

AMENDED IN ASSEMBLY APRIL 15, 2015

AMENDED IN ASSEMBLY MARCH 17, 2015

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 311

Introduced by Assembly Member Gallagher

(Principal coauthor: Senator Vidak)

**(Coauthors: Assembly Members Travis Allen, Baker, Bigelow, and
Brough, Chang, Grove, Harper, Lackey, Mayes, and Olsen)**

(Coauthor: Senator Bates)

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 amended, 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 4, 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, 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 authorize the public agency to concurrently prepare the record of proceedings for the project. 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~~ 370 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 *subdivision (a) of* Section

1 79751 of the Water Code and funded, in whole or in part, with
2 proceeds of bonds sold pursuant to the Water Quality, Supply, and
3 Infrastructure Improvement Act of 2014 (Division 26.7
4 (commencing with Section 79700) of the Water Code).

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

10 (c) On or before July 1, 2016, the Judicial Council shall adopt
11 a rule of court to establish procedures applicable to actions or
12 proceedings brought to attack, review, set aside, void, or annul the
13 certification of the environmental impact report for a water storage
14 project or the granting of any project approvals that require the
15 actions or proceedings, including any potential appeals therefrom,
16 be resolved, to the extent feasible, within ~~270~~ 370 days of
17 certification of the record of proceedings pursuant to subdivision
18 (e).

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

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

34 (2) The draft environmental impact report and final
35 environmental impact report shall contain, as an appendix, the full
36 text of this section.

37 (3) Within 10 days after the release of the draft environmental
38 impact report, the lead agency shall conduct an informational
39 workshop to inform the public of the key analyses and conclusions
40 of that report.

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

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

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

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

22 (D) A mediation session shall be conducted on each area of
23 dispute with the parties requesting mediation on that area of
24 dispute.

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

32 (6) The lead agency need not consider written or oral comments
33 submitted after the close of the public comment period, unless
34 those comments address any of the following:

35 (A) New issues raised in the response to comments by the lead
36 agency.

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

1 (C) Changes made to the project after the close of the public
2 comment period.

3 (D) Proposed conditions for approval, mitigation measures, or
4 proposed findings required by Section 21081 or a proposed
5 reporting and monitoring program required by paragraph (1) of
6 subdivision (a) of Section 21081.6, where the lead agency releases
7 those documents subsequent to the release of the draft
8 environmental impact report.

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

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

14 (e) (1) The lead agency may prepare and certify the record of
15 the proceedings in accordance with this subdivision and in
16 accordance with Rule 3.1365 of the California Rules of Court. The
17 applicant shall pay the lead agency for all costs of preparing and
18 certifying the record of proceedings.

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

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

1 in which hardcopies of the copyrighted materials are available for
2 public review.

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

7 (5) 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 (6) The lead agency shall indicate in the record of the
12 proceedings comments received that were not considered by the
13 lead agency pursuant to paragraph (6) of subdivision (d) and need
14 not include the content of the comments as a part of the record.

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

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

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

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

34 (f) Subdivisions (d) and (e) do not apply to a project for which
35 an environmental review pursuant to this division has commenced
36 on or before December 31, 2015.

37 (g) (1) (A) In granting relief in an action or proceeding brought
38 pursuant to this division, the court shall not stay or enjoin the
39 construction or operation of a water storage project unless the court
40 finds either of the following:

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

3 (ii) The water storage project site contains unforeseen important
4 Native American artifacts or unforeseen important historical,
5 archaeological, or ecological values that would be materially,
6 permanently, and adversely affected by the continued construction
7 or operation of the water storage project unless the court stays or
8 enjoins the construction or operation of the water storage project.

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

16 (2) An action or proceeding to attack, set aside, void, or annul
17 a determination, finding, or decision of the lead agency granting
18 a subsequent project approval shall be subject to the requirements
19 of this chapter.

20 SEC. 2. No reimbursement is required by this act pursuant to
21 Section 6 of Article XIII B of the California Constitution because
22 a local agency or school district has the authority to levy service
23 charges, fees, or assessments sufficient to pay for the program or
24 level of service mandated by this act, within the meaning of Section
25 17556 of the Government Code.