

**Introduced by Senator Hollingsworth
(Principal coauthor: Senator Ackerman)**

January 23, 2006

An act to amend Sections 21080, 21080.4, 21081, 21083, 21091, 21100, 21100.2, 21151.5, 21167.4, 21167.6, 21167.6.5, 21167.8, 21168, 21168.5, 21168.9, and 21177 of, to add Sections 21080.34, 21080.36, 21082.3, 21083.10, 21099, 21100.5, and 21178 to, and to add Chapter 4.3 (commencing with Section 21155) to Division 13 of, the Public Resources Code, relating to the environment.

LEGISLATIVE COUNSEL'S DIGEST

SB 1191, as introduced, Hollingsworth. California Environmental Quality Act.

(1) The California Environmental Quality Act (CEQA) requires a lead agency to prepare, or cause to be prepared, and certify the completion of, an environmental impact report on a project, as defined, that it proposes to carry out or approve that may have a significant effect on the environment, as defined, or to adopt a negative declaration if it finds that the project will not have that effect. CEQA also generally 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 some exemptions from its requirements for specified projects.

This bill would revise CEQA as follows: establish a short form environmental impact report, that a lead agency would be required to prepare if a project satisfies specified criteria related to housing; specify the types of standards and methodologies a lead agency is required, or authorized, to apply in determining whether a project may have a

significant effect on the environment; specify certain situations that do not constitute a significant effect on the environment or do not require certain analysis; provide that CEQA does not apply to specified approvals of the California Building Standards Commission; specify, in certain circumstances, the baseline environmental setting from which a lead agency determines whether a project may have a significant effect on the environment; change notice requirements, timelines, and definitions established by CEQA; limit the issues a lead agency may consider in determining whether a project may have a significant effect on the environment; limit the length of a draft environmental impact report; revise provisions relating to legal challenges concerning CEQA; and make other changes. By imposing new duties on a lead agency, the 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.

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 of the Public Resources Code is
- 2 amended to read:
- 3 21080. (a) Except as otherwise provided in this division, this
- 4 division shall apply to discretionary projects proposed to be carried
- 5 out or approved by public agencies, including, but not limited to,
- 6 the enactment and amendment of zoning ordinances, the issuance
- 7 of zoning variances, the issuance of conditional use permits, and
- 8 the approval of tentative subdivision maps unless the project is
- 9 exempt from this division.
- 10 (b) This division does not apply to any of the following
- 11 activities:
- 12 (1) Ministerial projects proposed to be carried out or approved
- 13 by public agencies.
- 14 (2) Emergency repairs to public service facilities necessary to
- 15 maintain service.
- 16 (3) Projects undertaken, carried out, or approved by a public
- 17 agency to maintain, repair, restore, demolish, or replace property

1 or facilities damaged or destroyed as a result of a disaster in a
2 disaster-stricken area in which a state of emergency has been
3 proclaimed by the Governor pursuant to Chapter 7 (commencing
4 with Section 8550) of Division 1 of Title 2 of the Government
5 Code.

6 (4) Specific actions necessary to prevent or mitigate an
7 emergency.

8 (5) Projects ~~which~~ *that* a public agency rejects or disapproves.

9 (6) Actions undertaken by a public agency relating to any
10 thermal powerplant site or facility, including the expenditure,
11 obligation, or encumbrance of funds by a public agency for
12 planning, engineering, or design purposes, or for the conditional
13 sale or purchase of equipment, fuel, water (except groundwater),
14 steam, or power for a thermal powerplant, if the powerplant site
15 and related facility will be the subject of an environmental impact
16 report, negative declaration, or other document, prepared pursuant
17 to a regulatory program certified pursuant to Section 21080.5,
18 which will be prepared by the State Energy Resources Conservation
19 and Development Commission, by the Public Utilities Commission,
20 or by the city or county in which the powerplant and related facility
21 would be located if the environmental impact report, negative
22 declaration, or document includes the environmental impact, if
23 any, of the action described in this paragraph.

24 (7) Activities or approvals necessary to the bidding for, hosting
25 or staging of, and funding or carrying out of, an Olympic ~~games~~
26 *game* under the authority of the International Olympic Committee,
27 except for the construction of facilities necessary for the Olympic
28 games.

29 (8) The establishment, modification, structuring, restructuring,
30 or approval of rates, tolls, fares, or other charges by public agencies
31 ~~which~~ *that* the public agency finds are for the purpose of (A)
32 meeting operating expenses, including employee wage rates and
33 fringe benefits, (B) purchasing or leasing supplies, equipment, or
34 materials, (C) meeting financial reserve needs and requirements,
35 (D) obtaining funds for capital projects necessary to maintain
36 service within existing service areas, or (E) obtaining funds
37 necessary to maintain those intracity transfers as are authorized
38 by city charter. The public agency shall incorporate written findings
39 in the record of any proceeding in which an exemption under this

1 paragraph is claimed setting forth with specificity the basis for the
2 claim of exemption.

3 (9) All classes of projects designated pursuant to Section 21084.

4 (10) A project for the institution or increase of passenger or
5 commuter services on rail or highway rights-of-way already in
6 use, including modernization of existing stations and parking
7 facilities.

8 (11) A project for the institution or increase of passenger or
9 commuter service on high-occupancy vehicle lanes already in use,
10 including the modernization of existing stations and parking
11 facilities.

12 (12) Facility extensions not to exceed four miles in length ~~which~~
13 *that* are required for the transfer of passengers from or to exclusive
14 public mass transit guideway or busway public transit services.

15 (13) A project for the development of a regional transportation
16 improvement program, the state transportation improvement
17 program, or a congestion management program prepared pursuant
18 to Section 65089 of the Government Code.

19 (14) Any project or portion ~~thereof~~ *of a project* located in
20 another state ~~which~~ *that* will be subject to environmental impact
21 review pursuant to the National Environmental Policy Act of 1969
22 (42 U.S.C. Sec. 4321 et seq.) or similar state laws of that state.
23 Any emissions or discharges that would have a significant effect
24 on the environment in this state are subject to this division.

25 (15) Projects undertaken by a local agency to implement a rule
26 or regulation imposed by a state agency, board, or commission
27 under a certified regulatory program pursuant to Section 21080.5.
28 Any site-specific effect of the project ~~which~~ *that* was not analyzed
29 as a significant effect on the environment in the plan or other
30 written documentation required by Section 21080.5 is subject to
31 this division.

32 (c) If a lead agency determines that a proposed project, not
33 otherwise exempt from this division, would not have a significant
34 effect on the environment, the lead agency shall adopt a negative
35 declaration to that effect. The negative declaration shall be prepared
36 for the proposed project in either of the following circumstances:

37 (1) There is no substantial evidence, in light of the whole record
38 before the lead agency, that the project may have a significant
39 effect on the environment.

(2) An initial study identifies potentially significant effects on the environment, but (A) revisions in the project plans or proposals made by, or agreed to by, the applicant before the proposed negative declaration and initial study are released for public review would avoid the effects or mitigate the effects to a point where clearly no significant effect on the environment would occur, and (B) there is no substantial evidence, in light of the whole record before the lead agency, that the project, as revised, may have a significant effect on the environment.

(d) (1) If there is substantial evidence, in light of the whole record before the lead agency, that the project may have a significant effect on the environment, an environmental impact report shall be prepared. *A short-form environmental impact report shall be prepared if the project satisfies the criteria set forth in Section 21155.2.*

(2) *In determining whether a project may have a significant effect on the environment, the lead agency shall apply standards and methodologies that have been developed or approved by a public agency with jurisdiction over public health and air and water resources, and may elect to apply standards and methodologies that have been developed or approved by a public agency with jurisdiction over other affected resources.*

(3) (A) *A conflict between a project and an applicable general plan, redevelopment plan, or specific plan is not a significant effect on the environment.*

(B) *In determining whether a project has a significant effect on the environment, an analysis of the growth-inducing impact of the project is not required, if the project meets both of the following requirements:*

(i) *The project is consistent with the use, density, and building intensity limitations of previously adopted, applicable legislative actions, including general plans, community plans, redevelopment plans, specific plans, zoning ordinances, long-range development plans, or similar planning documents.*

(ii) *The project does not require or include the oversizing of infrastructure or other attributes that could result in development that is inconsistent with the use, density, and building intensity limitations of previously adopted, applicable legislative actions, including general plans, community plans, redevelopment plans,*

1 *specific plans, zoning ordinances, long-range development plans,*
2 *or similar planning documents.*

3 (e) (1) For the purposes of this section and this division,
4 substantial evidence includes fact, a reasonable assumption
5 predicated upon fact, or expert opinion supported by fact.

6 (2) Substantial evidence is not argument, speculation,
7 unsubstantiated opinion or narrative, evidence that is clearly
8 inaccurate or erroneous, or evidence of social or economic impacts
9 that do not contribute to, or are not caused by, physical impacts
10 on the environment. *Changes related to, or resulting from,*
11 *economic competition are not social or economic impacts that*
12 *contribute to, or are caused by, physical impacts on the*
13 *environment.*

14 (f) As a result of the public review process for a mitigated
15 negative declaration, including administrative decisions and public
16 hearings, the lead agency may conclude that certain mitigation
17 measures identified pursuant to paragraph (2) of subdivision (c)
18 are infeasible or otherwise undesirable. In those circumstances,
19 the lead agency, prior to approving the project, may delete those
20 mitigation measures and substitute for them other mitigation
21 measures that the lead agency finds, after holding a public hearing
22 on the matter, are equivalent or more effective in mitigating
23 significant effects on the environment to a less than significant
24 level and that do not cause any potentially significant effect on the
25 environment. If those new mitigation measures are made conditions
26 of project approval or are otherwise made part of the project
27 approval, the deletion of the former measures and the substitution
28 of the new mitigation measures shall not constitute an action or
29 circumstance requiring recirculation of the mitigated negative
30 declaration.

31 (g) Nothing in this section ~~shall preclude~~ *precludes* a project
32 applicant or any other person from challenging, in an administrative
33 or judicial proceeding, the legality of a condition of project
34 approval imposed by the lead agency. If, however, any condition
35 of project approval set aside by either an administrative body or
36 court was necessary to avoid or lessen the likelihood of the
37 occurrence of a significant effect on the environment, the lead
38 agency's approval of the negative declaration and project shall be
39 invalid and a new environmental review process shall be conducted
40 before the project can be reapproved, unless the lead agency

1 substitutes a new condition that the lead agency finds, after holding
2 a public hearing on the matter, is equivalent to, or more effective
3 in, lessening or avoiding significant effects on the environment
4 and that does not cause any potentially significant effect on the
5 environment.

6 SEC. 2. Section 21080.34 is added to the Public Resources
7 Code, to read:

8 21080.34. This division does not apply to an approval, or an
9 activity or approval that leads to a final approval, by the California
10 Building Standards Commission, that incorporates a building
11 product into a model code.

12 SEC. 3. Section 21080.36 is added to the Public Resources
13 Code, to read:

14 21080.36. If a project consists of renewing, extending, or
15 amending a permit for an existing facility or operation, the baseline
16 environmental setting, by which a lead agency determines whether
17 a project may have a significant effect on the environment, shall
18 be the existing facility or operation, operating at its fully permitted
19 level.

20 SEC. 4. Section 21080.4 of the Public Resources Code is
21 amended to read:

22 21080.4. (a) If a lead agency determines that an environmental
23 impact report is required for a project, the lead agency shall
24 immediately send notice of that determination by certified mail or
25 an equivalent procedure to each responsible agency, the Office of
26 Planning and Research, and those public agencies having
27 jurisdiction by law over natural resources affected by the project
28 that are held in trust for the people of the State of California. Upon
29 receipt of the notice, each responsible agency, the office, and each
30 public agency having jurisdiction by law over natural resources
31 affected by the project that are held in trust for the people of the
32 State of California shall specify to the lead agency the scope and
33 content of the environmental information that is germane to the
34 statutory responsibilities of that responsible agency, the office, or
35 the public agency in connection with the proposed project and
36 which, pursuant to the requirements of this division, shall be
37 included in the environmental impact report. The information shall
38 be specified in writing and, *except as otherwise provided in this*
39 *subdivision*, shall be communicated to the lead agency by certified
40 mail or equivalent procedure not later than 30 days after the date

1 of receipt of the notice of the lead agency's determination.
2 *However, if the lead agency sent the notice of its determination*
3 *by electronic access through electronic mail or through the*
4 *Internet, the information shall be communicated not later than 20*
5 *days, rather than 30 days, after the date of receipt.* The lead agency
6 shall request similar guidance from appropriate federal agencies.

7 (b) To expedite the requirements of subdivision (a), the lead
8 agency, any responsible agency, the Office of Planning and
9 Research, or a public agency having jurisdiction by law over
10 natural resources affected by the project that are held in trust for
11 the people of the State of California, may request one or more
12 meetings between representatives of those agencies and the office
13 for the purpose of assisting the lead agency to determine the scope
14 and content of the environmental information that any of those
15 responsible agencies, the office, or the public agencies may require.
16 In the case of a project described in subdivision (c) of Section
17 21065, the request may also be made by the project applicant. The
18 meetings shall be convened by the lead agency as soon as possible,
19 but not later than 30 days after the date that the meeting was
20 requested.

21 (c) To expedite the requirements of subdivision (a), the Office
22 of Planning and Research, upon request of a lead agency, shall
23 assist the lead agency in determining the various responsible
24 agencies, public agencies having jurisdiction by law over natural
25 resources affected by the project that are held in trust for the people
26 of the State of California, and any federal agencies that have
27 responsibility for carrying out or approving a proposed project. In
28 the case of a project described in subdivision (c) of Section 21065,
29 that request may also be made by the project applicant.

30 (d) With respect to the Department of Transportation, and with
31 respect to any state agency that is a responsible agency or a public
32 agency ~~having~~ *that has* jurisdiction by law over natural resources
33 affected by the project that are held in trust for the people of the
34 State of California, subject to the requirements of subdivision (a),
35 the Office of Planning and Research shall ensure that the
36 information required by subdivision (a) is transmitted to the lead
37 agency, and that affected agencies are notified regarding meetings
38 to be held upon request pursuant to subdivision (b), within the
39 required time period.

SEC. 5. Section 21081 of the Public Resources Code is amended to read:

21081. Pursuant to the policy stated in Sections 21002 and 21002.1, ~~no~~ a public agency shall *not* approve or carry out a project for which an environmental impact report has been certified ~~which~~ *that* identifies one or more significant effects on the environment that would occur if the project is approved or carried out unless ~~both~~ *all* of the following occur:

(a) The public agency makes one or more of the following findings with respect to each significant effect:

(1) Changes or alterations have been required in, or incorporated into, the project ~~which~~ *that* mitigate or avoid the significant effects on the environment.

(2) Those changes or alterations are within the responsibility and jurisdiction of another public agency and have been, or can and should be, adopted by that other agency.

(3) Specific economic, legal, social, technological, or other considerations, including *considerations for providing housing and* considerations for ~~the provision of~~ *providing* employment opportunities for highly trained workers, make infeasible the mitigation measures or alternatives identified in the environmental impact report.

(b) With respect to significant effects ~~which~~ *that* were subject to a finding under paragraph (3) of subdivision (a), the public agency finds that specific overriding economic, legal, social, technological, or other benefits of the project, *including providing housing*, outweigh the significant effects on the environment.

(c) *With respect to significant effects previously analyzed in a valid, certified environmental impact report, the public agency relies on both of the following:*

(1) *Relevant analysis in that certified environmental impact report, for which a supplemental or subsequent report is not required.*

(2) *Relevant findings adopted in connection with that certified environmental impact report, to satisfy the requirements of subdivisions (a) and (b).*

SEC. 6. Section 21082.3 is added to the Public Resources Code, to read:

21082.3. A lead agency for a project may require feasible changes in an activity that is part of the project, in order to

1 substantially lessen or avoid significant effects on the environment,
2 if the imposition of the mitigation measure is based upon a finding
3 supported by substantial evidence in light of the whole record, that
4 the relationship among the project, the project's significant effects
5 on the environment, and the mitigation measure satisfies
6 constitutional requirements, including the nexus and rough
7 proportionality standards established by *Nollan v. California*
8 *Coastal Commission* (1987) 483 U.S. 825, *Dolan v. City of Tigard*
9 (1994) 512 U.S. 374, and *Ehrlich v. City of Culver City* (1996) 12
10 Cal.4th 854.

11 SEC. 7. Section 21083 of the Public Resources Code is
12 amended to read:

13 21083. (a) The Office of Planning and Research shall prepare
14 and develop proposed guidelines for the implementation of this
15 division by public agencies. The guidelines shall include objectives
16 and criteria for the orderly evaluation of projects and the
17 preparation of environmental impact reports and negative
18 declarations in a manner consistent with this division.

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

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

29 (2) The possible effects of a project are individually limited but
30 cumulatively considerable, *as described in Section 21083.10. As*
31 ~~used in this paragraph, "cumulatively considerable" means that~~
32 ~~the incremental effects of an individual project are considerable~~
33 ~~when viewed in connection with the effects of past projects, the~~
34 ~~effects of other current projects, and the effects of probable future~~
35 ~~projects.~~

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

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

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

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

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

SEC. 8. Section 21083.10 is added to the Public Resources Code, to read:

21083.10. (a) A project has a cumulatively considerable effect on the environment, for purposes of Section 21083, if it meets both of the following criteria:

(1) (A) The effect of the project, when combined with the effects of other cumulative projects, is significant when judged against the baseline physical conditions from which the lead agency determines whether an impact is significant.

1 (B) As used in subparagraph (A), “other cumulative projects”
2 means either of the following:

3 (i) A list of projects producing related or cumulative impacts,
4 including those outside the control of the agency if necessary, that
5 have been formally proposed on or before the date that the notice
6 required by subdivision (a) of Section 21080.4 is sent if an
7 environmental impact report will be prepared, or that have been
8 formally proposed on or before the date that the application for
9 the project has been received and accepted as complete by the lead
10 agency if an environmental impact report will not be prepared, as
11 well as those projects that have been approved but not yet
12 completed.

13 (ii) A summary of projections contained in an adopted general
14 plan or related planning document, or in a prior environmental
15 document that has been adopted or certified, that describe or
16 evaluate regional or areawide conditions contributing to the
17 cumulative impact, as the general plan, related planning document,
18 or prior environmental document existed on the date that the notice
19 required by all subdivision (a) of Section 21080.4 is sent if an
20 environmental impact report will be prepared, or on the date that
21 the application for the project has been received and accepted as
22 complete by the lead agency if an environmental impact report
23 will not be prepared.

24 (2) (A) The incremental effect of the project is cumulatively
25 considerable.

26 (B) As used in subparagraph (A), “cumulatively considerable”
27 means that the incremental effect of the project is substantial in
28 the context of the combined effect of the project plus other
29 cumulative projects determined pursuant to paragraph (1). An
30 incremental effect that is not perceptible and noticeable is not
31 cumulatively considerable.

32 (b) If a project will have a cumulatively considerable effect on
33 the environment, as determined pursuant to subdivision (a), but
34 will be responsible to implement or fund its fair share of a
35 mitigation measure or measures designed to alleviate the
36 cumulative effect identified pursuant to paragraph (1) of
37 subdivision (a), the incremental effect of the project shall be
38 considered less than cumulatively considerable and not significant.

39 SEC. 9. Section 21091 of the Public Resources Code is
40 amended to read:

1 21091. (a) The public review period for a draft environmental
2 impact report ~~may~~ shall not be less than 30 days, or, if the draft
3 environmental impact report is available to the public by electronic
4 access through the Internet, the public review period for the draft
5 environmental impact report shall not be less than 20 days. If the
6 draft environmental impact report is submitted to the State
7 Clearinghouse for review, the review period shall be at least ~~45~~
8 30 days, and the lead agency shall provide a sufficient number of
9 copies of the document to the State Clearinghouse for review and
10 comment by state agencies.

11 (b) The public review period for a proposed negative declaration
12 or proposed mitigated negative declaration ~~may~~ shall not be less
13 than 20 days, or, if the proposed negative declaration or proposed
14 mitigated negative declaration is available to the public by
15 electronic access through the Internet, the public review period
16 for the proposed negative declaration or proposed mitigated
17 negative declaration shall not be less than 10 days. If the proposed
18 negative declaration or proposed mitigated negative declaration
19 is submitted to the State Clearinghouse for review, the review
20 period shall be at least ~~30~~ 20 days, and the lead agency shall
21 provide a sufficient number of copies of the document to the State
22 Clearinghouse for review and comment by state agencies.

23 (c) (1) Notwithstanding subdivisions (a) and (b), if a draft
24 environmental impact report, proposed negative declaration, or
25 proposed mitigated negative declaration is submitted to the State
26 Clearinghouse for review and the period of review by the State
27 Clearinghouse is longer than the public review period established
28 pursuant to subdivision (a) or (b), whichever is applicable, the
29 public review period shall be at least as long as the period of review
30 and comment by state agencies as established by the State
31 Clearinghouse. *However, if the draft environmental impact report,*
32 *proposed negative declaration, or proposed mitigated negative*
33 *declaration is available to the public by electronic access through*
34 *the Internet pursuant to subdivision (a) or (b), the shorter public*
35 *review period authorized in subdivision (a) or (b), whichever is*
36 *applicable, is not required to be extended.*

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

1 (3) If the submittal of a CEQA document is determined by the
2 State Clearinghouse to be complete, the State Clearinghouse shall
3 distribute the document within three working days from the date
4 of receipt. The State Clearinghouse shall specify the information
5 that will be required in order to determine the completeness of the
6 submittal of a CEQA document.

7 (d) (1) (A) *A person commenting on a draft environmental*
8 *impact report, proposed negative declaration, or proposed*
9 *mitigated negative declaration shall submit his or her comment*
10 *to the lead agency before the close of the public review period.*

11 (B) The lead agency shall consider comments it receives on a
12 draft environmental impact report, proposed negative declaration,
13 or proposed mitigated negative declaration if those comments are
14 received within the public review period.

15 (2) (A) With respect to the consideration of comments received
16 on a draft environmental impact report, the lead agency shall
17 evaluate comments on environmental issues that are received from
18 persons who have reviewed the draft and shall prepare a written
19 response pursuant to subparagraph (B). The lead agency may also
20 respond to comments that are received after the close of the public
21 review period.

22 (B) The written response shall describe the disposition of each
23 significant environmental issue that is raised by commenters. The
24 responses shall be prepared consistent with Section 15088 of Title
25 14 of the California Code of Regulations, as those regulations
26 existed on June 1, 1993.

27 (3) (A) With respect to the consideration of comments received
28 on a draft environmental impact report, proposed negative
29 declaration, proposed mitigated negative declaration, or notice
30 pursuant to Section 21080.4, the lead agency shall accept comments
31 via e-mail and shall treat e-mail comments as equivalent to written
32 comments.

33 (B) Any law or regulation relating to written comments received
34 on a draft environmental impact report, proposed negative
35 declaration, proposed mitigated negative declaration, or notice
36 received pursuant to Section 21080.4, shall also apply to e-mail
37 comments received for those reasons.

38 ~~(e) (1) Criteria for shorter review periods by the State~~
39 ~~Clearinghouse for documents that must be submitted to the State~~
40 ~~Clearinghouse shall be set forth in the written guidelines issued~~

1 by the Office of Planning and Research and made available to the
2 public.

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

6 ~~(3) A request for a shortened review period shall only be made~~
7 ~~in writing by the decisionmaking body of the lead agency to the~~
8 ~~Office of Planning and Research. The decisionmaking body may~~
9 ~~designate by resolution or ordinance a person authorized to request~~
10 ~~a shortened review period. A designated person shall notify the~~
11 ~~decisionmaking body of this request.~~

12 ~~(4) A request approved by the State Clearinghouse shall be~~
13 ~~consistent with the criteria set forth in the written guidelines of~~
14 ~~the Office of Planning and Research.~~

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

19 ~~(6) An approval of a shortened review period shall be given~~
20 ~~prior to, and reflected in, the public notice required pursuant to~~
21 ~~Section 21092.~~

22 ~~(f)–~~

23 ~~(e) Prior to carrying out or approving a project for which a~~
24 ~~negative declaration has been adopted, the lead agency shall~~
25 ~~consider the negative declaration together with comments that~~
26 ~~were received and considered pursuant to paragraph (1) of~~
27 ~~subdivision (d).~~

28 SEC. 10. Section 21099 is added to the Public Resources Code,
29 to read:

30 21099. (a) To avoid duplication among public agencies, in
31 complying with this division, a lead agency shall not consider or
32 evaluate the effect of developing or expanding a public facility
33 that may serve the proposed project if developing or expanding
34 the public facility will be undertaken or approved by another lead
35 agency that will evaluate the facility pursuant to this division.

36 (b) Increased demand on a public facility or service, resulting
37 from a proposed project, is not a significant effect on the
38 environment unless the increased demand will directly result in a
39 significant effect on the physical environment.

1 SEC. 11. Section 21100 of the Public Resources Code is
2 amended to read:

3 21100. (a) All lead agencies shall prepare, or cause to be
4 prepared by contract, and certify the completion of, an
5 environmental impact report on any project ~~which~~ *that* they propose
6 to carry out or approve that may have a significant effect on the
7 environment. Whenever feasible, a standard format shall be used
8 for environmental impact reports. *In the standard format, technical*
9 *analysis and supporting data shall be placed in an appendix or*
10 *elsewhere in the record, and shall not be placed in the body of the*
11 *environmental impact report. The text of a draft environmental*
12 *impact report shall be less than 150 pages, or, if the draft*
13 *environmental impact report is for a project of unusual scope or*
14 *complexity, less than 300 pages.*

15 (b) The environmental impact report shall include a detailed
16 statement setting forth all of the following:

17 (1) All significant effects on the environment of the proposed
18 project.

19 (2) In a separate section:

20 (A) Any significant effect on the environment that cannot be
21 avoided if the project is implemented.

22 (B) Any significant effect on the environment that would be
23 irreversible if the project is implemented.

24 (3) Mitigation measures proposed to minimize significant effects
25 on the environment, including, but not limited to, measures to
26 reduce the wasteful, inefficient, and unnecessary consumption of
27 energy.

28 (4) Alternatives to the proposed project.

29 (5) The growth-inducing impact of the proposed project.

30 (c) The report shall also contain a statement briefly indicating
31 the reasons for determining that various effects on the environment
32 of a project are not significant and consequently have not been
33 discussed in detail in the environmental impact report.

34 (d) For purposes of this section, any significant effect on the
35 environment shall be limited to substantial, or potentially
36 substantial, adverse changes in physical conditions ~~which~~ *that*
37 exist within the area as defined in Section 21060.5. *In determining*
38 *whether a project may have a significant effect on the environment,*
39 *the lead agency shall apply standards and methodologies that have*
40 *been developed or approved by a public agency with jurisdiction*

over public health and air and water resources, and may elect to apply standards and methodologies that have been developed or approved by a public agency with jurisdiction over other affected resources.

(e) Previously approved land use documents, including, but not limited to, general plans, specific plans, and local coastal plans, may be used in cumulative impact analysis.

(f) To avoid duplication among public agencies, an environmental impact report for a project shall not include consideration or evaluation of the effect of developing or expanding a public facility that may serve the proposed project if developing or expanding the public facility will be undertaken or approved by another lead agency that will evaluate the facility pursuant to this division.

SEC. 12. Section 21100.2 of the Public Resources Code is amended to read:

21100.2. (a) (1) For projects described in subdivision (c) of Section 21065, each state agency shall establish, by resolution or order, time limits that do not exceed the following:

(A) One year for completing and certifying environmental impact reports.

(B) One hundred eighty days for completing and adopting negative declarations.

(2) The time limits specified in paragraph (1) shall apply only to those circumstances in which the state agency is the lead agency for a project. These resolutions or orders may establish different time limits for different types or classes of projects, but all limits shall be measured from the date on which an application requesting approval of the project is received and accepted as complete by the state agency.

(3) ~~No~~ An application for a project ~~may~~ shall not be deemed incomplete for lack of a waiver of time periods prescribed in state regulations.

(4) The resolutions or orders required by this section may provide for a reasonable extension of the time period in the event that compelling circumstances justify additional time and the project applicant consents thereto.

(b) If a draft environmental impact report, environmental impact report, or focused environmental impact report is prepared under a contract to a state agency, the contract shall be executed within

1 45 days from the date on which the state agency sends a notice of
2 ~~preparation~~ *determination* pursuant to Section 21080.4. The state
3 agency may take longer to execute the contract if the project
4 applicant and the state agency mutually agree to an extension of
5 the time limit provided by this subdivision.

6 *(c) In a lawsuit brought by a person against a public agency,*
7 *alleging a violation of the due process clause of the United States*
8 *Constitution or the California Constitution in the processing of a*
9 *permit, license, contract, entitlement, or approval subject to this*
10 *division, the court, in determining whether a denial of due process*
11 *has occurred, shall consider the failure of the public agency to*
12 *comply with a time limit set forth in this section.*

13 SEC. 13. Section 21100.5 is added to the Public Resources
14 Code, to read:

15 21100.5. (a) Notwithstanding any other provision of this
16 division, including Sections 21061 and 21100, analysis of
17 alternatives to the proposed project is not required in an
18 environmental impact report if feasible mitigation measures would
19 result in the project having less than a significant effect on the
20 environment.

21 (b) Analysis or evidence of the potential economic feasibility
22 or infeasibility of alternatives to the proposed project is not required
23 in an environmental impact report. That evidence may be included
24 in the administrative record.

25 (c) In the case of a project described in subdivision (b) or (c)
26 of Section 21065, a public agency shall not require an
27 environmental impact report to include consideration of an off-site
28 alternative to the proposed project. In the case of a project
29 described in subdivision (a) of Section 21065, a public agency
30 shall not require an environmental impact report to include analysis
31 of an off-site alternative to the proposed project that is located
32 outside the geographical area in which the lead agency has
33 authority to exercise the power of eminent domain.

34 SEC. 14. Section 21151.5 of the Public Resources Code is
35 amended to read:

36 21151.5. (a) (1) For projects described in subdivision (c) of
37 Section 21065, each local agency shall establish, by ordinance or
38 resolution, time limits that do not exceed the following:

39 (A) One year for completing and certifying environmental
40 impact reports.

1 (B) One hundred eighty days for completing and adopting
2 negative declarations.

3 (2) The time limits specified in paragraph (1) shall apply only
4 to those circumstances in which the local agency is the lead agency
5 for a project. These ordinances or resolutions may establish
6 different time limits for different types or classes of projects and
7 different types of environmental impact reports, but all limits shall
8 be measured from the date on which an application requesting
9 approval of the project is received and accepted as complete by
10 the local agency.

11 (3) ~~No~~ An application for a project ~~may~~ *shall not* be deemed
12 incomplete for lack of a waiver of time periods prescribed by local
13 ordinance or resolution.

14 (4) The ordinances or resolutions required by this section may
15 provide for a reasonable extension of the time period in the event
16 that compelling circumstances justify additional time and the
17 project applicant consents thereto.

18 (b) If a draft environmental impact report, environmental impact
19 report, or focused environmental impact report is prepared under
20 a contract to a local agency, the contract shall be executed within
21 45 days from the date on which the local agency sends a notice of
22 ~~preparation determination~~ pursuant to Section 21080.4. The local
23 agency may take longer to execute the contract if the project
24 applicant and the local agency mutually agree to an extension of
25 the time limit provided by this subdivision.

26 (c) *In a lawsuit brought by a person against a public agency,*
27 *alleging a violation of the due process clause of the United States*
28 *Constitution or the California Constitution in the processing of a*
29 *permit, license, contract, entitlement, or approval subject to this*
30 *division, the court, in determining whether a denial of due process*
31 *has occurred, shall consider the failure of the public agency to*
32 *comply with a time limit set forth in this section.*

33 SEC. 15. Chapter 4.3 (commencing with Section 21155) is
34 added to Division 13 of the Public Resources Code, to read:

35
36 CHAPTER 4.3. SHORT FORM ENVIRONMENTAL IMPACT REPORT
37

38 21155. The Legislature finds and declares all of the following:

39 (a) There is an urgent need to remove regulatory barriers to
40 providing housing.

1 (b) Consideration of projects that include housing should be
2 streamlined in certain areas, including areas in cities or areas in
3 counties that are designated for residential development, to help
4 reduce environmental impacts.

5 (c) California's environmental effect review procedures can be
6 balanced with the need to remove barriers to developing housing,
7 by providing a simpler process for conducting environmental
8 review.

9 21155.1. The Legislature intends that this chapter be construed
10 in a manner that fulfills the goals of protecting the environment
11 while also streamlining the evaluation and approval of projects
12 that help provide housing in appropriate areas. It is the
13 Legislature's intent that this chapter not be construed in manner
14 that imposes substantive or procedural requirements that impair
15 the ability of local agencies to streamline the evaluation of those
16 projects.

17 21155.2. A lead agency shall prepare a short form
18 environmental impact report pursuant to this chapter if it has
19 determined pursuant to subdivision (d) of Section 21080 that the
20 project may have a significant effect on the environment, and the
21 project meets all of the following criteria:

22 (a) Consists of residential development or residential
23 development combined with one or more qualified urban uses, as
24 defined in Section 21072.

25 (b) Is located within the boundaries of an incorporated city or
26 within an unincorporated area designated in the approved local
27 general plan for residential development.

28 (c) Is consistent with both of the following:

29 (1) The land use designation for that area, as specified in the
30 approved local general plan and as that designation existed on the
31 date that the lead agency determines that the application for the
32 project is complete.

33 (2) The standards of population density and building intensity
34 in the land use element of the local general plan, as those standards
35 existed on the date that the lead agency determines that the
36 application for the project is complete.

37 21155.3. A short form environmental impact report prepared
38 pursuant to this chapter shall include both of the following:

39 (a) A statement briefly describing the reasons for determining
40 that various effects on the environment of a project are not

1 significant and consequently have not been discussed in the short
2 form environmental impact report. The statement may consist of
3 a checklist analysis supported by a brief explanation.

4 (b) A separate section setting forth all significant effects on the
5 environment of the proposed project, including mitigation measures
6 proposed to minimize the significant effects on the environment.
7 This section shall be limited to a discussion of effects on the
8 environment that are a substantial, or potentially substantial,
9 adverse change in physical conditions that exist within the project
10 area, as described in Section 21065, and that are also
11 project-specific effects, as defined in Section 21065.3.

12 21155.4. A lead agency preparing or approving a short form
13 environmental impact report shall comply with the procedural
14 requirements of this division for an environmental impact report,
15 including the requirement for public notice, except that Sections
16 21080.4 and 21083.9 do not apply to a short form environmental
17 impact report.

18 21155.5. (a) For a project subject to Section 21083.3, a short
19 form environmental impact report may be used in place of an
20 environmental impact report.

21 (b) For a project that meets the criteria set forth in Section
22 21155.2, a short form environmental impact report may be used
23 to conduct further environmental review after an initial
24 environmental impact report has been prepared, and when a further
25 environmental impact report is required pursuant to any of the
26 following:

27 (1) Section 21094, relating to tiering.

28 (2) Article 2 (commencing with Section 21157) of Chapter 4.5,
29 relating to master environmental impact reports.

30 (3) Section 15167 of Title 14 of the California Code of
31 Regulations, relating to staged environmental impact reports.

32 (4) Section 15168 of Title 14 of the California Code of
33 Regulations, relating to program environmental impact reports.

34 SEC. 16. Section 21167.4 of the Public Resources Code is
35 amended to read:

36 21167.4. (a) In any action or proceeding alleging
37 noncompliance with this division, the petitioner shall request a
38 hearing within 90 days from the date of filing the petition or shall
39 be subject to dismissal on the court's own motion or on the motion
40 of any party interested in the action or proceeding.

1 (b) The petitioner shall serve a notice of the request for a hearing
2 on all parties at the time that the petitioner files the request for a
3 hearing.

4 (c) ~~Upon the filing of a~~ *timely* request by the petitioner for a
5 hearing ~~and pursuant to subdivision (a), or~~ upon application by
6 any party, the court shall establish a briefing schedule and a hearing
7 date. In the absence of good cause, briefing shall be completed
8 within 90 days from the date that the request for a hearing is filed,
9 and the hearing, to the extent feasible, shall be held within 30 days
10 thereafter. Good cause may include, but shall not be limited to,
11 the conduct of discovery, determination of the completeness of
12 the record of proceedings, the complexity of the issues, and the
13 length of the record of proceedings and the timeliness of its
14 production. The parties may stipulate to a briefing schedule or
15 hearing date that differs from the schedule set forth in this
16 subdivision if the stipulation is approved by the court.

17 SEC. 17. Section 21167.6 of the Public Resources Code is
18 amended to read:

19 21167.6. Notwithstanding any other provision of law, in all
20 actions or proceedings brought pursuant to Section 21167, except
21 those involving the Public Utilities Commission, all of the
22 following shall apply:

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

30 (b) (1) The public agency shall prepare and certify the record
31 of proceedings not later than 60 days from the date that the request
32 ~~specified in subdivision (a)~~ *complaint or petition* was served upon
33 the public agency *pursuant to subdivision (a)*. Upon certification,
34 the public agency shall lodge a copy of the record of proceedings
35 with the court and shall serve on the parties notice that the record
36 of proceedings has been certified and lodged with the court. The
37 parties shall pay any reasonable costs or fees imposed for the
38 preparation of the record of proceedings in conformance with any
39 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, as long as the agreement~~
5 ~~requires the record to be prepared and certified within the time~~
6 ~~limit specified in this subdivision.~~

7 (3) *At the time that it files and serves the action or proceeding,*
8 *the plaintiff or petitioner may elect to request the public agency*
9 *to prepare an index of the proposed record of proceedings and an*
10 *estimation of the cost of the record to be paid by the parties*
11 *pursuant to paragraph (1). Within 10 days after receipt of the*
12 *estimate, the plaintiff or petitioner may file a motion to disallow*
13 *some or all of the estimated cost for preparation of the record of*
14 *proceedings. The motion shall be granted only if the court finds*
15 *that the estimated cost for preparation of the record of proceedings*
16 *is not reasonable in light of the scope of the record. To the extent*
17 *that the actual cost of preparing the record of proceedings exceeds*
18 *an estimate provided by the public agency pursuant to this*
19 *paragraph, this paragraph does not bar the plaintiff or petitioner*
20 *from later objecting to those excess costs. A later objection or*
21 *motion shall be granted only if the court finds that the cost for*
22 *preparing the record of proceedings is not reasonable in light of*
23 *the scope of the record.*

24 (c) The time limit established by subdivision (b) may be
25 extended only upon the stipulation of all parties who have been
26 properly served in the action or proceeding or upon order of the
27 court. ~~Extensions shall be liberally~~ *may be granted by the court*
28 *when the size of the record of proceedings renders infeasible*
29 *compliance with that time limit. ~~There is no limit on the number~~*
30 *of extensions that may be granted by the court, but no Public*
31 *agencies and the court shall endeavor to minimize extensions,*
32 *consistent with the preference given to proceedings pursuant to*
33 *Section 21167.1. A single extension shall not exceed 60 days,*
34 *unless all parties who have been properly served in the action or*
35 *proceeding agree to a longer extension or the court determines*
36 *that a longer extension is in the public interest. More than one*
37 *extension shall not be granted, unless all parties who have been*
38 *properly served in the action or proceeding agree to an additional*
39 *extension or the court determines that an additional extension is*
40 *in the public interest.*

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

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

8 (1) All project application materials.

9 (2) All staff reports and related documents prepared by the
10 respondent public agency with respect to its compliance with the
11 substantive and procedural requirements of this division and with
12 respect to the action on the project.

13 (3) All staff reports and related documents prepared by the
14 respondent public agency and written testimony or documents
15 submitted by any person relevant to any findings or statement of
16 overriding considerations adopted by the respondent agency
17 pursuant to this division.

18 (4) Any transcript or minutes of the proceedings at which the
19 decisionmaking body of the respondent public agency heard
20 testimony on, or considered any environmental document on, the
21 project, and any transcript or minutes of proceedings before any
22 advisory body to the respondent public agency that were presented
23 to the decisionmaking body prior to action on the environmental
24 documents or on the project.

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

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

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

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

37 (9) The documentation of the final public agency decision,
38 including the final environmental impact report, mitigated negative
39 declaration, or negative declaration, and all documents, in addition
40 to those referenced in paragraph (3), cited or relied on in the

1 findings or in a statement of overriding considerations adopted
2 pursuant to this division.

3 (10) Any other written materials relevant to the respondent
4 public agency's compliance with this division or to its decision on
5 the merits of the project, including the initial study, any drafts of
6 any environmental document, or portions thereof, that have been
7 released for public review, and copies of studies or other documents
8 relied upon in any environmental document prepared for the project
9 and either made available to the public during the public review
10 period or included in the respondent public agency's files on the
11 project, and all internal agency communications, including staff
12 notes and memoranda related to the project or to compliance with
13 this division.

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

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

20 (g) The clerk of the superior court shall prepare and certify the
21 clerk's transcript on appeal not later than 60 days from the date
22 that the notice designating the papers or records to be included in
23 the clerk's transcript was filed with the superior court, if the party
24 or parties pay any costs or fees for the preparation of the clerk's
25 transcript imposed in conformance with any law or rules of court.
26 Nothing in this subdivision precludes an election to proceed by
27 appendix, as provided in Rule 5.1 of the California Rules of Court.

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

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

1 SEC. 18. Section 21167.6.5 of the Public Resources Code is
2 amended to read:

3 21167.6.5. (a) The petitioner or plaintiff shall name, as a real
4 party in interest, any recipient of an approval that is the subject of
5 an action or proceeding brought pursuant to Section 21167, 21168,
6 or 21168.5, and shall serve the petition or complaint on that real
7 party in interest, by personal service, mail facsimile, or any other
8 method permitted by law, not later than 20 business days following
9 service of the petition or complaint on the public agency.

10 ~~(b) The public agency shall provide the petitioner or plaintiff,~~
11 ~~not later than 10 business days following service of the petition or~~
12 ~~complaint on the public agency, with a list of responsible agencies~~
13 ~~and any public agency having jurisdiction over a natural resource~~
14 ~~affected by the project.~~

15 ~~(c) The petitioner or plaintiff shall provide the responsible~~
16 ~~agencies, and any public agency having jurisdiction over a natural~~
17 ~~resource affected by the project, with notice of the action or~~
18 ~~proceeding within 15 days of receipt of the list described in~~
19 ~~subdivision (b).~~

20 ~~(d)~~

21 (b) Failure to name potential parties, other than those real parties
22 in interest described in subdivision (a), is not grounds for dismissal
23 pursuant to Section 389 of the Code of Civil Procedure.

24 (e)

25 (c) Nothing in this section is intended to affect an existing right
26 of a party to intervene in the action.

27 SEC. 19. Section 21167.8 of the Public Resources Code is
28 amended to read:

29 21167.8. (a) Not later than 20 days from the date of service
30 upon a public agency of a petition or complaint brought pursuant
31 to Section 21167, the public agency shall file with the court a
32 notice setting forth the time and place at which all parties shall
33 meet and attempt to settle the litigation. The meeting shall be
34 scheduled and held not later than 45 days from the date of service
35 of the petition or complaint upon the public agency. The notice of
36 the settlement meeting shall be served by mail upon the counsel
37 for each party. If the public agency does not know the identity of
38 counsel for any party, the notice shall be served by mail upon the
39 party for whom counsel is not known.

1 (b) At the time and place specified in the notice filed with the
2 court, the parties shall meet and confer regarding anticipated issues
3 to be raised in the litigation and shall attempt in good faith to settle
4 the litigation and the dispute ~~which~~ *that* forms the basis of the
5 litigation. The settlement meeting discussions shall be
6 comprehensive in nature and shall focus on the legal issues raised
7 by the parties concerning the project that is the subject of the
8 litigation.

9 (c) The settlement meeting may be continued from time to time
10 without postponing or otherwise delaying other applicable time
11 limits in the litigation. The settlement meeting is intended to be
12 conducted concurrently with any judicial proceedings.

13 (d) If the litigation is not settled, the court, in its discretion, may,
14 or at the request of any party, shall, schedule a further settlement
15 conference before a judge of the superior court. If the petition or
16 complaint is later heard on its merits, the judge hearing the matter
17 shall not be the same judge conducting the settlement conference,
18 except in counties that have only one judge of the superior court.

19 (e) The failure of any party, who was notified pursuant to
20 subdivision (a), to participate in the litigation settlement process,
21 without good cause, may result in an imposition of sanctions by
22 the court.

23 ~~(f) Not later than 30 days from the date that notice of~~
24 ~~certification of the record of proceedings was filed and served in~~
25 ~~accordance with Section 21167.6, the petitioner or plaintiff shall~~
26 ~~file and serve on all other parties a statement of issues which the~~
27 ~~petitioner or plaintiff intends to raise in any brief or at any hearing~~
28 ~~or trial. Not later than 10 days from the date on which the~~
29 ~~respondent or real party in interest has been served with the~~
30 ~~statement of issues from the petitioner or plaintiff, each respondent~~
31 ~~and real party in interest shall file and serve on all other parties a~~
32 ~~statement of issues which that party intends to raise in any brief~~
33 ~~or at any hearing or trial.~~

34 SEC. 20. Section 21168 of the Public Resources Code is
35 amended to read:

36 21168. (a) (1) Any action or proceeding to attack, review, set
37 aside, void or annul a determination, finding, or decision of a public
38 agency, made as a result of a proceeding in which by law a hearing
39 is required to be given, evidence is required to be taken and
40 discretion in the determination of facts is vested in a public agency,

1 on the grounds of noncompliance with the provisions of this
2 division shall be in accordance with the provisions of Section
3 1094.5 of the Code of Civil Procedure.

4 (2) In any such action, the court shall not exercise its
5 independent judgment on the evidence but shall only determine
6 whether the act or decision is supported by substantial evidence
7 in the light of the whole record.

8 (b) *A lead agency's determination of the appropriate scope of,*
9 *and methodology for, an environmental impact report's analysis*
10 *of a project's significant effects on the environment shall not be*
11 *set aside unless the court finds that the lead agency's determination*
12 *of these issues was arbitrary and capricious. A lead agency's*
13 *determination of the factual accuracy of data contained in an*
14 *environmental impact report shall not be set aside unless the court*
15 *finds that it is clearly erroneous.*

16 (c) *A lead agency's determination of whether evidence is*
17 *substantial, for the purposes of making the determinations required*
18 *by subdivisions (c) and (d) of Section 21080 shall not be set aside*
19 *unless the determination is arbitrary and capricious or clearly*
20 *erroneous.*

21 SEC. 21. Section 21168.5 of the Public Resources Code is
22 amended to read:

23 21168.5. (a) In any action or proceeding, other than an action
24 or proceeding under Section 21168, to attack, review, set aside,
25 void or annul a determination, finding, or decision of a public
26 agency on the grounds of noncompliance with this division, the
27 inquiry shall extend only to whether there was a prejudicial abuse
28 of discretion. Abuse of discretion is established if the agency has
29 not proceeded in a manner required by law or if the determination
30 or decision is not supported by substantial evidence.

31 (b) *A lead agency's determination of the appropriate scope of,*
32 *and methodology for, an environmental impact report's analysis*
33 *of a project's significant effects on the environment shall not be*
34 *set aside unless the court finds that the lead agency's determination*
35 *of these issues was arbitrary and capricious. A lead agency's*
36 *determination of the factual accuracy of data contained in an*
37 *environmental impact report shall not be set aside unless the court*
38 *finds that it is clearly erroneous.*

39 (c) *A lead agency's determination of whether evidence is*
40 *substantial for the purposes of making the determinations required*

1 *by subdivisions (c) and (d) of Section 21080 shall not be set aside*
2 *unless the determination is arbitrary and capricious or clearly*
3 *erroneous.*

4 SEC. 22. Section 21168.9 of the Public Resources Code is
5 amended to read:

6 21168.9. (a) If a court finds, as a result of a trial, hearing, or
7 remand from an appellate court, that any determination, finding,
8 or decision of a public agency has been made without compliance
9 with this division, the court shall enter an order that includes one
10 or more of the following:

11 (1) *A If the court finds that a remedy pursuant to paragraph*
12 *(2) or (3) would be insufficient, and if the court finds that the lack*
13 *of compliance rendered the public review process and a document*
14 *prepared pursuant to this division is so fundamentally inadequate*
15 *and conclusory in nature that meaningful public review and*
16 *comment were precluded, a mandate that the determination,*
17 *finding, or decision be voided by the public agency, in whole or*
18 *in part.*

19 (2) If the court finds that a specific project activity or activities
20 will prejudice the consideration or implementation of particular
21 mitigation measures or alternatives to the project, a mandate that
22 the public agency and any real parties in interest suspend any or
23 all specific project activity or activities, pursuant to the
24 determination, finding, or decision, that could result in an adverse
25 change or alteration to the physical environment, until the public
26 agency has taken any actions that may be necessary to bring the
27 determination, finding, or decision into compliance with this
28 division.

29 (3) A mandate that the public agency take specific action as
30 may be necessary to bring the determination, finding, or decision
31 into compliance with this division.

32 (b) Any order pursuant to subdivision (a) shall include only
33 those mandates ~~which~~ *that* are necessary to achieve compliance
34 with this division and only those specific project activities in
35 noncompliance with this division. The order shall be made by the
36 issuance of a peremptory writ of mandate specifying what action
37 by the public agency is necessary to comply with this division.
38 However, the order shall be limited to that portion of a
39 determination, finding, or decision or the specific project activity
40 or activities found to be in noncompliance only if a court finds

1 that (1) the portion or specific project activity or activities are
2 severable, (2) severance will not prejudice complete and full
3 compliance with this division, and (3) the court has not found the
4 remainder of the project to be in noncompliance with this division.
5 The trial court shall retain jurisdiction over the public agency's
6 proceedings by way of a return to the peremptory writ until the
7 court has determined that the public agency has complied with this
8 division.

9 (c) Nothing in this section authorizes a court to direct any public
10 agency to exercise its discretion in any particular way. Except as
11 expressly provided in this section, nothing in this section is
12 intended to limit the equitable powers of the court.

13 SEC. 23. Section 21177 of the Public Resources Code is
14 amended to read:

15 21177. (a) ~~No~~ An action or proceeding ~~may~~ *shall not* be
16 brought pursuant to Section 21167 unless the alleged grounds for
17 noncompliance with this division were *specifically* presented to
18 the public agency orally or in writing by ~~any person~~ *a person*
19 *bringing the action or proceeding, either during the public*
20 *comment period provided by this division if the grounds were*
21 *known or could have been known with the exercise of reasonable*
22 *diligence before the close of the public comment period, or prior*
23 *to the close of the public hearing on the project before the issuance*
24 *of the notice of determination if there was no public comment*
25 *period or the grounds were not known and could not have been*
26 *known with the exercise of reasonable diligence before the close*
27 *of the public comment period.*

28 (b) ~~No~~ A person shall *not* maintain an action or proceeding
29 unless that person objected to the approval of the project orally or
30 in writing during the public comment period provided by this
31 division. *If the action or proceeding is based on a claim that arose*
32 *subsequent to the close of the public comment period, or if there*
33 *was no public comment period, a person shall not maintain an*
34 *action or proceeding unless the person objected to the approval*
35 *of the project orally or in writing prior to the close of the public*
36 *hearing on the project before the issuance of the notice of*
37 *determination.*

38 (c) This section does not preclude any organization formed after
39 the approval of a project from maintaining an action pursuant to

1 Section 21167 if a member of that organization has complied with
2 subdivision (b).

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

4 (e) This section does not apply to any alleged grounds for
5 noncompliance with this division for which there was no public
6 hearing or other opportunity for members of the public to raise
7 those objections orally or in writing prior to the approval of the
8 project, or if the public agency failed to give the notice required
9 by law.

10 SEC. 24. Section 21178 is added to the Public Resources Code,
11 to read:

12 21178. To further state policies to develop sufficient housing
13 to meet the state's housing needs and provide a decent home to
14 every Californian, a court considering a motion for attorneys' fees
15 pursuant to Section 1021.5 of the Code of Civil Procedure may
16 consider a project's provision of housing as a public interest factor
17 in determining both whether a successful party should be entitled
18 to a fee award and the amount of a fee award.

19 SEC. 25. No reimbursement is required by this act pursuant to
20 Section 6 of Article XIII B of the California Constitution because
21 a local agency or school district has the authority to levy service
22 charges, fees, or assessments sufficient to pay for the program or
23 level of service mandated by this act, within the meaning of Section
24 17556 of the Government Code.