

AMENDED IN SENATE APRIL 9, 2012

AMENDED IN SENATE MARCH 12, 2012

SENATE BILL

No. 984

Introduced by Senators Simitian, Steinberg, and Strickland
(Coauthors: Senators Blakeslee and Rubio)

January 30, 2012

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, 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 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

1 imposed for the preparation of the record of proceedings in
2 conformance with any law or rule of court.

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

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

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

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

24 (1) All project application materials.

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

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

34 (4) Any transcript or minutes of the proceedings at which the
35 decisionmaking body of the respondent public agency heard
36 testimony on, or considered any environmental document on, the
37 project, and any transcript or minutes of proceedings before any
38 advisory body to the respondent public agency that were presented
39 to the decisionmaking body prior to action on the environmental
40 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 project,
6 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 documents
24 relied upon in any environmental document prepared for the project
25 and either made available to the public during the public review
26 period or included in the respondent public agency's files on the
27 project, and all internal agency communications, including staff
28 notes and memoranda related to the project or to compliance with
29 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 in
39 the clerk's transcript was filed with the superior court, if the party
40 or parties pay any costs or fees for the preparation of the clerk's

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

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

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

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

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

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

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

(b) (1) The public agency shall prepare and certify the record of proceedings not later than 60 days from the date that the request specified in subdivision (a) was served upon the public agency. Upon certification, the public agency shall lodge a copy of the record of proceedings with the court and shall serve on the parties notice that the record of proceedings has been certified and lodged with the court. The parties shall pay any reasonable costs or fees

1 imposed for the preparation of the record of proceedings in
2 conformance with any law or rule of court.

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

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

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

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

24 (1) All project application materials.

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

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

34 (4) Any transcript or minutes of the proceedings at which the
35 decisionmaking body of the respondent public agency heard
36 testimony on, or considered any environmental document on, the
37 project, and any transcript or minutes of proceedings before any
38 advisory body to the respondent public agency that were presented
39 to the decisionmaking body prior to action on the environmental
40 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 project,
6 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 documents
24 relied upon in any environmental document prepared for the project
25 and either made available to the public during the public review
26 period or included in the respondent public agency's files on the
27 project, and all internal agency communications, including staff
28 notes and memoranda related to the project or to compliance with
29 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 in
39 the clerk's transcript was filed with the superior court, if the party
40 or parties pay any costs or fees for the preparation of the clerk's

1 transcript imposed in conformance with any law or rules of court.
2 Nothing in this subdivision precludes an election to proceed by
3 appendix, as provided in Rule 8.124 of the California Rules of
4 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. 3. Section 21167.6.2 is added to the Public Resources
20 Code, to read:

21 21167.6.2. (a) Notwithstanding Section 21167.6, for a project
22 described in subdivision (f), the lead agency, upon the written
23 request of a project applicant received no later than 30 days after
24 the date that the lead agency makes a determination pursuant to
25 subdivision (a) of Section 21080.1, Section 21094.5, or Chapter
26 4.2 (commencing with Section 21155), shall prepare and certify
27 the record of proceedings in the following manner:

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

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

39 (3) Except as provided in subdivision (d) of Section 15120 of
40 Title 14 of the California Code of Regulations, the lead agency

1 shall make available to the public in a readily accessible electronic
2 format the environmental document for a project specified in
3 subdivision (f), and all other documents submitted to, cited by, or
4 relied on by, the lead agency in the preparation of the
5 environmental document for a project specified in subdivision (f).

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

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

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

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

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

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

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

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

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

1 PREPARED CONCURRENTLY WITH THE
2 ADMINISTRATIVE PROCESS, DOCUMENTS PREPARED
3 BY, OR SUBMITTED TO, THE LEAD AGENCY TO BE
4 POSTED ON THE LEAD AGENCY'S INTERNET WEB SITE,
5 AND THE LEAD AGENCY TO ENCOURAGE WRITTEN
6 COMMENTS ON THE PROJECT TO BE SUBMITTED TO THE
7 LEAD AGENCY IN A READILY ACCESSIBLE ELECTRONIC
8 FORMAT.”
9

10 (f) ~~(1)~~—This section applies to the record of proceedings for the
11 preparation of a negative declaration, mitigated negative
12 declaration, environmental impact report, or other environmental
13 document prepared for any of the following:

14 ~~(A)~~

15 (1) A project determined to be of statewide, regional, or
16 areawide environmental significance pursuant to subdivision (d)
17 of Section 21083.

18 ~~(B)~~

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

21 ~~(C) (i)~~

22 (3) (A) A project, other than one described in ~~subparagraphs~~
23 ~~(A) and (B)~~ paragraphs (1) and (2), for which the lead agency
24 consents to prepare the record of proceeding pursuant to this
25 ~~subparagraph paragraph~~.

26 ~~(ii)~~

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

30 ~~(iii)~~

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

37 ~~(iv)~~

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

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

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