

ASSEMBLY BILL

No. 2578

Introduced by Assembly Member Bigelow

February 19, 2016

An act to amend Section 21168.9 of the Public Resources Code, relating to environmental quality.

LEGISLATIVE COUNSEL'S DIGEST

AB 2578, as introduced, Bigelow. California Environmental Quality Act: judicial relief.

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 authorizes a court, in an action or proceeding brought challenging the decision of a public agency on the ground of noncompliance with CEQA, to enter an order that includes, among other things, a mandate that the determination, finding, or decision be void by the public agency, in whole or in part.

This bill would make technical, nonsubstantive changes to those provisions.

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

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

1 SECTION 1. Section 21168.9 of the Public Resources Code
2 is 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 one
7 or more of the following:

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

10 (2) If the court finds that a specific project activity or activities
11 will prejudice the consideration or implementation of particular
12 mitigation measures or alternatives to the project, a mandate that
13 the public agency and any real parties in interest suspend any or
14 all specific project activity or activities, pursuant to the
15 determination, finding, or decision, that could result in an adverse
16 change or alteration to the physical environment, until the public
17 agency has taken any actions that may be necessary to bring the
18 determination, finding, or decision into compliance with this
19 division.

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

23 (b) ~~Any~~An order pursuant to subdivision (a) shall include only
24 those mandates ~~which~~ that are necessary to achieve compliance
25 with this division and only those specific project activities in
26 noncompliance with this division. The order shall be made by the
27 issuance of a peremptory writ of mandate specifying what action
28 by the public agency is necessary to comply with this division.
29 However, the order shall be limited to that portion of a
30 determination, finding, or decision or the specific project activity
31 or activities found to be in noncompliance only if a court finds
32 that (1) the portion or specific project activity or activities are
33 severable, (2) severance will not prejudice complete and full
34 compliance with this division, and (3) the court has not found the
35 remainder of the project to be in noncompliance with this division.
36 The trial court shall retain jurisdiction over the public agency's
37 proceedings by way of a return to the peremptory writ until the

1 court has determined that the public agency has complied with this
2 division.

3 (c) ~~Nothing in this~~ *This section authorizes does not authorize* a
4 court to direct any public agency to exercise its discretion in any
5 particular way. Except as expressly provided in this section,
6 nothing in this section is intended to limit the equitable powers of
7 the court.