

AMENDED IN SENATE APRIL 30, 2019

AMENDED IN SENATE APRIL 11, 2019

AMENDED IN SENATE MARCH 7, 2019

SENATE BILL

No. 25

Introduced by Senators Caballero and Glazer

December 3, 2018

An act to add and repeal Section 21168.6.9 of 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 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~~, 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.

This bill would, until January 1, 2025, establish specified procedures for the administrative and judicial review of the environmental review

and approvals granted for projects that are funded, in whole or in part, by specified public funds or public agencies and that meet certain requirements. 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~~ *require the Judicial Council, by September 1, 2020, to adopt rules of court establishing procedures requiring actions or proceedings seeking judicial review pursuant to CEQA applicable to an action or proceeding brought to attack, review, set aside, void, or annul the certification or adoption of an environmental review document* 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. 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 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:
- 3 (a) The federal Investing in Opportunity Act, enacted as a part
- 4 of the federal Tax Cuts and Jobs Act (Public Law 115-97), created
- 5 tax incentives for investment in designated census tracts called
- 6 qualified opportunity zones to spur growth in low-income
- 7 communities by encouraging reinvestment of capital gains into
- 8 certified opportunity funds.
- 9 (b) The Governor has nominated and the United States
- 10 Department of the Treasury has certified 879 census tracts in
- 11 California as qualified opportunity zones.

1 (c) The Strategic Growth Council funds projects that by their
2 nature are intended to reduce the emissions of greenhouse gases
3 and to reduce vehicle miles traveled.

4 (d) The State of California currently lacks housing supply at all
5 levels of affordability, and lacks the sufficient infrastructure to
6 support sufficient housing growth.

7 (e) It is in the interest of the state to expedite judicial review of
8 these projects, as appropriate, while protecting the environment
9 and the right of the public to review, comment on, and, if necessary,
10 seek judicial review of, the adequacy of the environmental impact
11 report for the project.

12 (f) A streamlined judicial review process for any challenges to
13 environmental review of projects funded by qualified opportunity
14 zone funds or other public funds is needed to provide investment
15 certainty regarding those projects and to ensure efficient use of
16 public resources.

17 SEC. 2. Section 21168.6.9 is added to the Public Resources
18 Code, to read:

19 21168.6.9. (a) For purposes of this section, the following
20 definitions apply:

21 (1) “Environmental review document” means any of the
22 following:

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

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

25 (C) An environmental impact report.

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

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

33 (4) “Qualified project” means a project that meets the
34 requirements of subdivision (b) and is financed, in whole or in
35 part, by any of the following:

36 (A) A qualified opportunity fund.

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

39 (C) An enhanced infrastructure financing district.

40 (D) An affordable housing authority.

- 1 (E) A community revitalization and investment authority.
2 (F) A transit village development district.
3 (G) A housing sustainability district.
4 (H) A Neighborhood Infill Finance and Transit Improvements
5 Act (NIFTI) district.
6 (I) Moneys allocated through the Department of Housing and
7 Community Development.
8 (J) Moneys allocated through the Department of Veterans
9 Affairs.
10 (K) Moneys allocated through the California Housing Finance
11 Agency.
12 (L) Moneys allocated through the California Infrastructure and
13 Economic Development Bank.
14 (M) An entity described in Division 10 (commencing with
15 Section 24501) of, Division 11 (commencing with Section 120000)
16 of, Division 12 (commencing with Section 130000) of, and
17 Division 13.1 (commencing with Section 140280) of, the Public
18 Utilities Code.
19 (5) “Skilled and trained workforce” has the same meaning as
20 provided in Chapter 2.9 (commencing with Section 2600) of Part
21 1 of Division 2 of the Public Contract Code.
22 (b) (1) A project described in subparagraph (A) of paragraph
23 (4) of subdivision (a) shall meet all of the following requirements:
24 (A) The project receives Leadership in Energy and
25 Environmental Design (LEED) gold certification.
26 (B) The project does not result in any net emissions of
27 greenhouse gases.
28 (C) The project has zero net energy emissions.
29 (D) If the project contains residential units, the project shall
30 also meet all of the following:
31 (i) No more than 25 percent of the total square footage of the
32 project shall be for commercial or retail uses.
33 (ii) Of the total number of residential units available, a minimum
34 of 40 percent shall be for lower income families, as defined in
35 Section 50079.5 of the Health and Safety Code. The project
36 proponent shall provide to the appropriate local agency sufficient
37 legal commitments to ensure the continued availability and use of
38 those residential units at that rate for a period of at least 30 years.
39 (2) A project described in subparagraph (B) through (L),
40 inclusive, of paragraph (4) of subdivision (a) shall include

1 residential units that meet the requirements described in paragraph
2 (1).

3 (3) A project described in subparagraph (M) of paragraph (4)
4 of subdivision (a) shall be a planned transit project contained in a
5 sustainable communities strategy that, upon the completion of the
6 project, will result in a reduction of emissions of greenhouse gases
7 and vehicle miles traveled.

8 (4) *The qualified project is not located in a very high fire hazard*
9 *severity zone, as determined by the Department of Forestry and*
10 *Fire Protection pursuant to Section 51178 of the Government*
11 *Code, or within a high or very high fire hazard severity zone as*
12 *indicated on maps adopted by the Department of Forestry and*
13 *Fire Protection pursuant to Section 4202 of this code. This*
14 *paragraph does not apply if the location is either of the following:*

15 (A) *A site excluded from the specific fire hazard severity zones*
16 *by a local agency pursuant to subdivision (b) of Section 51179 of*
17 *the Government Code.*

18 (B) *A site for which fire hazard mitigation measures have been*
19 *adopted pursuant to existing building standards or state fire*
20 *mitigation measures applicable to the development.*

21 (c) ~~Rules 3.2220 to 3.2237, inclusive, of the California Rules~~
22 ~~of Court, as may be amended by~~ *On or before September 1, 2020,*
23 *the Judicial Council, shall adopt rules of court that apply to any*
24 *action or proceeding brought to attack, review, set aside, void, or*
25 *annul the certification or adoption of an environmental review*
26 *document for a qualified project that meets the requirements of*
27 *subdivisions (b) and (d) or the granting of any approval for the*
28 *qualified project, to require the action or proceeding, including*
29 *any potential appeals therefrom, to be resolved, to the extent*
30 *feasible, within 270 days of the filing of the certified record of*
31 *proceedings with the court.* ~~On or before September 1, 2020, the~~
32 ~~Judicial Council shall amend the California Rules of Court, as~~
33 ~~necessary, to implement this subdivision.~~

34 (d) Except as provided in subdivision (e), the proponent of a
35 qualified project shall do both of the following, as applicable:

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

38 (A) The entirety of the project is a public work for purposes of
39 Chapter 1 (commencing with Section 1720) of Part 7 of Division
40 2 of the Labor Code.

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

12 (i) The project proponent shall ensure that the prevailing wage
13 requirement is included in all contracts for the performance of the
14 work.

15 (ii) All contractors and subcontractors shall pay to all
16 construction workers employed in the execution of the work at
17 least the general prevailing rate of per diem wages, except that
18 apprentices registered in programs approved by the Chief of the
19 Division of Apprenticeship Standards may be paid at least the
20 applicable apprentice prevailing rate.

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

25 (iv) Except as provided in clause (v), the obligation of the
26 contractors and subcontractors to pay prevailing wages may be
27 enforced by the Labor Commissioner through the issuance of a
28 civil wage and penalty assessment pursuant to Section 1741 of the
29 Labor Code, which may be reviewed pursuant to Section 1742 of
30 the Labor Code within 18 months after the completion of the
31 project by an underpaid worker through an administrative
32 complaint or civil action, or by a joint labor-management
33 committee through a civil action under Section 1771.2 of the Labor
34 Code. If a civil wage and penalty assessment is issued, the
35 contractor, subcontractor, and surety on a bond or bonds issued to
36 secure the payment of wages covered by the assessment shall be
37 liable for liquidated damages pursuant to Section 1742.1 of the
38 Labor Code.

39 (v) Clauses (iii) and (iv) shall not apply if all contractors and
40 subcontractors performing work on the project are subject to a

1 project labor agreement that requires the payment of prevailing
2 wages to all construction workers employed in the execution of
3 the project and provides for enforcement of that obligation through
4 an arbitration procedure. For purposes of this clause, “project labor
5 agreement” has the same meaning as set forth in paragraph (1) of
6 subdivision (b) of Section 2500 of the Public Contract Code.

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

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

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

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

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

27 (iii) Except as provided in clause (iv), the project proponent
28 shall provide to the local agency, on a monthly basis while the
29 project or contract is being performed, a report demonstrating
30 compliance with Chapter 2.9 (commencing with Section 2600) of
31 Part 1 of Division 2 of the Public Contract Code. A monthly report
32 provided to the local agency pursuant to this clause shall be a
33 public record under the California Public Records Act (Chapter
34 3.5 (commencing with Section 6250) of Division 7 of Title 1 of
35 the Government Code) and shall be open to public inspection. A
36 project proponent that fails to provide a monthly report
37 demonstrating compliance with Chapter 2.9 (commencing with
38 Section 2600) of Part 1 of Division 2 of the Public Contract Code
39 shall be subject to a civil penalty of ten thousand dollars (\$10,000)
40 per month for each month for which the report has not been

1 provided. A contractor or subcontractor that fails to use a skilled
2 and trained workforce shall be subject to a civil penalty of two
3 hundred dollars (\$200) per day for each worker employed in
4 contravention of the skilled and trained workforce requirement.
5 Penalties may be assessed by the Labor Commissioner within 18
6 months of completion of the project using the procedures for
7 issuance of civil wage and penalty assessments set forth in Section
8 1741 of the Labor Code, and may be reviewed pursuant to the
9 procedures set forth in Section 1742 of the Labor Code. Penalties
10 shall be paid to the State Public Works Enforcement Fund.

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

19 (e) Subdivision (d) does not apply to a qualified project if both
20 of the following are met:

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

22 (2) The project is not a public work for purposes of Chapter 1
23 (commencing with Section 1720) of Part 7 of Division 2 of the
24 Labor Code.

25 (f) (1) The draft environmental review document and final
26 environmental review document for a qualified project shall include
27 a notice in not less than 12-point type stating the following:

28

29 THIS ENVIRONMENTAL REVIEW DOCUMENT IS
30 SUBJECT TO SECTION 21168.6.9 OF THE PUBLIC
31 RESOURCES CODE, WHICH PROVIDES, AMONG OTHER
32 THINGS, THAT THE LEAD AGENCY NEED NOT CONSIDER
33 CERTAIN COMMENTS FILED AFTER THE CLOSE OF THE
34 PUBLIC COMMENT PERIOD, IF ANY, FOR THE DRAFT
35 ENVIRONMENTAL REVIEW DOCUMENT. ANY JUDICIAL
36 ACTION CHALLENGING THE CERTIFICATION OR
37 ADOPTION OF THE ENVIRONMENTAL REVIEW
38 DOCUMENT OR THE APPROVAL OF THE PROJECT
39 DESCRIBED IN SECTION 21168.6.9 OF THE PUBLIC
40 RESOURCES CODE IS SUBJECT TO THE PROCEDURES

1 SET FORTH IN THAT SECTION. A COPY OF SECTION
2 21168.6.9 OF THE PUBLIC RESOURCES CODE IS INCLUDED
3 IN THE APPENDIX TO THIS ENVIRONMENTAL REVIEW
4 DOCUMENT.

5

6 (2) The draft environmental review document and final
7 environmental review document shall contain, as an appendix, the
8 full text of this section.

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

13 (4) Within 10 days before the close of the public comment
14 period, the lead agency shall hold a public hearing to receive
15 testimony on the draft environmental review document. A transcript
16 of the hearing shall be included as an appendix to the final
17 environmental review document.

18 (5) (A) Within five days following the close of the public
19 comment period, a commenter on the draft environmental impact
20 report may submit to the lead agency a written request for
21 nonbinding mediation. The lead agency and applicant shall
22 participate in nonbinding mediation with all commenters who
23 submitted timely comments on the draft environmental impact
24 report and who requested the mediation. Mediation conducted
25 pursuant to this paragraph shall end no later than 35 days after the
26 close of the public comment period.

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

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

34 (D) A mediation session shall be conducted on each area of
35 dispute with the parties requesting mediation on that area of
36 dispute.

37 (E) The lead agency shall adopt, as a condition of approval, any
38 measures agreed upon by the lead agency, the applicant, and any
39 commenter who requested mediation. A commenter who agrees
40 to a measure pursuant to this subparagraph shall not raise the issue

1 addressed by that measure as a basis for an action or proceeding
2 challenging the lead agency's decision to certify the environmental
3 impact report or to grant one or more initial project approvals.

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

7 (A) New issues raised in the response to comments by the lead
8 agency.

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

13 (C) Changes made to the project after the close of the public
14 comment period.

15 (D) Proposed conditions for approval, mitigation measures, or
16 proposed findings required by Section 21081 or a proposed
17 reporting and monitoring program required by paragraph (1) of
18 subdivision (a) of Section 21081.6, if the lead agency releases
19 those documents subsequent to the release of the draft
20 environmental review document.

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

23 (7) The lead agency shall file the notice required by subdivision
24 (a) or (b) of Section 21108 or subdivision (a) or (b) of Section
25 21152 within five days after the approval or determination becomes
26 final.

27 (g) (1) In addition to other requirements, a party bringing an
28 action or proceeding pursuant to this division shall, within 10 days
29 of the posting of the notice required pursuant to Section 21108 or
30 21152, notify, in writing, the lead agency and the real party in
31 interest of its intent to file the action or proceeding. ~~The court shall
32 not accept for filing an action or proceeding from a party that fails
33 to comply with this paragraph.~~

34 (2) The lead agency, upon receipt of the notice required pursuant
35 to paragraph (1), shall prepare and certify the record of the
36 proceedings in accordance with this subdivision and in accordance
37 with Rule 3.2205 of the California Rules of Court. The applicant
38 shall pay the lead agency for all costs of preparing and certifying
39 the record of proceedings.

1 (h) (1) No later than three business days following the date of
2 the release of the draft environmental review document, the lead
3 agency shall make available to the public in a readily accessible
4 electronic format the draft environmental review and all other
5 documents submitted to or relied on by the lead agency in the
6 preparation of the draft environmental impact report. A document
7 prepared by the lead agency or submitted by the applicant after
8 the date of the release of the draft environmental impact report
9 that is a part of the record of the proceedings shall be made
10 available to the public in a readily accessible electronic format
11 within five business days after the document is prepared or received
12 by the lead agency.

13 (2) Notwithstanding paragraph (1), documents submitted to or
14 relied on by the lead agency that were not prepared specifically
15 for the project and are copyright protected are not required to be
16 made readily accessible in an electronic format. For those copyright
17 protected documents, the lead agency shall make an index of the
18 documents available in an electronic format no later than the date
19 of the release of the draft environmental review document, or
20 within five business days if the document is received or relied on
21 by the lead agency after the release of the draft environmental
22 impact report. The index must specify the libraries or lead agency
23 offices in which hardcopies of the copyrighted materials are
24 available for public review. The index shall specify the libraries
25 or lead agency offices in which hardcopies of the copyrighted
26 materials are available for public review.

27 (3) The lead agency shall encourage written comments on the
28 project to be submitted in a readily accessible electronic format,
29 and shall make any such comment available to the public in a
30 readily accessible electronic format within five days of its receipt.

31 (4) Within seven business days after the receipt of any comment
32 that is not in an electronic format, the lead agency shall convert
33 that comment into a readily accessible electronic format and make
34 it available to the public in that format.

35 (5) The lead agency shall indicate in the record of the
36 proceedings comments received that were not considered by the
37 lead agency pursuant to paragraph (6) of subdivision (f) and need
38 not include the content of the comments as a part of the record.

39 (6) Within 45 days after the filing of the notice required by
40 paragraph (1) of subdivision (g), the lead agency shall certify and

1 lodge with the court the record of the proceedings for the approval
2 or determination and shall provide an electronic copy of the record
3 to a party that has submitted a written request for a copy. The lead
4 agency may charge and collect a reasonable fee from a party
5 requesting a copy of the record for the electronic copy, which shall
6 not exceed the reasonable cost of reproducing that copy.

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

12 (8) The contents of the record of proceedings shall be as set
13 forth in subdivision (e) of Section 21167.6.

14 (i) Subdivision (f) and paragraphs (1) and (2) of subdivision (h)
15 do not apply to a determination that the project is exempt from
16 this division.

17 (j) If a lead agency determines that a project is exempt from
18 this division and is subject to this section, the lead agency shall
19 file with the Office of Planning and Research a notice of exemption
20 in accordance with subdivision (b) of Section 21108 or subdivision
21 (b) of Section 21152.

22 (k) This section shall remain in effect only until January 1, 2025,
23 and as of that date is repealed.

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