

AMENDED IN SENATE MARCH 26, 2015

AMENDED IN SENATE MARCH 12, 2015

SENATE BILL

No. 122

Introduced by Senators Jackson and Hill

January 15, 2015

An act to amend ~~Section~~ *Sections 21082.1, 21091, 21159.9, and 21167.6* of, and to add Section 21167.6.2 to, the Public Resources Code, relating to environmental quality.

LEGISLATIVE COUNSEL'S DIGEST

SB 122, as amended, Jackson. 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 and consent of the lead agency, to prepare a record of proceedings concurrently with the preparation of a negative declaration,

mitigated negative declaration, EIR, or other environmental document for projects.

(2) *CEQA requires the lead agency to submit to the State Clearinghouse a sufficient number of copies of specified environmental documents prepared pursuant to CEQA for review and comment by state agencies in certain circumstances and a copy of those documents in electronic form, as prescribed. CEQA requires the Office of Planning and Research to implement, utilizing existing resources, a public assistance program to, among other things, establish and maintain a database to assist in the preparation of environmental documents, and a central repository for the collection, storage, retrieval, and dissemination of certain notices provided to the office, and provide to the California State Library copies of documents submitted in electronic format to the office pursuant to CEQA.*

This bill would require a lead agency to submit to the State Clearinghouse environmental documents in the form prescribed by the office. The bill would instead require the office to establish and maintain a database for the collection, storage, retrieval, and dissemination of environmental documents and notices prepared pursuant to CEQA and to make the database available online to the public. The bill would eliminate the requirement to provide copies of documents to the California State Library. The bill would require the office to submit to the Legislature a report, by July 1, 2016, describing the implementation of this requirement and a status report, by July 1, 2018.

~~(2) The~~

(3) *This bill would state the intent of the Legislature to enact legislation establishing an electronic database clearinghouse of notices and environmental documents prepared pursuant to CEQA, establishing a public review period for a final environmental impact report, and relating to the record of proceedings for a project for which an environmental impact report is prepared pursuant to CEQA.*

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

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

- 1 SECTION 1. Section 21082.1 of the Public Resources Code is
- 2 amended to read:
- 3 21082.1. (a) ~~Any~~—A draft environmental impact report,
- 4 environmental impact report, negative declaration, or mitigated

1 negative declaration prepared pursuant to the requirements of this
2 division shall be prepared directly by, or under contract to, a public
3 agency.

4 (b) This section ~~is not intended to~~ *does not* prohibit, and shall
5 not be construed as prohibiting, ~~any a~~ a person from submitting
6 information or other comments to the public agency responsible
7 for preparing an environmental impact report, draft environmental
8 impact report, negative declaration, or mitigated negative
9 declaration. The information or other comments may be submitted
10 in any format, shall be considered by the public agency, and may
11 be included, in whole or in part, in any report or declaration.

12 (c) The lead agency shall do all of the following:

13 (1) Independently review and analyze any report or declaration
14 required by this division.

15 (2) Circulate draft documents that reflect its independent
16 judgment.

17 (3) As part of the adoption of a negative declaration or a
18 mitigated negative declaration, or certification of an environmental
19 impact report, find that the report or declaration reflects the
20 independent judgment of the lead agency.

21 (4) Submit a sufficient number of ~~copies~~ *copies, in the form*
22 *required by the Office of Planning and Research*, of the draft
23 environmental impact report, proposed negative declaration, or
24 proposed mitigated negative ~~declaration, and a copy of the report~~
25 ~~or declaration in an electronic form as required by the guidelines~~
26 ~~adopted pursuant to Section 21083, declaration~~ to the State
27 Clearinghouse for review and comment by state agencies, if any
28 of the following apply:

29 (A) A state agency is any of the following:

30 (i) The lead agency.

31 (ii) A responsible agency.

32 (iii) A trustee agency.

33 (B) A state agency otherwise has jurisdiction by law with respect
34 to the project.

35 (C) The proposed project is of sufficient statewide, regional, or
36 areawide environmental significance as determined pursuant to
37 the guidelines certified and adopted pursuant to Section 21083.

38 *SEC. 2. Section 21091 of the Public Resources Code is*
39 *amended to read:*

1 21091. (a) The public review period for a draft environmental
2 impact report may not be less than 30 days. If the draft
3 environmental impact report is submitted to the State Clearinghouse
4 for review, the review period shall be at least 45 days, and the lead
5 agency shall provide a sufficient number of copies of the ~~document~~
6 *document, in the form required by the Office of Planning and*
7 *Research*, to the State Clearinghouse for review and comment by
8 state agencies.

9 (b) The public review period for a proposed negative declaration
10 or proposed mitigated negative declaration may not be less than
11 20 days. If the proposed negative declaration or proposed mitigated
12 negative declaration is submitted to the State Clearinghouse for
13 review, the review period shall be at least 30 days, and the lead
14 agency shall provide a sufficient number of copies of the ~~document~~
15 *document, in the form required by the Office of Planning and*
16 *Research*, to the State Clearinghouse for review and comment by
17 state agencies.

18 (c) (1) Notwithstanding subdivisions (a) and (b), if a draft
19 environmental impact report, proposed negative declaration, or
20 proposed mitigated negative declaration is submitted to the State
21 Clearinghouse for review and the period of review by the State
22 Clearinghouse is longer than the public review period established
23 pursuant to subdivision (a) or (b), whichever is applicable, the
24 public review period shall be at least as long as the period of review
25 and comment by state agencies as established by the State
26 Clearinghouse.

27 (2) The public review period and the state agency review period
28 may, but are not required to, begin and end at the same time. Day
29 one of the state agency review period shall be the date that the
30 State Clearinghouse distributes the CEQA document to state
31 agencies.

32 (3) If the submittal of a CEQA document is determined by the
33 State Clearinghouse to be complete, the State Clearinghouse shall
34 distribute the document within three working days from the date
35 of receipt. The State Clearinghouse shall specify the information
36 that will be required in order to determine the completeness of the
37 submittal of a CEQA document.

38 (d) (1) The lead agency shall consider comments it receives on
39 a draft environmental impact report, proposed negative declaration,

1 or proposed mitigated negative declaration if those comments are
2 received within the public review period.

3 (2) (A) With respect to the consideration of comments received
4 on a draft environmental impact report, the lead agency shall
5 evaluate comments on environmental issues that are received from
6 persons who have reviewed the draft and shall prepare a written
7 response pursuant to subparagraph (B). The lead agency may also
8 respond to comments that are received after the close of the public
9 review period.

10 (B) The written response shall describe the disposition of each
11 significant environmental issue that is raised by commenters. The
12 responses shall be prepared consistent with Section 15088 of Title
13 14 of the California Code of Regulations.

14 (3) (A) With respect to the consideration of comments received
15 on a draft environmental impact report, proposed negative
16 declaration, proposed mitigated negative declaration, or notice
17 pursuant to Section 21080.4, the lead agency shall accept comments
18 via email and shall treat email comments as equivalent to written
19 comments.

20 (B) Any law or regulation relating to written comments received
21 on a draft environmental impact report, proposed negative
22 declaration, proposed mitigated negative declaration, or notice
23 received pursuant to Section 21080.4, shall also apply to email
24 comments received for those reasons.

25 (e) (1) Criteria for shorter review periods by the State
26 Clearinghouse for documents that must be submitted to the State
27 Clearinghouse shall be set forth in the written guidelines issued
28 by the Office of Planning and Research and made available to the
29 public.

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

33 (3) A request for a shortened review period shall only be made
34 in writing by the decisionmaking body of the lead agency to the
35 Office of Planning and Research. The decisionmaking body may
36 designate by resolution or ordinance a person authorized to request
37 a shortened review period. A designated person shall notify the
38 decisionmaking body of this request.

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

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

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

11 (f) Prior to carrying out or approving a project for which a
12 negative declaration has been adopted, the lead agency shall
13 consider the negative declaration together with comments that
14 were received and considered pursuant to paragraph (1) of
15 subdivision (d).

16 *SEC. 3. Section 21159.9 of the Public Resources Code is*
17 *amended to read:*

18 21159.9. The Office of Planning and Research shall ~~implement,~~
19 ~~utilizing existing resources,~~ *implement* a public assistance and
20 information program, to ensure efficient and effective
21 implementation of this division, to do ~~all~~ *both* of the following:

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

25 ~~(b) Establish and maintain a database to assist in the preparation~~
26 ~~of environmental documents.~~

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

34 ~~(d) Provide to the California State Library copies of documents~~
35 ~~submitted in electronic format to the Office of Planning and~~
36 ~~Research pursuant to this division. The California State Library~~
37 ~~shall be the repository for those electronic documents, which shall~~
38 ~~be made available for viewing by the general public upon request.~~

39 ~~(b) (1) Establish and maintain a database for the collection,~~
40 ~~storage, retrieval, and dissemination of environmental documents,~~

1 notices of exemption, notices of preparation, notices of
2 determination, and notices of completion provided to the office.
3 The database shall be available online to the public through the
4 internet. The office may coordinate with another state agency to
5 host and maintain the online database.

6 (2) The office may phase in the submission of electronic
7 documents and use of the database by state and local public
8 agencies.

9 (3) The office shall develop a budget for the development,
10 hosting, and maintenance of the database and shall submit the
11 budget to the Department of Finance for consideration and
12 approval.

13 (4) (A) Pursuant to Section 9795 of the Government Code, the
14 office shall, no later than July 1, 2016, submit to the Legislature
15 a report describing how it plans to implement this subdivision,
16 and shall provide an additional report to the Legislature no later
17 than July 2018 describing the status of the implementation of this
18 subdivision.

19 (B) Pursuant to Section 10231.5 of the Government Code, this
20 paragraph is inoperative on July 1, 2022.

21 **SECTION 4.**

22 *SEC. 4.* Section 21167.6 of the Public Resources Code is
23 amended to read:

24 21167.6. Notwithstanding any other law, in all actions or
25 proceedings brought pursuant to Section 21167, except as provided
26 in Section 21167.6.2 or those involving the Public Utilities
27 Commission, all of the following shall apply:

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

35 (b) (1) The public agency shall prepare and certify the record
36 of proceedings not later than 60 days from the date that the request
37 specified in subdivision (a) was served upon the public agency.
38 Upon certification, the public agency shall lodge a copy of the
39 record of proceedings with the court and shall serve on the parties
40 notice that the record of proceedings has been certified and lodged

1 with the court. The parties shall pay any reasonable costs or fees
2 imposed for the preparation of the record of proceedings in
3 conformance with any law or rule of court.

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

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

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

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

25 (1) All project application materials.

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

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

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

1 to the decisionmaking body prior to action on the environmental
2 documents or on the project.

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

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

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

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

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

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

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

35 (f) In preparing the record of proceedings, the party preparing
36 the record shall strive to do so at reasonable cost in light of the
37 scope of the record.

38 (g) The clerk of the superior court shall prepare and certify the
39 clerk's transcript on appeal not later than 60 days from the date
40 that the notice designating the papers or records to be included in

1 the clerk's transcript was filed with the superior court, if the party
2 or parties pay any costs or fees for the preparation of the clerk's
3 transcript imposed in conformance with any law or rules of court.
4 Nothing in this subdivision precludes an election to proceed by
5 appendix, as provided in Rule 8.124 of the California Rules of
6 Court.

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

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

20 ~~SEC. 2.~~

21 *SEC. 5.* Section 21167.6.2 is added to the Public Resources
22 Code, to read:

23 21167.6.2. (a) (1) Notwithstanding Section 21167.6, upon
24 the written request of a project applicant received no later than 30
25 days after the date that the lead agency makes a determination
26 pursuant to subdivision (a) of Section 21080.1, Section 21094.5,
27 or Chapter 4.2 (commencing with Section 21155) and with the
28 consent of the lead agency as provided in subdivision (e), the lead
29 agency shall prepare and certify the record of proceedings in the
30 following manner:

31 (A) The lead agency for the project shall prepare the record of
32 proceedings pursuant to this division concurrently with the
33 administrative process.

34 (B) All documents and other materials placed in the record of
35 proceedings shall be posted on, and be downloadable from, an
36 Internet Web site maintained by the lead agency commencing with
37 the date of the release of the draft environmental document for the
38 project. If the lead agency cannot maintain an Internet Web site
39 with the information required pursuant to this section, the lead

1 agency shall provide a link on the agency’s Internet Web site to
2 that information.

3 (C) The lead agency shall make available to the public in a
4 readily accessible electronic format the draft environmental
5 document for the project, and all other documents submitted to,
6 cited by, or relied on by the lead agency, in the preparation of the
7 draft environmental document for the project.

8 (D) A document prepared by the lead agency or submitted by
9 the applicant after the date of the release of the draft environmental
10 document for the project that is a part of the record of the
11 proceedings shall be made available to the public in a readily
12 accessible electronic format within 5 business days after the
13 document is released or received by the lead agency.

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

18 (F) Within 7 business days after the receipt of any comment
19 that is not in an electronic format, the lead agency shall convert
20 that comment into a readily accessible electronic format and make
21 it available to the public in that format.

22 (G) The lead agency shall certify the record of proceedings
23 within 30 days after the filing of the notice required pursuant to
24 Section 21108 or 21152.

25 (2) This subdivision does not require the disclosure or posting
26 of any trade secret as defined in Section 6254.7 of the Government
27 Code, information about the location of archaeological sites or
28 sacred lands, or any other information that is subject to the
29 disclosure restrictions of Section 6254 of the Government Code.

30 (b) Any dispute regarding the record of proceedings prepared
31 pursuant to this section shall be resolved by the court in an action
32 or proceeding brought pursuant to subdivision (b) or (c) of Section
33 21167.

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

36 (d) The negative declaration, mitigated negative declaration,
37 draft and final environmental impact report, or other environmental
38 document shall include a notice in no less than 12-point type stating
39 the following:

40

1 “THIS DOCUMENT IS SUBJECT TO SECTION 21167.6.2
2 OF THE PUBLIC RESOURCES CODE, WHICH REQUIRES
3 THE RECORD OF PROCEEDINGS FOR THIS PROJECT TO
4 BE PREPARED CONCURRENTLY WITH THE
5 ADMINISTRATIVE PROCESS, DOCUMENTS PREPARED
6 BY, OR SUBMITTED TO, THE LEAD AGENCY TO BE
7 POSTED ON THE LEAD AGENCY’S INTERNET WEB SITE,
8 AND THE LEAD AGENCY TO ENCOURAGE WRITTEN
9 COMMENTS ON THE PROJECT TO BE SUBMITTED TO THE
10 LEAD AGENCY IN A READILY ACCESSIBLE ELECTRONIC
11 FORMAT.”
12

13 (e) (1) The lead agency shall respond to a request by the project
14 applicant within 10 business days from the date that the request
15 pursuant to subdivision (a) is received by the lead agency.

16 (2) A project applicant and the lead agency may mutually agree,
17 in writing, to extend the time period for the lead agency to respond
18 pursuant to paragraph (1), but they shall not extend that period
19 beyond the commencement of the public review period for the
20 proposed negative declaration, mitigated negative declaration,
21 draft environmental impact report, or other environmental
22 document.

23 (3) The request to prepare a record of proceedings pursuant to
24 this section shall be deemed denied if the lead agency fails to
25 respond within 10 business days of receiving the request or within
26 the time period agreed upon pursuant to paragraph (2), whichever
27 ends later.

28 (f) The written request of the applicant submitted pursuant to
29 subdivision (a) shall include an agreement to pay all of the lead
30 agency’s costs of preparing and certifying the record of proceedings
31 pursuant to this section and complying with the requirements of
32 this section, in a manner specified by the lead agency.

33 (g) The costs of preparing the record of proceedings pursuant
34 to this section and complying with the requirements of this section
35 are not recoverable costs pursuant to Section 1033 of the Code of
36 Civil Procedure.

37 (h) Pursuant to subdivision (f) and Section 21089, the lead
38 agency may charge and collect a reasonable fee from the person
39 making the request pursuant to subdivision (a) to recover the costs

1 incurred by the lead agency in preparing the record of proceedings
2 pursuant to this section.

3 ~~SEC. 3. It is the intent of the Legislature to enact legislation~~
4 ~~establishing an electronic database clearinghouse managed by the~~
5 ~~Office of Planning and Research of notices and documents required~~
6 ~~to be prepared pursuant to the California Environmental Quality~~
7 ~~Act (Division 13 (commencing with Section 21000) of the Public~~
8 ~~Resources Code).~~

9 ~~SEC. 4.~~

10 *SEC. 6.* It is the intent of the Legislature to enact legislation
11 establishing a public review period for a final environmental impact
12 report prepared pursuant to, and relating to the record of
13 proceedings for a project for which an environmental impact report
14 is prepared pursuant to, the California Environmental Quality Act
15 (Division 13 (commencing with Section 21000) of the Public
16 Resources Code).

O