

AMENDED IN ASSEMBLY APRIL 10, 2018

AMENDED IN ASSEMBLY MARCH 15, 2018

CALIFORNIA LEGISLATURE—2017–18 REGULAR SESSION

## **ASSEMBLY BILL**

**No. 2447**

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**Introduced by Assembly Member Reyes**

February 14, 2018

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An act to amend Section 21092 of, and to add Chapter 2.8 (commencing with Section 21099.50) to Division 13 of, the Public Resources Code, relating to land use.

### LEGISLATIVE COUNSEL'S DIGEST

AB 2447, as amended, Reyes. California Environmental Quality Act: land use: environmental justice.

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 (EIR) 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 prohibits a lead agency from approving or carrying out a project for which a certified EIR identifies one or more significant effects on the environmental unless the lead agency makes certain findings.

This bill would require the Office of Environmental Health Hazard Assessment, by June 30, 2019, to publish a list of subject land uses, as specified, and a map that identifies disadvantaged communities and areas within 1/2 mile radius of the disadvantaged communities. The bill would require a lead agency to provide certain notices required by CEQA to owners and occupants of property located within one-half mile of any parcel or parcels, and to any schools located within one mile of any parcel or parcels, on which is located a project involving a subject land use. *The bill would require the lead agency to call at least one scoping meeting for those projects, as provided.* The bill would additionally require a lead agency, ~~before approving or carrying out certifying an EIR or adopting a negative declaration or mitigated negative declaration~~ for a project involving a subject land use, to make a finding that the approval of the project does not constitute intentional discrimination, or result in a discriminatory effect, on protected classes of person, as provided. The bill would apply these requirements to projects for which environmental review commences on or after July 1, 2019. Because the bill would impose additional duties on a lead agency, this bill would impose a state-mandated local program.

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 21092 of the Public Resources Code is
- 2 amended to read:
- 3 21092. (a) A lead agency that is preparing an environmental
- 4 impact report or a negative declaration or making a determination
- 5 pursuant to subdivision (c) of Section 21157.1 shall provide public
- 6 notice of that fact within a reasonable period of time prior to
- 7 certification of the environmental impact report, adoption of the
- 8 negative declaration, or making the determination pursuant to
- 9 subdivision (c) of Section 21157.1.
- 10 (b) (1) The notice shall specify the period during which
- 11 comments will be received on the draft environmental impact

1 report or negative declaration, and shall include the date, time, and  
2 place of any public meetings or hearings on the proposed project,  
3 a brief description of the proposed project and its location, the  
4 significant effects on the environment, if any, anticipated as a result  
5 of the project, the address where copies of the draft environmental  
6 impact report or negative declaration, and all documents referenced  
7 in the draft environmental impact report or negative declaration,  
8 are available for review, and a description of how the draft  
9 environmental impact report or negative declaration can be  
10 provided in an electronic format.

11 (2) This section shall not be construed in any manner that results  
12 in the invalidation of an action because of the alleged inadequacy  
13 of the notice content if there has been substantial compliance with  
14 the notice content requirements of this section.

15 (3) The notice required by this section shall be given to the last  
16 known name and address of all organizations and individuals who  
17 have previously requested notice, and shall also be given by at  
18 least one of the following procedures:

19 (A) Publication, no fewer times than required by Section 6061  
20 of the Government Code, by the public agency in a newspaper of  
21 general circulation in the area affected by the proposed project. If  
22 more than one area will be affected, the notice shall be published  
23 in the newspaper of largest circulation from among the newspapers  
24 of general circulation in those areas.

25 (B) Posting of notice by the lead agency ~~on-and-off-site~~ *onsite*  
26 *and offsite* in the area where the project is to be located.

27 (C) Direct mailing to the owners and occupants of contiguous  
28 property shown on the latest equalized assessment roll.

29 (c) For a project involving the burning of municipal wastes,  
30 hazardous waste, or refuse-derived fuel, including, but not limited  
31 to, tires, meeting the qualifications of subdivision (d), notice shall  
32 be given to all organizations and individuals who have previously  
33 requested notice and shall also be given by at least the procedures  
34 specified in subparagraphs (A), (B), and (C) of paragraph (3) of  
35 subdivision (b). In addition, notification shall be given by direct  
36 mailing to the owners and occupants of property within one-fourth  
37 of a mile of any parcel or parcels on which is located a project  
38 subject to this subdivision.

39 (d) The notice requirements of subdivision (c) apply to both of  
40 the following:

1 (1) The construction of a new facility.

2 (2) The expansion of an existing facility that burns hazardous  
3 waste which would increase its permitted capacity by more than  
4 10 percent. For purposes of this paragraph, the amount of expansion  
5 of an existing facility shall be calculated by comparing the  
6 proposed facility capacity with whichever of the following is  
7 applicable:

8 (A) The facility capacity approved in the facility's hazardous  
9 waste facilities permit pursuant to Section 25200 of the Health and  
10 Safety Code or its grant of interim status pursuant to Section  
11 25200.5 of the Health and Safety Code, or the facility capacity  
12 authorized in any state or local agency permit allowing the  
13 construction or operation of a facility for the burning of hazardous  
14 waste, granted before January 1, 1990.

15 (B) The facility capacity authorized in the facility's original  
16 hazardous waste facilities permit, grant of interim status, or any  
17 state or local agency permit allowing the construction or operation  
18 of a facility for the burning of hazardous waste, granted on or after  
19 January 1, 1990.

20 (e) (1) ~~For a project involving a subject land use, as identified~~  
21 ~~pursuant to subdivision (b) of Section 21099.51, that is located~~  
22 ~~within one-half mile of a disadvantaged community, as identified~~  
23 ~~pursuant to Section 39711 of the Health and Safety Code, that is~~  
24 ~~subject to Chapter 2.8 (commencing with Section 21099.50), the~~  
25 ~~lead agency shall give notice shall be given~~ to all organizations  
26 and individuals who have previously requested notice and shall  
27 ~~also be given~~ give notice by at least the procedures specified in  
28 subparagraphs (A), (B), and (C) of paragraph (3) of subdivision  
29 (b). In addition, ~~notification shall be given~~ the lead agency shall  
30 give notice by direct mailing to the owners and occupants of  
31 property within one-half of a mile of any parcel or parcels on which  
32 is located a project subject to this subdivision and to all schools  
33 located within one mile of any parcel or parcels on which is located  
34 a project subject to this subdivision. In addition to English, the  
35 notice provided pursuant to this subdivision shall be provided in  
36 all threshold languages, as defined in Section 1810.410 of Title 9  
37 of the California Code of Regulations.

38 (2) The subdivision applies to a project for which an  
39 environmental review is commenced on or after July 1, 2019.

(f) The notice requirements specified in subdivision (b) or (c) shall not preclude a public agency from providing additional notice by other means if the agency so desires, or from providing the public notice required by this section at the same time and in the same manner as public notice otherwise required by law for the project.

SEC. 2. Chapter 2.8 (commencing with Section 21099.50) is added to Division 13 of the Public Resources Code, to read:

CHAPTER 2.8. SPECIAL REQUIREMENTS FOR SUBJECT LAND  
USES

21099.50. For purposes of this chapter, the following ~~definition~~ *applies: definitions apply:*

(a) “Disadvantaged community” means a community identified as a disadvantaged community pursuant to Section 39711 of the Health and Safety Code.

(b) “Project” means a project that ~~involves a subject land use located within one-half mile of a disadvantaged community.~~ *includes any of the following:*

(1) *The siting, expansion, or intensification of a subject land use.*

(2) *The construction or expansion of a structure that is intended or designed for use as or to facilitate a subject land use.*

(3) *The adoption of municipal regulations, zoning, or land use designations that authorize a subject land use.*

(c) “Subject land use” means a land use identified ~~by the Office of Environmental Health Hazard Assessment pursuant to Section 21099.51.~~ *in the list published pursuant to Section 21099.51 and that is located within one-half mile of a disadvantaged community.*

(d) “Threshold language” has the same definition as set forth in Section 1810.410 of Title 9 of the California Code of Regulations.

21099.51. No later than June 30, 2019, the Office of Environmental Health Hazard Assessment shall do both of the following:

(a) (1) Publish a map that identifies disadvantaged communities and areas within one-half mile radius surrounding the disadvantaged communities.

(2) The Office of Environmental Health Hazard Assessment shall update the map concurrently with any revisions of the identification of disadvantaged communities made pursuant to Section 39711 of the Health and Safety Code.

(b) (1) Publish a list of subject land uses that have a propensity to generate or result in public exposure to contain or produce onsite and offsite *criteria air pollutants* or toxic air contaminants, odors, water contamination, hazardous materials, or other environmental pollution or impacts that can lead to are associated with negative public health effects or adversely affect the quality of life or the use and enjoyment of housing in the vicinity of the land use.

(2) In determining the land use to be listed, the Office of Environmental Health Hazard Assessment shall not consider impacts of the land use on aesthetics, biological resources, agriculture and forestry resources, or mineral resources.

21099.52. (a) In addition to any notices required pursuant to this division, within 30 days of the receipt of an application for a project and prior to making any determination regarding the level of environmental review for the project or the eligibility of the project for an exemption, an addendum to a certified environmental impact report or adopted negative declaration, a supplemental environmental impact report, or a subsequent environmental impact report, the lead agency shall do both of the following:

(1) Provide a notice of application to the last known name and address of all organizations and individuals who have previously requested notice.

(2) Provide a notice of application, by direct mail, to the owners and occupants of property located within one-half mile of any parcel or parcels, and to any schools located within one mile of any parcel or parcels, on which is located a project subject to this section.

(b) The notice shall include all of the following:

(1) A brief description of the project and its location.

(2) A description of any opportunities to provide oral or written comments on the project.

(3) A description of how oral and written comments on the project may be provided to the lead agency.

(4) A description of how additional information or materials relating to the project may be obtained.

1 (c) In addition to English, the notice shall be provided in all  
2 threshold languages.

3 (d) This section applies to a project for which the environmental  
4 review commences on or after July 1, 2019.

5 21099.53. (a) Notwithstanding Section 21080.4, 21104, or  
6 21153, a lead agency shall call at least one scoping meeting for a  
7 project.

8 (b) (1) The lead agency shall mail or deliver notice of the  
9 scoping meeting to all of the following:

10 (A) Entities specified in paragraphs (1) to (5), inclusive, of  
11 subdivision (b) of Section 21083.9.

12 (B) All owners and occupants of properties located within  
13 one-half mile of the project site.

14 (C) All schools located within one mile of the project site.

15 (2) The notice shall include all of the following:

16 (A) A brief description of the proposed project and its location.

17 (B) The date, time, and location of the scoping meeting for the  
18 project.

19 (C) A brief description of the purpose of the scoping meeting.

20 (D) Any other opportunities for the public to provide written  
21 and oral comments on the project.

22 (3) In addition to English, the notice provided pursuant to  
23 subparagraph (B) or (C) of paragraph (1) shall be provided in all  
24 threshold languages.

25 (c) (1) (A) The lead agency shall conduct a scoping meeting  
26 at a location within one mile of the project site.

27 (B) If, after making a good faith effort, the lead agency is unable  
28 to secure a location for the scoping meeting within one mile of the  
29 project site, the lead agency may hold the meeting at another  
30 location that meets both of the following requirements:

31 (i) The meeting location is readily accessible to residents of  
32 disadvantaged communities located in or next to the project site.

33 (ii) The meeting location is located within one-half miles of a  
34 transit stop.

35 (2) If the scoping meeting is held on a weekday, the scoping  
36 meeting shall be held between the hours of 5 p.m. and 8 p.m.

37 (d) At the scoping meeting, the lead agency shall do both of the  
38 following:

39 (1) Provide a description of the project and any information  
40 known about the project's potential environmental impacts.

1 (2) Take public comments regarding potential project impacts,  
2 project alternatives, and mitigation measures that would avoid or  
3 reduce any project impacts.

4 (e) *The lead agency shall make an audio or audio-visual*  
5 *recording of the scoping meeting.* Oral and written comments  
6 obtained at the scoping meeting conducted pursuant to this section  
7 shall be deemed a part of the record of ~~proceedings, shall be~~  
8 ~~included in any initial study or environmental review documents~~  
9 ~~prepared pursuant to this division, proceedings~~ and shall be  
10 considered by the lead agency prior to the approval of the project.

11 (f) This section applies to a project for which the environmental  
12 review commences on or after July 1, 2019.

13 21099.54. (a) In addition to the requirements of Section 21081,  
14 ~~a public lead agency shall not approve or carry out a project for~~  
15 ~~which~~ *certify* an environmental impact report ~~has been certified~~  
16 ~~that identifies one or more environmental impacts that would occur~~  
17 ~~if the project is approved or carried out or adopt a negative~~  
18 ~~declaration unless the public lead agency finds~~ *finds, in light of*  
19 *the whole record before the lead agency,* that the approval or  
20 carrying out of the project does not constitute intentional  
21 discrimination, or result in a discriminatory effect, based on classes  
22 of persons protected pursuant to Section 12955 of the Government  
23 Code.

24 (b) This section applies to a project for which the environmental  
25 review commences on or after July 1, 2019.

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