

**MWD**

METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA

To: Board of Directors (Executive Committee--Action)
 (Special Committee on Legislation--Action)
From: General Manager
Subject: Legislative Reform of the California Environmental Quality Act

Report

There is substantial dissatisfaction with implementation of the California Environmental Quality Act (CEQA) as successful completion of the process has become increasingly complex and uncertain. Numerous bills have been introduced to the Legislature this year providing reform of CEQA. At this time, two bills stand out in their importance: A.B. 1888 by Assembly Member Sher and S.B. 919 by Senator Dills. The key provisions of each bill are summarized below and are compared to the provisions of existing law in the attached table.

A.B. 1888 (Sher; Amended June 1, 1993). A.B. 1888 proposes comprehensive reforms to CEQA while preserving the substance of the existing law. These reforms could benefit Metropolitan by streamlining and clarifying requirements for document preparation and litigation. The key provisions of A.B. 1888 are as follows:

Streamlines documentation requirements:

Provides for Master EIR's for activities to be carried out on a phased basis. Subsequent projects would:

Need no additional CEQA documentation if found to have no additional significant impacts and not require any new mitigation measures beyond those addressed in the Master EIR;

Require a Mitigated Negative Declaration; or

Require a Focused EIR which addresses only those impacts specific to the subsequent project and not addressed in the Master EIR;

Adds technological and legal factors as tests for feasibility of alternatives and mitigation;

Requires county clerk to post CEQA notices within 24 hours of receipt;

Clarifies that cumulative analysis in a completed draft EIR need not be revised to incorporate new information which was not previously available and could not be reasonably anticipated;

Provides funding for OPR to evaluate the feasibility of establishing thresholds for determining environmental effects; and

Streamlines litigation procedures by requiring an appellate court to commence hearings on appeal within one year of the date of filing of the appeal.

S.B. 919 (Dills; Amended June 22, 1993). The purpose of the CEQA reform proposed by S.B. 919 is to assist with economic growth in California. The bill proposes that CEQA requirements would not apply to certain modifications, modernizations, and expansions of existing commercial and industrial facilities. It also directs the courts to utilize a "substantial evidence" standard in reviewing all CEQA decisions. These provisions may be beneficial for Metropolitan in that the proposed exemptions may apply to its facilities, and the focusing of the courts' review may also be of help. The key provisions of S.B. 919 are as follows:

Provides that lead agency determination that a 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 in the record.

Provides exemptions from CEQA for projects involving certain changes to existing commercial or industrial facilities:

For modernization or expansion of facilities that results in a maximum net increase in production capacity of 20 percent if there is no net increase in any regulated emission or discharge;

For modification or maintenance of a facility associated with compliance with environmental laws or regulations;

Any modification of a facility that results in a net reduction of emissions to the environment; or

Renewal or reissuance of a permit or lease for a facility which does not result in any new significant effect on the environment.

Provides that modernization or expansion of existing commercial or industrial facilities may be approved if the public agency makes appropriate findings regarding avoidance and minimization of impacts and adoption of mitigation, or makes a finding that specific economic, social, employment, or other benefits outweigh the significant adverse effects on the environment associated with the project; and

Directs courts to follow existing statutory law as to judicial review of CEQA decisions by requiring application of "substantial evidence" as opposed to a "fair argument" standard. However, certain legislative intent language in Section 1 of the bill drastically changes the existing statutory standard for judicial review of the threshold determination of whether or not to prepare an EIR, to the extent that almost any public agency determination not to prepare an EIR would be upheld on judicial review. This change is so fundamental that it appears to greatly diminish the bill's chances of being enacted into law. Because of the merits of the bill's other provisions, this language should be removed from Section 1. This will be accomplished by the deletion of all language contained in the last sentence of Section 1 (h) and in Section 1 (i) after "Public Resources Code" in line 37.

Board Committee Assignments

This letter is referred for action to:

The Executive Committee because of its jurisdiction over legislation sponsored by the District or in any way affecting the District, pursuant to Administrative Code Section 2417(a); and

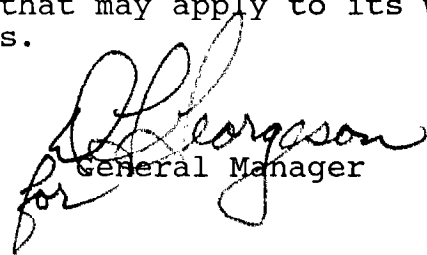
The Special Committee on Legislation because of its responsibility to review staff's recommendations for positions on legislation, pursuant to Administrative Code Section 2581(b).

Recommendations

EXECUTIVE COMMITTEE AND SPECIAL COMMITTEE ON LEGISLATION FOR ACTION.

1. It is recommended that your Board support A.B. 1888 by Assembly Member Sher with minor clarifying amendments. This legislation maintains the substance of the existing Act, but streamlines documentation and litigation procedures. Metropolitan would benefit from this legislation in that its capital improvement program and operations and maintenance activities must comply with CEQA.

2. It is recommended that your Board support S.B. 919 sponsored by Senator Dills if it is amended to exclude certain statements of legislative intent involving the standard of review for the determination of whether to prepare an EIR. This legislation could benefit Metropolitan in that it provides for exemptions for industrial facilities that may apply to its water filtration plants and other facilities.


General Manager

KMK/dgs

s:Board/21

Attachment

**REFORM OF THE CALIFORNIA ENVIRONMENTAL QUALITY ACT
COMPARISON OF LEGISLATION ON KEY ISSUES**

Subject	Existing Law	AB 1888 (Sher)	SB 919 (Dills)
Phased Projects	Provides for Tiered EIR's. EIR's for later projects which are consistent with a previously approved policy, plan, program, or ordinance are to concentrate upon environmental effects which may be mitigated or avoided in connection with the decision on the later project(s).	Provides for Master EIR's and clear language regarding documentation requirements for subsequent projects: - No additional documentation; - Mitigated Negative Declaration; or - Focused EIR.	Relies on existing law.
Litigation	Requires courts to give preference to a CEQA action or proceeding over all other civil actions therein. Requires that no action or proceeding may be brought unless the alleged grounds for noncompliance were presented to the public agency orally or in writing by any person.	In addition to existing law: Requires appellate court to commence hearings on appeal within one year of date of filing of the appeal.	In addition to existing law: Directs courts to follow existing statutory law by requiring application of "substantial evidence" as opposed to "fair argument" standard.
Determination to prepare an EIR	The lead agency shall determine whether a project may have a significant effect on the environment based on substantial evidence in the record. The existence of public controversy over the environmental effects of a project shall not require the preparation of an EIR if there is no substantial evidence before the agency that the project may have a significant effect on the environment.	Same as existing law.	Determination of whether a project may have a significant effect on the environment will be upheld if it is supported by substantial evidence in light of the whole record.
Exemptions from CEQA	Provides for 16 statutory exemptions and 29 classes of categorical exemptions. Categorical exemptions are only applicable where there are no special circumstances (e.g. presence of endangered species) that would result in significant environmental impacts. Key categorical exemptions: Class 1 provides for operation, repair, maintenance, or minor alteration of existing structures, facilities, equipment, or topographic features <u>involving negligible or no expansion of use</u> . Class 2 provides for replacement or reconstruction of existing facilities on same site with substantially same purpose and capacity. Class 3 consists of construction and location of limited numbers of new small facilities or structures; installation of small new equipment and facilities in small structures; and conversion of existing small structures from one use to another. Class 11 consists of construction or placement of minor structures accessory to existing facilities.	Same as existing law.	In addition to exemptions provided by existing law, the following exemptions are added. These exemptions are subject to condition's outlined in existing law. Bill exempts certain changes to existing commercial or industrial facilities: <u>Modernization or expansion of up to 20% net increase</u> in production capacity if there is no net increase in any regulated emission or discharge; Modification or maintenance associated with compliance with environmental laws and regulations; Modification that results in net reduction or emissions; of Renewal or reissuance of permit or lease which does not result in any new significant impacts.

**REFORM OF THE CALIFORNIA ENVIRONMENTAL QUALITY ACT
COMPARISON OF LEGISLATION ON KEY ISSUES**

Subject	Existing Law	AB 1888 (Sher)	SB 919 (Dills)
Approval of Projects/Overriding Considerations	Section 21002 states "that public agencies should not approve projects as proposed if there are feasible alternatives or feasible mitigation measures available which would substantially lessen the significant environmental effects of such project ... (I)n the event specific economic, social, or other conditions make infeasible such project alternatives or mitigation measures, individual projects may be approved in spite of one or more significant effects thereof. "	Adds technological and legal factors as tests for feasibility of alternatives and mitigation.	Provides that modernization or expansion of existing commercial or industrial facilities may be approved if public agency makes appropriate findings regarding avoidance and minimization of impacts and adoption of mitigation, or <u>makes a findings that specific economic, social, employment, or other benefits outweigh the significant adverse effects of the project on the environment.</u>
Initiation of Statute of Limitations for Suit	Requires county clerk to post notices for 30 days.	Requires county clerk to post notices within 24 hours of receipt.	Same as existing law.
Evaluation of Cumulative Impacts	Requires EIR to consider possible cumulative impacts of a project in light of past, current, and probable future projects.	Clarifies that cumulative impact analysis in a completed draft EIR need not be revised to incorporate new information which was not previously available and could not be reasonably anticipated.	Relies on existing law.