

Introduced by Senator Cannella

February 19, 2016

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

LEGISLATIVE COUNSEL'S DIGEST

SB 1440, as introduced, Cannella. 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 at the November 4, 2014, statewide general election, authorizes the issuance of bonds pursuant to the State General Obligation Bond Law to finance a water quality, supply, and infrastructure improvement program.

This bill would require a lead agency, in certifying the environmental impact report and in granting approvals for certain water storage projects funded, in whole or in part, by Proposition 1, 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 authorize the lead agency to concurrently prepare the record of proceedings for the project. The bill would require the Judicial Council, on or before July 1, 2017, to adopt a rule of court to establish procedures applicable to actions or proceedings seeking judicial review of a lead agency's action in certifying the environmental impact report and in granting approval for those projects that require the actions or proceedings, including any appeals therefrom, be resolved, to the extent feasible, within 370 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 storage
4 project” means a project described in subdivision (a) of Section
5 79751 of the Water Code and funded, in whole or in part, with
6 proceeds of bonds sold pursuant to the Water Quality, Supply, and
7 Infrastructure Improvement Act of 2014 (Division 26.7
8 (commencing with Section 79700) of the Water Code).
9 (b) Notwithstanding any other law, the procedures established
10 pursuant to subdivision (c) shall apply to an action or proceeding
11 brought to attack, review, set aside, void, or annul the certification
12 of the environmental impact report for a water storage project or
13 the granting of any approvals for a water storage project.
14 (c) On or before July 1, 2017, the Judicial Council shall adopt
15 a rule of court to establish procedures applicable to actions or

1 proceedings brought to attack, review, set aside, void, or annul the
2 certification of the environmental impact report for a water storage
3 project or the granting of any project approvals that require the
4 actions or proceedings, including any potential appeals therefrom,
5 be resolved, to the extent feasible, within 370 days of certification
6 of the record of proceedings pursuant to subdivision (e).

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

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

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

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

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

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

1 pursuant to this paragraph shall end no later than 35 days after the
2 close of the public comment period.

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

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

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

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

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

23 (A) New issues raised in the response to comments by the lead
24 agency.

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

29 (C) Changes made to the project after the close of the public
30 comment period.

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

37 (E) New information that was not reasonably known and could
38 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 may 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 shall 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 those comments available to the public in a readily
36 accessible electronic format within five days of their 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) Subdivisions (d) and (e) do not apply to a project for which
25 an environmental review pursuant to this division has commenced
26 before January 1, 2017.

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

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

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

39 (B) If the court finds that clause (i) or (ii) of subparagraph (A)
40 is satisfied, the court shall only enjoin those specific activities

1 associated with the water storage project that present an imminent
2 threat to public health and safety or that materially, permanently,
3 and adversely affect unforeseen important Native American
4 artifacts or unforeseen important historical, archaeological, or
5 ecological values.

6 (2) An action or proceeding to attack, set aside, void, or annul
7 a determination, finding, or decision of the lead agency granting
8 a subsequent project approval shall be subject to the requirements
9 of this chapter.

10 SEC. 2. No reimbursement is required by this act pursuant to
11 Section 6 of Article XIII B of the California Constitution because
12 a local agency or school district has the authority to levy service
13 charges, fees, or assessments sufficient to pay for the program or
14 level of service mandated by this act, within the meaning of Section
15 17556 of the Government Code.