

AMENDED IN ASSEMBLY AUGUST 20, 2012

AMENDED IN SENATE APRIL 9, 2012

AMENDED IN SENATE MARCH 12, 2012

SENATE BILL

No. 984

Introduced by Senators Simitian, Steinberg, and Strickland

(Principal coauthor: Assembly Member Perea)

(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 *for specified projects*, 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. *The bill would require, for a lead agency that is a state agency, the consent of the state agency for the concurrent preparation of the record of proceedings.*

(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.~~

(3) This bill would not become operative unless AB 1570 of the 2011–12 Regular Session of the Legislature is enacted on or before January 1, 2013.

Vote: $\frac{2}{3}$ -majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

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

1 SECTION 1. Section 21167.6 of the Public Resources Code
2 is amended to read:
3 21167.6. Notwithstanding any other 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.

1 (b) (1) The public agency shall prepare and certify the record
2 of proceedings not later than 60 days from the date that the request
3 specified in subdivision (a) was served upon the public agency.
4 Upon certification, the public agency shall lodge a copy of the
5 record of proceedings with the court and shall serve on the parties
6 notice that the record of proceedings has been certified and lodged
7 with the court. The parties shall pay any reasonable costs or fees
8 imposed for the preparation of the record of proceedings in
9 conformance with any law or rule of court.

10 (2) The plaintiff or petitioner may elect to prepare the record
11 of proceedings or the parties may agree to an alternative method
12 of preparation of the record of proceedings, subject to certification
13 of its accuracy by the public agency, within the time limit specified
14 in this subdivision.

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

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

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

31 (1) All project application materials.

32 (2) All staff reports and related documents prepared by the
33 respondent public agency with respect to its compliance with the
34 substantive and procedural requirements of this division and with
35 respect to the action on the project.

36 (3) All staff reports and related documents prepared by the
37 respondent public agency and written testimony or documents
38 submitted by any person relevant to any findings or statement of
39 overriding considerations adopted by the respondent agency
40 pursuant to this division.

1 (4) Any transcript or minutes of the proceedings at which the
2 decisionmaking body of the respondent public agency heard
3 testimony on, or considered any environmental document on, the
4 project, and any transcript or minutes of proceedings before any
5 advisory body to the respondent public agency that were presented
6 to the decisionmaking body prior to action on the environmental
7 documents or on the project.

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

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

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

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

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

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

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

1 (f) In preparing the record of proceedings, the party preparing
2 the record shall strive to do so at reasonable cost in light of the
3 scope of the record.

4 (g) The clerk of the superior court shall prepare and certify the
5 clerk's transcript on appeal not later than 60 days from the date
6 that the notice designating the papers or records to be included in
7 the clerk's transcript was filed with the superior court, if the party
8 or parties pay any costs or fees for the preparation of the clerk's
9 transcript imposed in conformance with any law or rules of court.
10 Nothing in this subdivision precludes an election to proceed by
11 appendix, as provided in Rule 8.124 of the California Rules of
12 Court.

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

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

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

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

31 21167.6. Notwithstanding any other law, in all actions or
32 proceedings brought pursuant to Section 21167, except those
33 involving the Public Utilities Commission, all of the following
34 shall apply:

35 (a) At the time that the action or proceeding is filed, the plaintiff
36 or petitioner shall file a request that the respondent public agency
37 prepare the record of proceedings relating to the subject of the
38 action or proceeding. The request, together with the complaint or
39 petition, shall be served personally upon the public agency not

1 later than 10 business days from the date that the action or
2 proceeding was filed.

3 (b) (1) The public agency shall prepare and certify the record
4 of proceedings not later than 60 days from the date that the request
5 specified in subdivision (a) was served upon the public agency.
6 Upon certification, the public agency shall lodge a copy of the
7 record of proceedings with the court and shall serve on the parties
8 notice that the record of proceedings has been certified and lodged
9 with the court. The parties shall pay any reasonable costs or fees
10 imposed for the preparation of the record of proceedings in
11 conformance with any law or rule of court.

12 (2) The plaintiff or petitioner may elect to prepare the record
13 of proceedings or the parties may agree to an alternative method
14 of preparation of the record of proceedings, subject to certification
15 of its accuracy by the public agency, within the time limit specified
16 in this subdivision.

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

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

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

33 (1) All project application materials.

34 (2) All staff reports and related documents prepared by the
35 respondent public agency with respect to its compliance with the
36 substantive and procedural requirements of this division and with
37 respect to the action on the project.

38 (3) All staff reports and related documents prepared by the
39 respondent public agency and written testimony or documents
40 submitted by any person relevant to any findings or statement of

1 overriding considerations adopted by the respondent agency
2 pursuant to this division.

3 (4) Any transcript or minutes of the proceedings at which the
4 decisionmaking body of the respondent public agency heard
5 testimony on, or considered any environmental document on, the
6 project, and any transcript or minutes of proceedings before any
7 advisory body to the respondent public agency that were presented
8 to the decisionmaking body prior to action on the environmental
9 documents or on the project.

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

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

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

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

22 (9) The documentation of the final public agency decision,
23 including the final environmental impact report, mitigated negative
24 declaration, or negative declaration, and all documents, in addition
25 to those referenced in paragraph (3), cited or relied on in the
26 findings or in a statement of overriding considerations adopted
27 pursuant to this division.

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

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

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

(g) The clerk of the superior court shall prepare and certify the clerk's transcript on appeal not later than 60 days from the date that the notice designating the papers or records to be included in the clerk's transcript was filed with the superior court, if the party 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 become operative on January 1, 2016.

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

21167.6.2. (a) (1) Notwithstanding Section 21167.6, for a project described in ~~subdivision (f)~~ *Section 21167.6.3*, the lead agency, upon the written request of a project applicant received no later than 30 days after the date that the lead agency makes a determination pursuant to subdivision (a) of Section 21080.1, Section 21094.5, or Chapter 4.2 (commencing with Section 21155), shall prepare and certify the record of proceedings in the following manner:

(1)

1 (A) The lead agency for the project shall prepare the record of
2 proceedings pursuant to this division concurrently with the
3 administrative process.

4 (2)

5 (B) All documents and other materials placed in the record of
6 proceedings shall be posted on, and be downloadable from, an
7 Internet Web site maintained by the lead agency commencing with
8 the date of the release of the *draft* environmental document for a
9 project specified in ~~subdivision (f) Section 21167.6.3~~. If the lead
10 agency cannot maintain an Internet Web site with the information
11 required pursuant to this section, the lead agency shall provide a
12 link on the agency's Internet Web site to that information.

13 ~~(3) Except as provided in subdivision (d) of Section 15120 of~~
14 ~~Title 14 of the California Code of Regulations, the~~

15 (C) The lead agency shall make available to the public in a
16 readily accessible electronic format the *draft* environmental
17 document for a project specified in ~~subdivision (f) Section~~
18 ~~21167.6.3~~, and all other documents submitted to, cited by, or relied
19 on by; the lead agency, in the preparation of the *draft*
20 environmental document for a project specified in ~~subdivision (f)~~
21 ~~Section 21167.6.3~~.

22 (4)

23 (D) A document prepared by the lead agency or submitted by
24 the applicant after the date of the release of the *draft* environmental
25 document for a project specified in ~~subdivision (f) Section~~
26 ~~21167.6.3~~ that is a part of the record of the proceedings shall be
27 made available to the public in a readily accessible electronic
28 format within five business days after the document is released or
29 received by the lead agency.

30 (5)

31 (E) The lead agency shall encourage written comments on the
32 project to be submitted in a readily accessible electronic format,
33 and shall make any comment available to the public in a readily
34 accessible electronic format within five business days of its receipt.

35 (6)

36 (F) Within seven business days after the receipt of any comment
37 that is not in an electronic format, the lead agency shall convert
38 that comment into a readily accessible electronic format and make
39 it available to the public in that format.

40 (7)

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

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

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

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

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

(e) The negative declaration, mitigated negative declaration, draft and final environmental impact report, or other environmental document for a project specified in ~~subdivision (f)~~ Section 21167.6.3 shall include a notice in no less than 12-point type stating the following:

“THIS NEGATIVE DECLARATION, MITIGATED NEGATIVE DECLARATION, EIR, OR ENVIRONMENTAL DOCUMENT IS SUBJECT TO ~~SECTION 21167.6.2~~ SECTIONS 21167.6.2 AND 21167.6.3 OF THE PUBLIC RESOURCES CODE, WHICH REQUIRES THE RECORD OF PROCEEDINGS FOR THIS PROJECT TO BE PREPARED CONCURRENTLY WITH THE ADMINISTRATIVE PROCESS, DOCUMENTS PREPARED BY, OR SUBMITTED TO, THE LEAD AGENCY TO BE POSTED ON THE LEAD AGENCY’S INTERNET WEB SITE, AND THE LEAD AGENCY TO ENCOURAGE WRITTEN COMMENTS ON THE PROJECT TO BE SUBMITTED TO THE LEAD AGENCY IN A READILY ACCESSIBLE ELECTRONIC FORMAT.”

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

1 ~~(1) A project determined to be of statewide, regional, or~~
2 ~~areawide environmental significance pursuant to subdivision (d)~~
3 ~~of Section 21083.~~

4 ~~(2) A project subject to Section 21094.5 or Chapter 4.2~~
5 ~~(commencing with Section 21155).~~

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

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

12 ~~(C) A project applicant and the lead agency may mutually agree,~~
13 ~~in writing, to extend the time period for the lead agency to respond~~
14 ~~pursuant to subparagraph (B), but the extension shall be no later~~
15 ~~than the commencement of the public review period for the~~
16 ~~proposed negative declaration, mitigated negative declaration, or~~
17 ~~draft environmental impact report.~~

18 ~~(D) The request is deemed denied if the lead agency fails to~~
19 ~~respond within 10 business days of receiving the request or within~~
20 ~~the time period agreed upon pursuant to subparagraph (C),~~
21 ~~whichever is later.~~

22 ~~(g) The project applicant shall reimburse the lead agency for~~
23 ~~the costs incurred in compliance with this section in a manner~~
24 ~~specified by the lead agency and a plaintiff or petitioner, if any, is~~
25 ~~not required to pay these costs.~~

26 ~~(f) For a lead agency that is a state agency, this section shall~~
27 ~~apply if the state agency consents to the preparation of the record~~
28 ~~of proceedings pursuant to this section.~~

29 ~~(h)~~

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

33 SEC. 4. No reimbursement is required by this act pursuant to
34 Section 6 of Article XIII B of the California Constitution because
35 a local agency or school district has the authority to levy service
36 charges, fees, or assessments sufficient to pay for the program or
37 level of service mandated by this act, within the meaning of Section
38 17556 of the Government Code.

39 SEC. 5. ~~This act is an urgency statute necessary for the~~
40 ~~immediate preservation of the public peace, health, or safety within~~

1 ~~the meaning of Article IV of the Constitution and shall go into~~
2 ~~immediate effect. The facts constituting the necessity are:~~

3 ~~To expedite the preparation of the record of proceeding of an~~
4 ~~environmental impact report for judicial review thereby protecting~~
5 ~~the environment and public health, and promote job creation at~~
6 ~~the earliest possible time, it is necessary for this act to take effect~~
7 ~~immediately.~~

8 *SEC. 5. This act shall not become operative unless Assembly*
9 *Bill 1570 of the 2011–12 Regular Session of the Legislature is*
10 *enacted on or before January 1, 2013.*