

AMENDED IN SENATE MARCH 7, 2019

SENATE BILL

No. 25

Introduced by ~~Senator Caballero~~ *Senators Caballero and Glazer*

December 3, 2018

An act to add Section 21168.6.9 to the Public Resources Code, relating to environmental quality.

LEGISLATIVE COUNSEL'S DIGEST

SB 25, as amended, Caballero. California Environmental Quality Act: *projects funded by qualified opportunity zones; zone funds or other public funds.*

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.

~~Existing federal law authorizes the governor of a state to nominate a specified number of census tracts that meet certain requirements as a qualified opportunity zone and authorizes the Treasury Secretary to designate those tracts as qualified opportunity zones. Existing federal law provides certain federal tax incentives to a taxpayer who invests in~~

~~a qualified opportunity fund, which is an investment vehicle organized for the purpose of investing in qualified opportunity zone property, as prescribed.~~

This bill would establish specified procedures for the administrative and judicial review of the environmental review and approvals granted for projects ~~located in qualified opportunity zones~~ that are funded, in whole or in part, by ~~qualified opportunity funds, or by moneys from the Greenhouse Gas Reduction Fund and allocated by the Strategic Growth Council.~~ *specified public funds or public agencies.* 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 apply certain rules of court establishing procedures requiring actions or proceedings seeking judicial review pursuant to CEQA or the granting of project approvals, including any appeals therefrom, to be resolved, to the extent feasible, within 270 days of the filing of the certified record of proceedings with the court to an action or proceeding seeking judicial review of the lead agency's action related to those projects located in a qualified opportunity zone. *The bill would require a party seeking to file an action or proceeding pursuant to CEQA to provide the lead agency and the real party in interest a notice of intent to sue within 10 days of the posting of a certain notice and would prohibit a court from accepting the filing of an action or proceeding from a party that fails to provide the notice of intent to sue. The bill would prohibit a court, in an action or proceeding challenging the lead agency's action for a project on the grounds of noncompliance with CEQA, from staying or enjoining the construction or operation of the project, except as provided.*

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. The Legislature finds and declares *all of the*
2 following:

1 (a) The federal Investing in Opportunity Act, enacted as a part
2 of the federal Tax Cuts and Jobs Act (Public Law 115-97), created
3 tax incentives for investment in designated census tracts called
4 qualified opportunity zones to spur growth in low-income
5 communities by encouraging reinvestment of capital gains into
6 certified opportunity funds.

7 (b) The Governor has nominated and the United States
8 Department of the Treasury has certified 879 census tracts in
9 California as qualified opportunity zones.

10 (c) *The Strategic Growth Council funds projects that by their*
11 *nature are intended to reduce the emissions of greenhouse gases*
12 *and to reduce vehicle miles traveled.*

13 (d) *The State of California currently lacks housing supply at*
14 *all levels of affordability, and lacks the sufficient infrastructure*
15 *to support sufficient housing growth.*

16 (e) *It is in the interest of the state to expedite judicial review of*
17 *these projects, as appropriate, while protecting the environment*
18 *and the right of the public to review, comment on, and, if necessary,*
19 *seek judicial review of, the adequacy of the environmental impact*
20 *report for the project.*

21 ~~(e) In addition to the tax incentives for investments in qualified~~
22 ~~opportunity zones, a~~

23 (f) *A streamlined judicial review process for any challenges to*
24 *environmental review of projects in funded by qualified opportunity*
25 *zones would be zone funds or other public funds is needed to*
26 *provide investment with certainty regarding those projects. projects*
27 *and to ensure efficient use of public resources.*

28 SEC. 2. Section 21168.6.9 is added to the Public Resources
29 Code, to read:

30 21168.6.9. (a) For purposes of this section, the following
31 definitions apply:

32 (1) “Environmental review document” means any of the
33 following:

34 (A) A determination that a project is exempt from this division.

35 (B) A negative declaration or mitigated negative declaration.

36 (C) An environmental impact report.

37 (2) “Qualified opportunity fund” has the same meaning as
38 defined in subsection (d) of Section 1400Z-2 of Title 26 of the
39 United States Code.

1 (3) “Qualified opportunity zone” means a census tract certified
2 by the Secretary of the United States Department of the Treasury
3 as a qualified opportunity zone pursuant to Section 1400Z-1 of
4 Title 26 of the United States Code.

5 (4) “Qualified project” means a project ~~located in a qualified~~
6 ~~opportunity zone~~ that is financed, in whole or in part, by ~~either~~
7 *any* of the following:

8 (A) A qualified opportunity fund.

9 (B) Moneys appropriated from the Greenhouse Gas Reduction
10 Fund and allocated by the Strategic Growth Council.

11 (C) *An enhanced infrastructure financing district.*

12 (D) *An affordable housing authority.*

13 (E) *A community revitalization and investment authority.*

14 (F) *A transit village development district.*

15 (G) *A housing sustainability district.*

16 (H) *A Neighborhood Infill Finance and Transit Improvements*
17 *Act (NIFTI) district.*

18 (I) *Moneys allocated through the Department of Housing and*
19 *Community Development.*

20 (J) *Moneys allocated through the Department of Veterans*
21 *Affairs.*

22 (K) *Moneys allocated through the California Housing Finance*
23 *Agency.*

24 (L) *Moneys allocated through the California Infrastructure and*
25 *Economic Development Bank.*

26 (5) “Skilled and trained workforce” has the same meaning as
27 provided in Chapter 2.9 (commencing with Section 2600) of Part
28 1 of Division 2 of the Public Contract Code.

29 (b) Rules 3.2220 to 3.2237, inclusive, of the California Rules
30 of Court, as may be amended by the Judicial Council, shall apply
31 to any action or proceeding brought to attack, review, set aside,
32 void, or annul the certification or adoption of an environmental
33 review document for a qualified project that meets the requirements
34 of subdivision (c) or the granting of any approval for the qualified
35 project, to require the action or proceeding, including any potential
36 appeals therefrom, to be resolved, to the extent feasible, within
37 270 days of the filing of the certified record of proceedings with
38 the court. On or before September 1, 2020, the Judicial Council
39 shall amend the California Rules of Court, as necessary, to
40 implement this subdivision.

1 (c) ~~The~~ *Except as provided in subdivision (d), the* proponent of
2 a project described in subdivision (b) shall do both of the following,
3 as applicable:

4 (1) Certify to the local agency that either of the following is
5 true, as applicable:

6 (A) The entirety of the project is a public work for purposes of
7 Chapter 1 (commencing with Section 1720) of Part 7 of Division
8 2 of the Labor Code.

9 (B) If the project is not in its entirety a public work, that all
10 construction workers employed in the execution of the project will
11 be paid at least the general prevailing rate of per diem wages for
12 the type of work and geographic area, as determined by the Director
13 of Industrial Relations pursuant to Sections 1773 and 1773.9 of
14 the Labor Code, except that apprentices registered in programs
15 approved by the Chief of the Division of Apprenticeship Standards
16 may be paid at least the applicable apprentice prevailing rate. If
17 the project is subject to this subparagraph, for those portions of
18 the project that are not a public work, all of the following shall
19 apply:

20 (i) The project proponent shall ensure that the prevailing wage
21 requirement is included in all contracts for the performance of the
22 work.

23 (ii) All contractors and subcontractors shall pay to all
24 construction workers employed in the execution of the work at
25 least the general prevailing rate of per diem wages, except that
26 apprentices registered in programs approved by the Chief of the
27 Division of Apprenticeship Standards may be paid at least the
28 applicable apprentice prevailing rate.

29 (iii) Except as provided in clause (v), all contractors and
30 subcontractors shall maintain and verify payroll records pursuant
31 to Section 1776 of the Labor Code and make those records
32 available for inspection and copying as provided in that section.

33 (iv) Except as provided in clause (v), the obligation of the
34 contractors and subcontractors to pay prevailing wages may be
35 enforced by the Labor Commissioner through the issuance of a
36 civil wage and penalty assessment pursuant to Section 1741 of the
37 Labor Code, which may be reviewed pursuant to Section 1742 of
38 the Labor Code within 18 months after the completion of the
39 project by an underpaid worker through an administrative
40 complaint or civil action, or by a joint labor-management

1 committee through a civil action under Section 1771.2 of the Labor
2 Code. If a civil wage and penalty assessment is issued, the
3 contractor, subcontractor, and surety on a bond or bonds issued to
4 secure the payment of wages covered by the assessment shall be
5 liable for liquidated damages pursuant to Section 1742.1 of the
6 Labor Code.

7 (v) Clauses (iii) and (iv) shall not apply if all contractors and
8 subcontractors performing work on the project are subject to a
9 project labor agreement that requires the payment of prevailing
10 wages to all construction workers employed in the execution of
11 the project and provides for enforcement of that obligation through
12 an arbitration procedure. For purposes of this clause, “project labor
13 agreement” has the same meaning as set forth in paragraph (1) of
14 subdivision (b) of Section 2500 of the Public Contract Code.

15 (vi) Notwithstanding subdivision (c) of Section 1773.1 of the
16 Labor Code, the requirement that employer payments not reduce
17 the obligation to pay the hourly straight time or overtime wages
18 found to be prevailing shall not apply if otherwise provided in a
19 bona fide collective bargaining agreement covering the worker.
20 The requirement to pay at least the general prevailing rate of per
21 diem wages does not preclude use of an alternative workweek
22 schedule adopted pursuant to Section 511 or 514 of the Labor
23 Code.

24 (2) (A) Certify to the local agency that a skilled and trained
25 workforce will be used to complete the project.

26 (B) If the project proponent has certified that a skilled and
27 trained workforce will be used to complete the project, the
28 following shall apply:

29 (i) The project proponent shall require in all contracts for the
30 performance of work that every contractor and subcontractor at
31 every tier will individually use a skilled and trained workforce to
32 complete the project.

33 (ii) Every contractor and subcontractor shall use a skilled and
34 trained workforce to complete the project.

35 (iii) Except as provided in clause (iv), the project proponent
36 shall provide to the local agency, on a monthly basis while the
37 project or contract is being performed, a report demonstrating
38 compliance with Chapter 2.9 (commencing with Section 2600) of
39 Part 1 of Division 2 of the Public Contract Code. A monthly report
40 provided to the local agency pursuant to this clause shall be a

1 public record under the California Public Records Act (Chapter
2 3.5 (commencing with Section 6250) of Division 7 of Title 1 of
3 the Government Code) and shall be open to public inspection. A
4 project proponent that fails to provide a monthly report
5 demonstrating compliance with Chapter 2.9 (commencing with
6 Section 2600) of Part 1 of Division 2 of the Public Contract Code
7 shall be subject to a civil penalty of ten thousand dollars (\$10,000)
8 per month for each month for which the report has not been
9 provided. A contractor or subcontractor that fails to use a skilled
10 and trained workforce shall be subject to a civil penalty of two
11 hundred dollars (\$200) per day for each worker employed in
12 contravention of the skilled and trained workforce requirement.
13 Penalties may be assessed by the Labor Commissioner within 18
14 months of completion of the project using the procedures for
15 issuance of civil wage and penalty assessments set forth in Section
16 1741 of the Labor Code, and may be reviewed pursuant to the
17 procedures set forth in Section 1742 of the Labor Code. Penalties
18 shall be paid to the State Public Works Enforcement Fund.

19 (iv) Clause (iii) shall not apply if all contractors and
20 subcontractors performing work on the project are subject to a
21 project labor agreement that requires compliance with the skilled
22 and trained workforce requirement and provides for enforcement
23 of that obligation through an arbitration procedure. For purposes
24 of this clause, “project labor agreement” has the same meaning as
25 set forth in paragraph (1) of subdivision (b) of Section 2500 of the
26 Public Contract Code.

27 (d) *Subdivision (c) does not apply to a qualified project if both*
28 *of the following are met:*

29 (1) *The project includes 75 or fewer residential units.*

30 (2) *The project is not a public work for purposes of Chapter 1*
31 *(commencing with Section 1720) of Part 7 of Division 2 of the*
32 *Labor Code.*

33 (e)

34 (e) (1) The draft environmental review document and final
35 environmental review document for a ~~qualified~~ *qualified* project
36 shall include a notice in not less than 12-point type stating the
37 following:

38

39 THIS ENVIRONMENTAL REVIEW DOCUMENT IS
40 SUBJECT TO SECTION 21168.6.9 OF THE PUBLIC

1 RESOURCES CODE, WHICH PROVIDES, AMONG OTHER
2 THINGS, THAT THE LEAD AGENCY NEED NOT CONSIDER
3 CERTAIN COMMENTS FILED AFTER THE CLOSE OF THE
4 PUBLIC COMMENT PERIOD, IF ANY, FOR THE DRAFT
5 ENVIRONMENTAL REVIEW DOCUMENT. ANY JUDICIAL
6 ACTION CHALLENGING THE CERTIFICATION OR
7 ADOPTION OF THE ENVIRONMENTAL REVIEW
8 DOCUMENT OR THE APPROVAL OF THE PROJECT
9 DESCRIBED IN SECTION 21168.6.9 OF THE PUBLIC
10 RESOURCES CODE IS SUBJECT TO THE PROCEDURES
11 SET FORTH IN THAT SECTION. A COPY OF SECTION
12 21168.6.9 OF THE PUBLIC RESOURCES CODE IS INCLUDED
13 IN THE APPENDIX TO THIS ENVIRONMENTAL REVIEW
14 DOCUMENT.

15

16 (2) The draft environmental review document and final
17 environmental review document shall contain, as an appendix, the
18 full text of this section.

19 (3) Within 10 days after the release of the draft environmental
20 review document, if any, the lead agency shall conduct an
21 informational workshop to inform the public of the key analyses
22 and conclusions of that document.

23 (4) Within 10 days before the close of the public comment
24 period, the lead agency shall hold a public hearing to receive
25 testimony on the draft environmental review document. A transcript
26 of the hearing shall be included as an appendix to the final
27 environmental review document.

28 ~~(5) (A) Within five days following the close of the public~~
29 ~~comment period, a commenter on the draft environmental review~~
30 ~~document may submit to the lead agency a written request for~~
31 ~~nonbinding mediation. The lead agency and applicant shall~~
32 ~~participate in nonbinding mediation with all commenters who~~
33 ~~submitted timely comments on the draft environmental review~~
34 ~~document and who requested the mediation. Mediation conducted~~
35 ~~pursuant to this paragraph shall end no later than 35 days after the~~
36 ~~close of the public comment period.~~

37 ~~(B) A request for mediation shall identify all areas of dispute~~
38 ~~raised in the comment submitted by the commenter that are to be~~
39 ~~mediated.~~

1 ~~(C) The lead agency shall select one or more mediators who~~
2 ~~shall be retired judges or recognized experts with at least five~~
3 ~~years' experience in land use and environmental law or science,~~
4 ~~or mediation. The applicant shall bear the costs of mediation.~~

5 ~~(D) A mediation session shall be conducted on each area of~~
6 ~~dispute with the parties requesting mediation on that area of~~
7 ~~dispute.~~

8 ~~(E) The lead agency shall adopt, as a condition of approval, any~~
9 ~~measures agreed upon by the lead agency, the applicant, and any~~
10 ~~commenter who requested mediation. A commenter who agrees~~
11 ~~to a measure pursuant to this subparagraph shall not raise the issue~~
12 ~~addressed by that measure as a basis for an action or proceeding~~
13 ~~challenging the lead agency's decision to certify or to adopt the~~
14 ~~environmental impact report or to grant project approval.~~

15 ~~(6)~~

16 (5) The lead agency ~~need~~ *shall* not consider written comments
17 submitted after the close of the public comment period, unless
18 those comments address any of the following:

19 (A) New issues raised in the response to comments by the lead
20 agency.

21 (B) New information released by the public agency subsequent
22 to the release of the draft environmental review document, such
23 as new information set forth or embodied in a staff report, proposed
24 permit, proposed resolution, ordinance, or similar documents.

25 (C) Changes made to the project after the close of the public
26 comment period.

27 (D) Proposed conditions for approval, mitigation measures, or
28 proposed findings required by Section 21081 or a proposed
29 reporting and monitoring program required by paragraph (1) of
30 subdivision (a) of Section 21081.6, if the lead agency releases
31 those documents subsequent to the release of the draft
32 environmental ~~impact report.~~ *review document.*

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

35 ~~(7)~~

36 (6) The lead agency shall file the notice required by *subdivision*
37 *(a) or (b) of Section 21108* or subdivision (a) or (b) of Section
38 21152 within five days after the last initial project approval.

39 (f) (1) *In addition to other requirements, a party bringing an*
40 *action or proceeding pursuant to this division shall, within 10 days*

1 of the posting of the notice required pursuant to Section 21108 or
2 21152, notify, in writing, the lead agency and the real party in
3 interest of its intent to file the action or proceeding. The court
4 shall not accept for filing an action or proceeding from a party
5 that fails to comply with this paragraph.

6 ~~(e) (1) The lead agency~~

7 (2) The lead agency, upon receipt of the notice required
8 pursuant to paragraph (1), shall prepare and certify the record of
9 the proceedings in accordance with this subdivision and in
10 accordance with Rule 3.2205 of the California Rules of Court. The
11 applicant shall pay the lead agency for all costs of preparing and
12 certifying the record of proceedings.

13 ~~(2)~~

14 (g) (1) No later than three business days following the date of
15 the release of the draft environmental review document, the lead
16 agency shall make available to the public in a readily accessible
17 electronic format the draft environmental review document and
18 all other documents submitted to or relied on by the lead agency
19 in the preparation of the draft environmental review document. A
20 document prepared by the lead agency or submitted by the
21 applicant after the date of the release of the draft environmental
22 impact report that is a part of the record of the proceedings shall
23 be made available to the public in a readily accessible electronic
24 format within five business days after the document is prepared
25 or received by the lead agency. *document.*

26 ~~(3)~~

27 (2) Notwithstanding paragraph ~~(2)~~, (1), documents submitted
28 to or relied on by the lead agency that were not prepared
29 specifically for the project and are copyright protected are not
30 required to be made readily accessible in an electronic format. For
31 those copyright protected documents, the lead agency shall make
32 an index of the documents available in an electronic format no
33 later than the date of the release of the draft environmental review
34 document, or within five business days if the document is received
35 or relied on by the lead agency after the release of the draft
36 environmental review document. The index shall specify the
37 libraries or lead agency offices in which hardcopies of the
38 copyrighted materials are available for public review.

39 ~~(4)~~

1 (3) The lead agency shall encourage written comments on the
2 project to be submitted in a readily accessible electronic format,
3 and shall make any such comments available to the public in a
4 readily accessible electronic format within five days of their receipt.
5 *format.*

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

10 ~~(6)~~

11 (4) The lead agency shall indicate in the record of the
12 proceedings comments received that were not considered by the
13 lead agency pursuant to paragraph ~~(6)~~ (5) of subdivision ~~(d)~~ (e)
14 and need not include the content of the comments as a part of the
15 record.

16 ~~(7)~~

17 (5) Within ~~five~~ 45 days after the filing of the notice required by
18 ~~subdivision (a) or (b) of Section 21108 or subdivision (a) or (b)~~
19 ~~of Section 21152, paragraph (1) of subdivision (f),~~ the lead agency
20 shall certify *and lodge with the court* the record of the proceedings
21 for the approval or determination and shall provide an electronic
22 copy of the record to a party that has submitted a written request
23 for a copy. The lead agency may charge and collect a reasonable
24 fee from a party requesting a copy of the record for the electronic
25 copy, which shall not exceed the reasonable cost of reproducing
26 that copy.

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

30 ~~(9)~~

31 (6) Any dispute over the content of the record of the proceedings
32 shall be resolved by the superior court. Unless the superior court
33 directs otherwise, a party disputing the content of the record shall
34 file a motion to augment the record at the time it files its initial
35 brief.

36 ~~(10)~~

37 (7) The contents of the record of proceedings shall be as set
38 forth in subdivision (e) of Section 21167.6.

39 ~~(f)~~

1 ~~(h)~~ Subdivision ~~(d)~~ (e) and paragraphs ~~(2) and (3)~~ (1) and (2)
2 of subdivision ~~(e)~~ (g) do not apply to a determination that the
3 project is exempt from this division.

4 (i) For qualified projects described in subparagraph (B) of
5 paragraph (4) of subdivision (a), the lead agency is not required
6 to conduct an analysis on vehicle miles traveled or emissions of
7 greenhouse gases in the environmental review document for the
8 project.

9 (j) (1) In granting relief in an action or proceeding brought
10 pursuant to this division, the court shall not stay or enjoin the
11 construction or operation of a qualified project unless the court
12 finds either of the following:

13 (A) The continued construction or operation of the project
14 presents an imminent threat to the public health and safety.

15 (B) The project site contains unforeseen important Native
16 American artifacts or unforeseen important historical,
17 archaeological, or ecological values that would be materially,
18 permanently, and adversely affected by the continued construction
19 or operation of the project unless the court stays or enjoins the
20 construction or operation of the project.

21 (2) If the court finds that subparagraph (A) or (B) of paragraph
22 (1) is satisfied, the court shall only enjoin those specific activities
23 associated with the project that present an imminent threat to
24 public health and safety or that materially, permanently, and
25 adversely affect unforeseen important Native American artifacts
26 or unforeseen important historical, archaeological, or ecological
27 values.

28 SEC. 3. No reimbursement is required by this act pursuant to
29 Section 6 of Article XIII B of the California Constitution because
30 a local agency or school district has the authority to levy service
31 charges, fees, or assessments sufficient to pay for the program or
32 level of service mandated by this act, within the meaning of Section
33 17556 of the Government Code.