

ASSEMBLY BILL

No. 499

Introduced by Assembly Member Hill

February 24, 2009

An act to amend Sections 21108, 21152, and 21167.6.5 of the Public Resources Code, relating to the environment.

LEGISLATIVE COUNSEL'S DIGEST

AB 499, as introduced, Hill. Environment: determination: dispute.

(1) The California Environmental Quality Act (CEQA) requires a lead agency, which includes a local agency, to prepare, or cause to be prepared by contract, and certify the completion of, an environmental impact report on a project, as defined, 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 requires a lead agency to file a notice of approval or a notice of determination containing specified information with the Office of Planning Research or the county clerk of each county in which the project is located, as appropriate. CEQA provides the procedure by which a party may attack, review, set aside, void, or annul the determination, finding, or decision of a public agency on specified grounds.

This bill would require that a petitioner or plaintiff name, as a real party in interest, a recipient of an approval, as identified by the public agency in its notice of determination or notice of exemption, that is the subject of an action or proceeding challenging the determination, finding, or decision of a public agency pursuant to CEQA. The bill would require that a petition or complaint be subject to dismissal if a petitioner or plaintiff fails to serve any recipient of an approval within the statute of limitations period.

The bill would provide that the above requirement would not apply to a proceeding for judicial review filed pursuant to CEQA that is pending on or before December 31, 2009, or to actions or proceedings challenging an act or decision of a public agency for which a notice of decision or notice of exemption was filed on or before December 31, 2009.

The bill would require a notice of approval or notice of determination to contain the name of the recipient of the agency's approval, if any. Because a lead agency would be required to include additional information in the notice of approval or notice of determination, this bill would impose a state-mandated local program.

(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 21108 of the Public Resources Code is
2 amended to read:
3 21108. (a) Whenever a state agency approves or determines
4 to carry out a project that is subject to this division, the state agency
5 shall file notice of that approval or that determination with the
6 Office of Planning and Research. The notice shall *name the*
7 *recipient of the agency's approval, if any, and* indicate the
8 determination of the state agency whether the project will, or will
9 not, have a significant effect on the environment and shall indicate
10 whether an environmental impact report has been prepared pursuant
11 to this division.
12 (b) Whenever a state agency determines that a project is not
13 subject to this division pursuant to subdivision (b) of Section 21080
14 or Section 21172, and the state agency approves or determines to
15 carry out the project, the state agency or the person specified in
16 subdivision (b) or (c) of Section 21065 may file notice of the
17 determination with the Office of Planning and Research. ~~Any A~~
18 *notice filed pursuant to this subdivision shall name the recipient*
19 *of the agency's approval, if any. A notice filed pursuant to this*

1 subdivision by a person specified in subdivision (b) or (c) of
2 Section 21065 shall have a certificate of determination attached
3 to it issued by the state agency responsible for making the
4 determination that the project is not subject to this division pursuant
5 to subdivision (b) of Section 21080 or pursuant to Section 21172.
6 The certificate of determination may be in the form of a certified
7 copy of an existing document or record of the state agency.

8 (c) All notices filed pursuant to this section shall be available
9 for public inspection, and a list of these notices shall be posted on
10 a weekly basis in the Office of Planning and Research. Each list
11 shall remain posted for a period of 30 days. The Office of Planning
12 and Research shall retain each notice for not less than 12 months.

13 SEC. 2. Section 21152 of the Public Resources Code is
14 amended to read:

15 21152. (a) Whenever a local agency approves or determines
16 to carry out a project that is subject to this division, the local agency
17 shall file notice of the approval or the determination within five
18 working days after the approval or determination becomes final,
19 with the county clerk of each county in which the project will be
20 located. The notice shall *name the recipient of the agency's*
21 *approval, if any, and* indicate the determination of the local agency
22 whether the project will, or will not, have a significant effect on
23 the environment and shall indicate whether an environmental
24 impact report has been prepared pursuant to this division. The
25 notice shall also include certification that the final environmental
26 impact report, if one was prepared, together with comments and
27 responses, is available to the general public.

28 (b) Whenever a local agency determines that a project is not
29 subject to this division pursuant to subdivision (b) of Section 21080
30 or pursuant to Section 21172, and the local agency approves or
31 determines to carry out the project, the local agency or the person
32 specified in subdivision (b) or (c) of Section 21065 may file a
33 notice of the determination with the county clerk of each county
34 in which the project will be located. *A notice filed pursuant to this*
35 *subdivision shall name the recipient of the agency's approval, if*
36 *any.* A notice filed pursuant to this subdivision by a person
37 specified in subdivision (b) or (c) of Section 21065 shall have a
38 certificate of determination attached to it issued by the local agency
39 responsible for making the determination that the project is not
40 subject to this division pursuant to subdivision (b) of Section 21080

1 or Section 21172. The certificate of determination may be in the
2 form of a certified copy of an existing document or record of the
3 local agency.

4 (c) All notices filed pursuant to this section shall be available
5 for public inspection, and shall be posted within 24 hours of receipt
6 in the office of the county clerk. A notice shall remain posted for
7 a period of 30 days. Thereafter, the clerk shall return the notice to
8 the local agency with a notation of the period it was posted. The
9 local agency shall retain the notice for not less than 12 months.

10 SEC. 3. Section 21167.6.5 of the Public Resources Code is
11 amended to read:

12 21167.6.5. (a) The petitioner or plaintiff shall name, as a real
13 party in interest, any recipient of an ~~approval~~ *approval, as identified*
14 *by the public agency in its notice of determination or notice of*
15 *exemption*, that is the subject of an action or proceeding brought
16 pursuant to Section 21167, 21168, or 21168.5, and shall serve the
17 petition or complaint on that real party in interest, by personal
18 service, ~~mail~~ *mail*, facsimile, or any other method permitted by
19 law, not later than 20 business days following service of the petition
20 or complaint on the public agency.

21 (b) *If the petitioner or plaintiff fails to serve any recipient of an*
22 *approval, identified in the public agency's notice of determination*
23 *or notice of exemption, within the limitations period specified in*
24 *subdivision (a), the petition or complaint shall be subject to*
25 *dismissal on the motion of any party interested in the proceeding.*

26 ~~(b)~~

27 (c) The public agency shall provide the petitioner or plaintiff,
28 not later than 10 business days following service of the petition or
29 complaint on the public agency, with a list of responsible agencies
30 and any public agency having jurisdiction over a natural resource
31 affected by the project.

32 ~~(c)~~

33 (d) The petitioner or plaintiff shall provide the responsible
34 agencies, and any public agency having jurisdiction over a natural
35 resource affected by the project, with notice of the action or
36 proceeding within 15 days of receipt of the list described in
37 subdivision ~~(b)~~ (c).

38 ~~(d)~~

39 (e) Failure to name potential ~~parties~~ *persons*, other than those
40 real parties in interest described in subdivision (a), *as identified*

1 *by the public agency in its notice of determination or notice of*
2 *exemption*, is not grounds for dismissal pursuant to Section 389
3 of the Code of Civil Procedure.

4 ~~(e) Nothing in this~~

5 *(f) This section is not* intended to affect an existing right of a
6 party to intervene in the action.

7 SEC. 4. Section 21167.6.5 of the Public Resources Code as
8 amended by this measure does not apply to a proceeding for
9 judicial review filed pursuant to Chapter 6 (commencing with
10 Section 21165) of Division 13 of the Public Resources Code that
11 is pending on or before December 31, 2009, or to an action or
12 proceeding that seeks to attack, review, void, or set aside an act
13 or decision of a public agency for which a notice of determination
14 or notice of exemption was filed on or before December 31, 2009,
15 and the applicable law in effect on that date shall continue to apply
16 to that proceeding.

17 SEC. 5. No reimbursement is required by this act pursuant to
18 Section 6 of Article XIII B of the California Constitution because
19 a local agency or school district has the authority to levy service
20 charges, fees, or assessments sufficient to pay for the program or
21 level of service mandated by this act, within the meaning of Section
22 17556 of the Government Code.