

AMENDED IN SENATE JUNE 14, 2011

AMENDED IN ASSEMBLY APRIL 12, 2011

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 320

Introduced by Assembly Member Hill

February 9, 2011

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

LEGISLATIVE COUNSEL'S DIGEST

AB 320, as amended, Hill. Environmental quality: California Environmental Quality Act (CEQA): 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 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 and requires that a petitioner or plaintiff name, as a real party in interest, a recipient of an approval that is the subject of an action or proceeding challenging the determination, finding, or decision of a public agency pursuant to CEQA.

This bill would require a notice of approval or notice of determination to identify the person undertaking an activity that receives financial assistance from a public agency or the person receiving a lease, permit, license, certificate, or other entitlement of use from a public agency. 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.

~~This bill would require that the named recipient be as a petitioner or plaintiff to name, as a real party in interest, the person identified by the public agency in its notice of determination or notice of exemption, as reflected by the agency's record of proceedings. The bill would require that a petition or complaint be subject to dismissal if a petitioner or plaintiff fails to serve any recipient of an approval within the statute of limitations 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, 2011, 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, 2011.

~~The bill would require a notice of approval or notice of determination to contain the names of the recipients 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.~~

(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 21108 of the Public Resources Code is
- 2 amended to read:
- 3 21108. (a) Whenever a state agency approves or determines
- 4 to carry out a project that is subject to this division, the state agency
- 5 shall file notice of that approval or that determination with the

Office of Planning and Research. The notice shall ~~name the recipients of the agency's approval, if any~~ *identify the person or persons in subdivision (b) or (c) of Section 21065, as reflected in the agency's record of proceedings*, 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 recipients of the agency's approval, if any~~ *identify the person or persons in subdivision (b) or (c) of Section 21065, as reflected in the agency's record of proceedings*. 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. 2. 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 recipients of the agency's approval, if any~~ *identify the person or persons in subdivision (b) or (c) of Section 21065, as reflected in the agency's record of*

1 *proceedings*, and indicate the determination of the local agency
2 whether the project will, or will not, have a significant effect on
3 the environment and shall indicate whether an environmental
4 impact report has been prepared pursuant to this division. The
5 notice shall also include certification that the final environmental
6 impact report, if one was prepared, together with comments and
7 responses, is available to the general public.

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

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

32 SEC. 3. Section 21167.6.5 of the Public Resources Code is
33 amended to read:

34 21167.6.5. (a) The petitioner or plaintiff shall name, as a real
35 party in interest, ~~the recipient or recipients of an approval, as the~~
36 ~~person or persons~~ *identified by the public agency in its notice of*
37 ~~determination or notice of exemption, filed pursuant to subdivision~~
38 *(a) or (b) of Section 21108 or Section 21152 or, if no notice is*
39 *filed, the person or persons in subdivision (b) or (c) of Section*
40 *21065, as reflected in the agency's record of proceedings for the*

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

7 ~~(b) If the petitioner or plaintiff fails to serve the recipient or~~
8 ~~recipients of an approval, identified in the public agency's notice~~
9 ~~of determination or notice of exemption, within the limitations~~
10 ~~period specified in subdivision (a), the petition or complaint shall~~
11 ~~be subject to dismissal on the motion of a party interested in the~~
12 ~~proceeding.~~

13 ~~(e)~~

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

19 ~~(d)~~

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

25 ~~(e)~~

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

31 ~~(f)~~

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

34 SEC. 4. Section 21167.6.5 of the Public Resources Code as
35 amended by this act does not apply to a proceeding for judicial
36 review filed pursuant to Chapter 6 (commencing with Section
37 21165) of Division 13 of the Public Resources Code that is pending
38 on or before December 31, 2011, or to an action or proceeding
39 that seeks to attack, review, void, or set aside an act or decision
40 of a public agency for which a notice of determination or notice

1 of exemption was filed on or before December 31, 2011, and the
2 applicable law in effect on that date shall continue to apply to that
3 proceeding.

4 SEC. 5. No reimbursement is required by this act pursuant to
5 Section 6 of Article XIII B of the California Constitution because
6 a local agency or school district has the authority to levy service
7 charges, fees, or assessments sufficient to pay for the program or
8 level of service mandated by this act, within the meaning of Section
9 17556 of the Government Code.