

AMENDED IN SENATE APRIL 17, 2012

SENATE BILL

No. 1348

Introduced by Senator Gaines

February 24, 2012

~~An act to amend Section 11342.548 of the Government Code, relating to regulations.~~ *An act to amend Section 21167.6 of, to add Sections 21168.10 and 21168.11 to, and to repeal Chapter 6.5 (commencing with Section 21178) of Division 13 of, the Public Resources Code, relating to environmental quality.*

LEGISLATIVE COUNSEL'S DIGEST

SB 1348, as amended, Gaines. ~~Regulations: major regulations.~~ *Environmental quality: CEQA: public projects: judicial review.*

(1) The California Environmental Quality Act (CEQA) requires a lead agency, as defined, to prepare, or cause to be prepared, and certify the completion of, an environmental impact report (EIR) on a project that it proposes to carry out or approve that may have a significant effect on the environment or to adopt a negative declaration if it finds that the project will not have that effect. CEQA also requires a lead agency to prepare a mitigated negative declaration for a project that may have a significant effect on the environment if revisions in the project would avoid or mitigate that effect and there is no substantial evidence that the project, as revised, would have a significant effect on the environment.

CEQA establishes procedures for creating the administrative record and a judicial review procedure for any action or proceeding brought to challenge the lead agency's decision to certify the EIR or to grant project approvals.

This bill would establish specified judicial review procedures for the judicial review of the EIR for a project that will result in a minimum investment of \$10,000,000 subject to the requirements of CEQA. The bill would establish an alternative procedure for creating the administrative record. Because the lead agency would be required to use these alternative procedures for creating the administrative record, this bill would impose a state-mandated local program.

This bill would make other conforming changes.

(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 Administrative Procedure Act governs the procedure for the adoption, amendment, or repeal of regulations by state agencies and for the review of those regulatory actions by the Office of Administrative Law. That act requires an agency, prior to submitting a proposal to adopt, amend, or repeal an administrative regulation, to determine the economic impact of that regulation, in accordance with certain procedures. That act defines a major regulation as a regulation that the agency determines has an expected economic impact on California business enterprises and individuals in an amount exceeding \$50,000,000.~~

~~This bill would make a technical, nonsubstantive change to that provision.~~

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~-yes.
State-mandated local program: ~~no~~-yes.

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

- 1 SECTION 1. Section 21167.6 of the Public Resources Code is
- 2 amended to read:
- 3 21167.6. Notwithstanding any other provision of law, in all
- 4 actions or proceedings brought pursuant to Section 21167, except
- 5 as provided in Section 21168.11 and those involving the Public
- 6 Utilities Commission, all of the following shall apply:
- 7 (a) At the time that the action or proceeding is filed, the plaintiff
- 8 or petitioner shall file a request that the respondent public agency
- 9 prepare the record of proceedings relating to the subject of the

1 action or proceeding. The request, together with the complaint or
2 petition, shall be served personally upon the public agency not
3 later than 10 business days from the date that the action or
4 proceeding was filed.

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

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

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

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

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

35 (1) All project application materials.

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

1 (3) All staff reports and related documents prepared by the
2 respondent public agency and written testimony or documents
3 submitted by any person relevant to any findings or statement of
4 overriding considerations adopted by the respondent agency
5 pursuant to this division.

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

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

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

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

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

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

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

1 notes and memoranda related to the project or to compliance with
2 this division.

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

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

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

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

27 (i) At the completion of the filing of briefs on appeal, the
28 appellant shall notify the court of the completion of the filing of
29 briefs, whereupon the clerk of the reviewing court shall set the
30 appeal for hearing on the first available calendar date.

31 *SEC. 2. Section 21168.10 is added to the Public Resources*
32 *Code, to read:*

33 *21168.10. (a) An action or proceeding brought pursuant to*
34 *subdivision (c) of Section 21167 on a project that will result in a*
35 *minimum investment of ten million dollars (\$10,000,000) shall be*
36 *conducted as follows:*

37 *(1) The action or proceeding shall be filed in the Court of Appeal*
38 *with geographic jurisdiction over the project.*

39 *(2) A party bringing the action or proceeding shall also file*
40 *concurrently any other claims alleging that a public agency has*

1 granted land use approvals for the project in violation of law. The
2 Court of Appeal has original jurisdiction over all of these claims.

3 (3) To the extent practicable, the Court of Appeal shall issue
4 its decision in the case within 175 days of the filing of the petition.

5 (4) The court may appoint a master to assist the court in
6 managing and processing the case.

7 (5) The court may grant extensions of time only for good cause
8 shown and in order to promote the interests of justice.

9 (b) On or before July 1, 2013, the Judicial Council shall adopt
10 rules of court to implement this section.

11 (c) If the Court of Appeal asserts jurisdiction over the action
12 or proceeding, the person bringing the action or proceeding shall
13 post a bond, in an amount as determined appropriate by the court,
14 against which a prevailing respondent or real party in interest
15 may recover its costs incurred in defending against the action or
16 proceeding, or attorney's fees, if awarded by the court.

17 SEC. 3. Section 21168.11 is added to the Public Resources
18 Code, to read:

19 21168.11. (a) Notwithstanding Section 21167.6, the
20 preparation and certification of the record of proceedings for the
21 certification of an environmental impact report for a project that
22 will result in a minimum investment of ten million dollars
23 (\$10,000,000) by a public agency shall be performed in the
24 following manner:

25 (1) The lead agency for the project shall prepare the record of
26 proceedings pursuant to this division concurrently with the
27 administrative process.

28 (2) All documents and other materials placed in the record of
29 proceedings shall be posted on, and be downloadable from, an
30 Internet Web site maintained by the lead agency commencing with
31 the date of the release of the draft environmental impact report.

32 (3) The lead agency shall make available to the public in a
33 readily accessible electronic format the draft environmental impact
34 report and all other documents submitted to, or relied on by, the
35 lead agency in the preparation of the draft environmental impact
36 report.

37 (4) A document prepared by the lead agency or submitted by
38 the applicant after the date of the release of the draft environmental
39 impact report that is a part of the record of the proceedings shall
40 be made available to the public in a readily accessible electronic

1 *format within five business days after the document is released or*
2 *received by the lead agency.*

3 (5) *The lead agency shall encourage written comments on the*
4 *project to be submitted in a readily accessible electronic format,*
5 *and shall make any comments available to the public in a readily*
6 *accessible electronic format within five days of its receipt.*

7 (6) *Within seven business days after the receipt of any comment*
8 *that is not in an electronic format, the lead agency shall convert*
9 *that comment into a readily accessible electronic format and make*
10 *it available to the public in that format.*

11 (7) *The lead agency shall certify the final record of proceedings*
12 *within five days of its approval of the project.*

13 (8) *Any dispute arising from the record of proceedings shall be*
14 *resolved by the Court of Appeal in an action or proceeding filed*
15 *pursuant to Section 21168.10.*

16 (9) *For the purposes of this section, “readily accessible*
17 *electronic format” includes electronic files, such as Portable*
18 *Document Format (PDF), files sent by electronic mail or made*
19 *available on a compact disc or the public agency’s Internet Web*
20 *site.*

21 (b) *The draft and final environmental impact report shall include*
22 *a notice in no less than 12-point type stating the following:*

23
24 *“THIS EIR IS SUBJECT TO SECTIONS 21168.10 AND*
25 *21168.11 OF THE PUBLIC RESOURCES CODE, WHICH*
26 *PROVIDES, AMONG OTHER THINGS, THAT ANY JUDICIAL*
27 *ACTION CHALLENGING THE CERTIFICATION OF THE EIR*
28 *OR THE APPROVAL OF THE PROJECT DESCRIBED IN THE*
29 *EIR IS SUBJECT TO THE PROCEDURES SET FORTH IN*
30 *THOSE SECTIONS AND MUST BE FILED WITH THE COURT*
31 *OF APPEAL.”*

32
33 *SEC. 4. Chapter 6.5 (commencing with Section 21178) of*
34 *Division 13 of the Public Resources Code is repealed.*

35 *SEC. 5. No reimbursement is required by this act pursuant to*
36 *Section 6 of Article XIII B of the California Constitution because*
37 *a local agency or school district has the authority to levy service*
38 *charges, fees, or assessments sufficient to pay for the program or*
39 *level of service mandated by this act, within the meaning of Section*
40 *17556 of the Government Code.*

1 SECTION 1. ~~Section 11342.548 of the Government Code is~~
2 ~~amended to read:~~
3 ~~11342.548. “Major regulation” means any proposed adoption,~~
4 ~~amendment, or repeal of the regulation subject to review by the~~
5 ~~Office of Administrative Law pursuant to Article 6 (commencing~~
6 ~~with Section 11349) that will have an economic impact on~~
7 ~~California business enterprises and individuals in an amount~~
8 ~~exceeding fifty million dollars (\$50,000,000), as estimated by the~~
9 ~~agency.~~

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