

AMENDED IN SENATE JULY 5, 2011

**SENATE BILL**

**No. 195**

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**Introduced by ~~Senator Cannella~~ *Senators Cannella, Berryhill,  
Emmerson, and Harman***

February 8, 2011

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~~An act to amend Section 11502 of the Food and Agricultural Code, relating to pest control.~~ *An act to amend Sections 21080, 21083, 21084, 21169.11, and 21177 of, and to add Section 21178 to, the Public Resources Code, relating to environmental quality.*

LEGISLATIVE COUNSEL'S DIGEST

SB 195, as amended, Cannella. ~~Pest control: regulations.~~ *Environmental quality: CEQA.*

*(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 impact on the environment or to adopt a negative declaration if it finds that the project will not have that impact. CEQA also requires a lead agency to prepare a mitigated negative declaration for a project that may have a significant impact 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 impact on the environment.*

*This bill would provide that impacts, potential impacts, or cumulative impacts on the environment of a project that is subject to an environmental regulation are deemed to be insignificant for the purposes of CEQA unless a preponderance of evidence demonstrates that the*

*specific impact, potential impact, or cumulative impact is significant after giving full effect to the environmental regulation.*

*(2) CEQA requires a lead agency to prepare a negative declaration if there is no substantial evidence in the administrative record that a project would have a significant environmental impact or a mitigated negative declaration if the project's environmental impacts may be avoided through a revision of the project so that there is no substantial evidence in the administrative record that the revised project would have a significant environmental impact. CEQA requires the preparation of an EIR if there is substantial evidence in the administrative record that a project may have a significant environmental impact.*

*This bill would instead require the lead agency to prepare a negative declaration or a mitigated negative declaration if there is a preponderance of the evidence in the record that a project or a revised project would not have a significant environmental impact. The bill would require the preparation of an EIR if the lead agency finds, in light of the whole record, that a project, based on a preponderance of the evidence, will have a significant environmental impact that could not be avoided through a revision of the project. Because the bill would require a lead agency to determine whether there is a preponderance of the evidence in the record that a project would not have a significant environmental impact, the bill would impose a state-mandated local program.*

*(3) CEQA authorizes the Secretary of the Natural Resources Agency to certify and adopt guidelines to include a list of classes of projects that have been determined not to have a significant effect on the environment and are exempted from the requirements of CEQA.*

*This bill would provide that a project's greenhouse gas emissions are not, in and of themselves, deemed to cause the exemption to be inapplicable under specified conditions.*

*(4) CEQA prohibits a person from bringing or maintaining an action or proceeding unless the alleged grounds for noncompliance with CEQA were presented to the public agency during the public comment period or before the close of the public hearing on the project before the issuance of the notice of determination.*

*This bill would authorize, with specified exceptions, a lead agency to not consider written materials submitted after the close of the public comment period and would prohibit the use of those materials as a basis for challenging the lead agency's action pursuant to CEQA.*

(5) CEQA requires the Office of Planning and Research to prepare and develop, and the Secretary of the Natural Resources Agency to certify and adopt, guidelines for the implementation of CEQA that include criteria for public agencies to follow in determining whether or not a proposed project may have a “significant effect on the environment.” CEQA defines “significant effect on the environment” to include, among other things, effects on the environment that are “cumulatively considerable.” CEQA defines “cumulatively considerable” to mean incremental effects of an individual project that are considerable when viewed in connection with the effects of past projects, other current projects, and probable future projects.

This bill would revise the definition of “cumulatively considerable” to delete reference to the effects of “probable future projects” and instead include the effects of “reasonably foreseeable future projects,” which are projects that have been proposed or approved 90 days before the issuance of an EIR or 30 days prior to the circulation of a negative declaration or a mitigated negative declaration.

(6) Existing law authorizes the court, upon the motion of a party, to award attorney’s fees to a prevailing party in an action that has resulted in the enforcement of an important right affecting the public interest if 3 conditions are met.

The bill would require the court to additionally consider specified factors in awarding the attorney’s fees.

(7) Existing law authorizes the court until January 1, 2016, to impose a sanction of up to \$10,000 for the filing of a frivolous claim in an action brought pursuant to CEQA.

This bill would increase the maximum amount of a sanction for such a filing to \$20,000.

(8) 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.

~~Existing law governs pest control operations in this state in order to, among other stated purposes, protect public health and safety and protect the environment. Existing law establishes the Department of Pesticide Regulation within the California Environmental Protection Agency, under the control of the Director of Pesticide Regulation, to administer these provisions. Existing law requires the Director of Pesticide~~

Regulation to adopt regulations that govern the conduct of the business of pest control:

This bill would make a technical, nonsubstantive change to the latter provision.

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

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

1 SECTION 1. Section 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

1 and related facility will be the subject of an environmental impact  
2 report, negative declaration, or other document, prepared pursuant  
3 to a regulatory program certified pursuant to Section 21080.5,  
4 which will be prepared by the State Energy Resources Conservation  
5 and Development Commission, by the Public Utilities Commission,  
6 or by the city or county in which the powerplant and related facility  
7 would be located if the environmental impact report, negative  
8 declaration, or document includes the environmental impact, if  
9 any, of the action described in this paragraph.

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

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

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

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

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

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

39 (13) A project for the development of a regional transportation  
40 improvement program, the state transportation improvement

1 program, or a congestion management program prepared pursuant  
2 to Section 65089 of the Government Code.

3 (14) Any project or portion thereof located in another state  
4 which will be subject to environmental impact review pursuant to  
5 the *federal* National Environmental Policy Act of 1969 (42 U.S.C.  
6 Sec. 4321 et seq.) or similar state laws of that state. Any emissions  
7 or discharges that would have a significant effect on the  
8 environment in this state are subject to this division.

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

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

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

25 (1) There is ~~no substantial~~ *a preponderance of* evidence, in light  
26 of the whole record before the lead agency, that the project ~~may~~  
27 *would not* have a significant effect on the environment.

28 (2) An initial study identifies potentially significant effects on  
29 the environment, ~~but (A) and~~ revisions in the project plans or  
30 proposals made by, or agreed to by, the applicant before the  
31 proposed negative declaration and initial study are released for  
32 public review *that* would avoid the effects or mitigate the effects  
33 to a point where ~~clearly no significant effect on the environment~~  
34 ~~would occur, and (B) there is no substantial~~ *a preponderance of*  
35 evidence, in light of the whole record before the lead agency, that  
36 the project, as revised, ~~may~~ *will not* have a significant effect on  
37 the environment.

38 (d) If ~~there is substantial evidence~~ *the lead agency finds*, in light  
39 of the whole record before the lead agency, that *there is a*  
40 *preponderance of evidence that* the project ~~may~~ *will* have a

1 significant effect on the environment *that could not be mitigated*  
2 *pursuant to paragraph (2) of subdivision (c)*, an environmental  
3 impact report shall be prepared.

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

7 (2) Substantial evidence is not argument, speculation,  
8 unsubstantiated opinion or narrative, evidence that is clearly  
9 inaccurate or erroneous, or evidence of social or economic impacts  
10 that do not contribute to, or are not caused by, physical impacts  
11 on the environment.

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

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

1 in, lessening or avoiding significant effects on the environment  
2 and that does not cause any potentially significant effect on the  
3 environment.

4 (h) (1) *For a project that is subject to an environmental*  
5 *regulation, any impact, potential impact, or cumulative impact for*  
6 *which the project is subject to the environmental regulation shall*  
7 *be presumed to be insignificant under this division unless a*  
8 *preponderance of the evidence demonstrates that the specific*  
9 *impact, potential impact, or cumulative impact is significant after*  
10 *giving full effect to the environmental regulations.*

11 (2) *For the purposes of this subdivision, “project subject to an*  
12 *environmental regulation” means a project included within, subject*  
13 *to, or expressly exempt from, any plan, mitigation program, rule,*  
14 *regulation, standard, or other requirement adopted by a federal,*  
15 *state, regional, or local agency for the protection of human health*  
16 *or the environment, including, but not limited to, those intended*  
17 *for the protection or improvement of water or air quality, waste*  
18 *management, habitat and natural community conservation,*  
19 *threatened or endangered species, and climate change or*  
20 *greenhouse gas emissions.*

21 *SEC. 2. Section 21083 of the Public Resources Code is*  
22 *amended to read:*

23 21083. (a) The Office of Planning and Research shall prepare  
24 and develop proposed guidelines for the implementation of this  
25 division by public agencies. The guidelines shall include objectives  
26 and criteria for the orderly evaluation of projects and the  
27 preparation of environmental impact reports and negative  
28 declarations in a manner consistent with this division.

29 (b) The guidelines shall specifically include criteria for public  
30 agencies to follow in determining whether or not a proposed project  
31 may have a “significant effect on the environment.” The criteria  
32 shall require a finding that a project may have a “significant effect  
33 on the environment” if one or more of the following conditions  
34 exist:

35 (1) A proposed project has the potential to degrade the quality  
36 of the environment, curtail the range of the environment, or to  
37 achieve short-term, to the disadvantage of long-term, environmental  
38 goals.

39 (2) (A) The possible effects of a project are individually limited  
40 but cumulatively considerable. As used in this paragraph,

1 “cumulatively considerable” means that the incremental effects of  
2 an individual project are considerable when viewed in connection  
3 with the effects of past projects, the effects of other current projects,  
4 and the effects of ~~probable~~ *reasonably foreseeable* future projects.

5 (B) For the purpose of this paragraph, “*reasonably foreseeable*  
6 *future project*” is a project that is proposed or approved 90 days  
7 before the issuance of the notice of preparation of the  
8 environmental impact report or 30 days prior to the circulation  
9 of a negative declaration or a mitigated negative declaration.

10 (3) The environmental effects of a project will cause substantial  
11 adverse effects on human beings, either directly or indirectly.

12 (c) The guidelines shall include procedures for determining the  
13 lead agency pursuant to Section 21165.

14 (d) The guidelines shall include criteria for public agencies to  
15 use in determining when a proposed project is of sufficient  
16 statewide, regional, or areawide environmental significance that  
17 a draft environmental impact report, a proposed negative  
18 declaration, or a proposed mitigated negative declaration shall be  
19 submitted to appropriate state agencies, through the State  
20 Clearinghouse, for review and comment prior to completion of the  
21 environmental impact report, negative declaration, or mitigated  
22 negative declaration.

23 (e) The Office of Planning and Research shall develop and  
24 prepare the proposed guidelines as soon as possible and shall  
25 transmit them immediately to the Secretary of the *Natural*  
26 Resources Agency. The Secretary of the *Natural* Resources Agency  
27 shall certify and adopt the guidelines pursuant to Chapter 3.5  
28 (commencing with Section 11340) of Part 1 of Division 3 of Title  
29 2 of the Government Code, which shall become effective upon the  
30 filing ~~thereof~~ *of the guidelines*. However, the guidelines shall not  
31 be adopted without compliance with Sections 11346.4, 11346.5,  
32 and 11346.8 of the Government Code.

33 (f) The Office of Planning and Research shall, at least once  
34 every two years, review the guidelines adopted pursuant to this  
35 section and shall recommend proposed changes or amendments  
36 to the Secretary of the *Natural* Resources Agency. The Secretary  
37 of the *Natural* Resources Agency shall certify and adopt guidelines,  
38 and any amendments thereto, at least once every two years,  
39 pursuant to Chapter 3.5 (commencing with Section 11340) of Part  
40 1 of Division 3 of Title 2 of the Government Code, which shall

1 become effective upon the filing thereof. However, guidelines ~~may~~  
2 *shall* not be adopted or amended without compliance with Sections  
3 11346.4, 11346.5, and 11346.8 of the Government Code.

4 *SEC. 3. Section 21084 of the Public Resources Code is*  
5 *amended to read:*

6 21084. (a) The guidelines prepared and adopted pursuant to  
7 Section 21083 shall include a list of classes of projects ~~which that~~  
8 have been determined not to have a significant effect on the  
9 environment and ~~which that~~ shall be exempt from this division.  
10 In adopting the guidelines, the Secretary of the *Natural Resources*  
11 Agency shall make a finding that the listed classes of projects  
12 referred to in this section do not have a significant effect on the  
13 environment.

14 (b) *A project's greenhouse gas emissions shall not, in and of*  
15 *themselves, be deemed to cause an exemption adopted pursuant*  
16 *to subdivision (a) to be inapplicable if the project complies with*  
17 *applicable legal requirements adopted to implement statewide,*  
18 *regional, or local plans consistent with Section 15183.5 of Title*  
19 *14 of the California Code of Regulations.*

20 ~~(b) No project which~~

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

31 ~~(e) No~~

32 (d) *A project located on a site which that* is included on any list  
33 compiled pursuant to Section 65962.5 of the Government Code  
34 shall *not* be exempted from this division pursuant to subdivision  
35 (a).

36 ~~(d)~~

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

1 ~~(e) No~~

2 (f) A project that may cause a substantial adverse change in the  
3 significance of an historical resource, as specified in Section  
4 21084.1, shall *not* be exempted from this division pursuant to  
5 subdivision (a).

6 *SEC. 4. Section 21169.11 of the Public Resources Code is*  
7 *amended to read:*

8 21169.11. (a) At any time after a petition has been filed  
9 pursuant to this division, but at least 30 days before the hearing  
10 on the merits, a party may file a motion requesting the court to  
11 impose a sanction for a frivolous claim made in the course of an  
12 action brought pursuant to this division.

13 (b) If the court determines that a claim is frivolous, the court  
14 may impose an appropriate sanction, in an amount up to ~~ten~~ *twenty*  
15 ~~thousand dollars~~ ~~(\$10,000)~~ *(\$20,000)*, upon the attorneys, law  
16 firms, or parties responsible for the violation.

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

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

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

25 *SEC. 5. Section 21177 of the Public Resources Code, as*  
26 *amended by Section 11 of Chapter 496 of the Statutes of 2010, is*  
27 *amended to read:*

28 21177. (a) An action or proceeding shall not be brought  
29 pursuant to Section 21167 unless the alleged grounds for  
30 noncompliance with this division were presented to the public  
31 agency orally or in writing by any person during the public  
32 comment period provided by this division or prior to the close of  
33 the public hearing on the project before the issuance of the notice  
34 of determination.

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

1 (c) (1) This division does not require a public agency to  
2 consider written materials submitted after the close of the public  
3 comment period, unless those materials address any of the  
4 following matters:

5 (A) New issues raised in the response to comments by the lead  
6 agency.

7 (B) New information released by the responsible agency  
8 subsequent to the release of the proposed final environmental  
9 impact report, such as new information set forth or embodied in  
10 a staff report, proposed permit, proposed resolution or ordinance,  
11 or similar legislative document.

12 (C) Changes made to the project after the close of the public  
13 comment period.

14 (D) Proposed conditions for approval of a project, new  
15 mitigation measures for a project included in a revised  
16 environmental document, or proposed findings required by Section  
17 21081 or a proposed mitigation and monitoring program required  
18 by paragraph (1) of subdivision (a) of Section 21081.6, if the public  
19 agency releases those documents subsequent to the release of the  
20 proposed final environmental document.

21 (E) New information that was not known and could not have  
22 been known with reasonable diligence during the public comment  
23 period.

24 (2) If a lead agency elects not to consider written materials  
25 submitted after the close of the public comment period, the lead  
26 agency is not required to respond to that written material, and  
27 that written material shall not be raised in an action or proceeding  
28 brought pursuant to Section 21167.

29 ~~(e)~~

30 (d) This section does not preclude any organization formed after  
31 the approval of a project from maintaining an action pursuant to  
32 Section 21167 if a member of that organization has complied with  
33 subdivisions (a) and (b). The grounds for noncompliance may have  
34 been presented directly by a member or by a member agreeing  
35 with or supporting the comments of another person.

36 ~~(e)~~

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

38 ~~(e)~~

39 (f) This section does not apply to any alleged grounds for  
40 noncompliance with this division for which there was no public

1 hearing or other opportunity for members of the public to raise  
2 those objections orally or in writing prior to the approval of the  
3 project, or if the public agency failed to give the notice required  
4 by law.

5 (f)

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

9 (2) *Notwithstanding paragraph (1), this section shall apply to*  
10 *all projects for which a notice of preparation for an environmental*  
11 *impact report or a draft negative declaration have been issued on*  
12 *or before December 31, 2016.*

13 *SEC. 6. Section 21177 of the Public Resources Code, as added*  
14 *by Section 12 of Chapter 496 of the Statutes of 2010, is amended*  
15 *to read:*

16 21177. (a) An action or proceeding shall not be brought  
17 pursuant to Section 21167 unless the alleged grounds for  
18 noncompliance with this division were presented to the public  
19 agency orally or in writing by any person during the public  
20 comment period provided by this division or prior to the close of  
21 the public hearing on the project before the issuance of the notice  
22 of determination.

23 (b) A person shall not maintain an action or proceeding unless  
24 that person objected to the approval of the project orally or in  
25 writing during the public comment period provided by this division  
26 or prior to the close of the public hearing on the project before the  
27 filing of notice of determination ~~pursuant to Sections 21108 and~~  
28 ~~21152.~~

29 (c) (1) *This division does not require a public agency to*  
30 *consider written materials submitted after the close of the public*  
31 *comment period, unless those materials address any of the*  
32 *following matters:*

33 (A) *New issues raised in the response to comments by the lead*  
34 *agency.*

35 (B) *New information released by the responsible agency*  
36 *subsequent to the release of the proposed final environmental*  
37 *impact report, such as new information set forth or embodied in*  
38 *a staff report, proposed permit, proposed resolution or ordinance,*  
39 *or similar legislative document.*

1 (C) Changes made to the project after the close of the public  
2 comment period.

3 (D) Proposed conditions for approval of a project, new  
4 mitigation measures for a project included in a revised  
5 environmental document, or proposed findings required by Section  
6 21081 or a proposed mitigation and monitoring program required  
7 by paragraph (1) of subdivision (a) of Section 21081.6, if the public  
8 agency releases those documents subsequent to the release of the  
9 proposed final environmental document.

10 (E) New information that was not known and could not have  
11 been known with reasonable diligence during the public comment  
12 period.

13 (2) If a lead agency elects not to consider written materials  
14 submitted after the close of the public comment period, the lead  
15 agency is not required to respond to that written material, and  
16 that written material shall not be raised in an action or proceeding  
17 brought pursuant to Section 21167.

18 ~~(e)~~

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

23 ~~(d)~~

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

25 ~~(e)~~

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

32 ~~(f)~~

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

34 SEC. 7. Section 21178 is added to the Public Resources Code,  
35 to read:

36 21178. (a) In reviewing a motion filed pursuant to Section  
37 1021.5 of the Code of Civil Procedure for the recovery of attorney's  
38 fees for an action or proceeding brought pursuant to this division,  
39 the court shall also consider the following factors:

1 (1) Whether the time spent on an unsuccessful claim was  
2 reasonably incurred.

3 (2) The complexity and skill involved in the litigation of the  
4 claims upon which relief is granted.

5 (3) The skill used in the attorney's representation as compared  
6 to other similarly situated attorneys.

7 (4) Other factors deemed appropriate by the court.

8 (b) The court shall disallow fees for any unsuccessful claim  
9 unless that claim contributed to a successful claim brought  
10 pursuant to this division and the court may, in its discretion, reduce  
11 the fee award based upon the proportion of claims that were  
12 unsuccessful.

13 SEC. 8. No reimbursement is required by this act pursuant to  
14 Section 6 of Article XIII B of the California Constitution because  
15 a local agency or school district has the authority to levy service  
16 charges, fees, or assessments sufficient to pay for the program or  
17 level of service mandated by this act, within the meaning of Section  
18 17556 of the Government Code.

19 SECTION 1. ~~Section 11502 of the Food and Agricultural Code~~  
20 ~~is amended to read:~~

21 ~~11502. The director shall adopt regulations that govern the~~  
22 ~~conduct of the business of pest control.~~