

ASSEMBLY BILL

No. 311

Introduced by Assembly Member Gallagher
(Principal coauthor: Senator Vidak)

February 12, 2015

An act to add Section 21168.6.7 to the Public Resources Code, relating to environmental quality.

LEGISLATIVE COUNSEL'S DIGEST

AB 311, as introduced, Gallagher. Environmental quality: Water Quality, Supply, and Infrastructure Improvement Act of 2014.

(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 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 procedure by which a person may seek judicial review of the decision of the lead agency made pursuant to CEQA and a procedure for the preparation and certification of the record of proceedings upon the filing of an action or proceeding challenging a lead agency's action on the grounds of noncompliance with CEQA.

The Water Quality, Supply, and Infrastructure Improvement Act of 2014 (Proposition 1), approved by the voters on the November 2, 2014,

statewide general election, authorizes the issuance of bonds in the amount of \$7,120,000,000 pursuant to the State General Obligation Bond Law to finance a water quality, supply, and infrastructure improvement program.

This bill would require the public agency, in certifying the environmental impact report and in granting approvals for specified water storage projects funded, in whole or in part, by Proposition 1, including the concurrent preparation of the record of proceedings and the certification of the record of proceeding within 5 days of the filing of a specified notice, to comply with specified procedures. Because a public agency would be required to comply with those new procedures, this bill would impose a state-mandated local program. The bill would require the Judicial Council, on or before July 1, 2016, to adopt a rule of court to establish procedures applicable to actions or proceedings seeking judicial review of a public agency’s action in certifying the environmental impact report and in granting project approval for those projects that require the actions or proceedings, including any appeals therefrom, be resolved, to the extent feasible, within 270 days of the certification of the record of proceedings. The bill would prohibit a court from staying or enjoining those projects unless it makes specified findings.

(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 21168.6.7 is added to the Public
- 2 Resources Code, to read:
- 3 21168.6.7. (a) For the purposes of this section “water storage
- 4 project” means a project described in Section 79751 of the Water
- 5 Code and funded, in whole or in part, with proceeds of bonds sold
- 6 pursuant to the Water Quality, Supply and Infrastructure
- 7 Improvement Act of 2014 (Division 26.7 (commencing with
- 8 Section 79700) of the Water Code).

1 (b) Notwithstanding any other law, the procedures established
2 pursuant to subdivision (c) shall apply to an action or proceeding
3 brought to attack, review, set aside, void, or annul the certification
4 of the environmental impact report for a water storage project or
5 the granting of any approvals for a water storage project.

6 (c) On or before July 1, 2016, the Judicial Council shall adopt
7 a rule of court to establish procedures applicable to actions or
8 proceedings brought to attack, review, set aside, void, or annul the
9 certification of the environmental impact report for a water storage
10 project or the granting of any project approvals that require the
11 actions or proceedings, including any potential appeals therefrom,
12 be resolved, to the extent feasible, within 270 days of certification
13 of the record of proceedings pursuant to subdivision (e).

14 (d) (1) The draft and final environmental impact report for a
15 water storage project shall include a notice in not less than 12-point
16 type stating the following:

17 THIS EIR IS SUBJECT TO SECTION 21168.6.7 OF THE
18 PUBLIC RESOURCES CODE, WHICH PROVIDES, AMONG
19 OTHER THINGS, THAT THE LEAD AGENCY NEED NOT
20 CONSIDER CERTAIN COMMENTS FILED AFTER THE
21 CLOSE OF THE PUBLIC COMMENT PERIOD FOR THE
22 DRAFT EIR. ANY JUDICIAL ACTION CHALLENGING THE
23 CERTIFICATION OF THE EIR OR THE APPROVAL OF THE
24 PROJECT DESCRIBED IN THE EIR IS SUBJECT TO THE
25 PROCEDURES SET FORTH IN SECTION 21168.6.7 OF THE
26 PUBLIC RESOURCES CODE. A COPY OF SECTION 21168.6.7
27 OF THE PUBLIC RESOURCES CODE IS INCLUDED IN THE
28 APPENDIX TO THIS EIR.

29 (2) The draft environmental impact report and final
30 environmental impact report shall contain, as an appendix, the full
31 text of this section.

32 (3) Within 10 days after the release of the draft environmental
33 impact report, the lead agency shall conduct an informational
34 workshop to inform the public of the key analyses and conclusions
35 of that report.

36 (4) Within 10 days before the close of the public comment
37 period, the lead agency shall hold a public hearing to receive
38 testimony on the draft environmental impact report. A transcript
39 of the hearing shall be included as an appendix to the final
40 environmental impact report.

1 (5) (A) Within five days following the close of the public
2 comment period, a commenter on the draft environmental impact
3 report may submit to the lead agency a written request for
4 nonbinding mediation. The lead agency and applicant shall
5 participate in nonbinding mediation with all commenters who
6 submitted timely comments on the draft environmental impact
7 report and who requested the mediation. Mediation conducted
8 pursuant to this paragraph shall end no later than 35 days after the
9 close of the public comment period.

10 (B) A request for mediation shall identify all areas of dispute
11 raised in the comment submitted by the commenter that are to be
12 mediated.

13 (C) The lead agency shall select one or more mediators who
14 shall be retired judges or recognized experts with at least five years
15 experience in land use and environmental law or science, or
16 mediation. The applicant shall bear the costs of mediation.

17 (D) A mediation session shall be conducted on each area of
18 dispute with the parties requesting mediation on that area of
19 dispute.

20 (E) The lead agency shall adopt, as a condition of approval, any
21 measures agreed upon by the lead agency, the applicant, and any
22 commenter who requested mediation. A commenter who agrees
23 to a measure pursuant to this subparagraph shall not raise the issue
24 addressed by that measure as a basis for an action or proceeding
25 challenging the lead agency's decision to certify the environmental
26 impact report or to grant one or more initial project approvals.

27 (6) The lead agency need not consider written comments
28 submitted after the close of the public comment period, unless
29 those comments address any of the following:

30 (A) New issues raised in the response to comments by the lead
31 agency.

32 (B) New information released by the public agency subsequent
33 to the release of the draft environmental impact report, such as
34 new information set forth or embodied in a staff report, proposed
35 permit, proposed resolution, ordinance, or similar documents.

36 (C) Changes made to the project after the close of the public
37 comment period.

38 (D) Proposed conditions for approval, mitigation measures, or
39 proposed findings required by Section 21081 or a proposed
40 reporting and monitoring program required by paragraph (1) of

1 subdivision (a) of Section 21081.6, where the lead agency releases
2 those documents subsequent to the release of the draft
3 environmental impact report.

4 (E) New information that was not reasonably known and could
5 not have been reasonably known during the public comment period.

6 (7) The lead agency shall file the notice required by subdivision
7 (a) of Section 21108 or subdivision (a) of Section 21152 within
8 five days after the last initial project approval.

9 (e) (1) The lead agency shall prepare and certify the record of
10 the proceedings in accordance with this subdivision and in
11 accordance with Rule 3.1365 of the California Rules of Court. The
12 applicant shall pay the lead agency for all costs of preparing and
13 certifying the record of proceedings.

14 (2) No later than three business days following the date of the
15 release of the draft environmental impact report, the lead agency
16 shall make available to the public in a readily accessible electronic
17 format the draft environmental impact report and all other
18 documents submitted to or relied on by the lead agency in the
19 preparation of the draft environmental impact report. A document
20 prepared by the lead agency or submitted by the applicant after
21 the date of the release of the draft environmental impact report
22 that is a part of the record of the proceedings shall be made
23 available to the public in a readily accessible electronic format
24 within five business days after the document is prepared or received
25 by the lead agency.

26 (3) Notwithstanding paragraph (2), documents submitted to or
27 relied on by the lead agency that were not prepared specifically
28 for the project and are copyright protected are not required to be
29 made readily accessible in an electronic format. For those copyright
30 protected documents, the lead agency shall make an index of these
31 documents available in an electronic format no later than the date
32 of the release of the draft environmental impact report, or within
33 five business days if the document is received or relied on by the
34 lead agency after the release of the draft environmental impact
35 report. The index must specify the libraries or lead agency offices
36 in which hardcopies of the copyrighted materials are available for
37 public review.

38 (4) The lead agency shall encourage written comments on the
39 project to be submitted in a readily accessible electronic format,

1 and shall make any such comment available to the public in a
2 readily accessible electronic format within five days of its receipt.

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

7 (6) The lead agency shall indicate in the record of the
8 proceedings comments received that were not considered by the
9 lead agency pursuant to paragraph (6) of subdivision (d) and need
10 not include the content of the comments as a part of the record.

11 (7) Within five days after the filing of the notice required by
12 subdivision (a) of Section 21108 or subdivision (a) of Section
13 21152, the lead agency shall certify the record of the proceedings
14 for the approval or determination and shall provide an electronic
15 copy of the record to a party that has submitted a written request
16 for a copy. The lead agency may charge and collect a reasonable
17 fee from a party requesting a copy of the record for the electronic
18 copy, which shall not exceed the reasonable cost of reproducing
19 that copy.

20 (8) Within 10 days after being served with a complaint or a
21 petition for a writ of mandate, the lead agency shall lodge a copy
22 of the certified record of proceedings with the superior court.

23 (9) Any dispute over the content of the record of the proceedings
24 shall be resolved by the superior court. Unless the superior court
25 directs otherwise, a party disputing the content of the record shall
26 file a motion to augment the record at the time it files its initial
27 brief.

28 (10) The contents of the record of proceedings shall be as set
29 forth in subdivision (e) of Section 21167.6.

30 (f) (1) (A) In granting relief in an action or proceeding brought
31 pursuant to this division, the court shall not stay or enjoin the
32 construction or operation of a water storage project unless the court
33 finds either of the following:

34 (i) The continued construction or operation of the water storage
35 project presents an imminent threat to the public health and safety.

36 (ii) The water storage project site contains unforeseen important
37 Native American artifacts or unforeseen important historical,
38 archaeological, or ecological values that would be materially,
39 permanently, and adversely affected by the continued construction

1 or operation of the water storage project unless the court stays or
2 enjoins the construction or operation of the water storage project.

3 (B) If the court finds that clause (i) or (ii) of subparagraph (A)
4 is satisfied, the court shall only enjoin those specific activities
5 associated with the water storage project that present an imminent
6 threat to public health and safety or that materially, permanently,
7 and adversely affect unforeseen important Native American
8 artifacts or unforeseen important historical, archaeological, or
9 ecological values.

10 (2) An action or proceeding to attack, set aside, void, or annul
11 a determination, finding, or decision of the lead agency granting
12 a subsequent project approval shall be subject to the requirements
13 of Chapter 6 (commencing with Section 21165).

14 SEC. 2. No reimbursement is required by this act pursuant to
15 Section 6 of Article XIII B of the California Constitution because
16 a local agency or school district has the authority to levy service
17 charges, fees, or assessments sufficient to pay for the program or
18 level of service mandated by this act, within the meaning of Section
19 17556 of the Government Code.