

**Introduced by Senators Simitian, Steinberg, and Strickland**January 30, 2012

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An act to amend Section 21167.6 of, and to add Section 21167.6.2 to, the Public Resources Code, relating to environmental quality, and declaring the urgency thereof, to take effect immediately.

## LEGISLATIVE COUNSEL'S DIGEST

SB 984, as introduced, Simitian. Environmental quality: California Environmental Quality Act: record of proceedings.

(1) The California Environmental Quality Act (CEQA) requires a lead agency, as defined, to prepare, or cause to be prepared, and certify the completion of, an environmental impact report (EIR) on a project that it proposes to carry out or approve that may have a significant effect on the environment or to adopt a negative declaration if it finds that the project will not have that effect. CEQA also requires a lead agency to prepare a mitigated negative declaration for a project that may have a significant effect on the environment if revisions in the project would avoid or mitigate that effect and there is no substantial evidence that the project, as revised, would have a significant effect on the environment. CEQA establishes a procedure for the preparation and certification of the record of proceedings upon the filing of an action or proceeding challenging a lead agency's action on the grounds of noncompliance with CEQA.

This bill would require the lead agency, at the request of a project applicant, to, among other things, prepare a record of proceedings concurrently with the preparation and certification of an EIR. Because the bill would require a lead agency to prepare the record of proceedings as provided, this bill would impose a state-mandated local program.

(2) 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.

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

Vote:  $\frac{2}{3}$ . Appropriation: no. Fiscal committee: yes.  
State-mandated local program: yes.

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

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

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

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

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

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

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

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

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

17 (1) All project application materials.

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

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

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

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

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

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

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

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

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

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

27 (f) In preparing the record of proceedings, the party preparing  
28 the record shall strive to do so at reasonable cost in light of the  
29 scope of the record.

30 (g) The clerk of the superior court shall prepare and certify the  
31 clerk's transcript on appeal not later than 60 days from the date  
32 that the notice designating the papers or records to be included in  
33 the clerk's transcript was filed with the superior court, if the party  
34 or parties pay any costs or fees for the preparation of the clerk's  
35 transcript imposed in conformance with any law or rules of court.  
36 Nothing in this subdivision precludes an election to proceed by  
37 appendix, as provided in Rule 8.124 of the California Rules of  
38 Court.

39 (h) Extensions of the period for the filing of any brief on appeal  
40 may be allowed only by stipulation of the parties or by order of

1 the court for good cause shown. Extensions for the filing of a brief  
2 on appeal shall be limited to one 30-day extension for the  
3 preparation of an opening brief, and one 30-day extension for the  
4 preparation of a responding brief, except that the court may grant  
5 a longer extension or additional extensions if it determines that  
6 there is a substantial likelihood of settlement that would avoid the  
7 necessity of completing the appeal.

8 (i) At the completion of the filing of briefs on appeal, the  
9 appellant shall notify the court of the completion of the filing of  
10 briefs, whereupon the clerk of the reviewing court shall set the  
11 appeal for hearing on the first available calendar date.

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

14 21167.6.2. (a) Notwithstanding Section 21167.6, the lead  
15 agency, upon the written request of a project applicant, shall  
16 prepare and certify the record of proceedings for an environmental  
17 impact report in the following manner:

18 (1) The lead agency for the project shall prepare the record of  
19 proceedings pursuant to this division concurrently with the  
20 administrative process.

21 (2) All documents and other materials placed in the record of  
22 proceedings shall be posted on, and be downloadable from, an  
23 Internet Web site maintained by the lead agency commencing with  
24 the date of the release of the draft environmental impact report.

25 (3) The lead agency shall make available to the public in a  
26 readily accessible electronic format the draft environmental impact  
27 report and all other documents submitted to, or relied on by, the  
28 lead agency in the preparation of the draft environmental impact  
29 report.

30 (4) A document prepared by the lead agency or submitted by  
31 the applicant after the date of the release of the draft environmental  
32 impact report that is a part of the record of the proceedings shall  
33 be made available to the public in a readily accessible electronic  
34 format within five business days after the document is released or  
35 received by the lead agency.

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

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

5 (7) The lead agency shall certify the record of proceedings  
6 within five days of its approval of the project.

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

10 (c) The content of the record of proceedings shall be as specified  
11 in subdivision (e) of Section 21167.6.

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

15 SEC. 3. No reimbursement is required by this act pursuant to  
16 Section 6 of Article XIII B of the California Constitution because  
17 a local agency or school district has the authority to levy service  
18 charges, fees, or assessments sufficient to pay for the program or  
19 level of service mandated by this act, within the meaning of Section  
20 17556 of the Government Code.

21 SEC. 4. This act is an urgency statute necessary for the  
22 immediate preservation of the public peace, health, or safety within  
23 the meaning of Article IV of the Constitution and shall go into  
24 immediate effect. The facts constituting the necessity are:

25 To expedite the preparation of the record of proceeding of an  
26 environmental impact report for judicial review thereby protecting  
27 the environment and public health, and promote job creation at  
28 the earliest possible time, it is necessary for this act to take effect  
29 immediately.