

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

January 20, 2015

An act to add Section 21168.6.7 to the Public Resources Code, relating to environmental quality.

LEGISLATIVE COUNSEL'S DIGEST

SB 127, as introduced, Vidak. Environmental quality: Water Quality, Supply, and Infrastructure Improvement Act of 2014.

(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. 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 21168.6.7 is added to the Public
- 2 Resources Code, to read:
- 3 21168.6.7. (a) For the purposes of this section “water project”
- 4 means a project funded, in whole or in part, with proceeds of bonds
- 5 sold pursuant to the Water Quality, Supply and Infrastructure
- 6 Improvement Act of 2014 (Division 26.7 (commencing with
- 7 Section 79700) of the Water Code).
- 8 (b) Notwithstanding any other law, the procedures established
- 9 pursuant to subdivision (c) shall apply to an action or proceeding
- 10 brought to attack, review, set aside, void, or annul the certification
- 11 of the environmental impact report for a water project or the
- 12 granting of any approvals for a water project.

1 (c) On or before July 1, 2016, the Judicial Council shall adopt
2 a rule of court to establish procedures applicable to actions or
3 proceedings brought to attack, review, set aside, void, or annul the
4 certification of the environmental impact report for a water project
5 or the granting of any project approvals that require the actions or
6 proceedings, including any potential appeals therefrom, be
7 resolved, to the extent feasible, within 270 days of certification of
8 the record of proceedings pursuant to subdivision (e).

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

12 THIS EIR IS SUBJECT TO SECTION 21168.6.7 OF THE
13 PUBLIC RESOURCES CODE, WHICH PROVIDES, AMONG
14 OTHER THINGS, THAT THE LEAD AGENCY NEED NOT
15 CONSIDER CERTAIN COMMENTS FILED AFTER THE
16 CLOSE OF THE PUBLIC COMMENT PERIOD FOR THE
17 DRAFT EIR. ANY JUDICIAL ACTION CHALLENGING THE
18 CERTIFICATION OF THE EIR OR THE APPROVAL OF THE
19 PROJECT DESCRIBED IN THE EIR IS SUBJECT TO THE
20 PROCEDURES SET FORTH IN SECTION 21168.6.7 OF THE
21 PUBLIC RESOURCES CODE. A COPY OF SECTION 21168.6.7
22 OF THE PUBLIC RESOURCES CODE IS INCLUDED IN THE
23 APPENDIX TO THIS EIR.

24 (2) The draft environmental impact report and final
25 environmental impact report shall contain, as an appendix, the full
26 text of this section.

27 (3) Within 10 days after the release of the draft environmental
28 impact report, the lead agency shall conduct an informational
29 workshop to inform the public of the key analyses and conclusions
30 of that report.

31 (4) Within 10 days before the close of the public comment
32 period, the lead agency shall hold a public hearing to receive
33 testimony on the draft environmental impact report. A transcript
34 of the hearing shall be included as an appendix to the final
35 environmental impact report.

36 (5) (A) Within five days following the close of the public
37 comment period, a commenter on the draft environmental impact
38 report may submit to the lead agency a written request for
39 nonbinding mediation. The lead agency and applicant shall
40 participate in nonbinding mediation with all commenters who

1 submitted timely comments on the draft environmental impact
2 report and who requested the mediation. Mediation conducted
3 pursuant to this paragraph shall end no later than 35 days after the
4 close of the public comment period.

5 (B) A request for mediation shall identify all areas of dispute
6 raised in the comment submitted by the commenter that are to be
7 mediated.

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

12 (D) A mediation session shall be conducted on each area of
13 dispute with the parties requesting mediation on that area of
14 dispute.

15 (E) The lead agency shall adopt, as a condition of approval, any
16 measures agreed upon by the lead agency, the applicant, and any
17 commenter who requested mediation. A commenter who agrees
18 to a measure pursuant to this subparagraph shall not raise the issue
19 addressed by that measure as a basis for an action or proceeding
20 challenging the lead agency's decision to certify the environmental
21 impact report or to grant one or more initial project approvals.

22 (6) The lead agency need not consider written comments
23 submitted after the close of the public comment period, unless
24 those comments address any of the following:

25 (A) New issues raised in the response to comments by the lead
26 agency.

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

31 (C) Changes made to the project after the close of the public
32 comment period.

33 (D) Proposed conditions for approval, mitigation measures, or
34 proposed findings required by Section 21081 or a proposed
35 reporting and monitoring program required by paragraph (1) of
36 subdivision (a) of Section 21081.6, where the lead agency releases
37 those documents subsequent to the release of the draft
38 environmental impact report.

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

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

4 (e) (1) The lead agency shall prepare and certify the record of
5 the proceedings in accordance with this subdivision and in
6 accordance with Rule 3.1365 of the California Rules of Court. The
7 applicant shall pay the lead agency for all costs of preparing and
8 certifying the record of proceedings.

9 (2) No later than three business days following the date of the
10 release of the draft environmental impact report, the lead agency
11 shall make available to the public in a readily accessible electronic
12 format the draft environmental impact report and all other
13 documents submitted to or relied on by the lead agency in the
14 preparation of the draft environmental impact report. A document
15 prepared by the lead agency or submitted by the applicant after
16 the date of the release of the draft environmental impact report
17 that is a part of the record of the proceedings shall be made
18 available to the public in a readily accessible electronic format
19 within five business days after the document is prepared or received
20 by the lead agency.

21 (3) Notwithstanding paragraph (2), documents submitted to or
22 relied on by the lead agency that were not prepared specifically
23 for the project and are copyright protected are not required to be
24 made readily accessible in an electronic format. For those copyright
25 protected documents, the lead agency shall make an index of these
26 documents available in an electronic format no later than the date
27 of the release of the draft environmental impact report, or within
28 five business days if the document is received or relied on by the
29 lead agency after the release of the draft environmental impact
30 report. The index must specify the libraries or lead agency offices
31 in which hardcopies of the copyrighted materials are available for
32 public review.

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

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

1 (6) The lead agency shall indicate in the record of the
2 proceedings comments received that were not considered by the
3 lead agency pursuant to paragraph (6) of subdivision (d) and need
4 not include the content of the comments as a part of the record.

5 (7) Within five days after the filing of the notice required by
6 subdivision (a) of Section 21108 or subdivision (a) of Section
7 21152, the lead agency shall certify the record of the proceedings
8 for the approval or determination and shall provide an electronic
9 copy of the record to a party that has submitted a written request
10 for a copy. The lead agency may charge and collect a reasonable
11 fee from a party requesting a copy of the record for the electronic
12 copy, which shall not exceed the reasonable cost of reproducing
13 that copy.

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

17 (9) Any dispute over the content of the record of the proceedings
18 shall be resolved by the superior court. Unless the superior court
19 directs otherwise, a party disputing the content of the record shall
20 file a motion to augment the record at the time it files its initial
21 brief.

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

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

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

30 (ii) The water project site contains unforeseen important Native
31 American artifacts or unforeseen important historical,
32 archaeological, or ecological values that would be materially,
33 permanently, and adversely affected by the continued construction
34 or operation of the water project unless the court stays or enjoins
35 the construction or operation of the water project.

36 (B) If the court finds that clause (i) or (ii) is satisfied, the court
37 shall only enjoin those specific activities associated with the water
38 project that present an imminent threat to public health and safety
39 or that materially, permanently, and adversely affect unforeseen

1 important Native American artifacts or unforeseen important
2 historical, archaeological, or ecological values.

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

7 SEC. 2. No reimbursement is required by this act pursuant to
8 Section 6 of Article XIII B of the California Constitution because
9 a local agency or school district has the authority to levy service
10 charges, fees, or assessments sufficient to pay for the program or
11 level of service mandated by this act, within the meaning of Section
12 17556 of the Government Code.

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