

AMENDED IN SENATE APRIL 3, 2013

**SENATE BILL**

**No. 436**

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**Introduced by Senator Jackson**

February 21, 2013

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An act to amend Sections 21083.9, 21092, 21108, and 21152 and 21092 of the Public Resources Code, relating to environmental quality.

LEGISLATIVE COUNSEL'S DIGEST

SB 436, as amended, Jackson. California Environmental Quality Act: notice.

(1) The California Environmental Quality Act (~~CEQA~~) Act, commonly referred to as *CEQA*, requires a lead agency to prepare, or cause to be prepared, and certify the completion of, an environmental impact report (~~EIR~~) report, also known as an *EIR*, on a project, as defined, that it proposes to carry out or approve that may have a significant effect on the environment, as defined, or to adopt a negative declaration if it finds that the project will not have that effect. *CEQA* also requires the lead agency to call at least one scoping meeting for a project that may affect highways or other facilities under the jurisdiction of the Department of Transportation if the meeting is requested by the department, or for a project of statewide, regional, or areawide significance. *CEQA* requires the lead agency to provide to specified entities a notice of at least one scoping meeting.

This bill would require a lead agency to conduct at least one public scoping meeting for the specified projects and to provide notice to the specified entities of at least one public scoping meeting.

(2) *CEQA* requires any lead agency that is preparing an *EIR* or a negative declaration or making a determination, pursuant to a specified provision of law, to provide public notice within a reasonable period

of time prior to certification of the EIR or adoption of the negative declaration. Existing law requires that notice be given to the last known name and address of all organizations and individuals who previously requested the notice and by at least one of several procedures, including by direct mailing to the owners and occupants of contiguous property shown on the latest equalized assessment roll.

This bill would revise these notice requirements to require *that* the notice be given to a list of specified parties, including the State Clearinghouse and project applicants, and by at least one of the several listed procedures.

~~(3) CEQA requires a state agency or local agency that approves or determines to carry out a project that is subject to the act, to file notice of the approval or determination with the Office of Planning and Research or the county clerk of each county in which the project will be located, respectively, and to have the notice posted in the Office of Planning and Research or the office of the county clerk, respectively.~~

~~This bill would also require the notices to be posted on the Office and Planning and Research's Internet Web site and the lead agency's Internet Web site, respectively. If the lead agency cannot maintain an Internet Web site with the specified information, the bill would require the lead agency to provide a link on its Internet Web site to the required information. The bill would also require a notice filed by a local agency to also be filed with the Office of Planning and Research. By requiring local agencies to follow specified notice requirements in regard to CEQA, this bill would impose a state-mandated local program.~~

~~(4) 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.~~

~~(3) *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 21083.9 of the Public Resources Code  
2 is amended to read:  
3 21083.9. (a) Notwithstanding Section 21080.4, 21104, or  
4 21153, a lead agency shall conduct at least one public scoping  
5 meeting for either of the following:  
6 (1) A proposed project that may affect highways or other  
7 facilities under the jurisdiction of the Department of Transportation  
8 if the meeting is requested by the department. The lead agency  
9 shall call the scoping meeting as soon as possible, but not later  
10 than 30 days after receiving the request from the Department of  
11 Transportation.  
12 (2) A project of statewide, regional, or areawide significance.  
13 (b) The lead agency shall provide notice of at least one public  
14 scoping meeting held pursuant to paragraph (2) of subdivision (a)  
15 to all of the following:  
16 (1) A county or city that borders on a county or city within  
17 which the project is located, unless otherwise designated annually  
18 by agreement between the lead agency and the county or city.  
19 (2) A responsible agency.  
20 (3) A public agency that has jurisdiction by law with respect to  
21 the project.  
22 (4) A transportation planning agency or public agency required  
23 to be consulted pursuant to Section 21092.4.  
24 (5) A public agency, organization, or individual who has filed  
25 a written request for the notice.  
26 (c) For a public agency, organization, or individual that is  
27 required to be provided notice of a lead agency public meeting,  
28 the requirement for notice of a scoping meeting pursuant to  
29 subdivision (b) may be met by including the notice of a scoping  
30 meeting in the public meeting notice.  
31 (d) A *public* scoping meeting that is held in the city or county  
32 within which the project is located pursuant to the federal National  
33 Environmental Policy Act of 1969 (42 U.S.C. Sec. 4321 et seq.)  
34 and the regulations adopted pursuant to that act shall be deemed  
35 to satisfy the requirement that a scoping meeting be held for a  
36 project subject to paragraph (2) of subdivision (a) if the lead agency  
37 meets the notice requirements of subdivision (b) or subdivision  
38 (c).

1 (e) The referral of a proposed action to adopt or substantially  
2 amend a general plan to a city or county pursuant to paragraph (1)  
3 of subdivision (a) of Section 65352 of the Government Code may  
4 be conducted concurrently with the *public* scoping meeting required  
5 pursuant to this section, and the city or county may submit its  
6 comments as provided pursuant to subdivision (b) of ~~that section~~  
7 *Section 65352 of the Government Code* at the *public* scoping  
8 meeting.

9 SEC. 2. Section 21092 of the Public Resources Code is  
10 amended to read:

11 21092. (a) A lead agency that is preparing an environmental  
12 impact report or a negative declaration or making a determination  
13 pursuant to subdivision (c) of Section 21157.1 shall provide public  
14 notice of that fact within a reasonable period of time prior to  
15 certification of the environmental impact report, adoption of the  
16 negative declaration, or making the determination pursuant to  
17 subdivision (c) of Section 21157.1.

18 (b) (1) The notice shall specify the period during which  
19 comments will be received on the draft environmental impact  
20 report or negative declaration, and shall include the date, time, and  
21 place of any public meetings or hearings on the proposed project,  
22 a brief description of the proposed project and its location, the  
23 significant effects on the environment, if any, anticipated as a result  
24 of the project, the address where copies of the draft environmental  
25 impact report or negative declaration, and all documents referenced  
26 in the draft environmental impact report or negative declaration,  
27 are available for review, and a description of how the draft  
28 environmental impact report or negative declaration can be  
29 provided in an electronic format.

30 (2) This section shall not be construed in any manner that results  
31 in the invalidation of an action because of the alleged inadequacy  
32 of the notice content if there has been substantial compliance with  
33 the notice content requirements of this section.

34 (3) (A) The notice required by this section shall be given to all  
35 of the following:

36 (i) The last known name and address of all organizations and  
37 individuals who have previously requested notice.

38 (ii) By mail to the owners and occupants of contiguous property  
39 shown on the latest equalized assessment roll.

1 (iii) By mail or electronic mail to responsible and trustee  
2 agencies.

3 (iv) By mail or electronic mail to a project applicant, if different  
4 than the lead agency, and the applicant's duly authorized agent.

5 (v) The State Clearinghouse.

6 (B) The notice required by this section shall also be given by  
7 at least one of the following procedures:

8 (i) Publication, no fewer times than required by Section 6061  
9 of the Government Code, by the public agency in a newspaper of  
10 general circulation in the area affected by the proposed project. If  
11 more than one area will be affected, the notice shall be published  
12 in the newspaper of largest circulation from among the newspapers  
13 of general circulation in those areas.

14 (ii) Posting of notice by the lead agency on- and off-site in the  
15 area where the project is to be located.

16 (c) For a project involving the burning of municipal wastes,  
17 hazardous waste, or refuse-derived fuel, including, but not limited  
18 to, tires, meeting the qualifications of subdivision (d), notice shall  
19 be given to all organizations and individuals who have previously  
20 requested notice and shall also be given by at least the procedures  
21 specified in subparagraphs (A) and (B) of paragraph (3) of  
22 subdivision (b). In addition, notification shall be given by direct  
23 mailing to the owners and occupants of property within one-fourth  
24 of a mile of any parcel or parcels on which ~~is located~~ a project  
25 subject to this subdivision *is located*.

26 (d) The notice requirements of subdivision (c) apply to both of  
27 the following:

28 (1) The construction of a new facility.

29 (2) The expansion of an existing facility that burns hazardous  
30 waste which would increase its permitted capacity by more than  
31 10 percent. For purposes of this paragraph, the amount of expansion  
32 of an existing facility shall be calculated by comparing the  
33 proposed facility capacity with whichever of the following is  
34 applicable:

35 (A) The facility capacity approved in the facility's hazardous  
36 waste facilities permit pursuant to Section 25200 of the Health and  
37 Safety Code or its grant of interim status pursuant to Section  
38 25200.5 of the Health and Safety Code, or the facility capacity  
39 authorized in any state or local agency permit allowing the

1 construction or operation of a facility for the burning of hazardous  
2 waste, granted before January 1, 1990.

3 (B) The facility capacity authorized in the facility's original  
4 hazardous waste facilities permit, grant of interim status, or any  
5 state or local agency permit allowing the construction or operation  
6 of a facility for the burning of hazardous waste, granted on or after  
7 January 1, 1990.

8 (e) The notice requirements specified in subdivision (b) or (c)  
9 shall not preclude a public agency from providing additional notice  
10 by other means if the agency so desires, or from providing the  
11 public notice required by this section at the same time and in the  
12 same manner as public notice otherwise required by law for the  
13 project.

14 ~~SEC. 3.—Section 21108 of the Public Resources Code is~~  
15 ~~amended to read:~~

16 ~~21108. (a) If a state agency approves or determines to carry~~  
17 ~~out a project that is subject to this division, the state agency shall~~  
18 ~~file notice of that approval or that determination with the Office~~  
19 ~~of Planning and Research. The notice shall identify the person or~~  
20 ~~persons in subdivision (b) or (c) of Section 21065, as reflected in~~  
21 ~~the agency's record of proceedings, and indicate the determination~~  
22 ~~of the state agency whether the project will, or will not, have a~~  
23 ~~significant effect on the environment and shall indicate whether~~  
24 ~~an environmental impact report has been prepared pursuant to this~~  
25 ~~division.~~

26 ~~(b) If a state agency determines that a project is not subject to~~  
27 ~~this division pursuant to subdivision (b) of Section 21080, and the~~  
28 ~~state agency approves or determines to carry out the project, the~~  
29 ~~state agency or the person specified in subdivision (b) or (c) of~~  
30 ~~Section 21065 may file notice of the determination with the Office~~  
31 ~~of Planning and Research. A notice filed pursuant to this~~  
32 ~~subdivision shall identify the person or persons in subdivision (b)~~  
33 ~~or (c) of Section 21065, as reflected in the agency's record of~~  
34 ~~proceedings. A notice filed pursuant to this subdivision by a person~~  
35 ~~specified in subdivision (b) or (c) of Section 21065 shall have a~~  
36 ~~certificate of determination attached to it issued by the state agency~~  
37 ~~responsible for making the determination that the project is not~~  
38 ~~subject to this division pursuant to subdivision (b) of Section~~  
39 ~~21080. The certificate of determination may be in the form of a~~  
40 ~~certified copy of an existing document or record of the state agency.~~

1 ~~(e) (1) A notice filed pursuant to this section shall be available~~  
2 ~~for public inspection, and a list of these notices shall be posted on~~  
3 ~~a weekly basis in the Office of Planning and Research. Each list~~  
4 ~~shall remain posted for a period of 30 days. The Office of Planning~~  
5 ~~and Research shall retain each notice for not less than 12 months.~~

6 ~~(2) A notice filed pursuant to this section shall be posted by the~~  
7 ~~Office of Planning and Research on its Internet Web site within~~  
8 ~~one business day after its filing. The notice shall remain on the~~  
9 ~~Internet Web site for not less than 12 months.~~

10 ~~SEC. 4. Section 21152 of the Public Resources Code is~~  
11 ~~amended to read:~~

12 ~~21152. (a) If a local agency approves or determines to carry~~  
13 ~~out a project that is subject to this division the local agency shall~~  
14 ~~file notice of the approval or the determination, within five working~~  
15 ~~days after the approval or determination becomes final, with the~~  
16 ~~county clerk of each county in which the project will be located.~~  
17 ~~The notice shall identify the person or persons in subdivision (b)~~  
18 ~~or (c) of Section 21065, as reflected in the agency's record of~~  
19 ~~proceedings, and indicate the determination of the local agency~~  
20 ~~whether the project will, or will not, have a significant effect on~~  
21 ~~the environment and shall indicate whether an environmental~~  
22 ~~impact report has been prepared pursuant to this division. The~~  
23 ~~notice shall also include certification that the final environmental~~  
24 ~~impact report, if one was prepared, together with comments and~~  
25 ~~responses, is available to the general public.~~

26 ~~(b) If a local agency determines that a project is not subject to~~  
27 ~~this division pursuant to subdivision (b) of Section 21080, and the~~  
28 ~~local agency approves or determines to carry out the project, the~~  
29 ~~local agency or the person specified in subdivision (b) or (c) of~~  
30 ~~Section 21065 may file a notice of the determination with the~~  
31 ~~county clerk of each county in which the project will be located.~~  
32 ~~A notice filed pursuant to this subdivision shall identify the person~~  
33 ~~or persons in subdivision (b) or (c) of Section 21065, as reflected~~  
34 ~~in the agency's record of proceedings. A notice filed pursuant to~~  
35 ~~this subdivision by a person specified in subdivision (b) or (c) of~~  
36 ~~Section 21065 shall have a certificate of determination attached~~  
37 ~~to it issued by the local agency responsible for making the~~  
38 ~~determination that the project is not subject to this division pursuant~~  
39 ~~to subdivision (b) of Section 21080. The certificate of~~

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

3 (e) (1) A notice filed pursuant to this section shall be available  
4 for public inspection, and shall be posted within 24 hours of receipt  
5 in the office of the county clerk and on the lead agency's Internet  
6 Web site. A notice shall remain posted for a period of 30 days.  
7 Thereafter, the clerk shall return the notice to the local agency with  
8 a notation of the period it was posted. The local agency shall retain  
9 the notice for not less than 12 months.

10 (2) If the lead agency cannot maintain an Internet Web site with  
11 the information required pursuant to this section, the lead agency  
12 shall provide a link on its Internet Web site that directs the user to  
13 the required information.

14 (d) (1) A notice filed pursuant to this section shall also be filed  
15 with the Office of Planning and Research.

16 (2) A notice filed pursuant to this subdivision shall be posted  
17 by the Office of Planning and Research on its Internet Web site  
18 within one business day after its filing. The notice shall be retained  
19 on the Internet Web site for not less than 12 months.

20 SEC. 5. If the Commission on State Mandates determines that  
21 this act contains costs mandated by the state, reimbursement to  
22 local agencies and school districts for those costs shall be made  
23 pursuant to Part 7 (commencing with Section 17500) of Division  
24 4 of Title 2 of the Government Code.

25 SEC. 3. No reimbursement is required by this act pursuant to  
26 Section 6 of Article XIII B of the California Constitution because  
27 a local agency or school district has the authority to levy service  
28 charges, fees, or assessments sufficient to pay for the program or  
29 level of service mandated by this act, within the meaning of Section  
30 17556 of the Government Code.