

Assembly Bill No. 499

Passed the Assembly August 31, 2010

Chief Clerk of the Assembly

Passed the Senate August 30, 2010

Secretary of the Senate

This bill was received by the Governor this _____ day
of _____, 2010, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

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, 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 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 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 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 name the recipient of 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.

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

SECTION 1. Section 21073 is added to the Public Resources Code, to read:

21073. "Recipient of approval" means the project applicant on the date of final public agency action, as identified in the public agency's record of proceedings.

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

21108. (a) Whenever a state agency approves or determines to carry out a project that is subject to this division, the state agency shall file notice of that approval or that determination with the Office of Planning and Research. The notice shall name the recipient of approval, if any, and indicate the determination of the state agency whether the project will, or will not, have a significant effect on the environment and shall indicate whether an

environmental impact report has been prepared pursuant to this division.

(b) Whenever a state agency determines that a project is not subject to this division pursuant to subdivision (b) of Section 21080 or Section 21172, and the state agency approves or determines to carry out the project, the state agency or the person specified in subdivision (b) or (c) of Section 21065 may file notice of the determination with the Office of Planning and Research. A notice filed pursuant to this subdivision shall name the recipient of approval, if any. A notice filed pursuant to this subdivision by a person specified in subdivision (b) or (c) of Section 21065 shall have a certificate of determination attached to it issued by the state agency responsible for making the determination that the project is not subject to this division pursuant to subdivision (b) of Section 21080 or pursuant to Section 21172. The certificate of determination may be in the form of a certified copy of an existing document or record of the state agency.

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

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

21152. (a) Whenever a local agency approves or determines to carry out a project that is subject to this division, the local agency shall file notice of the approval or the determination within five working days after the approval or determination becomes final, with the county clerk of each county in which the project will be located. The notice shall name the recipient of approval, if any, and indicate the determination of the local agency whether the project will, or will not, have a significant effect on the environment and shall indicate whether an environmental impact report has been prepared pursuant to this division. The notice shall also include certification that the final environmental impact report, if one was prepared, together with comments and responses, is available to the general public.

(b) Whenever a local agency determines that a project is not subject to this division pursuant to subdivision (b) of Section 21080 or pursuant to Section 21172, and the local agency approves or

determines to carry out the project, the local agency or the person specified in subdivision (b) or (c) of Section 21065 may file a notice of the determination with the county clerk of each county in which the project will be located. A notice filed pursuant to this subdivision shall name the recipient of approval, if any. A notice filed pursuant to this subdivision by a person specified in subdivision (b) or (c) of Section 21065 shall have a certificate of determination attached to it issued by the local agency responsible for making the determination that the project is not subject to this division pursuant to subdivision (b) of Section 21080 or Section 21172. The certificate of determination may be in the form of a certified copy of an existing document or record of the local agency.

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

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

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

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

(2) Notwithstanding paragraph (1), if the petitioner or plaintiff demonstrates to the court's satisfaction that he or she has made a good faith effort to effect service to the recipient of approval pursuant to subdivision (a), the court shall issue an order providing

additional time for, and specifying the manner of, service of the recipient of approval.

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

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

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

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

SEC. 5. Section 21167.6.5 of the Public Resources Code as amended by this act does not apply to a proceeding for judicial review filed pursuant to Chapter 6 (commencing with Section 21165) of Division 13 of the Public Resources Code that is pending on or before December 31, 2009, or to an action or proceeding that seeks to attack, review, void, or set aside an act or decision of a public agency for which a notice of determination or notice of exemption was filed on or before December 31, 2009, and the applicable law in effect on that date shall continue to apply to that proceeding.

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

Approved _____, 2010

Governor