

AMENDED IN SENATE JUNE 18, 2009

AMENDED IN ASSEMBLY MAY 21, 2009

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

ASSEMBLY BILL

No. 499

Introduced by Assembly Member Hill

February 24, 2009

An act to amend Sections 21108, 21152, and 21167.6.5 of, *and to add Section 21073 to*, the Public Resources Code, relating to the environment.

LEGISLATIVE COUNSEL'S DIGEST

AB 499, as amended, Hill. Environment: California Environmental Quality Act: determination: dispute.

(1) The California Environmental Quality Act (CEQA) requires a lead agency, which includes a local agency, to prepare, or cause to be prepared by contract, and certify the completion of, an environmental impact report on a project, as defined, 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 requires a lead agency to file a notice of approval or a notice of determination containing specified information with the Office of Planning *and* Research or the county clerk of each county in which the project is located, as appropriate. CEQA provides a procedure by which a party may attack, review, set aside, void, or annul the determination, finding, or decision of a public agency on specified grounds. CEQA requires the party challenging the determination to name, as a real party of interest, a recipient of an approval that is the subject of the challenge and to service the petition

or complaint on that real party of interest not later than 20 business days following the service of the petition or complaint on the public agency.

This bill would instead require that a petitioner or plaintiff name, as a real party in interest, a recipient of ~~an~~ approval, as identified by the public agency in its notice of determination or notice of exemption, that is the subject of an action or proceeding challenging the determination, finding, or decision of a public agency pursuant to CEQA. The bill would authorize the court to dismiss a petition or complaint if a petitioner or plaintiff fails to serve the recipient of ~~an~~ approval identified by the public agency within the above service period. The bill would require the court to issue an order providing additional time for, and specifying the manner of, service if the petitioner or plaintiff demonstrates to the court's satisfaction that he or she has made a good faith effort to service the identified recipient of ~~the~~ approval within the above service period.

The bill would provide that the above requirement would not apply to a proceeding for judicial review filed pursuant to CEQA that is pending on or before December 31, 2009, or to actions or proceedings challenging an act or decision of a public agency for which a notice of decision or notice of exemption was filed on or before December 31, 2009.

The bill would require a notice of approval or notice of determination to ~~contain the name of~~ the recipient of ~~the agency's~~ approval, if any. Because a lead agency would be required to include additional information in the notice of approval or notice of determination, this bill would impose a state-mandated local program.

The bill would also define "recipient of approval" for purposes of CEQA.

(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 21073 is added to the Public Resources*
- 2 *Code, to read:*

1 21073. *“Recipient of approval” means the project applicant*
2 *on the date of final public agency action, as identified in the public*
3 *agency’s record of proceedings.*

4 ~~SECTION 1.~~

5 SEC. 2. Section 21108 of the Public Resources Code is
6 amended to read:

7 21108. (a) Whenever a state agency approves or determines
8 to carry out a project that is subject to this division, the state agency
9 shall file notice of that approval or that determination with the
10 Office of Planning and Research. The notice shall name the
11 recipient of ~~the agency’s~~ approval, if any, and indicate the
12 determination of the state agency whether the project will, or will
13 not, have a significant effect on the environment and shall indicate
14 whether an environmental impact report has been prepared pursuant
15 to this division.

16 (b) Whenever a state agency determines that a project is not
17 subject to this division pursuant to subdivision (b) of Section 21080
18 or Section 21172, and the state agency approves or determines to
19 carry out the project, the state agency or the person specified in
20 subdivision (b) or (c) of Section 21065 may file notice of the
21 determination with the Office of Planning and Research. A notice
22 filed pursuant to this subdivision shall name the recipient of ~~the~~
23 ~~agency’s~~ approval, if any. A notice filed pursuant to this
24 subdivision by a person specified in subdivision (b) or (c) of
25 Section 21065 shall have a certificate of determination attached
26 to it issued by the state agency responsible for making the
27 determination that the project is not subject to this division pursuant
28 to subdivision (b) of Section 21080 or pursuant to Section 21172.
29 The certificate of determination may be in the form of a certified
30 copy of an existing document or record of the state agency.

31 (c) All notices filed pursuant to this section shall be available
32 for public inspection, and a list of these notices shall be posted on
33 a weekly basis in the Office of Planning and Research. Each list
34 shall remain posted for a period of 30 days. The Office of Planning
35 and Research shall retain each notice for not less than 12 months.

36 ~~SEC. 2.~~

37 SEC. 3. Section 21152 of the Public Resources Code is
38 amended to read:

39 21152. (a) Whenever a local agency approves or determines
40 to carry out a project that is subject to this division, the local agency

1 shall file notice of the approval or the determination within five
2 working days after the approval or determination becomes final,
3 with the county clerk of each county in which the project will be
4 located. The notice shall name the recipient of ~~the agency's~~
5 approval, if any, and indicate the determination of the local agency
6 whether the project will, or will not, have a significant effect on
7 the environment and shall indicate whether an environmental
8 impact report has been prepared pursuant to this division. The
9 notice shall also include certification that the final environmental
10 impact report, if one was prepared, together with comments and
11 responses, is available to the general public.

12 (b) Whenever a local agency determines that a project is not
13 subject to this division pursuant to subdivision (b) of Section 21080
14 or pursuant to Section 21172, and the local agency approves or
15 determines to carry out the project, the local agency or the person
16 specified in subdivision (b) or (c) of Section 21065 may file a
17 notice of the determination with the county clerk of each county
18 in which the project will be located. A notice filed pursuant to this
19 subdivision shall name the recipient of ~~the agency's~~ approval, if
20 any. A notice filed pursuant to this subdivision by a person
21 specified in subdivision (b) or (c) of Section 21065 shall have a
22 certificate of determination attached to it issued by the local agency
23 responsible for making the determination that the project is not
24 subject to this division pursuant to subdivision (b) of Section 21080
25 or Section 21172. The certificate of determination may be in the
26 form of a certified copy of an existing document or record of the
27 local agency.

28 (c) All notices filed pursuant to this section shall be available
29 for public inspection, and shall be posted within 24 hours of receipt
30 in the office of the county clerk. A notice shall remain posted for
31 a period of 30 days. Thereafter, the clerk shall return the notice to
32 the local agency with a notation of the period it was posted. The
33 local agency shall retain the notice for not less than 12 months.

34 ~~SEC. 3.~~

35 *SEC. 4.* Section 21167.6.5 of the Public Resources Code is
36 amended to read:

37 21167.6.5. (a) The petitioner or plaintiff shall name, as a real
38 party in interest, any recipient of ~~an~~ approval, as identified by the
39 public agency in its notice of determination or notice of exemption,
40 that is the subject of an action or proceeding brought pursuant to

1 Section 21167, 21168, or 21168.5, and shall serve the petition or
2 complaint on that real party in interest, by personal service, mail,
3 facsimile, or any other method permitted by law, not later than 20
4 business days following service of the petition or complaint on the
5 public agency.

6 (b) (1) If the petitioner or plaintiff fails to serve a recipient of
7 an approval as identified in the public agency's notice of
8 determination or notice of exemption within the service period
9 specified in subdivision (a), the court may dismiss the petition or
10 complaint.

11 (2) Notwithstanding paragraph (1), if the petitioner or plaintiff
12 demonstrates to the court's satisfaction that he or she has made a
13 good faith effort to effect service to the recipient of the approval
14 pursuant to subdivision (a), the court shall issue an order providing
15 additional time for, and specifying the manner of, service of the
16 recipient of the approval.

17 (c) The public agency shall provide the petitioner or plaintiff,
18 not later than 10 business days following service of the petition or
19 complaint on the public agency, with a list of responsible agencies
20 and any public agency having jurisdiction over a natural resource
21 affected by the project.

22 (d) The petitioner or plaintiff shall provide the responsible
23 agencies, and any public agency having jurisdiction over a natural
24 resource affected by the project, with notice of the action or
25 proceeding within 15 days of receipt of the list described in
26 subdivision (c).

27 (e) Failure to name potential persons, other than those real
28 parties in interest described in subdivision (a), as identified by the
29 public agency in its notice of determination or notice of exemption,
30 is not grounds for dismissal pursuant to Section 389 of the Code
31 of Civil Procedure.

32 (f) This section is not intended to affect an existing right of a
33 party to intervene in the action.

34 ~~SEC. 4.~~

35 *SEC. 5.* Section 21167.6.5 of the Public Resources Code as
36 amended by this act does not apply to a proceeding for judicial
37 review filed pursuant to Chapter 6 (commencing with Section
38 21165) of Division 13 of the Public Resources Code that is pending
39 on or before December 31, 2009, or to an action or proceeding
40 that seeks to attack, review, void, or set aside an act or decision

1 of a public agency for which a notice of determination or notice
2 of exemption was filed on or before December 31, 2009, and the
3 applicable law in effect on that date shall continue to apply to that
4 proceeding.

5 ~~SEC. 5.~~

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

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