SENATE JUDICIARY COMMITTEE
Senator Thomas Umberg, Chair
2021-2022 Regular Session

SB 1118 (Borgeas)
Version: April 21, 2022
Hearing Date: May 3, 2022
Fiscal: No
Urgency: No
AM

SUBJECT

California Environmental Quality Act: judicial relief

DIGEST

This bill requires the court to find that the determination, finding, or decision of a public agency has been made with a prejudicial lack of compliance with CEQA, as defined, before entering an order. Requires a court, before issuing an order, to first issue written findings that based on a preponderance of the evidence, the order is necessary to avoid or mitigate a specific, adverse impact upon the environment, public health, or public safety.

EXECUTIVE SUMMARY

CEQA actions taken by public agencies can be challenged in the Superior Court once the agency approves or determines to carry out the project. If a court finds that a determination, finding, or decision of a public agency was made without compliance with CEQA, the court will issue at least one of three specified forms of relief. When courts review a CEQA determination they seek to determine if there was a prejudicial abuse of discretion, which is when agency has failed to proceed in the manner required by law, or when the determination or decision of the agency is not supported by substantial evidence. This bill would require a court to instead find that the determination or decision of a public agency was made with a prejudicial lack of compliance with CEQA before issuing an order. The bill also requires a court, before issuing an order, to first issue specified written findings that the order is necessary to avoid or mitigate a specific, adverse impact upon the environment, public health, or public safety.

The bill is author sponsored. The bill is supported by the California Association of Realtors, California Building Industry Association, and California Chamber of Commerce. It is opposed by California Environmental Justice Alliance Action, the California State Association of Electrical Workers, the California State Pipe Trades Council, Leadership Counsel for Justice and Accountability, Natural Resources Defense

Council, Sierra Club California, the State Building and Construction Trades Council, and the Western States Council Sheet Metal Workers. The bill passed out of the Senate Environmental Quality Committee on a vote of 4 to 0. If the bill passes out of this Committee, it will next be heard before the Senate Appropriations Committee.

PROPOSED CHANGES TO THE LAW

Existing law:

1) Requires lead agencies with the principal responsibility for carrying out or approving a proposed discretionary project to prepare a negative declaration, mitigated declaration, or environmental impact report (EIR) for this action, unless the project is exempt from CEQA (CEQA includes various statutory exemptions, as well as categorical exemptions in the CEQA Guidelines). (Pub. Res. Code § 21100 et seq.)[1]

2) Sets requirements relating to the preparation, review, comment, approval and certification of environmental documents, as well as procedures relating to an action or proceeding to attack, review, set aside, void, or annul various actions of a public agency on the grounds of noncompliance with CEQA. (§ 21165 et seq.)

3) Prohibits, when there is a challenge to a determination or decision of a public agency alleging CEQA noncompliance and the proceeding of that determination required a hearing, evidence to be taken, and discretion in the determination of facts be vested in the public agency, the court from exercising independent judgment on the evidence and requires the court to only determine whether the decision is supported by substantial evidence in light of the whole record. (§ 21168.)
    a) Requires, in other challenges to a determination or decision of a public agency alleging CEQA noncompliance, the inquiry to extend only to whether there was a prejudicial abuse of discretion. (§ 21168.5)
    b) Abuse of discretion is established if the agency has not proceeded in a manner required by law or if the determination or decision is not supported by substantial evidence. (*Ibid*.)

4) Requires, if a court finds that any determination, finding, or decision of a public agency has been made without compliance with CEQA, the court to enter an order that includes one or more of the following:
    a) a mandate that the determination, finding, or decision be voided by the public agency, in whole or in part;
    b) a mandate that the public agency and any real parties in interest suspend any or all specific project activity that could result in an adverse change in alteration to the physical environment until the public agency has taken

[1] All further references are to the Public Resources Code unless otherwise indicated.

actions necessary to bring the determination, finding, or decision into compliance, if the court finds that a specific project activity will prejudice the consideration or implementation of mitigation measures or alternatives to the public; and

c) a mandate that the public agency take specific action as may be necessary to bring the determination, finding, or decision into compliance. (§ 21168.9(a).)

5) Requires any such order to only include those mandates that are necessary to achieve compliance with CEQA and to only those specific activities in noncompliance with CEQA. (*Id*. at subd. (b).)

6) Provides that the Legislature finds and declares that it is the policy of the state that noncompliance with the information disclosure provisions of CEQA, which precludes relevant information from being presented to the public agency, or noncompliance with substantive requirements of CEQA, may constitute a prejudicial abuse of discretion within the meaning of Sections 21168 and 21168.5, regardless of whether a different outcome would have resulted if the public agency had complied with those provisions.
   a) Further states, it is the intent of the Legislature that, in undertaking judicial review pursuant to Sections 21168 and 21168.5, courts will continue to follow the established principle that there is no presumption that error is prejudicial. (§ 21005.)

This bill:

1) Requires the court to find that the determination, finding, or decision of a public agency has been made with a prejudicial lack of compliance with CEQA, instead of without compliance, before entering an order.

2) States it is the intent of the Legislature, in requiring the court to determine whether there has been a prejudicial lack of compliance, to codify the holding of *Neighbors for Smart Rail v. Exposition Metro Line Construction Authority* (2013) 57 Cal.4th 439.

3) Requires a court, before issuing an order, to first issue written findings that based on a preponderance of the evidence, the order is necessary to avoid or mitigate a specific, adverse impact upon the environment, public health, or public safety.

4) Defines "prejudicial lack of compliance" to mean that the deficiency in the determination, finding, or decision of the public agency was made without substantial relevant information about the project's likely adverse impacts. Insubstantial or merely technical violations are not grounds for relief.

5) Makes various legislative findings and declarations related to CEQA.

6) States it is the intent of the Legislature to address the outsized and unnecessary litigation risks that are created by CEQA in two important ways.
    a) First, by codifying language from *Neighbors for Smart Rail v. Exposition Metro Line Construction Authority* (2013) 57 Cal.4th 439, in which the California Supreme Court upheld the principle that insubstantial or merely technical violations are not grounds for relief. This change will make it clear to state agencies and the courts that minor, inconsequential violations of CEQA will not be grounds for relief, and that absolute perfection in preparing an environmental document is not a requirement under CEQA. The change will also make it harder to use CEQA for improper purposes, since it will ensure that only serious violations of CEQA create a risk of legal relief.
    b) Second, by adding and repurposing language from the Housing Accountability Act, Senate Bill 167 (Ch. 368, Stats. 2017), to limit the ability of the courts to order special relief on an approved project where it is necessary to avoid or mitigate a specific adverse impact to public health or safety. Not every violation of CEQA has the potential to harm the public health or safety. Ordering special relief in those instances serves no compelling state interest and, more often than not, threatens the viability of a useful and needed project that has already committed countless hours of effort and significant investment capital.

COMMENTS

1. Author's statement

The author writes:

> The California Environmental Quality Act (CEQA) was enacted over 50 years ago to ensure that state and local agencies consider the environmental impact of their decisions when approving a public or private project. And while this law has undoubtedly done an excellent job in protecting and conserving the natural resources of the State, it is also clear that this law has been used to facilitate needless and costly litigation whose purpose is often times unrelated to protecting the environment.
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> In *Neighbors for Smart Rail v. Exposition Metro Line Construction Authority* (2013) 57 Cal. 4th 439, a plurality on the California Supreme Court held that "[i]nsubstantial or merely technical omissions are not grounds for relief" under CEQA. That decision further noted that an omission is prejudicial "if it deprived the public and decision makers of substantial relevant information about the project's likely adverse impacts." If enacted, SB 1118 would amend CEQA to require a finding that an agency caused "prejudicial" violation of the act before a court can issue an order directing a lead agency or real parties in interest to take additional steps. This change would help limit the number of frivolous suits that are filed every year

under CEQA because it would ensure that only those cases with real merit will ever succeed in obtaining relief.

2. CEQA

Enacted in 1970, CEQA requires state and local agencies to follow a set protocol to disclose and evaluate the significant environmental impacts of proposed projects and to adopt feasible measures to mitigate those impacts. CEQA itself applies to projects undertaken or requiring approval by public agencies, and, if more than one agency is involved, CEQA requires one of the agencies to be designated as the "lead agency." The environmental review process required by CEQA consists of: (1) determining if the activity is a project; (2) determining if the project is exempt from CEQA; and (3) performing an initial study to identify the environmental impacts and, depending on the findings, preparing either a Negative Declaration (for projects with no significant impacts), a Mitigated Negative Declaration (for projects with significant impacts but that are revised in some form to avoid or mitigate those impacts), or an EIR (for projects with significant impacts).

An EIR must accurately describe the proposed project, identify and analyze each significant environmental impact expected to result from the proposed project, identify mitigation measures to reduce those impacts to the extent feasible, and evaluate a range of reasonable alternatives to the proposed project. Before approving any project that has received environmental review, an agency must make certain findings pertaining to the project's environmental impact and any associated mitigation measures. If mitigation measures are required or incorporated into a project, the public agency must adopt a reporting or monitoring program to ensure compliance with those measures. To enforce the requirements of CEQA, a civil action may be brought under several code sections to attack, review, set aside, void, or annul the acts or decisions of a public agency for noncompliance with the act.

"CEQA operates, not by dictating proenvironmental outcomes, but rather by mandating that 'decision makers and the public' study the likely environmental effects of contemplated government actions and thus make fully informed decisions regarding those actions. … In other words, CEQA does not care what decision is made as long as it is an informed one." (*Citizens Coalition Los Angeles v. City of Los Angeles* (2018) 26 Cal. App. 5th 561, 577.)

3. CEQA is enforced through judicial review for prejudicial abuse of discretion

Unlike other environmental laws specific to air resources, water resources, or the control of toxic substances, there is no statewide bureaucracy charged with enforcement of CEQA. Rather, it is enforced through citizen participation and litigation if necessary. Arguably, this makes the implementation of CEQA more efficient and expeditious than if a state agency were created to administer the law. Thus, CEQA litigation—which

occurs at very low rates[2]—could more appropriately be characterized as mere enforcement. Additionally, several provisions streamline judicial review of challenges to projects under CEQA, including:

- discovery is generally not allowed, as CEQA cases are generally restricted to review of the record;[3]
- concurrent preparation of the record of proceedings to enable judicial review to occur sooner;[4]
- counties with a population of over 200,000 must designate one or more judges to develop expertise on CEQA and hear CEQA cases (§ 21167.1 (b));
- both the Superior Court and the Court of Appeal must give CEQA lawsuits preference over all other civil actions (§ 21167.1(a)); and
- if feasible, the Court of Appeal must hear a CEQA appeal within one year of filing (§ 21167.1(a)).

CEQA actions taken by public agencies can be challenged in the Superior Court once the agency approves or determines to carry out the project. (§ 21167.) If a court finds that a determination, finding, or decision of a public agency was made without compliance with CEQA, the court will issue at least one of the following forms of relief: (1) a mandate that the determination, finding, or decision be voided by the public agency, in whole or in part; (2) injunctive relief; or (3) a mandate that the public agency take specific action as may be necessary to bring the determination, finding, or decision into compliance with CEQA. (§ 21168.9(a).) When courts review a CEQA determination they seek to determine if there was a prejudicial abuse of discretion, and have held that such abuse is established (1) when agency has failed to proceed in the manner the required by law, or (2) when the determination or decision of the agency is not supported by substantial evidence. (§§ 21168, 21168.5, & 21168.7; *see Cleveland National Forest Foundation v. San Diego Association of Governments* (2017) 3 Cal.5th 497, 511.)

Essentially, the standard of review for noncompliance with CEQA is proscribed in Sections 21168 and 21168.5. The types of relief that can be granted for noncompliance is provided for in Section 21168.9. Section 21168.7 states that Sections 21168 and 21168.7

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[2] Although the data are incomplete, three recent studies have found CEQA litigation rates of between one and three percent. BAE Urban Economics, *CEQA in the 21st Century* (Aug. 2016) https://rosefdn.org/wp-content/uploads/2016/08/CEQA-in-the-21st-Century.pdf (as of Apr. 20, 2022); *CEQA Survey* (Oct. 2007) Senate Environmental Quality Committee, available at https://senv.senate.ca.gov/sites/senv.senate.ca.gov/files/ceqa_survey_full_report_-_final_12-5-17.pdf (as of Apr. 20, 2022); *Getting it Right: Examining the Local Land Use Entitlement Process to Inform Policy and Process* (2018), available at https://www.law.berkeley.edu/wp-content/uploads/2018/02/Getting_It_Right.pdf (as of Apr. 20, 2022); *Examining the Local Land Use Entitlement Process to Inform Policy and Process* (2019) https://www.law.berkeley.edu/wp-content/uploads/2019/02/Examining-the-Local-Land-Use-Entitlement-Process-in-California.pdf (as of Apr. 20, 2022).

[3] See *Cadiz Land Co. v. Rail Cycle, LP* (2000) 83 Cal.App.4th 74, 122.

[4] SB 122 (Jackson, 2015), Ch. 476, Stats. 2016.

are declaratory of existing law with respect to judicial review determinations or decisions of public agencies made pursuant to CEQA.

The Guidelines for Implementation of the California Environmental Quality Act provide that substantial evidence means:

> […] enough relevant information and reasonable inferences from this information that a fair argument can be made to support a conclusion, even though other conclusions might also be reached. Whether a fair argument can be made that the project may have a significant effect on the environment is to be determined by examining the whole record before the lead agency. Argument, speculation, unsubstantiated opinion or narrative, evidence which is clearly erroneous or inaccurate, or evidence of social or economic impacts which do not contribute to or are not caused by physical impacts on the environment does not constitute substantial evidence. (Tit. 14 Cal. Code of Reg. § 15384.)

A court reviewing an agency decision under the substantial evidence test does not review the evidence *de novo* or reweigh it, but merely determines whether the record contains relevant information that a reasonable mind might accept as sufficient to support the conclusion reached. (*Banning Ranch Conservancy v. City of Newport Beach* (2017) 2 Cal.5th 918, 935.)

An agency abuses its discretion by failing to proceed in the manner required by law if its action or decision does not substantially comply with the requirements of CEQA, and is generally used when a petitioner claims the agency failed to comply with CEQA's procedural requirements. When a court reviews a case under the failure to substantially comply test, it determines *de novo* whether an agency has employed the correct procedures and requirements legislatively mandated by CEQA. (*Ibid*.)

4. *Neighbors for Smart Rail v. Exposition Metro Line Construction Authority* (2013) 57 Cal.4th 439, (hereafter *Neighbors*).

In *Neighbors,* Neighbors for Smart Rail (NSR) challenged the certification of an EIR for a light rail construction project on the grounds that the EIR (1) failed to consider existing environmental conditions, only looking at future impacts to traffic and air quality; and (2) didn't incorporate mandatory enforcement mitigation measures for spillover parking effects. The Supreme Court of California, applying the substantial evidence test to the agency's determination to rely solely on projected future conditions in evaluating significant impacts, found that there was not substantial evidence indicating that an analysis based on existing conditions would be misleading or without informational value, and therefore, the agency had no justification to leave that information out; however, the court provided that an "omission in an EIR's significant impacts analysis is deemed prejudicial [only] if it deprived the public and decision makers of substantial

relevant information about the project's likely adverse impacts," (*Id*. at 463). The Court further quoted another decision, noting, "a prejudicial abuse of discretion occurs if the failure to include relevant information precludes informed decisionmaking and informed public participation, thereby thwarting the statutory goals of the EIR process." (*Ibid*., quoting *Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d, 692, at 712 (hereafter *Kings County*).)

The Court stated that subdivision (b) of Section 21005 provides there is no presumption under CEQA that an error is prejudicial and noted "insubstantial or merely technical omissions are not grounds for relief" citing a 2008 California Supreme Court decision *Environmental Protection Information Center v. California Department of Forestry & Fire Protection* (44 Cal.4th 459, 485-86 (hereafter *Environmental Protection Center*). (*Ibid*.) The Court concluded that leaving the information out was not prejudicial because the exclusion of the information did not deprive the agency or the public of substantial relevant information regarding those impacts and did not preclude informed decision making. Therefore, while the agency did abuse its discretion by certifying an EIR without analyzing certain impacts, the Court found that omission did not result in a prejudicial abuse of discretion because it did not prohibit informed decision making or informed public participation.

5. Bill will complicate existing CEQA jurisprudence and place new requirements on the court

    a. *The bill introduces a new standard of review for CEQA cases*

This bill requires the court to find that the determination, finding, or decision of a public agency has been made with a prejudicial lack of compliance with CEQA, instead of the existing requirement of without compliance with CEQA, before entering an order for relief. "Prejudicial lack of compliance" is defined as meaning that the deficiency in the determination, finding, or decision of the public agency was made without substantial relevant information about the project's likely adverse impacts, and that insubstantial or merely technical violations are not grounds for relief. As noted above, when courts currently review a CEQA determination they seek to decide if there was a prejudicial abuse of discretion in making or issuing the agency determination. These changes will very likely lead to confusion and ambiguity about what standard of review courts should use when reviewing a CEQA challenge.

The bill introduces a new standard of review for challenges to CEQA—prejudicial lack of compliance—that is generally taken from *Neighbors*. The author states his intention is to codify the holding in *Neighbors*; however, the bill's definition does not include the specific language in *Neighbors* that requires the omission *to deprive the public and decision makers of substantial relevant information* about the likely adverse impacts (emphasis added). Additionally, the Court in *Neighbors* made its determination in regard to an

omission in an EIR's significant impacts analysis using the existing standard of review—prejudicial abuse of discretion—not a prejudicial lack of compliance. (*Neighbors*, *supra* at 463.) The Court did not create a new standard of review in *Neighbors* and when making its decision cited to existing case law to support its conclusions. (*Id.* at 463, citing to *Kings County, supra* and *Environmental Protection Center*, *supra*.)

This bill would change the existing standard of review for CEQA challenges to prejudicial lack of compliance and apply it generally to all CEQA actions taken by public agencies that are challenged, whether or not they are about an omission in an EIR's significant impacts analysis as was the issue in *Neighbors*. It is unclear if the court's decision in *Neighbors* is broad enough to apply to any CEQA challenge or whether it is more suited for challenges related to omissions in an EIR's significant impacts analysis. For example, how would a court use this new standard to review a challenge that the lead agency has made a conclusion based on a legally insufficient analysis of the relevant information about the project's likely adverse impacts? Additionally, a court is limited to reviewing evidence that is available in the administrative record only. If relevant substantial information was not a part of the administrative record and a court cannot rely on information that is outside of the administrative record, how will a court be able to find a prejudicial lack of compliance?

b. The bill places new requirements on the court by requiring judges to make a written finding before issuing an order

The bill requires a court, before issuing an order, to first issue written findings that, based on a preponderance of the evidence, the order is necessary to avoid or mitigate a specific, adverse impact upon the environment, public health, or public safety. This provision of the bill will place additional requirements on the courts, require the courts to expend additional resources, and will require judges to take more time in deciding and issuing orders in CEQA challenges. According to the author, this additional step is needed to ensure a court does not issue an order without proper reasoning and to deter frivolous lawsuits by ensuring that only those cases with real merit will ever succeed in obtaining relief. The author's reasoning; however, presupposes that courts are currently issuing orders without proper reasoning and allowing cases without real merit to obtain relief. Additionally, if a court makes the finding required under this section on a request for an injunction and finds that it is not necessary to avoid or mitigate a specific, adverse impact upon the environment, public health, or public safety at the time the injunction is requested is the court prohibited from making a different determination on the underlying merits of the case at a later date? Lastly, when courts make rulings on requests for injunctive relief in CEQA cases the standards in Section 526 of the Code of Civil Procedure are followed. Would a decision on injunctive relief under this bill's requirements be in lieu of or addition to the standards in Section 526 of the Code of Civil Procedure?

c. The bill states it is the intent of the Legislature to address the outsized and unnecessary litigation risks that are created by CEQA

The bill provides it is the intent of the Legislature to address the outsized and unnecessary litigation risks that are created by CEQA in two important ways. The two ways are:

- By codifying language from *Neighbors for Smart Rail v. Exposition Metro Line Construction Authority* (*supra*), in which the California Supreme Court upheld the principle that insubstantial or merely technical violations are not grounds for relief. This change will make it clear to state agencies and the courts that minor, inconsequential violations of CEQA will not be grounds for relief, and that absolute perfection in preparing an environmental document is not a requirement under CEQA. The change will also make it harder to use CEQA for improper purposes, since it will ensure that only serious violations of CEQA create a risk of legal relief.
- Adding and repurposing language from the Housing Accountability Act, Senate Bill 167 (2017), to limit the ability of the courts to order special relief on an approved project where it is necessary to avoid or mitigate a specific adverse impact to public health or safety. Not every violation of CEQA has the potential to harm the public health or safety. Ordering special relief in those instances serves no compelling state interest and, more often than not, threatens the viability of a useful and needed project that has already committed countless hours of effort and significant investment capital.

There are a few problematic issues with the language above. First, it states that the changes by the bill "will also make it harder to use CEQA for improper purposes, since it will ensure that only serious violations of CEQA create a risk of legal relief." The Court in *Neighbors* did not say that only serious violations of CEQA would be considered prejudicial, it merely stated "insubstantial or merely technical omissions are not grounds for relief." (*Neighbors*, *supra* at 463.) This could lead to ambiguity as to what the actual intent of the bill is and create confusion for the court when interpreting these provisions.

Second, the language borrowed from the Housing Accountability Act was removed from the bill as an amendment in the Senate Environmental Quality Committee analysis. As such it needs to be, at a minimum edited to reflect that fact. That language further states that ordering special relief in instances where it is not necessary to avoid or mitigate a specific adverse impact to public health or safety "serves no compelling state interest and, more often than not, threatens the viability of a useful and needed project that has already committed countless hours of effort and significant investment capital." It is unclear why the bill refers to the relief authorized to be granted under CEQA in this way. The provisions of CEQA specifically authorize what relief a court may issue for failure to comply with CEQA's requirements and existing law does not

indicate it is the intent of the Legislature for it to only be granted in "special" situations or circumstances. Additionally the language does not refer to the environment, the chief public policy concern of CEQA, in any way. The legislative findings and declarations of CEQA state that the "maintenance of a quality environment for the people of this state now and in the future is a matter of statewide concern," which directly contradicts the stated Legislative intent in this bill. (§ 21000(a).)

d. This bill makes changes to CEQA that are more appropriate to be made within the actual policy provisions of CEQA as opposed to the judicial enforcement provisions

The two changes this bill makes to CEQA will very likely limit the ability of the court to grant relief currently authorized to be granted under CEQA, which seems to be the goal of the author as indicated by the statements in the bill's uncodified section related to the intent of the Legislature and the author's provided statement. The bill does this by changing the current standard of review and placing new requirements on the court to make certain findings before issuing an order instead of actually amending the findings and declarations of CEQA, the provisions of CEQA related to how environmental impacts are to be assessed by an agency, or the way relief under CEQA can or should be granted. The bill will add uncertainty and ambiguity into the judicial enforcement of CEQA, which could very likely result in longer delays and more appeals of lower court decisions.

6. Proposed amendments[5]

As the author states his intent is to codify the holding in *Neighbors*, the author may wish to delete Section 21168.9 from the bill and instead amend Section 21005 with the language from *Neighbors*. The author may also wish to amend the uncodified legislative intent in the bill to address the issues raised above so as not to create any ambiguity in the bill.

The specific amendments are as follows:

Amendment 1

Delete Section 21168.9 of the Public Resources Code from the bill.

Amendment 2

Amend subdivision (e) of Section 1 of the bill as follows:

(e) It is the intent of the Legislature to address the outsized and unnecessary litigation risks that are created by CEQA ~~in two important ways, as follows:~~

[5] The amendments may also include the addition technical, nonsubstantive changes recommended by the Office of Legislative Counsel.

~~(1) By~~ *by* codifying language from Neighbors for Smart Rail v. Exposition Metro Line Construction Authority (2013) 57 Cal.4th 439, in which the California Supreme Court upheld the principle that insubstantial or merely technical violations are not grounds for relief. This change will make it clear to state agencies and the courts that minor, inconsequential violations of CEQA will not be grounds for relief, and that absolute perfection in preparing an environmental document is not a requirement under CEQA. ~~The change will also make it harder to use CEQA for improper purposes, since it will ensure that only serious violations of CEQA create a risk of legal relief.~~

~~(2) Adding and repurposing language from the Housing Accountability Act, Senate Bill 167 (Chapter 368 of the Statutes of 2017), to limit the ability of the courts to order special relief on an approved project where it is necessary to avoid or mitigate a specific adverse impact to public health or safety. Not every violation of CEQA has the potential to harm the public health or safety. Ordering special relief in those instances serves no compelling state interest and, more often than not, threatens the viability of a useful and needed project that has already committed countless hours of effort and significant investment capital.~~

Amendment 3

Amend Section 21005 of the Public Resources Code as follows:

(a) The Legislature finds and declares that it is the policy of the state that noncompliance with the information disclosure provisions of this division which precludes relevant information from being presented to the public agency, or noncompliance with substantive requirements of this division, may constitute a prejudicial abuse of discretion within the meaning of Sections 21168 and 21168.5, regardless of whether a different outcome would have resulted if the public agency had complied with those provisions.

(b) It is the intent of the Legislature that, in undertaking judicial review pursuant to Sections 21168 and 21168.5, courts shall continue to follow the established principle that there is no presumption that error is prejudicial.

(c) It is further the intent of the Legislature that any court, which finds, or, in the process of reviewing a previous court finding, finds, that a public agency has taken an action without compliance with this division, shall specifically address each of the alleged grounds for noncompliance.

(d) It is further the intent of the Legislature that, in undertaking judicial review pursuant to Sections 21168 and 21168.5, courts shall find that insubstantial or merely technical omissions are not grounds for relief and that an omission in an environmental impact report's significant impacts analysis is prejudicial if it deprived the public and decision makers of substantial relevant information about the projects likely adverse impacts.

7. Statements in support

The California Association of Realtors write in support:

> Development pressures have lead communities and anti-growth activists to weaponize the California Environmental Quality Act (CEQA) to delay or stop housing projects, especially affordable housing. SB 1118 (Borgeas) will clear up ambiguity by codifying case law upholding the standard that "Insubstantial or merely technical omissions are not grounds for relief." *(Neighbors for Smart Rail v. Exposition Metro Line Const. Auth., (2013) 57 Cal. 4th 439)*
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> Furthermore, SB 1118 (Borgeas) will further help relieve the housing crisis by creating a new standard for courts to provide written findings before being able to halt work under CEQA. SB 1118 (Borgeas) offers necessary and thoughtful updates to the Public Resources Code that will help drive down costs and speed up housing development. Californians deserve to live affordably in whatever community they choose.

The California Chamber of Commerce and the California Building Industry Association write in support:

> […] CEQA serves an important goal of preventing public agencies from approving projects with potentially significant impacts if there are feasible mitigation measures that would eliminate or substantially reduce those impacts. Notwithstanding these benefits, CEQA can be used by special interest groups to delay, scale back, or halt projects altogether for reasons unrelated to the environment. For example, just this year a neighborhood group weaponized CEQA to block the enrollment of 3,000 incoming students from being able to attend UC Berkeley this fall. This was the same group that also sued to block proposed student housing in Berkeley in prior lawsuits. Thankfully, this Legislature stepped in with an urgency measure to protect those students.
>
> SB 1118 is a straightforward bill that seeks to codify a California Supreme Court CEQA decision that clarifies that technical or insubstantial omissions in a CEQA document are not grounds to invalidate a project and send it back to the beginning of the CEQA process. By codifying this high court decision, the California legislature will limit the abuse of CEQA, especially for critically needed housing in the state, while also preserving all of the statute's robust environmental protections and public disclosure provisions. […]

8. Statements in opposition

The State Building and Construction Trades Council, AFL-CIO writes in opposition:

> […] First, SB 1118 eviscerates the agency standards of review under CEQA and creates an internally inconsistent statute. It is well-established that a court must review an agency's compliance with CEQA for a prejudicial abuse of discretion. Under CEQA section 21168.5, an "[a]buse of discretion is established if the agency has not proceeded in a manner required by law or if the determination or decision is not supported by substantial evidence." […]
>
> Second, SB 1118 would require a court to find a "prejudicial lack of compliance," meaning an agency made a decision "without substantial relevant information" about a project's "likely adverse impacts." This language is based on dicta in Neighbors for Smart Rail concerning an omission in an EIR's significant impacts analysis. Yet, the judicial remedies under section 21168.9 are not limited to a public agency's failure to comply with the EIR significant impact analysis. Instead, the judicial remedies section of CEQA provides the court direction on remedies for any violation of CEQA. […] SB 1118's definition of "prejudicial lack of compliance" is therefore nonsensical, too restrictive, and cannot be used as a onesize-fits-all approach for enforcing the requirements of CEQA. […]

The California Environmental Justice Alliance Action and Leadership Counsel for Justice and Accountability write in opposition:

> We are especially concerned with the new set of definitions within the bill, such as "prejudicial lack of compliance" and "specific, adverse impact," as well as the clarification that "insubstantial or merely technical violations are not grounds for relief." These provisions are troubling because they would add new definitions that overlap with or duplicate current aspects of CEQA law, and would create vague and subjective standards for determining which CEQA violations are deemed "prejudicial" and which impacts would be deemed "significant." Such confusion and lack of clarity, from our experience, would disadvantage EJ petitioners who are seeking justice and remedies to address environmental harms and health-related threats and would lead to more litigation to clarify these new terms. On the other hand, such loopholes would allow industry, corporate developers, or public agencies to avoid accountability if a judge could be convinced that there was an "insubstantial or technical violation" instead of a substantive violation. […]

The Natural Resources Defense Council and Sierra Club California write in opposition:

> […] SB 1118 is a solution in search of a problem. It will not solve or even affect California's housing crisis because CEQA litigation only involves around one

percent of CEQA-eligible projects. NIMBY groups and business interests that use CEQA for non-environmental purposes have other legal tools to fight projects, but the frontline communities that are often in the zone of harm for projects dangerous to public health typically do not.

Finally, the bill's provisions about judicial remedies are confusing and could lead to additional litigation as the courts struggle to understand them. […]

SUPPORT

California Association of Realtors
California Building Industry Association
California Chamber of Commerce

OPPOSITION

California Environmental Justice Alliance
California State Association of Electrical Workers
California State Pipe Trades Council
Leadership Council for Justice and Accountability
Natural Resources Defense Council
Sierra Club California
State Building and Construction Trades Council, AFL-CIO
Western States Council Sheet Metal Workers

RELATED LEGISLATION

Pending Legislation: None known.

Prior Legislation: None known.

PRIOR VOTES:

Senate Committee On Environemntal Quality (Ayes 4, Noes 0)

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