

**Introduced by Senator Correa**February 26, 2009

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An act to amend Sections 21083, 21091, and 21177 of, and to add Section 21080.34 to, the Public Resources Code, relating to the environment.

## LEGISLATIVE COUNSEL'S DIGEST

SB 476, as introduced, Correa. Environment: California Environmental Quality Act: noncompliance allegations: public comment.

(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 provides for a public review period for the public to review a draft EIR, proposed negative declaration, or proposed mitigated negative declaration. CEQA requires a lead agency to evaluate and respond to comments on a draft EIR, proposed negative declaration, or proposed mitigated negative declaration made during the public review period and authorizes a lead agency to evaluate and respond to comments made on a draft EIR when the comments are submitted after the public review period. CEQA requires an action or proceeding alleging noncompliance with its requirements to be based on grounds that were presented to the public agency orally or in writing by any

person during the public comment period provided under CEQA or prior to the close of the public hearing on the project before the issuance of the notice of determination.

This bill would allow an action or proceeding to be brought based on alleged grounds of noncompliance with CEQA raised after the public comment period if the person can demonstrate that the alleged grounds were not known and could not have been known with reasonable diligence at the time the EIR, negative declaration, or mitigated negative declaration was made available for public review, and therefore could not have been presented prior to the close of the comment period and the person raised the alleged grounds prior to the close of the public hearing on the project before the issuance of the notice of determination.

The bill would prohibit a lead agency from considering comments received after the close of the public review period, except in this case in which the bill would authorize alleged grounds of noncompliance with CEQA to be raised after the public comment period. The bill would limit the evaluation of the cumulative effect of a project in an EIR to the information available at the time of publishing of the notice of preparation.

(2) CEQA exempts certain specified projects from its requirements.

This bill would exempt from its requirements projects related to the installation of environmental enhancement on or within a property or structure if the enhancement does not increase the square footage of the property or structure. Because a lead agency would be required to determine whether a project is exempt under this provision and to provide certain notice regarding its determination, the bill would impose a state-mandated local program.

(3) 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 21080.34 is added to the Public Resources
- 2 Code, to read:

1 21080.34. This division does not apply to an approval or a  
2 permit that may be required when an owner or occupant of an  
3 existing, or approved but unbuilt, residential or commercial  
4 property or structure elects to install environmental enhancement  
5 on or within that property or structure. For the purposes of this  
6 section, environmental enhancement, as determined by the lead  
7 agency, may include alterations to the property or structure that  
8 reduce energy and water usage, or emissions, or both usage and  
9 emissions. The enhancement shall not increase the square footage  
10 of the existing, or approved but unbuilt, residential or commercial  
11 property or structure.

12 SEC. 2. Section 21083 of the Public Resources Code is  
13 amended to read:

14 21083. (a) The Office of Planning and Research shall prepare  
15 and develop proposed guidelines for the implementation of this  
16 division by public agencies. The guidelines shall include objectives  
17 and criteria for the orderly evaluation of projects and the  
18 preparation of environmental impact reports and negative  
19 declarations in a manner consistent with this division.

20 (b) The guidelines shall specifically include criteria for public  
21 agencies to follow in determining whether or not a proposed project  
22 may have a “significant effect on the environment.” The criteria  
23 shall require a finding that a project may have a “significant effect  
24 on the environment” if one or more of the following conditions  
25 exist:

26 (1) A proposed project has the potential to degrade the quality  
27 of the environment, to curtail the range of the environment, or to  
28 achieve short-term, to the disadvantage of long-term, environmental  
29 goals.

30 (2) The possible effects of a project are individually limited but  
31 cumulatively considerable. As used in this paragraph,  
32 “cumulatively considerable” means that the incremental effects of  
33 an individual project are considerable when viewed in connection  
34 with the effects of past projects, the effects of other current projects,  
35 and the effects of probable future projects. *In evaluating cumulative  
36 effects in an environmental impact report, the information required  
37 to be considered shall be limited to the information available at  
38 the time of the publishing of the notice of preparation.*

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

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

3 (d) The guidelines shall include criteria for public agencies to  
4 use in determining when a proposed project is of sufficient  
5 statewide, regional, or areawide environmental significance that  
6 a draft environmental impact report, a proposed negative  
7 declaration, or a proposed mitigated negative declaration shall be  
8 submitted to appropriate state agencies, through the State  
9 Clearinghouse, for review and comment prior to completion of the  
10 environmental impact report, negative declaration, or mitigated  
11 negative declaration.

12 (e) The Office of Planning and Research shall develop and  
13 prepare the proposed guidelines as soon as possible and shall  
14 transmit them immediately to the Secretary of the Resources  
15 Agency. The Secretary of the Resources Agency shall certify and  
16 adopt the guidelines pursuant to Chapter 3.5 (commencing with  
17 Section 11340) of Part 1 of Division 3 of Title 2 of the Government  
18 Code, which shall become effective upon the filing thereof.  
19 However, the guidelines shall not be adopted without compliance  
20 with Sections 11346.4, 11346.5, and 11346.8 of the Government  
21 Code.

22 (f) The Office of Planning and Research shall, at least once  
23 every two years, review the guidelines adopted pursuant to this  
24 section and shall recommend proposed changes or amendments  
25 to the Secretary of the Resources Agency. The Secretary of the  
26 Resources Agency shall certify and adopt guidelines, and any  
27 amendments thereto, at least once every two years, pursuant to  
28 Chapter 3.5 (commencing with Section 11340) of Part 1 of Division  
29 3 of Title 2 of the Government Code, which shall become effective  
30 upon the filing thereof. However, guidelines may not be adopted  
31 or amended without compliance with Sections 11346.4, 11346.5,  
32 and 11346.8 of the Government Code.

33 SEC. 3. Section 21091 of the Public Resources Code is  
34 amended to read:

35 21091. (a) The public review period for a draft environmental  
36 impact report may not be less than 30 days. If the draft  
37 environmental impact report is submitted to the State Clearinghouse  
38 for review, the review period shall be at least 45 days, and the lead  
39 agency shall provide a sufficient number of copies of the document

1 to the State Clearinghouse for review and comment by state  
2 agencies.

3 (b) The public review period for a proposed negative declaration  
4 or proposed mitigated negative declaration may not be less than  
5 20 days. If the proposed negative declaration or proposed mitigated  
6 negative declaration is submitted to the State Clearinghouse for  
7 review, the review period shall be at least 30 days, and the lead  
8 agency shall provide a sufficient number of copies of the document  
9 to the State Clearinghouse for review and comment by state  
10 agencies.

11 (c) (1) Notwithstanding subdivisions (a) and (b), if a draft  
12 environmental impact report, proposed negative declaration, or  
13 proposed mitigated negative declaration is submitted to the State  
14 Clearinghouse for review and the period of review by the State  
15 Clearinghouse is longer than the public review period established  
16 pursuant to subdivision (a) or (b), whichever is applicable, the  
17 public review period shall be at least as long as the period of review  
18 and comment by state agencies as established by the State  
19 Clearinghouse.

20 (2) The public review period and the state agency review period  
21 may, but are not required to, begin and end at the same time. Day  
22 one of the state agency review period shall be the date that the  
23 State Clearinghouse distributes the document to state agencies.

24 (3) If the submittal of a CEQA document is determined by the  
25 State Clearinghouse to be complete, the State Clearinghouse shall  
26 distribute the document within three working days from the date  
27 of receipt. The State Clearinghouse shall specify the information  
28 that will be required in order to determine the completeness of the  
29 submittal of a CEQA document.

30 (d) (1) The lead agency shall consider comments it receives on  
31 a draft environmental impact report, proposed negative declaration,  
32 or proposed mitigated negative declaration if those comments are  
33 received within the public review period. *Except in circumstances*  
34 *specified in subdivision (a) of Section 21177, the lead agency shall*  
35 *not consider comments received after the close of the public review*  
36 *period.*

37 (2) (A) With respect to the consideration of comments received  
38 on a draft environmental impact report, the lead agency shall  
39 evaluate comments on environmental issues that are received from  
40 persons who have reviewed the draft and shall prepare a written

1 response pursuant to subparagraph (B).—~~The~~ *Except in*  
2 *circumstances specified in subdivision (a) of Section 21177, the*  
3 *lead agency may also shall not* respond to comments that are  
4 received after the close of the public review period.

5 (B) The written response shall describe the disposition of each  
6 significant environmental issue that is raised by commenters. The  
7 responses shall be prepared consistent with Section 15088 of Title  
8 14 of the California Code of Regulations, as those regulations  
9 existed on June 1, 1993.

10 (3) (A) With respect to the consideration of comments received  
11 on a draft environmental impact report, proposed negative  
12 declaration, proposed mitigated negative declaration, or notice  
13 pursuant to Section 21080.4, the lead agency shall accept comments  
14 via e-mail and shall treat e-mail comments as equivalent to written  
15 comments.

16 (B) Any law or regulation relating to written comments received  
17 on a draft environmental impact report, proposed negative  
18 declaration, proposed mitigated negative declaration, or notice  
19 received pursuant to Section 21080.4, shall also apply to e-mail  
20 comments received for those reasons.

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

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

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

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

38 (5) A shortened review period may not be approved by the  
39 Office of Planning and Research for a proposed project of

1 statewide, regional, or areawide environmental significance as  
2 determined pursuant to Section 21083.

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

6 (f) Prior to carrying out or approving a project for which a  
7 negative declaration has been adopted, the lead agency shall  
8 consider the negative declaration together with comments that  
9 were received and considered pursuant to paragraph (1) of  
10 subdivision (d).

11 SEC. 4. Section 21177 of the Public Resources Code is  
12 amended to read:

13 21177. (a) ~~No~~*An action or proceeding may shall not* be  
14 brought pursuant to Section 21167 unless the alleged grounds for  
15 noncompliance with this division were presented to the public  
16 agency orally or in writing by any person during the public  
17 comment period provided by this division ~~or~~. *If a person can*  
18 *demonstrate that the alleged grounds for noncompliance relate to*  
19 *matters that were not known and could not have been known with*  
20 *reasonable diligence at the time the environmental impact report,*  
21 *negative declaration, or mitigated negative declaration was made*  
22 *available for public review, and therefore could not have been*  
23 *presented prior to the close of the comment period, then an action*  
24 *or proceeding may be brought pursuant to Section 21167 only if*  
25 *the alleged grounds for noncompliance with this division were*  
26 *presented to the public agency by the person prior to the close of*  
27 *the public hearing on the project before the issuance of the notice*  
28 *of determination.*

29 (b) ~~No~~*A person shall not* maintain an action or proceeding  
30 unless that person objected to the approval of the project orally or  
31 in writing during the public comment period provided by this  
32 division or prior to the close of the public hearing on the project  
33 before the issuance of the notice of determination.

34 (c) This section does not preclude ~~any~~ *an* organization formed  
35 after the approval of a project from maintaining an action pursuant  
36 to Section 21167 if a member of that organization has complied  
37 with subdivision (b).

38 (d) This section does not apply to the Attorney General.

39 (e) 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 SEC. 5. No reimbursement is required by this act pursuant to  
6 Section 6 of Article XIII B of the California Constitution because  
7 a local agency or school district has the authority to levy service  
8 charges, fees, or assessments sufficient to pay for the program or  
9 level of service mandated by this act, within the meaning of Section  
10 17556 of the Government Code.