

AMENDED IN SENATE MARCH 12, 2012

**SENATE BILL**

**No. 984**

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**Introduced by Senators Simitian, Steinberg, and Strickland**

January 30, 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 ~~to~~ of, the Public Resources Code, relating to environmental quality, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

SB 984, as amended, 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, *until January 1, 2016*, 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~~ 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.

(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 law, in all actions or  
4 proceedings brought pursuant to Section 21167, except as provided  
5 for in Section 21167.6.2 or those involving the Public Utilities  
6 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

1 of preparation of the record of proceedings, subject to certification  
2 of its accuracy by the public agency, within the time limit specified  
3 in this subdivision.

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

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

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

20 (1) All project application materials.

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

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

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

37 (5) All notices issued by the respondent public agency to comply  
38 with this division or with any other law governing the processing  
39 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 remain in effect only until January 1, 2016,*  
17 *and as of that date is repealed, unless a later enacted statute, that*  
18 *is enacted before January 1, 2016, deletes or extends that date.*

19 SEC. 2. Section 21167.6 is added to the Public Resources Code,  
20 to read:

21 21167.6. *Notwithstanding any other law, in all actions or*  
22 *proceedings brought pursuant to Section 21167, except those*  
23 *involving the Public Utilities Commission, all of the following*  
24 *shall apply:*

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

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

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

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

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

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

22         (1) *All project application materials.*

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

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

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

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

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

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

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

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

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

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

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

36    (g) The clerk of the superior court shall prepare and certify the  
37 clerk's transcript on appeal not later than 60 days from the date  
38 that the notice designating the papers or records to be included  
39 in the clerk's transcript was filed with the superior court, if the  
40 party or parties pay any costs or fees for the preparation of the

1 clerk's transcript imposed in conformance with any law or rules  
2 of court. Nothing in this subdivision precludes an election to  
3 proceed by appendix, as provided in Rule 8.124 of the California  
4 Rules of Court.

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

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

18 (j) This section shall become operative on January 1, 2016.

19 ~~SEC. 2.~~

20 SEC. 3. Section 21167.6.2 is added to the Public Resources  
21 Code, to read:

22 21167.6.2. (a) Notwithstanding Section 21167.6, for a project  
23 described in subdivision (f), the lead agency, upon the written  
24 request of a project applicant received no later than 30 days after  
25 the date that the lead agency makes a determination pursuant to  
26 subdivision (a) of Section 21080.1, Section 21094.5, or Chapter  
27 4.2 (commencing with Section 21155), shall prepare and certify  
28 the record of proceedings for an environmental impact report in  
29 the following manner:

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

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



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

3 (3) ~~The Except as provided in subdivision (d) of Section 15120~~  
4 ~~of Title 14 of the California Code of Regulations, the lead agency~~  
5 shall make available to the public in a readily accessible electronic  
6 format the ~~draft environmental impact report~~ *environmental*  
7 *document for a project specified in subdivision (f)*, and all other  
8 documents submitted to, ~~or cited by, or relied on by, the lead~~  
9 agency in the preparation of the ~~draft environmental impact report~~  
10 *environmental document for a project specified in subdivision (f)*.

11 (4) A document prepared by the lead agency or submitted by  
12 the applicant after the date of the release of the ~~draft environmental~~  
13 ~~impact report~~ *environmental document for a project specified in*  
14 *subdivision (f)* that is a part of the record of the proceedings shall  
15 be made available to the public in a readily accessible electronic  
16 format within five business days after the document is released or  
17 received by the lead agency.

18 (5) The lead agency shall encourage written comments on the  
19 project to be submitted in a readily accessible electronic format,  
20 and shall make any comment available to the public in a readily  
21 accessible electronic format within five *business* days of its receipt.

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

26 (7) The lead agency shall certify the record of proceedings  
27 ~~within five 30 days of its approval of the project after the filing of~~  
28 *the notice required pursuant to Section 21108 or 21152.*

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

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

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

37 (e) *The negative declaration, mitigated negative declaration,*  
38 *draft and final environmental impact report, or other*  
39 *environmental document for a project specified in subdivision (f)*

1 shall include a notice in no less than 12-point type stating the  
2 following:

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

16  
17 (f) (1) This section applies to the record of proceedings for the  
18 preparation of a negative declaration, mitigated negative  
19 declaration, environmental impact report, or other environmental  
20 document prepared for any of the following:

21 (A) A project determined to be of statewide, regional, or  
22 areawide environmental significance pursuant to subdivision (d)  
23 of Section 21083.

24 (B) A project subject to Section 21094.5 or Chapter 4.2  
25 (commencing with Section 21155).

26 (C) (i) A project, other than one described in subparagraphs  
27 (A) and (B), for which the lead agency consents to prepare the  
28 record of proceeding pursuant to this subparagraph.

29 (ii) The lead agency shall respond to a request by the project  
30 applicant within 10 business days from the date that the request  
31 pursuant to subdivision (a) is received by the lead agency.

32 (iii) A project applicant and the lead agency may mutually  
33 agree, in writing, to extend the time period for the lead agency to  
34 respond pursuant to clause (ii), but the extension shall be no later  
35 than the commencement of the public review period for the  
36 proposed negative declaration, mitigated negative declaration, or  
37 draft environmental impact report.

38 (iv) The request is deemed denied if the lead agency fails to  
39 respond within 10 business days of receiving the request or within

1 *the time period agreed upon pursuant to clause (iii), whichever is*  
2 *later.*

3 *(g) The project applicant shall reimburse the lead agency for*  
4 *the costs incurred in compliance with this section in a manner*  
5 *specified by the lead agency and a plaintiff or petitioner, if any,*  
6 *is not required to pay these costs.*

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

10 ~~SEC. 3.~~

11 *SEC. 4.* No reimbursement is required by this act pursuant to  
12 Section 6 of Article XIII B of the California Constitution because  
13 a local agency or school district has the authority to levy service  
14 charges, fees, or assessments sufficient to pay for the program or  
15 level of service mandated by this act, within the meaning of Section  
16 17556 of the Government Code.

17 ~~SEC. 4.~~

18 *SEC. 5.* This act is an urgency statute necessary for the  
19 immediate preservation of the public peace, health, or safety within  
20 the meaning of Article IV of the Constitution and shall go into  
21 immediate effect. The facts constituting the necessity are:

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