

**ASSEMBLY BILL**

**No. 37**

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**Introduced by Assembly Member Perea**

December 3, 2012

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An act to amend, repeal, and add Section 21167.6 of, and to add and repeal Section 21167.6.2 of, the Public Resources Code, relating to environmental quality.

LEGISLATIVE COUNSEL'S DIGEST

AB 37, as introduced, Perea. 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, until January 1, 2017, the lead agency, at the request of a project applicant, to, among other things, prepare a record of proceedings concurrently with the preparation of negative declarations, mitigated negative declarations, EIRs, or other

environmental documents for specified projects. Because the bill would require a lead agency to prepare the record of proceedings as provided, this bill would impose a state-mandated local program.

(2) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

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

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

1 SECTION 1. Section 21167.6 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 (j) *This section shall remain in effect only until January 1, 2017,*  
13 *and as of that date is repealed, unless a later enacted statute, that*  
14 *is enacted before January 1, 2017, deletes or extends that date.*

15 SEC. 2. Section 21167.6 is added to the Public Resources Code,  
16 to read:

17 21167.6. Notwithstanding any other law, in all actions or  
18 proceedings brought pursuant to Section 21167, except those  
19 involving the Public Utilities Commission, all of the following  
20 shall apply:

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

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

37 (2) The plaintiff or petitioner may elect to prepare the record  
38 of proceedings or the parties may agree to an alternative method  
39 of preparation of the record of proceedings, subject to certification

1 of its accuracy by the public agency, within the time limit specified  
2 in this subdivision.

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

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

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

19 (1) All project application materials.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

16 (j) This section shall become operative on January 1, 2017.

17 SEC. 3. Section 21167.6.2 is added to the Public Resources  
18 Code, to read:

19 21167.6.2. (a) Notwithstanding Section 21167.6, for a project  
20 described in subdivision (f), upon the written request of a project  
21 applicant received no later than 30 days after the date that a lead  
22 agency makes a determination pursuant to subdivision (a) of  
23 Section 21080.1, Section 21094.5, or Chapter 4.2 (commencing  
24 with Section 21155), the lead agency shall prepare and certify the  
25 record of proceedings in the following manner:

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

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

37 (3) Except as provided in subdivision (d) of Section 15120 of  
38 Title 14 of the California Code of Regulations, the lead agency  
39 shall make available to the public, in a readily accessible electronic  
40 format, the draft environmental document for a project specified



1 in subdivision (f) and all other documents submitted to, cited by,  
2 or relied on by, the lead agency in the preparation of the draft  
3 environmental document for a project specified in subdivision (f).

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

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

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

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

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

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

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

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

33  
34 “THIS NEGATIVE DECLARATION, MITIGATED  
35 NEGATIVE DECLARATION, EIR, OR ENVIRONMENTAL  
36 DOCUMENT IS SUBJECT TO SECTION 21167.6.2 OF THE  
37 PUBLIC RESOURCES CODE, WHICH REQUIRES THE  
38 RECORD OF PROCEEDINGS FOR THIS PROJECT TO BE  
39 PREPARED CONCURRENTLY WITH THE  
40 ADMINISTRATIVE PROCESS, DOCUMENTS PREPARED

1 BY, OR SUBMITTED TO, THE LEAD AGENCY TO BE  
 2 POSTED ON THE LEAD AGENCY’S INTERNET WEB SITE,  
 3 AND THE LEAD AGENCY TO ENCOURAGE WRITTEN  
 4 COMMENTS ON THE PROJECT TO BE SUBMITTED TO THE  
 5 LEAD AGENCY IN A READILY ACCESSIBLE ELECTRONIC  
 6 FORMAT.”

7  
 8 (f) This section applies to the record of proceedings for the  
 9 preparation of a negative declaration, mitigated negative  
 10 declaration, environmental impact report, or other environmental  
 11 document prepared for any of the following:

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

15 (2) A project subject to Section 21094.5 or Chapter 4.2  
 16 (commencing with Section 21155).

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

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

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

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

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

39 (h) The costs of preparing the record of proceedings pursuant  
 40 to this section and complying with the requirements of this section

1 are not recoverable costs pursuant to Section 1033 of the Code of  
2 Civil Procedure.

3 (i) This section shall remain in effect only until January 1, 2017,  
4 and as of that date is repealed, unless a later enacted statute, that  
5 is enacted before January 1, 2017, deletes or extends that date.

6 SEC. 4. No reimbursement is required by this act pursuant to  
7 Section 6 of Article XIII B of the California Constitution because  
8 a local agency or school district has the authority to levy service  
9 charges, fees, or assessments sufficient to pay for the program or  
10 level of service mandated by this act, within the meaning of Section  
11 17556 of the Government Code.

O