DEFERRED BY BOARD AT MEETING OF 5-10-94

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MWD
METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA

April 21, 1994

To: Board of Directors (Committee on Legislation--Action)

From: General Manager

Subject: Description of Impact of Assembly Bill 3250 Upon Metropolitan for Possible Board Position Regarding the California Environmental Quality Act (Haynes--Temecula)

Report

The California Environmental Quality Act (CEQA) currently (1) requires a lead agency to prepare an environmental impact report (EIR) for a project if the initial study produces substantial evidence from which a fair argument can be made that the project might cause a significant effect on the environment; (2) permits a petitioner alleging noncompliance with CEQA to bring an lawsuit through a complaint for injunctive relief as well as through a mandamus action, and in some instances conduct discovery; (3) requires the public agency to prepare and certify the administrative record within 60 days after the petitioner requests it, but allows the court to liberally grant an unlimited number of extensions due to the large size of the record; and (4) requires the petitioner within 90 days after filing the lawsuit to request the court for a hearing on the merits.

AB 3250, supported by the California Chamber of Commerce, would (1) provide that a lead agency determination that an EIR is not required because the project will not have a significant effect on the environment will be upheld by a reviewing court if it is based on any substantial evidence, even if there is credible and substantial contrary evidence in the record; (2) preclude bringing a CEQA lawsuit other than through a mandamus action, and prohibit any discovery; (3) require the petitioner to prepare and certify the administrative record within 35 days after the petitioner requests it, and allow the court to extend the time not to exceed the date of the hearing on the merits; and (4) require the hearing on the merits to be held within 90 days after the lawsuit is filed, except that the court may extend the hearing date not to exceed a total of 180 days from the date the lawsuit is filed.

The prohibition of discovery and limiting CEQA lawsuits to mandamus actions is beneficial to public agencies and has considerable merit. However, AB 3250 reverses the standard of judicial review of an agency determination not to prepare an EIR. Such a reversed standard for the threshold determination on whether to prepare an EIR could effectively gut CEQA since it strongly favors upholding an agency's decision not to prepare an EIR, and encourages public agencies to always prepare negative declarations, even when there exists a large body of credible evidence of significant adverse environmental impacts. On July, 1993 your Board voted to support SB 919 (Dills) only if it was amended to delete language which was similar to, and had the same effect as the judicial review standard in AB 3250. SB 919 was subsequently amended to delete that language. While speeding up the hearing of CEQA lawsuits is good in concept, AB 3250 takes discretion away from the court in cases where more time is needed by an agency for preparation of the administrative record.

Board Committee Assignments

This letter is referred to the Committee on Legislation for action because of its jurisdiction to review and make recommendations based upon presentations of the General Manager regarding proposals for State legislation, or amendments thereto, pursuant to Administrative Code Section 2491, subdivision (a).

Recommendation

COMMITTEE ON LEGISLATION FOR ACTION.

It is recommended that the Board support AB 3250 if it is amended to exclude the provisions involving the standard of review for the determination of whether to prepare an EIR, and the provisions limiting the times for preparation of the administrative record and hearing the merits of a CEQA lawsuit.

John R. Wodraska

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ASSEMBLY BILL No. 3250

Introduced by Assembly Member Haynes

February 24, 1994

An act to amend Sections 21167.3, 21167.4, 21167.6, and 21168 of, to add Section 21168.10 to, and to repeal Section 21168.7 of, the Public Resources Code, relating to environmental quality.

LEGISLATIVE COUNSEL'S DIGEST

AB 3250, as introduced, Haynes. Environmental quality: noncompliance: actions or proceedings.

Existing law, the California Environmental Quality Act, requires a public lead agency, as defined, to prepare an environmental impact report on a project which it proposes to carry out or approve that may have a significant effect on the environment, as defined, unless the project is exempt from the act. The act prescribes procedures for bringing an action or proceeding alleging noncompliance with the act.

This bill would revise those procedures to delete provisions relating to the issuance of an injunction, to revise or prescribe time limits for various procedural matters, to specify when prescribed mandamus procedures apply, to revise provisions relating to a determination by the court based on the evidence, and to prescribe the circumstances when a court may award attorney's fees, as specified.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. Section 21167.3 of the Public Resources Code is amended to read:

21167.3. (a) If an action or proceeding alleging that an environmental impact report or a negative declaration does not comply with ~~the provisions of~~ this division is commenced during the period described in subdivision (b) or (c) of Section 21167, and if ~~an injunction or~~ *a* stay is issued *pursuant to Section 1094.5 of the Code of Civil Procedure* prohibiting the project from being carried out or approved pending final determination of the issue of ~~such~~ compliance, responsible agencies shall assume that the environmental impact report or the negative declaration for the project does comply with ~~the provisions of~~ this division and shall issue a conditional approval or disapproval of ~~such~~ *the* project ~~according to~~ *in accordance with* the timetable for agency action *prescribed* in Article 5 (commencing with Section 65950) of Chapter 4.5 of Division 1 of Title 7 of the Government Code. A conditional approval shall constitute permission to proceed with a project when and only when ~~such~~ *the* action or proceeding results in a final determination that the environmental impact report or negative declaration does comply with ~~the provisions of~~ this division.

(b) ~~In the event that~~ *If* an action or proceeding is commenced as described in subdivision (a) but no ~~injunction or similar relief~~ *stay* is sought and granted, responsible agencies shall assume that the environmental impact report or negative declaration for the project does comply with ~~the provisions of~~ this division and shall approve or disapprove the project ~~according to~~ *in accordance with* the timetable for agency action *prescribed* in Article 5 (commencing with Section 65950) of Chapter 4.5 of Division 1 of Title 7 of the Government Code. ~~Such~~ *The* approval shall constitute permission to proceed with the project at the applicant's risk pending final determination of ~~such~~ *the* action or proceeding.

SEC. 2. Section 21167.4 of the Public Resources Code

is amended to read:

21167.4. (a) In any action or proceeding alleging noncompliance with this division, the petitioner shall, *within 10 days from the date of the filing of the petition,* request *that* a hearing *be held* within 90 days ~~of~~ *from the date of the* filing *of* the petition or *the action or proceeding* shall be subject to dismissal on the court's own motion or on the motion of any party interested in the action or proceeding.

(b) The petitioner shall serve a notice of the request for a hearing on all parties within 14 calendar days ~~of~~ *from the date of the* filing *of* the request for a hearing.

(c) Within 10 days from the date of the filing of the request for a hearing, the court shall issue an alternative writ specifying the following deadlines:

(1) The date for filing the record of proceedings relative to the subject of the action, which shall be not later than 45 days from the date of the filing of the action or proceeding.

(2) The date for the respondent public agency to file its answer and opposition to the petition, which shall be not later than 30 days from the date of the filing of the record of proceedings.

(3) The date for the petitioner to file its reply to the answer and opposition, which shall be not later than 15 days from the date upon which the answer and opposition is filed.

(4) The date for the hearing on the petition, which shall be not later than 90 days from the date of the filing of the action or proceeding.

(d) The court may grant extensions of the deadlines specified in subdivision (c) upon the agreement of the parties or upon good cause shown, except that the date that is set for the hearing of the petition may not be more than 180 days from the date of the filing of the action or proceeding. A failure to commence the hearing at the required time shall result in the dismissal of the action or proceeding on the court's own motion, or on the motion of any party interested in the action or proceeding.

SEC. 3. Section 21167.6 of the Public Resources Code

is amended to read:

21167.6. Notwithstanding any other provision of law, in all actions or proceedings brought pursuant to Section 21167, except those involving the Public Utilities Commission, all of the following *procedures* shall apply:

(a) At the time *that* the action is filed, the petitioner shall file a request that the respondent public agency prepare the record of proceedings relating to the subject of the action or proceeding. The request, together with the petition, shall be served upon the public agency not later than 10 business days ~~after~~ *from the date upon which* the action *or proceeding* is filed.

(b) (1) The public agency shall prepare and certify the record of proceedings not later than ~~60~~ *35* days ~~after~~ *from the date upon which* the request specified in subdivision (a) is served upon the public agency. The parties shall pay any costs or fees imposed for the preparation of the record of proceedings in conformance with any law or rule of court.

(2) The petitioner may elect to prepare the record of proceedings or the parties may agree to an alternative method of preparation of the record of proceedings, subject to certification of its accuracy by the public agency, within the time limit specified in this subdivision.

(c) The time limit prescribed by subdivision (b) may be extended only upon stipulation of all parties who have been properly served in the action or proceeding or upon order of the court. Extensions shall be liberally granted by the court when the size of the record of proceedings renders infeasible compliance with that time limit. ~~There is no limit on the number of extensions which may be granted by the court, but no single extension shall exceed 60 days unless the court determines that a longer extension is in the public interest.~~

(d) If the public agency fails to prepare and certify the record within the time limit prescribed in subdivision (b), or any continuances of that time limit, the petitioner may move for sanctions, and the court may, upon that motion, grant appropriate sanctions.

(e) The clerk of the superior court shall prepare and certify the clerk's transcript on appeal not later than 60 days ~~after~~ *from the date upon which* the notice designating the papers or records to be included in the clerk's transcript is filed with the superior court, if the party or parties pay any costs or fees for preparation of the clerk's transcript imposed in conformance with any law or rules of court. Nothing in this subdivision precludes an election to proceed pursuant to Rule 5.1 of the California Rules of Court.

(f) Extensions of the period for the filing of any brief on appeal may be allowed only by stipulation of the parties or by order of the court for good cause shown. Extensions shall be limited to one 30-day extension for the preparation of an opening brief, and one 30-day extension for the preparation of a responding brief, except that the court may grant a longer extension or additional extensions if it determines that there is a substantial likelihood of settlement that would avoid the necessity of completing the appeal.

(g) At the completion of the filing of briefs, the appellant shall notify the court of completion of the filing of briefs, whereupon the clerk of the reviewing court shall set the appeal for hearing on the first available calendar date.

SEC. 4. Section 21168 of the Public Resources Code is amended to read:

21168. *(a) (1)* Any action or proceeding to attack, review, set aside, void, or annul a determination, finding, or decision of a public agency, made as a result of a proceeding in which by law a hearing is required to be given, evidence is required to be taken, and discretion in the determination of facts is vested in a public agency, on the grounds of noncompliance with ~~the provisions of~~ this division shall be in accordance with ~~the provisions of~~ Section 1094.5 of the Code of Civil Procedure *(administrative mandamus)*.

(2) Any other action or proceeding brought pursuant to Section 21167 shall be in accordance with Section 1084 of the Code of Civil Procedure (ordinary mandamus).

(3) No other action or proceeding or relief shall be

available for a violation of this division. It is the intent of the Legislature in enacting the 1994 amendments to this subdivision and Section 21167.3 to overrule any decision of any court authorizing any other action or proceeding or granting any other relief for a violation of this division.

(b) No discovery shall be available in any action or proceeding brought pursuant to Section 21167.

(c) In any ~~such~~ action *or proceeding, as specified in subdivision (a)*, the court shall not exercise its independent judgment on the evidence, but shall only determine whether the ~~act~~ *determination, finding,* or decision *of the public agency* is supported by substantial evidence in the light of the whole record. *The court shall uphold the public agency's determination, finding, or decision if, upon review of the record as a whole, the decision is supported by substantial evidence, even if there is credible and substantial conflicting evidence.*

SEC. 5. Section 21168.7 of the Public Resources Code is repealed.

~~21168.7. Sections 21168 and 21168.5 are declaratory of existing law with respect to the judicial review of determinations or decisions of public agencies made pursuant to this division.~~

SEC. 6. Section 21168.10 is added to the Public Resources Code, to read:

21168.10. The court, in an action or proceeding brought pursuant to Section 21167, may only award attorney's fees in the following cases:

(a) To a petitioner, if the court determines that the action or proceeding resulted in substantial changes to the environmental document challenged in the petition, or resulted in the preparation of an environmental impact report.

(b) To the respondent public agency, if the court determines that no changes, or insubstantial changes, were required in the environmental document as a result of the action or proceeding and that the action or proceeding did not result in the preparation of an environmental impact report.

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