

**ASSEMBLY BILL**

**No. 1068**

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**Introduced by Assembly Member Travis Allen**

February 26, 2015

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An act to add Section 21168.10 to the Public Resources Code, relating to the environment.

LEGISLATIVE COUNSEL'S DIGEST

AB 1068, as introduced, Travis Allen. California Environmental Quality Act: priority projects.

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 procedures by which a person may seek judicial review of the decision of the lead agency made pursuant to CEQA and the judicial remedies available.

This bill would authorize each Member of the Legislature to nominate one project within his or her respective district each year, and the Governor to designate those projects as priority projects if the projects meet specified requirements. The bill would require the Governor to provide a notice of the designation to the appropriate lead agency and

to the Office of Planning and Research. The bill would require the lead agency to notify the public and interested stakeholders of the designation, as specified, thereby imposing a state-mandated local program. The bill would require that an environmental impact report be prepared for each priority project, but would authorize tiering from previously prepared reports, as specified. The bill would prohibit the court from staying or enjoining the implementation of a priority project unless the court makes specified findings and would limit any stay or injunction, as provided.

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. This act shall be known, and may be cited, as the
- 2 Priority Project Parity Act of 2015.
- 3 SEC. 2. The Legislature finds and declares all of the following:
- 4 (a) The California Environmental Quality Act (Division 13
- 5 (commencing with Section 21000) of the Public Resources Code),
- 6 commonly known as CEQA, was enacted with a near unanimous
- 7 bipartisan vote of the Legislature in 1970 and signed into law by
- 8 Governor Reagan.
- 9 (b) The purpose of CEQA is to enhance public disclosure of the
- 10 environmental impacts of a project and to require feasible
- 11 mitigation measures or alternative project configurations that
- 12 reduce significant adverse impacts to the physical environment.
- 13 (c) Feasible mitigation measures and alternatives are limited to
- 14 those that allow the project to achieve its objectives, fall within
- 15 the jurisdiction of the lead agency, and can be readily implemented
- 16 from a legal, technical, and economic perspective.
- 17 (d) If, notwithstanding the feasible mitigation measures or
- 18 alternative configuration, a project would have a significant
- 19 unavoidable adverse impact on the physical environment or
- 20 substantially contribute to an unavoidable significant adverse
- 21 cumulative impact on the physical environment, an agency may

1 nevertheless approve the project by adopting a statement explaining  
2 the overriding employment, environmental, social, economic, or  
3 other benefits that have informed the agency’s decision to approve  
4 the project.

5 (e) In a notable contrast to the federal court interpretation of the  
6 federal National Environmental Policy Act of 1969 (42 U.S.C.  
7 Secs. 4321 et seq.), which served as a model for CEQA, California  
8 courts have decided that lawsuits challenging the adequacy of an  
9 agency’s compliance with CEQA may be brought by any party  
10 for any reason, including, but not limited to, parties seeking  
11 competitive advantage, seeking wage or other employment terms  
12 and conditions, seeking to protect private property economic  
13 values, and seeking to preclude neighborhood-scale projects that  
14 are or may increase the quality of life for lower income and racially  
15 diverse population groups, by increasing youth utilization of urban  
16 parks or by developing transit systems in urbanized areas, without  
17 regard to the environmental or other merits of the project.

18 (f) In advising the state, regional, and local agency on the  
19 compliance requirements of CEQA, the Governor’s Office of  
20 Planning and Research has identified more than 100 potential  
21 environmental impact topics that must be evaluated for each  
22 project, has routinely adopted guidance that increases the cost and  
23 complexity of the analysis required, and continues to propose  
24 requirements that increase uncertainty and complexity, including,  
25 but not limited to, advocating for regulatory reversals of appellate  
26 court statutory interpretations, such as the “business as usual”  
27 approach to evaluating the significance of greenhouse gas  
28 emissions and the judicial classification of parking as an  
29 environmental impact based on air quality and other factors.  
30 Collectively, such ambiguous and contradictory advice has  
31 continued to increase the cost and litigation uncertainty of  
32 compliance obligations under CEQA.

33 (g) Three private sector law firms, each representing a diverse  
34 range of parties affected by CEQA including public agencies,  
35 project applicants, and other stakeholders, have completed studies  
36 on reported appellate court decisions interpreting CEQA and those  
37 studies demonstrate that the courts have determined that the lead  
38 agencies failed to comply with some aspect of CEQA in nearly  
39 half of all cases, and that even the most elaborate environmental  
40 studies, the environmental impact reports, that are entitled to the

1 highest level of judicial deference, failed to pass judicial muster  
2 in nearly half of all reported appellate cases over a 15-year period.  
3 Projects approved under a less costly and less time-consuming  
4 negative declaration process fail to pass judicial muster in far more  
5 than half of the cases challenging those approvals.

6 (h) The overwhelming majority of the adverse court decisions  
7 required that project approval be vacated pending completion of  
8 further environmental studies under CEQA.

9 (i) Notwithstanding such conclusive evidence of widespread  
10 confusion regarding the compliance requirements of CEQA, along  
11 with litigation abuse to promote nonenvironmental interests and  
12 abusive litigation tactics, such as “document dumping,” to delay  
13 agency decisions for weeks and sometimes months after the close  
14 of the comment periods prescribed by CEQA, the Legislature has  
15 declined to enact any systematic reforms that address how this  
16 1970-era law is to be interpreted in conjunction with the hundreds  
17 of environmental and planning mandates that have subsequently  
18 been enacted as coequal legal mandates in California’s stringent  
19 and complex suite of statutes designed to protect and enhance  
20 environmental quality, including, but not limited to, statutes  
21 requiring integration of environmental protection standards in land  
22 use plans and policies.

23 (j) The existence of an outstanding lawsuit challenging  
24 compliance with CEQA, in tandem with the high level of adverse  
25 judicial outcomes, creates significant unresolved project  
26 contingencies that generally preclude timely receipt of federal and  
27 state grant funding as well as other forms of public and private  
28 sector financing.

29 (k) Legislative leadership has routinely sponsored last minute  
30 legislation for politically favored projects, including, but not limited  
31 to, major league sports facilities and prisons, to either exempt them  
32 from CEQA or limit the judicial remedies that are available when  
33 an adverse judicial determination has been made. These favored  
34 leadership projects have achieved this sheltered status without  
35 regard to whether the projects are consistent with an adopted  
36 sustainable communities strategy required pursuant to Section  
37 65080 of the Government Code. This highly politicized leadership  
38 exemption process has been referred to as the “transactional” model  
39 for implementing CEQA.

1 (l) This transactional model for implementing CEQA is an  
2 effective method of avoiding delays in financing and  
3 implementation of priority projects. There is an ample body of  
4 otherwise applicable California environmental protection and land  
5 use law in place to avoid and minimize potentially significant  
6 adverse environmental impacts to the physical environment without  
7 regard to the applicability of CEQA. No existing law creates a  
8 presumed different suite of legal compliance obligations reserved  
9 to legislative leaders and the legislative districts they represent.  
10 Legislative leadership positions do not confer upon individuals  
11 serving in those positions a monopoly on the use of the  
12 transactional model for implementing CEQA. The transactional  
13 model of legislative exemptions has a history of extending nearly  
14 to the 1970 enactment date of CEQA.

15 (m) It is now appropriate to enact a new compliance pathway  
16 for a project identified as a priority by each Member of the Senate  
17 and Assembly.

18 SEC. 3. Section 21168.10 is added to the Public Resources  
19 Code, to read:

20 21168.10. (a) (1) On or before November 15 of each year,  
21 each Member of the Legislature may annually nominate one project  
22 within his or her respective district as a priority project.

23 (2) A member of the Legislature who chooses to nominate a  
24 project shall submit to the Governor the name of the project and  
25 sufficient information to demonstrate that the project will meet  
26 the requirements specified in paragraph (3).

27 (3) The Governor shall designate a project as a priority project  
28 if the project meets all of the following:

29 (A) The project will result in at least 100 new or retained full  
30 time jobs.

31 (B) The project is consistent with the adopted sustainable  
32 communities strategy for the region in which the project is located.

33 (C) The project applicant certifies its intent to remain in the  
34 location of the project for a minimum of five years.

35 (b) Subject to subdivision (a), a project may be designated as a  
36 priority project pursuant to subdivision (a) at any time following  
37 the submittal of the project proposal or application to the lead  
38 agency for the commencement of environmental review pursuant  
39 to this division but not later than 30 days following the approval  
40 of the project by the lead agency.

1 (c) Within 10 days after the designation of a project pursuant  
2 to paragraph (3) of subdivision (a), the Governor shall provide a  
3 notice of designation to the lead agency for the designated project  
4 and to the Office of Planning and Research. The lead agency shall  
5 inform members of the public and other interested stakeholders  
6 that a project has been designated as a priority project pursuant to  
7 paragraph (3) of subdivision (a) in the lead agency's next otherwise  
8 applicable and required public document or notice regarding the  
9 project and in all subsequent otherwise applicable and required  
10 public documents or notices regarding the project, up to and  
11 including applicable and required notice and documentation for  
12 project approval. If there is no applicable and required public  
13 document or notice, the lead agency shall provide a notice of  
14 designation to the public and interested stakeholders.

15 (d) (1) The lead agency for a priority project shall complete all  
16 notices required by this division and, except as provided in  
17 paragraph (3), an environmental impact report shall be completed  
18 for each priority project.

19 (2) The environmental impact report for a priority project may  
20 tier from an earlier environmental impact report completed for the  
21 existing or earlier version of the project and the tiered  
22 environmental impact report shall be limited to the consideration  
23 of significant adverse impacts resulting from the project that were  
24 not previously identified in the earlier environmental impact report,  
25 or, if the adverse impacts had been identified in the earlier  
26 environmental impact report, the impacts are more severe than  
27 previously identified.

28 (3) A new environmental impact report is not required for a  
29 priority project that has been already included in an environmental  
30 impact report prepared and certified under this division but the  
31 lead agency shall prepare an addendum to the prior environmental  
32 impact report to explain to the public and other interested  
33 stakeholders the manner in which the project had been addressed  
34 in the prior environmental impact report.

35 (e) (1) In granting relief in an action or proceeding brought  
36 pursuant to this division, the court shall not stay or enjoin a priority  
37 project designated pursuant to subdivision (a) unless the court  
38 finds either of the following:

39 (A) The continued implementation of the priority project  
40 presents an imminent threat to the public health and safety.

1 (B) The priority project site contains unforeseen important  
2 Native American artifacts or unforeseen important historical,  
3 archaeological, or ecological values that would be materially,  
4 permanently, and adversely affected by the continued  
5 implementation of the priority project.

6 (2) If the court finds that subparagraph (A) or (B) is satisfied,  
7 the court shall only enjoin those specific activities associated with  
8 the priority project that present an imminent threat to public health  
9 and safety or that materially, permanently, and adversely affect  
10 unforeseen important Native American artifacts or unforeseen  
11 important historical, archaeological, or ecological values.

12 SEC. 4. No reimbursement is required by this act pursuant to  
13 Section 6 of Article XIII B of the California Constitution because  
14 the only costs that may be incurred by a local agency or school  
15 district will be incurred because this act creates a new crime or  
16 infraction, eliminates a crime or infraction, or changes the penalty  
17 for a crime or infraction, within the meaning of Section 17556 of  
18 the Government Code, or changes the definition of a crime within  
19 the meaning of Section 6 of Article XIII B of the California  
20 Constitution.