

AMENDED IN ASSEMBLY JANUARY 6, 2014

AMENDED IN ASSEMBLY MARCH 11, 2013

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 515

Introduced by Assembly Member Dickinson

February 20, 2013

~~An act to amend Sections 21167.1, 21167.8, 21168.9, and 21177 of, and to add Sections 21166.5 and 21167.15 to, the Public Resources Code, relating to environmental quality. An act to amend Section 21168.9 of the Public Resources Code, relating to environmental quality.~~

LEGISLATIVE COUNSEL'S DIGEST

AB 515, as amended, Dickinson. Environmental quality: California Environmental Quality Act: ~~judicial review~~. *writ of mandate*.

(1) *The California Environmental Quality Act requires the court, if the court finds that a public agency has violated the requirements of the act, to issue an order, in the form of a peremptory writ of mandate, specifying what actions by the public agency are necessary to comply with the requirements of the act.*

This bill would require the writ to specify the time by which the public agency is to make an initial return of the writ containing specified information. Because a public agency would be required to file an initial return of a writ, 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, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

The California Constitution vests the judicial power of the state in the Supreme Court, the courts of appeal, and the superior courts. Existing law establishes a superior court of one or more judges in each county and provides that the superior courts have original jurisdiction, except as provided in the Constitution. Existing law requires the presiding judge of each superior court to distribute the business of the court among the judges, and to prescribe the order of business, subject to the rules of the Judicial Council.

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 a judicial review of determinations made by a public agency pursuant to CEQA and requires actions or proceedings brought pursuant to CEQA to be given preference over all other civil actions by a trial court. Existing law requires the superior courts in all counties with a population of more than 200,000 to designate one or more judges to develop expertise in CEQA and related land use and environmental laws, so that those judges will be available to hear, and quickly resolve, actions or proceedings brought pursuant to CEQA. If the court finds that a determination made by a public agency pursuant to CEQA violates the requirements of CEQA, CEQA requires the court to issue an order, in the form of a peremptory writ of mandate, specifying what action by the public agency is necessary to comply with CEQA.

This bill would establish a CEQA compliance division of the superior court in a county in which the Attorney General maintains an office and would vest the division with original jurisdiction over actions of proceedings brought pursuant to CEQA and joined matters related to land use and environmental laws. The bill would require the Judicial

Council to adopt rules for establishing, among other things, protocol to govern the administration and efficient operation of the division, so that those judges assigned to the division will be able to hear and quickly resolve those actions or proceedings. The bill would provide that decisions of the CEQA compliance division of the superior court may be reviewed by way of a petition for an extraordinary writ. The bill would require the CEQA compliance division to issue a preliminary decision before the opportunity for oral argument is granted. If the CEQA compliance division of the superior court finds that a determination of a public agency violated CEQA, the bill would require the court's order to specify what action taken by the public agency was in error and what specific action by the public agency is necessary to comply with CEQA. The bill would prohibit an action or proceeding pursuant to CEQA from being brought unless the alleged grounds of noncompliance were presented to the public agency with enough specificity that the public agency could reasonably respond to the alleged violation. The bill would prohibit a person from maintaining an action or proceeding pursuant to CEQA unless that person objected during the administrative process with specificity as to how the public agency's response to the alleged violation is inadequate.

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

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

- 1 SECTION 1. Section 21168.9 of the Public Resources Code is
- 2 amended to read:
- 3 21168.9. (a) If a court finds, as a result of a trial, hearing, or
- 4 remand from an appellate court, that any determination, finding,
- 5 or decision of a public agency has been made without compliance
- 6 with this division, the court shall enter ~~an order that includes a~~
- 7 *judgment directing the issuance of a peremptory writ of mandate*
- 8 *specifying what action by the public agency is necessary to comply*
- 9 *with this division, including one or more of the following:*
- 10 (1) A mandate that the determination, finding, or decision be
- 11 voided by the public agency, in whole or in part.
- 12 (2) If the court finds that a specific project activity or activities
- 13 will prejudice the consideration or implementation of particular
- 14 mitigation measures or alternatives to the project, a mandate that
- 15 the public agency and any real parties in interest suspend any or

1 all specific project activity or activities, pursuant to the
2 determination, finding, or decision, that could result in an adverse
3 change or alteration to the physical environment, until the public
4 agency has taken any actions that may be necessary to bring the
5 determination, finding, or decision into compliance with this
6 division.

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

10 (b) ~~Any order~~(1) A writ issued pursuant to subdivision (a) shall
11 include only those mandates ~~which~~ that are necessary to achieve
12 compliance with this division and *shall address* only those specific
13 project activities in noncompliance with this division. ~~The order~~
14 ~~shall be made by the issuance of a peremptory writ of mandate~~
15 ~~specifying what action by the public agency is necessary to comply~~
16 ~~with this division. However, the order~~

17 (2) *The writ* shall be limited to that portion of a determination,
18 finding, or decision or the specific project activity or activities
19 found to be in noncompliance only if a court finds ~~that (1) the all~~
20 *of the following:*

21 (A) *The portion or specific project activity or activities are*
22 *severable, (2) severance severable.*

23 (B) *Severance* will not prejudice complete and full compliance
24 with this ~~division, and (3) the division.~~

25 (C) *The court* has not found the remainder of the project to be
26 in noncompliance with this division. ~~The trial court shall retain~~
27 ~~jurisdiction over the public agency's proceedings by way of a~~
28 ~~return to the peremptory writ until the court has determined that~~
29 ~~the public agency has complied with this division.~~

30 (3) *The writ shall include the time by which the public agency*
31 *shall make an initial return of the writ.*

32 (4) *The trial court shall retain jurisdiction over the public*
33 *agency's proceedings by way of a return to the peremptory writ*
34 *until the court has determined that the public agency has complied*
35 *with this division.*

36 (c) *An initial return of the writ shall describe all of the*
37 *following:*

38 (1) *The actions the public agency will take to come into*
39 *compliance with the writ and this division.*

40 (2) *A schedule for these actions.*

1 (3) *In the case of a negative declaration, mitigated negative*
2 *declaration, or environmental impact report found not to be in*
3 *compliance with this division, the public comment period*
4 *applicable to the agency’s revision of the document.*

5 ~~(e) Nothing in this section authorizes~~

6 ~~(d) This section does not authorize a court to direct any a public~~
7 ~~agency to exercise its discretion in any particular way. Except as~~
8 ~~expressly provided in this section, nothing in this section is not~~
9 ~~intended to limit the equitable powers of the court.~~

10 ~~(e) This section does not affect the authority of a court to allow~~
11 ~~those determinations, findings, or decisions of a public agency~~
12 ~~that are not found to be in violation of this division to proceed, if~~
13 ~~allowing the public agency to proceed does not, in any manner,~~
14 ~~prejudice complete and full compliance with this division.~~

15 *SEC. 2. If the Commission on State Mandates determines that*
16 *this act contains costs mandated by the state, reimbursement to*
17 *local agencies and school districts for those costs shall be made*
18 *pursuant to Part 7 (commencing with Section 17500) of Division*
19 *4 of Title 2 of the Government Code.*

20 ~~SECTION 1. Section 21166.5 is added to the Public Resources~~
21 ~~Code, to read:~~

22 ~~21166.5. (a) There shall be a CEQA compliance division of~~
23 ~~the superior court in a county in which the Attorney General~~
24 ~~maintains an office.~~

25 ~~(b) The CEQA compliance division shall have original~~
26 ~~jurisdiction over actions or proceedings brought pursuant to this~~
27 ~~division, as well as other matters related to land use and~~
28 ~~environmental laws that may be joined with those actions or~~
29 ~~proceedings.~~

30 ~~(c) The judicial council shall adopt rules that do all of the~~
31 ~~following:~~

32 ~~(1) Establish standards for determining the appropriate superior~~
33 ~~court with a CEQA compliance division in which an action or~~
34 ~~proceeding brought pursuant to Section 21167, 21168, or 21168.5~~
35 ~~may be filed.~~

36 ~~(2) Establish protocol to govern the administration and efficient~~
37 ~~operation of the CEQA compliance division to accomplish the~~
38 ~~goals of Section 21167.1.~~

1 ~~(3) Establish appropriate qualifications for the assignment of~~
2 ~~judges to the CEQA compliance division based on the knowledge~~
3 ~~and education of a judge in this division.~~

4 ~~SEC. 2. Section 21167.1 of the Public Resources Code is~~
5 ~~amended to read:~~

6 ~~21167.1. (a) In all actions or proceedings brought pursuant to~~
7 ~~Sections 21167, 21168, and 21168.5, including the hearing of an~~
8 ~~action or proceeding on appeal from a decision of a lower court,~~
9 ~~all courts in which the action or proceeding is pending shall give~~
10 ~~the action or proceeding preference over all other civil actions, in~~
11 ~~the matter of setting the action or proceeding for hearing or trial,~~
12 ~~and in hearing or trying the action or proceeding, so that the action~~
13 ~~or proceeding shall be quickly heard and determined. The court~~
14 ~~shall regulate the briefing schedule so that, to the extent feasible,~~
15 ~~the court shall commence hearings on an appeal within one year~~
16 ~~of the date of the filing of the appeal.~~

17 ~~(b) To ensure that actions or proceedings brought pursuant to~~
18 ~~Sections 21167, 21168, and 21168.5 may be quickly heard and~~
19 ~~determined by judges with expertise in this division and related~~
20 ~~land use and environmental laws, actions or proceedings brought~~
21 ~~pursuant to Sections 21167, 21168, and 21168.5 shall be heard by~~
22 ~~the CEQA compliance division of an appropriate superior court,~~
23 ~~as determined by rules developed pursuant to subdivision (c) of~~
24 ~~Section 21166.5.~~

25 ~~(c) In an action or proceeding filed pursuant to this chapter that~~
26 ~~is joined with any other cause of action, the court, upon a motion~~
27 ~~by any party, may grant severance of the actions. In determining~~
28 ~~whether to grant severance, the court shall consider such matters~~
29 ~~as judicial economy, administrative economy, and prejudice to~~
30 ~~any party.~~

31 ~~(d) Notwithstanding any other law, review of the decision of~~
32 ~~the CEQA compliance division of the superior court shall be~~
33 ~~pursuant to a petition for an extraordinary writ.~~

34 ~~SEC. 3. Section 21167.8 of the Public Resources Code, as~~
35 ~~amended by Section 7 of Chapter 496 of the Statutes of 2010, is~~
36 ~~amended to read:~~

37 ~~21167.8. (a) Not later than 20 days from the date of service~~
38 ~~upon a public agency of a petition or complaint brought pursuant~~
39 ~~to Section 21167, the public agency shall file with the court a~~
40 ~~notice setting forth the time and place at which all parties shall~~

1 meet and attempt to settle the litigation. The meeting shall be
2 scheduled and held not later than 45 days from the date of service
3 of the petition or complaint upon the public agency. The notice of
4 the settlement meeting shall be served by mail upon the counsel
5 for each party. If the public agency does not know the identity of
6 counsel for a party, the notice shall be served by mail upon the
7 party for whom counsel is not known.

8 (b) At the time and place specified in the notice filed with the
9 court, the parties shall meet and confer regarding anticipated issues
10 to be raised in the litigation and shall attempt in good faith to settle
11 the litigation and the dispute that forms the basis of the litigation.
12 The settlement meeting discussions shall be comprehensive in
13 nature and shall focus on the legal issues raised by the parties
14 concerning the project that is the subject of the litigation.

15 (c) The settlement meeting may be continued from time to time
16 without postponing or otherwise delaying other applicable time
17 limits in the litigation. The settlement meeting, or a mediation
18 proceeding that is conducted pursuant to Chapter 9.3 (commencing
19 with Section 66030) of Division 1 of Title 7 of the Government
20 Code, is intended to be conducted concurrently with any judicial
21 proceedings.

22 (d) If the litigation is not settled, the court, in its discretion, may,
23 or at the request of a party, shall, schedule a further settlement
24 conference before a judge of the CEQA compliance division.

25 (e) The failure of a party, who was notified pursuant to
26 subdivision (a), to participate in the litigation settlement process,
27 without good cause, may result in an imposition of sanctions by
28 the court.

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

1 ~~(g) This section shall remain in effect only until January 1, 2016,~~
2 ~~and as of that date is repealed, unless a later enacted statute, that~~
3 ~~is enacted before January 1, 2016, deletes or extends that date.~~

4 ~~SEC. 4. Section 21167.8 of the Public Resources Code, as~~
5 ~~added by Section 8 of Chapter 496 of the Statutes of 2010, is~~
6 ~~amended to read:~~

7 ~~21167.8. (a) Not later than 20 days from the date of service~~
8 ~~upon a public agency of a petition or complaint brought pursuant~~
9 ~~to Section 21167, the public agency shall file with the court a~~
10 ~~notice setting forth the time and place at which all parties shall~~
11 ~~meet and attempt to settle the litigation. The meeting shall be~~
12 ~~scheduled and held not later than 45 days from the date of service~~
13 ~~of the petition or complaint upon the public agency. The notice of~~
14 ~~the settlement meeting shall be served by mail upon the counsel~~
15 ~~for each party. If the public agency does not know the identity of~~
16 ~~counsel for any party, the notice shall be served by mail upon the~~
17 ~~party for whom counsel is not known.~~

18 ~~(b) At the time and place specified in the notice filed with the~~
19 ~~court, the parties shall meet and confer regarding anticipated issues~~
20 ~~to be raised in the litigation and shall attempt in good faith to settle~~
21 ~~the litigation and the dispute which forms the basis of the litigation.~~
22 ~~The settlement meeting discussions shall be comprehensive in~~
23 ~~nature and shall focus on the legal issues raised by the parties~~
24 ~~concerning the project that is the subject of the litigation.~~

25 ~~(c) The settlement meeting may be continued from time to time~~
26 ~~without postponing or otherwise delaying other applicable time~~
27 ~~limits in the litigation. The settlement meeting is intended to be~~
28 ~~conducted concurrently with any judicial proceedings.~~

29 ~~(d) If the litigation is not settled, the court, in its discretion, may,~~
30 ~~or at the request of any party, shall, schedule a further settlement~~
31 ~~conference before a judge of the CEQA compliance division.~~

32 ~~(e) The failure of any party, who was notified pursuant to~~
33 ~~subdivision (a), to participate in the litigation settlement process,~~
34 ~~without good cause, may result in an imposition of sanctions by~~
35 ~~the court.~~

36 ~~(f) Not later than 30 days from the date that notice of~~
37 ~~certification of the record of proceedings was filed and served in~~
38 ~~accordance with Section 21167.6, the petitioner or plaintiff shall~~
39 ~~file and serve on all other parties a statement of issues which the~~
40 ~~petitioner or plaintiff intends to raise in any brief or at any hearing~~

1 or trial. Not later than 10 days from the date on which the
2 respondent or real party in interest has been served with the
3 statement of issues from the petitioner or plaintiff, each respondent
4 and real party in interest shall file and serve on all other parties a
5 statement of issues which that party intends to raise in any brief
6 or at any hearing or trial.

7 (g) This section shall become operative on January 1, 2016.

8 SEC. 5. Section 21167.15 is added to the Public Resources
9 Code, immediately following Section 24167.10, to read:

10 21167.15. To ensure the efficient use of the court's time and
11 a focused discussion of the issues at oral arguments, the CEQA
12 compliance division of the superior court shall first issue a
13 preliminary decision before the opportunity for oral argument is
14 granted.

15 SEC. 6. Section 21168.9 of the Public Resources Code is
16 amended to read:

17 21168.9. (a) If a court finds, as a result of a trial, hearing, or
18 remand from an appellate court, that any determination, finding,
19 or decision of a public agency has been made without compliance
20 with this division, the court shall enter an order that includes one
21 or more of the following:

22 (1) A mandate that the determination, finding, or decision be
23 voided by the public agency, in whole or in part.

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

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

37 (b) An order pursuant to subdivision (a) shall include only those
38 mandates that are necessary to achieve compliance with this
39 division and only those specific project activities in noncompliance
40 with this division. The order shall be made by the issuance of a

1 peremptory writ of mandate specifying what actions were in error
2 and what specific action by the public agency is necessary to
3 comply with this division. However, the order shall be limited to
4 that portion of a determination, finding, or decision or the specific
5 project activity or activities found to be in noncompliance only if
6 a court finds that (1) the portion or specific project activity or
7 activities are severable, (2) severance will not prejudice complete
8 and full compliance with this division, and (3) the court has not
9 found the remainder of the project to be in noncompliance with
10 this division. The CEQA compliance division of the superior court
11 shall retain jurisdiction over the public agency's proceedings by
12 way of a return to the peremptory writ until the court has
13 determined that the public agency has complied with this division.

14 (e) Nothing in this section authorizes a court to direct any public
15 agency to exercise its discretion in any particular way. Except as
16 expressly provided in this section, nothing in this section is
17 intended to limit the equitable powers of the court.

18 ~~SEC. 7. Section 21177 of the Public Resources Code, as~~
19 ~~amended by Section 11 of Chapter 496 of the Statutes of 2010, is~~
20 ~~amended to read:~~

21 ~~21177. (a) An action or proceeding shall not be brought~~
22 ~~pursuant to Section 21167 unless the alleged grounds for~~
23 ~~noncompliance with this division were presented to the public~~
24 ~~agency orally or in writing by any person during the public~~
25 ~~comment period provided by this division or prior to the close of~~
26 ~~the public hearing on the project before the issuance of the notice~~
27 ~~of determination with enough specificity that the public agency~~
28 ~~could reasonably respond to the alleged violation.~~

29 ~~(b) A person shall not maintain an action or proceeding unless~~
30 ~~that person objected to the approval of the project orally or in~~
31 ~~writing during the public comment period provided by this division~~
32 ~~or prior to the close of the public hearing on the project before the~~
33 ~~filing of the notice of determination pursuant to Sections 21108~~
34 ~~and 21152.~~

35 ~~(c) A person shall not maintain an action or proceeding unless~~
36 ~~the person objected during the administrative process with~~
37 ~~specificity as to how the public agency's response to the alleged~~
38 ~~violation is inadequate under this division.~~

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

1 Section 21167 if a member of that organization has complied with
2 subdivisions (a) and (b). The grounds for noncompliance may have
3 been presented directly by a member or by a member agreeing
4 with or supporting the comments of another person.

5 ~~(e) This section does not apply to the Attorney General.~~

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

12 ~~(g) This section shall remain in effect only until January 1, 2016,~~
13 ~~and as of that date is repealed, unless a later enacted statute, that~~
14 ~~is enacted before January 1, 2016, deletes or extends that date.~~

15 ~~SEC. 8. Section 21177 of the Public Resources Code, as added~~
16 ~~by Section 12 of Chapter 496 of the Statutes of 2010, is amended~~
17 ~~to read:~~

18 ~~21177. (a) An action or proceeding shall not be brought~~
19 ~~pursuant to Section 21167 unless the alleged grounds for~~
20 ~~noncompliance with this division were presented to the public~~
21 ~~agency orally or in writing by any person during the public~~
22 ~~comment period provided by this division or prior to the close of~~
23 ~~the public hearing on the project before the issuance of the notice~~
24 ~~of determination with enough specificity that the public agency~~
25 ~~could reasonably respond to the alleged violation.~~

26 ~~(b) A person shall not maintain an action or proceeding unless~~
27 ~~that person objected to the approval of the project orally or in~~
28 ~~writing during the public comment period provided by this division~~
29 ~~or prior to the close of the public hearing on the project before the~~
30 ~~filing of notice of determination pursuant to Sections 21108 and~~
31 ~~21152.~~

32 ~~(c) A person shall not maintain an action or proceeding unless~~
33 ~~the person objected during the administrative process with~~
34 ~~specificity as to how the public agency's response to the alleged~~
35 ~~violation is inadequate under this division.~~

36 ~~(d) This section does not preclude any organization formed after~~
37 ~~the approval of a project from maintaining an action pursuant to~~
38 ~~Section 21167 if a member of that organization has complied with~~
39 ~~subdivision (b).~~

40 ~~(e) This section does not apply to the Attorney General.~~

- 1 ~~(f) This section does not apply to any alleged grounds for~~
- 2 ~~noncompliance with this division for which there was no public~~
- 3 ~~hearing or other opportunity for members of the public to raise~~
- 4 ~~those objections orally or in writing prior to the approval of the~~
- 5 ~~project, or if the public agency failed to give the notice required~~
- 6 ~~by law.~~
- 7 ~~(g) This section shall become operative on January 1, 2016.~~