

AMENDED IN SENATE JANUARY 4, 2016

SENATE BILL

No. 127

Introduced by ~~Senators Vidak, Fuller, and Nielsen~~ Senator Vidak
(Principal coauthor: Assembly Member Olsen)
(Principal coauthor: Assembly Member Mathis)

January 20, 2015

~~An act to add Section 21168.6.7 to the Public Resources Code, relating to environmental quality. An act to add Chapter 6.6 (commencing with Section 13486) to Division 7 of the Water Code, relating to water, and declaring the urgency thereof, to take effect immediately.~~

LEGISLATIVE COUNSEL'S DIGEST

SB 127, as amended, Vidak. ~~Environmental quality: Water Quality, Supply, and Infrastructure Improvement Act of 2014. Water and Wastewater Loan and Grant Program.~~

Existing law, the Safe Drinking Water State Revolving Fund Law of 1997, establishes the Safe Drinking Water State Revolving Fund to provide grants or revolving fund loans for the design and construction of projects for public water systems that will enable those systems to meet safe drinking water standards.

This bill would require the State Water Resources Control Board to establish a program to provide low-interest loans and grants to local agencies for low-interest loans and grants to eligible applicants for specified purposes relating to drinking water and wastewater treatment. This bill would create the Water and Wastewater Loan and Grant Fund and provide that the moneys in this fund are available, upon appropriation by the Legislature, to the board for expenditure for the

program. This bill would transfer to the Water and Wastewater Loan and Grant Fund \$10,000,000 from the General Fund.

This bill would declare that it is to take effect immediately as an urgency statute.

~~(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 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~~^{2/3}. Appropriation: no. Fiscal committee: yes. State-mandated local program: ~~yes~~^{no}.

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

1 SECTION 1. *The Legislature hereby finds and declares as*
2 *follows:*

3 (a) *Many areas of the state are disproportionately impacted by*
4 *drought because they are heavily dependent or completely reliant*
5 *on groundwater from basins that are in overdraft and in which*
6 *the water table declines year after year or from basins that are*
7 *contaminated.*

8 (b) *There are a number of state grant and loan programs that*
9 *provide financial assistance to communities to address drinking*
10 *water and wastewater needs. Unfortunately, there is no program*
11 *in place to provide similar assistance to individual homeowners*
12 *who are reliant on their own groundwater wells and who may not*
13 *be able to afford conventional private loans to undertake vital*
14 *water supply, water quality, and wastewater improvements.*

15 (c) *The program created by this act is intended to bridge that*
16 *gap by providing low-interest loans, grants, or both, to individual*
17 *homeowners to undertake actions necessary to provide safer,*
18 *cleaner, and more reliable drinking water and wastewater*
19 *treatment. These actions may include, but are not limited to,*
20 *digging deeper wells, improving existing wells and related*
21 *equipment, addressing drinking water contaminants in the*
22 *homeowner’s water, or connecting to a local water or wastewater*
23 *system.*

24 SEC. 2. *Chapter 6.6 (commencing with Section 13486) is added*
25 *to Division 7 of the Water Code, to read:*

1 (1) *Have a household income below the statewide median*
2 *household income.*

3 (2) *Have an ownership interest in the residence.*

4 (3) *Be unable to obtain financial assistance at reasonable terms*
5 *and conditions from private lenders and lack the personal*
6 *resources to undertake these improvements.*

7 (4) *Demonstrate an ability to repay the loan. This requirement*
8 *may be satisfied by having another party join the application as*
9 *a cosigner.*

10 (b) *Any loan granted shall be secured by a mortgage on the*
11 *residence and repaid within 20 years in accordance with terms*
12 *established by the board. The interest rate on the loan shall not*
13 *exceed 1 percent. While any balance on the loan is outstanding,*
14 *a loan recipient shall furnish evidence of and continually maintain*
15 *homeowner's insurance on the security residence to protect the*
16 *state's interest in the residence.*

17 (c) *The board may enter into a contract with a private financial*
18 *institution to provide loans consistent with the purposes of this*
19 *chapter. If the board exercises this authority, the board may utilize*
20 *a portion of the moneys in the Water and Wastewater Loan and*
21 *Grant Fund to provide a loan guarantee or similar loss mitigation*
22 *mechanism.*

23 13489. (a) *An eligible applicant for a grant shall meet all of*
24 *the following criteria:*

25 (1) *Have a household income that is 60 percent or less of the*
26 *statewide median household income.*

27 (2) *Have an ownership interest in the residence.*

28 (3) *Be unable to obtain financial assistance at reasonable terms*
29 *and conditions from private lenders and lack the personal*
30 *resources to undertake these improvements.*

31 (b) *A grant recipient shall repay to the board the grant amount*
32 *in full if that recipient sells the residence less than five years from*
33 *the date that the grant agreement was signed.*

34 (c) *A grant recipient shall repay to the board any unused grant*
35 *funds.*

36 SEC. 3. *Ten million dollars (\$10,000,000) is hereby transferred*
37 *from the General Fund to the Water and Wastewater Loan and*
38 *Grant Fund.*

39 SEC. 4. *This act is an urgency statute necessary for the*
40 *immediate preservation of the public peace, health, or safety within*

1 *the meaning of Article IV of the Constitution and shall go into*
2 *immediate effect. The facts constituting the necessity are:*

3 *In order to provide eligible households with access to safer,*
4 *cleaner, and more reliable drinking water and wastewater*
5 *treatment during California's prolonged drought, it is necessary*
6 *that this act take effect immediately.*

7 SECTION 1. ~~Section 21168.6.7 is added to the Public~~
8 ~~Resources Code, to read:~~

9 21168.6.7. (a) ~~For the purposes of this section "water project"~~
10 ~~means a project funded, in whole or in part, with proceeds of bonds~~
11 ~~sold pursuant to the Water Quality, Supply and Infrastructure~~
12 ~~Improvement Act of 2014 (Division 26.7 (commencing with~~
13 ~~Section 79700) of the Water Code).~~

14 (b) ~~Notwithstanding any other law, the procedures established~~
15 ~~pursuant to subdivision (c) shall apply to an action or proceeding~~
16 ~~brought to attack, review, set aside, void, or annul the certification~~
17 ~~of the environmental impact report for a water project or the~~
18 ~~granting of any approvals for a water project.~~

19 (c) ~~On or before July 1, 2016, the Judicial Council shall adopt~~
20 ~~a rule of court to establish procedures applicable to actions or~~
21 ~~proceedings brought to attack, review, set aside, void, or annul the~~
22 ~~certification of the environmental impact report for a water project~~
23 ~~or the granting of any project approvals that require the actions or~~
24 ~~proceedings, including any potential appeals therefrom, be~~
25 ~~resolved, to the extent feasible, within 270 days of certification of~~
26 ~~the record of proceedings pursuant to subdivision (c).~~

27 (d) (1) ~~The draft and final environmental impact report for a~~
28 ~~water project shall include a notice in not less than 12-point type~~
29 ~~stating the following:~~

30 ~~THIS EIR IS SUBJECT TO SECTION 21168.6.7 OF THE~~
31 ~~PUBLIC RESOURCES CODE, WHICH PROVIDES, AMONG~~
32 ~~OTHER THINGS, THAT THE LEAD AGENCY NEED NOT~~
33 ~~CONSIDER CERTAIN COMMENTS FILED AFTER THE~~
34 ~~CLOSE OF THE PUBLIC COMMENT PERIOD FOR THE~~
35 ~~DRAFT EIR. ANY JUDICIAL ACTION CHALLENGING THE~~
36 ~~CERTIFICATION OF THE EIR OR THE APPROVAL OF THE~~
37 ~~PROJECT DESCRIBED IN THE EIR IS SUBJECT TO THE~~
38 ~~PROCEDURES SET FORTH IN SECTION 21168.6.7 OF THE~~
39 ~~PUBLIC RESOURCES CODE. A COPY OF SECTION 21168.6.7~~

1 ~~OF THE PUBLIC RESOURCES CODE IS INCLUDED IN THE~~
2 ~~APPENDIX TO THIS EIR.~~

3 ~~(2) The draft environmental impact report and final~~
4 ~~environmental impact report shall contain, as an appendix, the full~~
5 ~~text of this section.~~

6 ~~(3) Within 10 days after the release of the draft environmental~~
7 ~~impact report, the lead agency shall conduct an informational~~
8 ~~workshop to inform the public of the key analyses and conclusions~~
9 ~~of that report.~~

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

15 ~~(5) (A) Within five days following the close of the public~~
16 ~~comment period, a commenter on the draft environmental impact~~
17 ~~report may submit to the lead agency a written request for~~
18 ~~nonbinding mediation. The lead agency and applicant shall~~
19 ~~participate in nonbinding mediation with all commenters who~~
20 ~~submitted timely comments on the draft environmental impact~~
21 ~~report and who requested the mediation. Mediation conducted~~
22 ~~pursuant to this paragraph shall end no later than 35 days after the~~
23 ~~close of the public comment period.~~

24 ~~(B) A request for mediation shall identify all areas of dispute~~
25 ~~raised in the comment submitted by the commenter that are to be~~
26 ~~mediated.~~

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

31 ~~(D) A mediation session shall be conducted on each area of~~
32 ~~dispute with the parties requesting mediation on that area of~~
33 ~~dispute.~~

34 ~~(E) The lead agency shall adopt, as a condition of approval, any~~
35 ~~measures agreed upon by the lead agency, the applicant, and any~~
36 ~~commenter who requested mediation. A commenter who agrees~~
37 ~~to a measure pursuant to this subparagraph shall not raise the issue~~
38 ~~addressed by that measure as a basis for an action or proceeding~~
39 ~~challenging the lead agency's decision to certify the environmental~~
40 ~~impact report or to grant one or more initial project approvals.~~

1 ~~(6) The lead agency need not consider written comments~~
2 ~~submitted after the close of the public comment period, unless~~
3 ~~those comments address any of the following:~~

4 ~~(A) New issues raised in the response to comments by the lead~~
5 ~~agency.~~

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

10 ~~(C) Changes made to the project after the close of the public~~
11 ~~comment period.~~

12 ~~(D) Proposed conditions for approval, mitigation measures, or~~
13 ~~proposed findings required by Section 21081 or a proposed~~
14 ~~reporting and monitoring program required by paragraph (1) of~~
15 ~~subdivision (a) of Section 21081.6, where the lead agency releases~~
16 ~~those documents subsequent to the release of the draft~~
17 ~~environmental impact report.~~

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

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

23 ~~(e) (1) The lead agency shall prepare and certify the record of~~
24 ~~the proceedings in accordance with this subdivision and in~~
25 ~~accordance with Rule 3.1365 of the California Rules of Court. The~~
26 ~~applicant shall pay the lead agency for all costs of preparing and~~
27 ~~certifying the record of proceedings.~~

28 ~~(2) No later than three business days following the date of the~~
29 ~~release of the draft environmental impact report, the lead agency~~
30 ~~shall make available to the public in a readily accessible electronic~~
31 ~~format the draft environmental impact report and all other~~
32 ~~documents submitted to or relied on by the lead agency in the~~
33 ~~preparation of the draft environmental impact report. A document~~
34 ~~prepared by the lead agency or submitted by the applicant after~~
35 ~~the date of the release of the draft environmental impact report~~
36 ~~that is a part of the record of the proceedings shall be made~~
37 ~~available to the public in a readily accessible electronic format~~
38 ~~within five business days after the document is prepared or received~~
39 ~~by the lead agency.~~

1 ~~(3) Notwithstanding paragraph (2), documents submitted to or~~
2 ~~relied on by the lead agency that were not prepared specifically~~
3 ~~for the project and are copyright protected are not required to be~~
4 ~~made readily accessible in an electronic format. For those copyright~~
5 ~~protected documents, the lead agency shall make an index of these~~
6 ~~documents available in an electronic format no later than the date~~
7 ~~of the release of the draft environmental impact report, or within~~
8 ~~five business days if the document is received or relied on by the~~
9 ~~lead agency after the release of the draft environmental impact~~
10 ~~report. The index must specify the libraries or lead agency offices~~
11 ~~in which hardcopies of the copyrighted materials are available for~~
12 ~~public review.~~

13 ~~(4) The lead agency shall encourage written comments on the~~
14 ~~project to be submitted in a readily accessible electronic format,~~
15 ~~and shall make any such comment available to the public in a~~
16 ~~readily accessible electronic format within five days of its receipt.~~

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

21 ~~(6) The lead agency shall indicate in the record of the~~
22 ~~proceedings comments received that were not considered by the~~
23 ~~lead agency pursuant to paragraph (6) of subdivision (d) and need~~
24 ~~not include the content of the comments as a part of the record.~~

25 ~~(7) Within five days after the filing of the notice required by~~
26 ~~subdivision (a) of Section 21108 or subdivision (a) of Section~~
27 ~~21152, the lead agency shall certify the record of the proceedings~~
28 ~~for the approval or determination and shall provide an electronic~~
29 ~~copy of the record to a party that has submitted a written request~~
30 ~~for a copy. The lead agency may charge and collect a reasonable~~
31 ~~fee from a party requesting a copy of the record for the electronic~~
32 ~~copy, which shall not exceed the reasonable cost of reproducing~~
33 ~~that copy.~~

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

37 ~~(9) Any dispute over the content of the record of the proceedings~~
38 ~~shall be resolved by the superior court. Unless the superior court~~
39 ~~directs otherwise, a party disputing the content of the record shall~~

1 file a motion to augment the record at the time it files its initial
2 brief.

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

5 ~~(f) (1) (A) In granting relief in an action or proceeding brought~~
6 ~~pursuant to this division, the court shall not stay or enjoin the~~
7 ~~construction or operation of a water project unless the court finds~~
8 ~~either of the following:~~

9 ~~(i) The continued construction or operation of the water project~~
10 ~~presents an imminent threat to the public health and safety.~~

11 ~~(ii) The water project site contains unforeseen important Native~~
12 ~~American artifacts or unforeseen important historical,~~
13 ~~archaeological, or ecological values that would be materially,~~
14 ~~permanently, and adversely affected by the continued construction~~
15 ~~or operation of the water project unless the court stays or enjoins~~
16 ~~the construction or operation of the water project.~~

17 ~~(B) If the court finds that clause (i) or (ii) is satisfied, the court~~
18 ~~shall only enjoin those specific activities associated with the water~~
19 ~~project that present an imminent threat to public health and safety~~
20 ~~or that materially, permanently, and adversely affect unforeseen~~
21 ~~important Native American artifacts or unforeseen important~~
22 ~~historical, archaeological, or ecological values.~~

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

27 ~~SEC. 2. No reimbursement is required by this act pursuant to~~
28 ~~Section 6 of Article XIII B of the California Constitution because~~
29 ~~a local agency or school district has the authority to levy service~~
30 ~~charges, fees, or assessments sufficient to pay for the program or~~
31 ~~level of service mandated by this act, within the meaning of Section~~
32 ~~17556 of the Government Code.~~