

AMENDED IN ASSEMBLY MARCH 19, 2013

CALIFORNIA LEGISLATURE—2013—14 REGULAR SESSION

ASSEMBLY BILL

No. 756

Introduced by Assembly Member Melendez

February 21, 2013

An act to ~~amend Section 21100 of~~ *add Chapter 7 (commencing with Section 21189.50) to Division 13 of the Public Resources Code*, relating to environmental quality.

LEGISLATIVE COUNSEL'S DIGEST

AB 756, as amended, Melendez. ~~Environmental quality: California Environmental Quality Act. Act: judicial review: public works 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 (EIR) 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 establishes 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 Jobs and Economic Improvement Through Environmental Leadership Act of 2011 requires that any action or proceeding alleging that a public agency has approved or is undertaking a leadership project certified by the Governor, as specified, in violation of CEQA be conducted in accordance with specified streamlining benefits. The act also requires the preparation and certification of the administrative record for a leadership project that is certified by the Governor to comply with certain procedures. The act requires the draft and final

EIR of a leadership project to include a specific notice relating to required procedures for judicial actions challenging the certification of the EIR or the approval of a project described in the EIR.

This bill would also apply these provisions to a public works project, defined to mean an infrastructure project carried out by the city, county, or state government or contracted out to a private entity by the local or state government. By requiring a lead agency to use these alternative procedures in preparing and certifying the administrative record, this bill would impose a state-mandated local program. The bill would also authorize the Judicial Council to adopt Rules of Court to implement these provisions.

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, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

~~The California Environmental Quality Act (CEQA) requires a lead agency, as defined, to prepare, or cause to be prepared by contract, and certify the completion of, an environmental impact report on a project, as defined, 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.~~

~~This bill would make technical, nonsubstantive changes to those provisions:~~

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

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

1 SECTION 1. Chapter 7 (commencing with Section 21189.50)
2 is added to Division 13 of the Public Resources Code, to read:

3
4 CHAPTER 7. JUDICIAL REVIEW OF PUBLIC WORKS PROJECTS

5
6 21189.50. "Public works project," for purposes of this chapter,
7 means an infrastructure project carried out by the city, county, or
8 state government, or contracted out to a private entity by a city,

1 county, or state government. Infrastructure projects include
2 projects relating to transportation, such as the construction and
3 maintenance of roads, bridges, airports, and ports, and the
4 placement of traffic signs and street lights, projects relating to
5 public-health-related buildings such as hospitals and urgent care
6 facilities, projects relating to public safety buildings such as law
7 enforcement stations and correctional facilities, projects relating
8 to water quality and water waste treatment facilities and their
9 related infrastructures, and projects relating to electrical grid
10 improvements, landscaping, seismic retrofitting, and technological
11 retrofitting.

12 21189.51. (a) Notwithstanding any other law, any action or
13 proceeding alleging that a public agency has approved or is
14 undertaking a public works project in violation of this division
15 shall be conducted in accordance with the following streamlining
16 benefits:

17 (1) The action or proceeding shall be filed in the court of appeal
18 with geographic jurisdiction over the project.

19 (2) Any party bringing a claim described in this section shall
20 also file concurrently any other claims alleging that a public
21 agency has granted land use approvals for the public works project
22 in violation of the law. The court of appeal shall have original
23 jurisdiction over all those claims.

24 (3) The court of appeal shall issue its decision in the case within
25 175 days of the filing of the petition.

26 (4) The court may appoint a master to assist the court in
27 managing and processing the case.

28 (5) The court may grant extensions of time only for good cause
29 shown and in order to promote the interests of justice.

30 (b) The Judicial Council may adopt rules of court to implement
31 this chapter.

32 21189.52. Notwithstanding any other law, the preparation and
33 certification of the administrative record for a public works project
34 shall be performed in the following manner:

35 (a) The lead agency for the project shall prepare the
36 administrative record pursuant to this division concurrently with
37 the administrative process.

38 (b) All documents and other materials placed in the
39 administrative record shall be posted on, and be downloadable
40 from, an Internet Web site maintained by the lead agency

1 commencing with the date of the release of the draft environmental
2 impact report.

3 (c) The lead agency shall make available to the public in a
4 readily accessible electronic format the draft environmental impact
5 report and all other documents submitted to, or relied on by, the
6 lead agency in the preparation of the draft environmental impact
7 report.

8 (d) A document prepared by the lead agency or submitted by
9 the applicant after the date of the release of the draft environmental
10 impact report that is a part of the record of the proceedings shall
11 be made available to the public in a readily accessible electronic
12 format within five business days after the document is released or
13 received by the lead agency.

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

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

22 (g) The lead agency shall certify the final administrative record
23 within five days of its approval of the project.

24 (h) Any dispute arising from the administrative record shall be
25 resolved by the court of appeal pursuant to Section 21189.51.

26 21189.53. The draft and final environmental impact report
27 shall include a notice in no less than 12-point type stating the
28 following:

29
30 “THIS EIR IS SUBJECT TO CHAPTER 7 (COMMENCING
31 WITH SECTION 21189.50) OF DIVISION 21 OF THE PUBLIC
32 RESOURCES CODE, WHICH PROVIDES, AMONG OTHER
33 THINGS, THAT ANY JUDICIAL ACTION CHALLENGING THE
34 CERTIFICATION OF THE EIR OR THE APPROVAL OF THE
35 PROJECT DESCRIBED IN THE EIR IS SUBJECT TO THE
36 PROCEDURES SET FORTH IN SECTION 21189.51 OF THE
37 PUBLIC RESOURCES CODE AND MUST BE FILED WITH THE
38 COURT OF APPEAL. A COPY OF CHAPTER 7 OF DIVISION
39 21 OF THE PUBLIC RESOURCES CODE IS INCLUDED IN
40 THE APPENDIX TO THIS EIR.”

1
2 21189.54. *The provisions of this chapter are severable. If any*
3 *provision of this chapter or its application is held invalid, that*
4 *invalidity shall not affect other provisions or applications that can*
5 *be given effect without the invalid provision or application.*

6 SEC. 2. *If the Commission on State Mandates determines that*
7 *this act contains costs mandated by the state, reimbursement to*
8 *local agencies and school districts for those costs shall be made*
9 *pursuant to Part 7 (commencing with Section 17500) of Division*
10 *4 of Title 2 of the Government Code.*

11 SECTION 1. ~~Section 21100 of the Public Resources Code is~~
12 ~~amended to read:~~

13 21100. (a) ~~A lead agency shall prepare, or cause to be prepared~~
14 ~~by contract, and certify the completion of, an environmental impact~~
15 ~~report on a project that it proposes to carry out or approve that may~~
16 ~~have a significant effect on the environment. Whenever feasible,~~
17 ~~a standard format shall be used for an environmental impact report.~~

18 (b) ~~The environmental impact report shall include a detailed~~
19 ~~statement setting forth all of the following:~~

20 (1) ~~All significant effects on the environment of the proposed~~
21 ~~project.~~

22 (2) ~~In a separate section:~~

23 (A) ~~Any significant effect on the environment that cannot be~~
24 ~~avoided if the project is implemented.~~

25 (B) ~~Any significant effect on the environment that would be~~
26 ~~irreversible if the project is implemented.~~

27 (3) ~~Mitigation measures proposed to minimize significant effects~~
28 ~~on the environment, including, but not limited to, measures to~~
29 ~~reduce the wasteful, inefficient, and unnecessary consumption of~~
30 ~~energy.~~

31 (4) ~~Alternatives to the proposed project.~~

32 (5) ~~The growth-inducing impact of the proposed project.~~

33 (c) ~~The report shall also contain a statement that briefly states~~
34 ~~the reasons for determining that various effects on the environment~~
35 ~~of a project are not significant and consequently have not been~~
36 ~~discussed in detail in the environmental impact report.~~

37 (d) ~~For purposes of this section, any significant effect on the~~
38 ~~environment shall be limited to substantial, or potentially~~
39 ~~substantial, adverse changes in physical conditions which exist~~
40 ~~within the area as defined in Section 21060.5.~~

- 1 ~~(e) Previously approved land use documents, including, but not~~
- 2 ~~limited to, general plans, specific plans, and local coastal plans;~~
- 3 ~~may be used in cumulative impact analysis.~~