recirculation of the mitigated negative
22 declaration.

23 (g) Nothing in this section shall preclude a project applicant or
24 any other person from challenging, in an administrative or judicial
25 proceeding, the legality of a condition of project approval imposed
26 by the lead agency. If, however, any condition of project approval
27 set aside by either an administrative body or court was necessary
28 to avoid or lessen the likelihood of the occurrence of a significant
29 effect on the environment, the lead agency's approval of the
30 negative declaration and project shall be invalid and a new
31 environmental review process shall be conducted before the project
32 can be reapproved, unless the lead agency substitutes a new
33 condition that the lead agency finds, after holding a public hearing
34 on the matter, is equivalent to, or more effective in, lessening or
35 avoiding significant effects on the environment and that does not
36 cause any potentially significant effect on the environment.

37 SEC. 2. Section 21080.5 of the Public Resources Code is
38 amended to read:

39 21080.5. (a) Except as provided in Section 21158.1, when the
40 regulatory program of a state agency requires a plan or other written

1 documentation containing environmental information and
2 complying with paragraph (3) of subdivision (d) to be submitted
3 in support of an activity listed in subdivision (b), the plan or other
4 written documentation may be submitted in lieu of the
5 environmental impact report required by this division if the
6 Secretary of the *Natural* Resources Agency has certified the
7 regulatory program pursuant to this section.

8 (b) This section applies only to regulatory programs or portions
9 thereof that involve either of the following:

10 (1) The issuance to a person of a lease, permit, license,
11 certificate, or other entitlement for use.

12 (2) The adoption or approval of standards, rules, regulations,
13 or plans for use in the regulatory program.

14 (c) A regulatory program certified pursuant to this section is
15 exempt from Chapter 3 (commencing with Section 21100), Chapter
16 4 (commencing with Section 21150), and Section 21167, except
17 as provided in Article 2 (commencing with Section 21157) of
18 Chapter 4.5.

19 (d) To qualify for certification pursuant to this section, a
20 regulatory program shall require the utilization of an
21 interdisciplinary approach that will ensure the integrated use of
22 the natural and social sciences in decisionmaking and that shall
23 meet all of the following criteria:

24 (1) The enabling legislation of the regulatory program does both
25 of the following:

26 (A) Includes protection of the environment among its principal
27 purposes.

28 (B) Contains authority for the administering agency to adopt
29 rules and regulations for the protection of the environment, guided
30 by standards set forth in the enabling legislation.

31 (2) The rules and regulations adopted by the administering
32 agency for the regulatory program do all of the following:

33 (A) Require that an activity will not be approved or adopted as
34 proposed if there are feasible alternatives or feasible mitigation
35 measures available that would substantially lessen a significant
36 adverse effect that the activity may have on the environment.

37 (B) Include guidelines for the orderly evaluation of proposed
38 activities and the preparation of the plan or other written
39 documentation in a manner consistent with the environmental
40 protection purposes of the regulatory program.

1 (C) Require the administering agency to consult with all public
2 agencies that have jurisdiction, by law, with respect to the proposed
3 activity.

4 (D) Require that final action on the proposed activity include
5 the written responses of the issuing authority to significant
6 environmental points raised during the evaluation process.

7 (E) Require the filing of a notice of the decision by the
8 administering agency on the proposed activity with the Secretary
9 of the *Natural* Resources Agency. Those notices shall be available
10 for public inspection, and a list of the notices shall be posted on a
11 weekly basis in the Office of the *Natural* Resources Agency. Each
12 list shall remain posted for a period of 30 days.

13 (F) Require notice of the filing of the plan or other written
14 documentation to be made to the public and to a person who
15 requests, in writing, notification. The notification shall be made
16 in a manner that will provide the public or a person requesting
17 notification with sufficient time to review and comment on the
18 filing.

19 (3) The plan or other written documentation required by the
20 regulatory program does both of the following:

21 (A) Includes a description of the proposed activity with
22 alternatives to the activity, and mitigation measures to minimize
23 any significant adverse effect on the environment of the activity.

24 (B) Is available for a reasonable time for review and comment
25 by other public agencies and the general public.

26 (e) (1) The Secretary of the *Natural* Resources Agency shall
27 certify a regulatory program that the secretary determines meets
28 all the qualifications for certification set forth in this section, and
29 withdraw certification on determination that the regulatory program
30 has been altered so that it no longer meets those qualifications.
31 Certification and withdrawal of certification shall occur only after
32 compliance with Chapter 3.5 (commencing with Section 11340)
33 of Part 1 of Division 3 of Title 2 of the Government Code.

34 (2) In determining whether or not a regulatory program meets
35 the qualifications for certification set forth in this section, the
36 inquiry of the secretary shall extend only to the question of whether
37 the regulatory program meets the generic requirements of
38 subdivision (d). The inquiry may not extend to individual decisions
39 to be reached under the regulatory program, including the nature
40 of specific alternatives or mitigation measures that might be

1 proposed to lessen any significant adverse effect on the
2 environment of the activity.

3 (3) If the secretary determines that the regulatory program
4 submitted for certification does not meet the qualifications for
5 certification set forth in this section, the secretary shall adopt
6 findings setting forth the reasons for the determination.

7 (f) After a regulatory program has been certified pursuant to
8 this section, a proposed change in the program that could affect
9 compliance with the qualifications for certification specified in
10 subdivision (d) may be submitted to the Secretary of the *Natural*
11 Resources Agency for review and comment. The scope of the
12 secretary's review shall extend only to the question of whether the
13 regulatory program meets the generic requirements of subdivision
14 (d). The review may not extend to individual decisions to be
15 reached under the regulatory program, including specific
16 alternatives or mitigation measures that might be proposed to lessen
17 any significant adverse effect on the environment of the activity.
18 The secretary shall have 30 days from the date of receipt of the
19 proposed change to notify the state agency whether the proposed
20 change will alter the regulatory program so that it no longer meets
21 the qualification for certification established in this section and
22 will result in a withdrawal of certification as provided in this
23 section.

24 (g) An action or proceeding to attack, review, set aside, void,
25 or annul a determination or decision of a state agency approving
26 or adopting a proposed activity under a regulatory program that
27 has been certified pursuant to this section on the basis that the plan
28 or other written documentation prepared pursuant to paragraph (3)
29 of subdivision (d) does not comply with this section shall be
30 commenced not later than 30 days from the date of the filing of
31 notice of the approval or adoption of the activity.

32 (h) (1) An action or proceeding to attack, review, set aside,
33 void, or annul a determination of the Secretary of the *Natural*
34 Resources Agency to certify a regulatory program pursuant to this
35 section on the basis that the regulatory program does not comply
36 with this section shall be commenced within 30 days from the date
37 of certification by the secretary.

38 (2) In an action brought pursuant to paragraph (1), the inquiry
39 shall extend only to whether there was a prejudicial abuse of
40 discretion by the secretary. Abuse of discretion is established if

1 the secretary has not proceeded in a manner required by law or if
2 the determination is not supported by substantial evidence.

3 (i) For purposes of this section, a county agricultural
4 commissioner is a state agency.

5 (j) For purposes of this section, an air quality management
6 district or air pollution control district is a state agency, except
7 that the approval, if any, by a district of a nonattainment area plan
8 is subject to this section only if, and to the extent that, the approval
9 adopts or amends rules or regulations.

10 ~~(k) (1) The secretary, by July 1, 2004, shall develop a protocol~~
11 ~~for reviewing the prospective application of certified regulatory~~
12 ~~programs to evaluate the consistency of those programs with the~~
13 ~~requirements of this division. Following the completion of the~~
14 ~~development of the protocol, the secretary shall provide a report~~
15 ~~to the Senate Committee on Environmental Quality and the~~
16 ~~Assembly Committee on Natural Resources regarding the need~~
17 ~~for a grant of additional statutory authority authorizing the secretary~~
18 ~~to undertake a review of the certified regulatory programs.~~

19 ~~(2) The secretary shall provide a significant opportunity for~~
20 ~~public participation in developing the protocol described in~~
21 ~~paragraph (1) including, but not limited to, at least two public~~
22 ~~meetings with interested parties. A notice of each meeting shall~~
23 ~~be provided at least 10 days prior to the meeting to a person who~~
24 ~~files a written request for a notice with the agency.~~

25 SEC. 3. Section 21080.23 of the Public Resources Code is
26 amended to read:

27 21080.23. (a) This division does not apply to any project which
28 consists of the inspection, maintenance, repair, restoration,
29 reconditioning, relocation, replacement, or removal of an existing
30 pipeline, as defined in subdivision (a) of Section 51010.5 of the
31 Government Code, or any valve, flange, meter, or other piece of
32 equipment that is directly attached to the pipeline, if the project
33 meets all of the following conditions:

34 (1) (A) The project is less than eight miles in length.

35 (B) Notwithstanding subparagraph (A), actual construction and
36 excavation activities undertaken to achieve the maintenance, repair,
37 restoration, reconditioning, relocation, replacement, or removal
38 of an existing pipeline are not undertaken over a length of more
39 than one-half mile at any one time.

1 (2) The project consists of a section of pipeline that is not less
2 than eight miles from any section of pipeline that has been subject
3 to an exemption pursuant to this section in the past 12 months.

4 (3) The project is not solely for the purpose of excavating soil
5 that is contaminated by hazardous materials, and, to the extent not
6 otherwise expressly required by law, the party undertaking the
7 project immediately informs the lead agency of the discovery of
8 contaminated soil.

9 (4) To the extent not otherwise expressly required by law, the
10 person undertaking the project has, in advance of undertaking the
11 project, prepared a plan that will result in notification of the
12 appropriate agencies so that they may take action, if determined
13 to be necessary, to provide for the emergency evacuation of
14 members of the public who may be located in close proximity to
15 the project.

16 (5) Project activities are undertaken within an existing
17 right-of-way and the right-of-way is restored to its condition prior
18 to the project.

19 (6) The project applicant agrees to comply with all conditions
20 otherwise authorized by law, imposed by the city or county
21 planning department as part of any local agency permit process,
22 that are required to mitigate potential impacts of the proposed
23 project, and to otherwise comply with the Keene-Nejedly California
24 Wetlands Preservation Act (Chapter 7 (commencing with Section
25 5810) of Division 5), the California Endangered Species Act
26 (Chapter 1.5 (commencing with Section 2050) of Division 3 of
27 the Fish and Game Code), and other applicable state laws, and
28 with all applicable federal laws.

29 (b) If a project meets all of the requirements of subdivision (a),
30 the person undertaking the project shall do all of the following:

31 (1) Notify, in writing, any affected public agency, including,
32 but not limited to, any public agency having permit, land use,
33 environmental, public health protection, or emergency response
34 authority of the exemption of the project from this division by
35 subdivision (a).

36 (2) Provide notice to the public in the affected area in a manner
37 consistent with paragraph (3) of subdivision (b) of Section 21092.

38 (3) In the case of private rights-of-way over private property,
39 receive from the underlying property owner permission for access
40 to the property.

(4) Comply with all conditions otherwise authorized by law, imposed by the city or county planning department as part of any local agency permit process, that are required to mitigate potential impacts of the proposed project, and otherwise comply with the Keene-Nejedly California Wetlands Preservation Act (Chapter 7 (commencing with Section 5810) of Division 5), the California Endangered Species Act (Chapter 1.5 (commencing with Section 2050) of Division 3 of the Fish and Game Code), and other applicable state laws, and with all applicable federal laws.

~~(c) Prior to January 1, 1999, this section shall not apply to ARCO Pipeline Company's crude oil pipelines designated as Crude Oil Line 1, from Tejon Station south to its terminus, and Crude Oil Line 90.~~

~~(d)~~

(c) This section does not apply to either of the following:

(1) A project in which the diameter of the pipeline is increased.

(2) A project undertaken within the boundaries of an oil refinery.

SEC. 4. Section 21080.24 of the Public Resources Code is amended to read:

21080.24. ~~(a)~~ This division does not apply to the issuance, modification, amendment, or renewal of a permit by an air pollution control district or air quality management district pursuant to Title V, as defined in Section 39053.3 of the Health and Safety Code, or pursuant to a district Title V program established pursuant to Sections 42301.10, 42301.11, and 42301.12 of the Health and Safety Code, unless the issuance, modification, amendment, or renewal authorizes a physical or operational change to a source or facility.

~~(b) Nothing in this section is intended to result in the application of this division to a physical or operational change that, prior to January 1, 1995, was not subject to this division.~~

SEC. 5. Section 21083.05 of the Public Resources Code is amended to read:

21083.05. ~~(a) On or before July 1, 2009, the Office of Planning and Research shall prepare, develop, and transmit to the Resources Agency guidelines for the mitigation of greenhouse gas emissions or the effects of greenhouse gas emissions as required by this division, including, but not limited to, effects associated with transportation or energy consumption.~~

~~(b) On or before January 1, 2010, the Resources Agency shall certify and adopt guidelines prepared and developed by the Office of Planning and Research pursuant to subdivision (a).~~

~~(c)~~

21083.05. The Office of Planning and Research and the *Natural Resources Agency* shall periodically update the guidelines *for the mitigation of greenhouse gas emissions or the effects of greenhouse gas emissions as required by this division, including, but not limited to, effects associated with transportation or energy consumption*, to incorporate new information or criteria established by the State Air Resources Board pursuant to Division 25.5 (commencing with Section 38500) of the Health and Safety Code.

SEC. 6. Section 21084 of the Public Resources Code is amended to read:

21084. (a) The guidelines prepared and adopted pursuant to Section 21083 shall include a list of classes of projects that have been determined not to have a significant effect on the environment and that shall be exempt from this division. In adopting the guidelines, the Secretary of the Natural Resources Agency shall make a finding that the listed classes of projects referred to in this section do not have a significant effect on the environment.

(b) A project's greenhouse gas emissions shall not, in and of themselves, be deemed to cause an exemption adopted pursuant to subdivision (a) to be inapplicable if the project complies with all applicable regulations or requirements adopted to implement statewide, regional, or local plans consistent with Section 15183.5 of Title 14 of the California Code of Regulations.

(c) A project that may result in damage to scenic resources, including, but not limited to, trees, historic buildings, rock outcroppings, or similar resources, within a highway designated as an official state scenic highway, pursuant to Article 2.5 (commencing with Section 260) of Chapter 2 of Division 1 of the Streets and Highways Code, shall not be exempted from this division pursuant to subdivision (a). This subdivision does not apply to improvements as mitigation for a project for which a negative declaration has been approved or an environmental impact report has been certified.

(d) A project located on a site that is included on any list compiled pursuant to Section 65962.5 of the Government Code

1 shall not be exempted from this division pursuant to subdivision
2 (a).

3 ~~(e) The changes made to this section by Chapter 1212 of the~~
4 ~~Statutes of 1991 apply only to projects for which applications have~~
5 ~~not been deemed complete on or before January 1, 1992, pursuant~~
6 ~~to Section 65943 of the Government Code.~~

7 ~~(f)–~~

8 (e) A project that may cause a substantial adverse change in
9 the significance of an historical resource, as specified in Section
10 21084.1, shall not be exempted from this division pursuant to
11 subdivision (a).

12 SEC. 7. Section 21091 of the Public Resources Code is
13 amended to read:

14 21091. (a) The public review period for a draft environmental
15 impact report may not be less than 30 days. If the draft
16 environmental impact report is submitted to the State Clearinghouse
17 for review, the review period shall be at least 45 days, and the lead
18 agency shall provide a sufficient number of copies of the document
19 to the State Clearinghouse for review and comment by state
20 agencies.

21 (b) The public review period for a proposed negative declaration
22 or proposed mitigated negative declaration may not be less than
23 20 days. If the proposed negative declaration or proposed mitigated
24 negative declaration is submitted to the State Clearinghouse for
25 review, the review period shall be at least 30 days, and the lead
26 agency shall provide a sufficient number of copies of the document
27 to the State Clearinghouse for review and comment by state
28 agencies.

29 (c) (1) Notwithstanding subdivisions (a) and (b), if a draft
30 environmental impact report, proposed negative declaration, or
31 proposed mitigated negative declaration is submitted to the State
32 Clearinghouse for review and the period of review by the State
33 Clearinghouse is longer than the public review period established
34 pursuant to subdivision (a) or (b), whichever is applicable, the
35 public review period shall be at least as long as the period of review
36 and comment by state agencies as established by the State
37 Clearinghouse.

38 (2) The public review period and the state agency review period
39 may, but are not required to, begin and end at the same time. Day
40 one of the state agency review period shall be the date that the

1 State Clearinghouse distributes the CEQA document to state
2 agencies.

3 (3) If the submittal of a CEQA document is determined by the
4 State Clearinghouse to be complete, the State Clearinghouse shall
5 distribute the document within three working days from the date
6 of receipt. The State Clearinghouse shall specify the information
7 that will be required in order to determine the completeness of the
8 submittal of a CEQA document.

9 (d) (1) The lead agency shall consider comments it receives on
10 a draft environmental impact report, proposed negative declaration,
11 or proposed mitigated negative declaration if those comments are
12 received within the public review period.

13 (2) (A) With respect to the consideration of comments received
14 on a draft environmental impact report, the lead agency shall
15 evaluate comments on environmental issues that are received from
16 persons who have reviewed the draft and shall prepare a written
17 response pursuant to subparagraph (B). The lead agency may also
18 respond to comments that are received after the close of the public
19 review period.

20 (B) The written response shall describe the disposition of each
21 significant environmental issue that is raised by commenters. The
22 responses shall be prepared consistent with Section 15088 of Title
23 14 of the California Code of Regulations, ~~as those regulations~~
24 ~~existed on June 1, 1993.~~

25 (3) (A) With respect to the consideration of comments received
26 on a draft environmental impact report, proposed negative
27 declaration, proposed mitigated negative declaration, or notice
28 pursuant to Section 21080.4, the lead agency shall accept comments
29 via e-mail and shall treat e-mail comments as equivalent to written
30 comments.

31 (B) Any law or regulation relating to written comments received
32 on a draft environmental impact report, proposed negative
33 declaration, proposed mitigated negative declaration, or notice
34 received pursuant to Section 21080.4, shall also apply to e-mail
35 comments received for those reasons.

36 (e) (1) Criteria for shorter review periods by the State
37 Clearinghouse for documents that must be submitted to the State
38 Clearinghouse shall be set forth in the written guidelines issued
39 by the Office of Planning and Research and made available to the
40 public.

1 (2) Those shortened review periods may not be less than 30
2 days for a draft environmental impact report and 20 days for a
3 negative declaration.

4 (3) A request for a shortened review period shall only be made
5 in writing by the decisionmaking body of the lead agency to the
6 Office of Planning and Research. The decisionmaking body may
7 designate by resolution or ordinance a person authorized to request
8 a shortened review period. A designated person shall notify the
9 decisionmaking body of this request.

10 (4) A request approved by the State Clearinghouse shall be
11 consistent with the criteria set forth in the written guidelines of
12 the Office of Planning and Research.

13 (5) A shortened review period may not be approved by the
14 Office of Planning and Research for a proposed project of
15 statewide, regional, or areawide environmental significance as
16 determined pursuant to Section 21083.

17 (6) An approval of a shortened review period shall be given
18 prior to, and reflected in, the public notice required pursuant to
19 Section 21092.

20 (f) Prior to carrying out or approving a project for which a
21 negative declaration has been adopted, the lead agency shall
22 consider the negative declaration together with comments that
23 were received and considered pursuant to paragraph (1) of
24 subdivision (d).

25 SEC. 8. Section 21092.6 of the Public Resources Code is
26 amended to read:

27 21092.6. (a) The lead agency shall consult the lists compiled
28 pursuant to Section 65962.5 of the Government Code to determine
29 whether the project and any alternatives are located on a site which
30 is included on any list. The lead agency shall indicate whether a
31 site is on any list not already identified by the applicant. The lead
32 agency shall specify the list and include the information in the
33 statement required pursuant to subdivision (f) of Section 65962.5
34 of the Government Code, in the notice required pursuant to Section
35 21080.4, a negative declaration, and a draft environmental impact
36 report. The requirement in this section to specify any list shall not
37 be construed to limit compliance with this division.

38 (b) If a project or any alternatives are located on a site which is
39 included on any of the lists compiled pursuant to Section 65962.5
40 of the Government Code and the lead agency did not accurately

1 specify or did not specify any list pursuant to subdivision (a), the
2 California Environmental Protection Agency shall notify the lead
3 agency specifying any list with the site when it receives notice
4 pursuant to Section 21080.4, a negative declaration, and a draft
5 environmental impact report. The California Environmental
6 Protection Agency shall not be liable for failure to notify the lead
7 agency pursuant to this subdivision.

8 ~~(c) This section applies only to projects for which applications~~
9 ~~have not been deemed complete pursuant to Section 65943 of the~~
10 ~~Government Code on or before January 1, 1992.~~

11 SEC. 9. Section 21094 of the Public Resources Code, as
12 amended by Section 3.5 of Chapter 496 of the Statutes of 2010, is
13 amended to read:

14 21094. (a) (1) If a prior environmental impact report has been
15 prepared and certified for a program, plan, policy, or ordinance,
16 the lead agency for a later project that meets the requirements of
17 this section shall examine significant effects of the later project
18 upon the environment by using a tiered environmental impact
19 report, except that the report on the later project is not required to
20 examine those effects that the lead agency determines were either
21 of the following:

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

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

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

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

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

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

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

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

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

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

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

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

27 (3) Not subject to Section 21166.

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

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

38 (e) (1) If a lead agency determines pursuant to this subdivision
39 that a cumulative effect has been adequately addressed in a prior
40 environmental impact report, that cumulative effect is not required

1 to be examined in a later environmental impact report, mitigated
2 negative declaration, or negative declaration for purposes of
3 subparagraph (B) of paragraph (1) of subdivision (a).

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

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

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

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

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

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

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

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

35 SEC. 10. Section 21151.1 of the Public Resources Code is
36 amended to read:

37 21151.1. (a) Notwithstanding paragraph (6) of subdivision (b)
38 of Section 21080, or Section 21080.5 or 21084, or any other
39 provision of law, except as provided in this section, a lead agency
40 shall prepare or cause to be prepared by contract, and certify the

1 completion of, an environmental impact report or, if appropriate,
2 a modification, addendum, or supplement to an existing
3 environmental impact report, for a project involving any of the
4 following:

5 (1) ~~(A)~~—The burning of municipal wastes, hazardous waste, or
6 refuse-derived fuel, including, but not limited to, tires, if the project
7 is either of the following:

8 ~~(i)~~—

9 (A) The construction of a new facility.

10 ~~(ii)~~—

11 (B) The expansion of an existing facility that burns hazardous
12 waste that would increase its permitted capacity by more than 10
13 percent.

14 ~~(B) This paragraph does not apply to a project exclusively~~
15 ~~burning hazardous waste, for which a final determination under~~
16 ~~Section 21080.1 has been made prior to July 14, 1989.~~

17 (2) The initial issuance of a hazardous waste facilities permit
18 to a land disposal facility, as defined in subdivision (d) of Section
19 25199.1 of the Health and Safety Code.

20 (3) The initial issuance of a hazardous waste facilities permit
21 pursuant to Section 25200 of the Health and Safety Code to an
22 offsite large treatment facility, as defined pursuant to subdivision
23 (d) of Section 25205.1 of the Health and Safety Code.

24 (4) A base reuse plan as defined in Section 21083.8.1. The
25 Legislature hereby finds that no reimbursement is required pursuant
26 to Section 6 of Article XIII B of the California Constitution for an
27 environmental impact report for a base reuse plan if an
28 environmental impact report is otherwise required for that base
29 reuse plan pursuant to any other provision of this division.

30 (b) For purposes of clause (ii) of subparagraph (A) of paragraph
31 (1) of subdivision (a), the amount of expansion of an existing
32 facility shall be calculated by comparing the proposed facility
33 capacity with whichever of the following is applicable:

34 (1) The facility capacity authorized in the facility's hazardous
35 waste facilities permit pursuant to Section 25200 of the Health and
36 Safety Code or its grant of interim status pursuant to Section
37 25200.5 of the Health and Safety Code, or the facility capacity
38 authorized in a state or local agency permit allowing the
39 construction or operation of a facility for the burning of hazardous
40 waste, granted before January 1, 1990.

(2) The facility capacity authorized in the facility's original hazardous waste facilities permit, grant of interim status, or a state or local agency permit allowing the construction or operation of a facility for the burning of hazardous waste, granted on or after January 1, 1990.

(c) For purposes of paragraphs (2) and (3) of subdivision (a), the initial issuance of a hazardous waste facilities permit does not include the issuance of a closure or postclosure permit pursuant to Chapter 6.5 (commencing with Section 25100) of Division 20 of the Health and Safety Code.

(d) Paragraph (1) of subdivision (a) does not apply to a project that does any of the following:

(1) Exclusively burns digester gas produced from manure or any other solid or semisolid animal waste.

(2) Exclusively burns methane gas produced from a disposal site, as defined in Section 40122, that is used only for the disposal of solid waste, as defined in Section 40191.

(3) Exclusively burns forest, agricultural, wood, or other biomass wastes.

(4) Exclusively burns hazardous waste in an incineration unit that is transportable and that is either at a site for not longer than three years or is part of a remedial or removal action. For purposes of this paragraph, "transportable" means any equipment that performs a "treatment" as defined in Section 66216 of Title 22 of the California Code of Regulations, and that is transported on a vehicle as defined in Section 66230 of Title 22 of the California Code of Regulations, as those sections read on June 1, 1991.

(5) Exclusively burns refinery waste in a flare on the site of generation.

(6) Exclusively burns in a flare methane gas produced at a municipal sewage treatment plant.

(7) Exclusively burns hazardous waste, or exclusively burns hazardous waste as a supplemental fuel, as part of a research, development, or demonstration project that, consistent with federal regulations implementing the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. Sec. 6901 et seq.), has been determined to be innovative and experimental by the Department of Toxic Substances Control and that is limited in type and quantity of waste to that necessary to determine the efficacy and performance capabilities of the technology or process. However,

1 a facility that operated as a research, development, or demonstration
2 project and for which an application is thereafter submitted for a
3 hazardous waste facility permit for operation other than as a
4 research, development, or demonstration project shall be considered
5 a new facility for the burning of hazardous waste and shall be
6 subject to subdivision (a) of Section 21151.1.

7 (8) Exclusively burns soils contaminated only with petroleum
8 fuels or the vapors from these soils.

9 (9) Exclusively treats less than 3,000 pounds of hazardous waste
10 per day in a thermal processing unit operated in the absence of
11 open flame, and submits a worst-case health risk assessment of
12 the technology to the Department of Toxic Substances Control for
13 review and distribution to the interested public. This assessment
14 shall be prepared in accordance with guidelines set forth in the Air
15 Toxics Assessment Manual of the California Air Pollution Control
16 Officers Association.

17 (10) Exclusively burns less than 1,200 pounds per day of
18 medical waste, as defined in Section 117690 of the Health and
19 Safety Code, on hospital sites.

20 (11) Exclusively burns chemicals and fuels as part of firefighter
21 training.

22 (12) Exclusively conducts open burns of explosives subject to
23 the requirements of the air pollution control district or air quality
24 management district and in compliance with OSHA and Cal-OSHA
25 regulations.

26 (13) Exclusively conducts onsite burning of less than 3,000
27 pounds per day of fumes directly from a manufacturing or
28 commercial process.

29 (14) Exclusively conducts onsite burning of hazardous waste
30 in an industrial furnace that recovers hydrogen chloride from the
31 flue gas if the hydrogen chloride is subsequently sold, distributed
32 in commerce, or used in a manufacturing process at the site where
33 the hydrogen chloride is recovered, and the burning is in
34 compliance with the requirements of the air pollution control
35 district or air quality management district and the Department of
36 Toxic Substances Control.

37 (e) Paragraph (1) of subdivision (a) does not apply to a project
38 for which the State Energy Resources Conservation and
39 Development Commission has assumed jurisdiction under Chapter
40 6 (commencing with Section 25500) of Division 15.

(f) Paragraphs (2) and (3) of subdivision (a) do not apply if the facility only manages hazardous waste that is identified or listed pursuant to Section 25140 or 25141 of the Health and Safety Code on or after January 1, 1992, but not before that date, or only conducts activities that are regulated pursuant to Chapter 6.5 (commencing with Section 25100) of Division 20 of the Health and Safety Code on or after January 1, 1992, but not before that date.

(g) This section does not exempt a project from any other requirement of this division.

(h) For purposes of this section, offsite facility means a facility that serves more than one generator of hazardous waste.

SEC. 11. Section 21159.9 of the Public Resources Code is amended to read:

21159.9. The Office of Planning and Research shall implement, utilizing existing resources, a public assistance and information program, to ensure efficient and effective implementation of this division, to do all of the following:

(a) Establish a public education and training program for planners, developers, and other interested parties to assist them in implementing this division.

(b) Establish and maintain a data base to assist in the preparation of environmental documents.

(c) Establish and maintain a central repository for the collection, storage, retrieval, and dissemination of notices of exemption, notices of preparation, notices of determination, and notices of completion provided to the office, and make the notices available through the Internet. The office may coordinate with another state agency for that agency to make the notices available through the Internet.

~~(d) Commencing January 1, 2003, Provide to the California State Library copies of any documents submitted in electronic format to the Office of Planning and Research pursuant to this division shall be furnished by the office to the California State Library.~~ The California State Library shall be the repository for those electronic documents, which shall be made available for viewing by the general public upon request.

SEC. 12. Section 21167.10 of the Public Resources Code is amended to read:

1 21167.10. (a) Within five business days of the filing of a notice
2 required by subdivision (a) or (b) of Section 21108, or subdivision
3 (a) or (b) of Section 21152 by the lead agency, a person wishing
4 to bring an action or a proceeding pursuant to Section 21167,
5 21168, or 21168.5 may file with the lead agency and the real party
6 in interest a notice requesting mediation.

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

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

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

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

18 ~~(f)~~

19 (e) This section does not apply in cases where the lead agency
20 has not filed the notice required by subdivision (a) or (b) of Section
21 21108, or subdivision (a) or (b) of Section 21152.

22 ~~(g)~~

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

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

31 SEC. 13. Section 21169 of the Public Resources Code is
32 repealed.

33 ~~21169. Any project defined in subdivision (c) of Section 21065~~
34 ~~undertaken, carried out or approved on or before the effective date~~
35 ~~of this section and the issuance by any public agency of any lease,~~
36 ~~permit, license, certificate or other entitlement for use executed or~~
37 ~~issued on or before the effective date of this section~~
38 ~~notwithstanding a failure to comply with this division, if otherwise~~
39 ~~legal and valid, is hereby confirmed, validated and declared legally~~
40 ~~effective. Any project undertaken by a person which was supported~~

1 in whole or part through contracts with one or more public agencies
2 on or before the effective date of this section, notwithstanding a
3 failure to comply with this division, if otherwise legal and valid,
4 is hereby confirmed, validated and declared legally effective.

5 SEC. 14. Section 21170 of the Public Resources Code is
6 repealed.

7 21170. (a) Section 21169 shall not operate to confirm, validate
8 or give legal effect to any project the legality of which was being
9 contested in a judicial proceeding in which proceeding the
10 pleadings, prior to the effective date of this section, alleged facts
11 constituting a cause of action for, or raised the issue of, a violation
12 of this division and which was pending and undetermined on the
13 effective date of this section; provided, however, that Section
14 21169 shall operate to confirm, validate or give legal effect to any
15 project to which this subdivision applies if, prior to the
16 commencement of judicial proceedings and in good faith and in
17 reliance upon the issuance by a public agency of any lease, permit,
18 license, certificate or other entitlement for use, substantial
19 construction has been performed and substantial liabilities for
20 construction and necessary materials have been incurred.

21 (b) Section 21169 shall not operate to confirm, validate or give
22 legal effect to any project which had been determined in any
23 judicial proceeding, on or before the effective date of this section
24 to be illegal, void or ineffective because of noncompliance with
25 this division.

26 SEC. 15. Section 21171 of the Public Resources Code is
27 repealed.

28 21171. This division, except for Section 21169, shall not apply
29 to the issuance of any lease, permit, license, certificate or other
30 entitlement for use for any project defined in subdivision (c) of
31 Section 21065 or to any project undertaken by a person which is
32 supported in whole or in part through contracts with one or more
33 public agencies until the 121st day after the effective date of this
34 section. This section shall not apply to any project to which Section
35 21170 is applicable or to any successor project which is the same
36 as, or substantially identical to, such a project.

37 This section shall not prohibit or prevent a public agency, prior
38 to the 121st day after the effective date of this section, from
39 considering environmental factors in connection with the approval

1 or disapproval of a project and from imposing reasonable fees in
2 connection therewith.

3 SEC. 16. Section 21172 of the Public Resources Code is
4 repealed.

5 ~~21172. This division shall not apply to any project undertaken,~~
6 ~~carried out, or approved by a public agency to maintain, repair,~~
7 ~~restore, demolish or replace property or facilities damaged or~~
8 ~~destroyed as a result of a disaster in a disaster stricken area in~~
9 ~~which a state of emergency has been proclaimed by the Governor~~
10 ~~pursuant to Chapter 7 (commencing with Section 8550) of Division~~
11 ~~1, Title 2 of the Government Code.~~

12 SEC. 17. Section 21172.5 of the Public Resources Code is
13 repealed.

14 ~~21172.5. Until the 121st day after the effective date of this~~
15 ~~section, any objectives, criteria and procedures adopted by public~~
16 ~~agencies in compliance with this division shall govern the~~
17 ~~evaluation of projects defined in subdivisions (a) and (b) of Section~~
18 ~~21065 and the preparation of environmental impact reports on such~~
19 ~~projects when required by this division.~~

20 ~~Any environmental impact report which has been completed or~~
21 ~~on which substantial work has been performed on or before the~~
22 ~~121st day after the effective date of this section, if otherwise legally~~
23 ~~sufficient, shall, when completed, be deemed to be in compliance~~
24 ~~with this division and no further environmental impact report shall~~
25 ~~be required except as provided in Section 21166.~~

26 SEC. 18. Section 21175 of the Public Resources Code is
27 repealed.

28 ~~21175. In the event that a local agency formation commission,~~
29 ~~acting pursuant to the provisions of Chapter 6.6 (commencing with~~
30 ~~Section 54773) of Part 1 of Division 2 of Title 5 of, or pursuant~~
31 ~~to Division 1 (commencing with Section 56000) of Title 6 of, the~~
32 ~~Government Code, has approved a project without complying with~~
33 ~~this division, such approval is hereby confirmed, validated, and~~
34 ~~declared legally effective notwithstanding the failure to comply~~
35 ~~with this division; provided, that such approval shall have occurred~~
36 ~~prior to February 7, 1975.~~

37 SEC. 19. Section 21176 of the Public Resources Code is
38 repealed.

39 ~~21176. (a) Section 21175 shall not operate to confirm, validate,~~
40 ~~or give legal effect to any project, the legality of which was being~~

1 ~~contested in a judicial proceeding in which proceeding the~~
2 ~~pleadings, prior to February 7, 1975, alleged facts constituting a~~
3 ~~cause of action for, or raised the issue of, a violation of this~~
4 ~~division, and which was pending and undetermined on February~~
5 ~~7, 1975.~~
6 ~~(b) Section 21175 shall not operate to confirm, validate, or give~~
7 ~~legal effect to any project which had been determined in any~~
8 ~~judicial proceeding, on or before the effective date of this section,~~
9 ~~to be illegal, void, or ineffective because of noncompliance with~~
10 ~~this division.~~