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**SENATE COMMITTEE ON ENVIRONMENTAL QUALITY**

**Senator Allen, Chair**

**2021 - 2022 Regular**

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**Bill No:** AB 819  
**Author:** Levine and Mathis  
**Version:** 5/28/2021  
**Urgency:** No  
**Consultant:** Genevieve M. Wong  
**Hearing Date:** 6/14/2021  
**Fiscal:** Yes

**SUBJECT:** California Environmental Quality Act: notices and documents: electronic filing and posting

**DIGEST:** Requires various California Environmental Quality Act (CEQA) notices and documents posted online and filed electronically.

**ANALYSIS:**

Existing law, under CEQA (Public Resources Code (PRC) 21000 et seq.):

- 1) Requires lead agencies with principal responsibility for carrying out or approving a proposed discretionary project to prepare a negative declaration (ND), mitigated negative declaration (MND), 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. (Public Resources Code (PRC) §§21000 et seq.)
- 2) Requires the lead agency to submit to the State Clearinghouse, for review and comment by state agencies, a sufficient number of copies, in either hard-copy or electronic form, the draft EIR, proposed ND, or proposed MND in the following instances:
  - a) When a state agency is the lead agency, a responsible agency, or a trustee agency.
  - b) A state agency otherwise has jurisdiction with respect to the project.
  - c) The project is of sufficient statewide, regional, or areawide environmental significance (PRC §21082.1).
- 3) Requires a state agency, when a project is approved or carried out by a state agency that is subject to CEQA, to file a Notice of Determination (NOD) with OPR. If the state agency determines that a project is not subject to CEQA, the state agency may, but is not required to, file a notice of exemption (NOE) with OPR (PRC §21108).

- 4) Requires a local agency, when a project is approved or carried out by a local agency that is subject to CEQA, to file a NOD within five working days after the determination becomes final, with the county clerk of each county in which the project will be located. If the local agency determines that a project is not subject to CEQA, the local agency may, but is not required to, file an NOE with the county clerk of a county in which the project will be located (PRC §21152).
  - a) Requires an NOD to include specified information.
  - b) Requires the notice to be: (i) available for public inspection; (ii) physically posted at the office of the county clerk within 24 hours of receipt; and (iii) remain posted for 30 days.
- 5) Specifies public review periods for draft EIRs, proposed NDs, and proposed MNDs. If the environmental review document is submitted to the State Clearinghouse for review by state agencies, the lead agency is required to provide a sufficient number of copies of the document in either a hard copy or electronic form (PRC §21091).
- 6) Requires the following notices to be mailed to every person who files a request with the clerk of the governing body or director of the agency:
  - a) Notice to each responsibility agency, OPR, and public agencies with jurisdiction over the natural resources affected by a project if an EIR is required for the project (PRC §21080.4).
  - b) Notice of specified scoping meetings to various public entities if a project is of statewide, regional, or areawide significance (PRC §21083.0).
  - c) Public notice of the preparation of an EIR or ND, or determination that a subsequent proposed project identified in a master EIR will not have additional significant effect on the environment (PRC §21092).
  - d) NODs filed by a state agency with OPR (PRC §21108).
  - e) NODs filed by a local agency with the county clerk (PRC §21152).
  - f) Notice of Completion filed with OPR whenever a public agency has completed an environmental review document (PRC §21161).

This bill:

- 1) Eliminates the option for a lead agency to submit hard copies of the draft EIR, ND, or MND when the lead agency is submitting the environmental review documents to the State Clearinghouse, and instead requires only electronic copies of the environmental review documents be submitted.

- 2) Instead of requiring that environmental review documents be submitted to the State Clearinghouse under certain circumstances, requires environmental review documents be submitted for all projects, and requires the lead agency to post the environmental review documents on its internet website.
- 3) Requires NODs filed by a state agency also be filed electronically with OPR and for the notice to be available for public inspection on OPR's internet website for not less than 12 months. Removes the requirement that OPR maintain a list of these notices in their physical office.
- 4) Requires a local agency, when an NOD or NOE is filed with the county clerk of each county in which the project will be located, to file that notice electronically, if available.
- 5) Requires, when notice is given for the preparation of an EIR or ND or when making a determination that a subsequent proposed project identified in a master EIR will not have additional significant effect on the environment, that the notice also be posted on the lead agency's internet website.
- 6) Additionally requires, when mailing the specific notices to requesting parties, the lead agency to post the notices on their website.
- 7) Requires, for specified EIR notices that are posted in the county clerk's physical office, that the notices also be posted on the county clerk's internet website.
- 8) Requires a public agency, when it has completed an environmental document, to file a notice of completion with OPR using OPR's online process and would specifically state that the public agency is not required to mail a printed copy to OPR.
- 9) Makes various technical and conforming changes.

## **Background**

- 1) *Overview of CEQA Process.* CEQA provides a process for evaluating the environmental effects of a project, and includes statutory exemptions, as well as categorical exemptions in the CEQA guidelines. If a project is not exempt from CEQA, an initial study is prepared to determine whether a project may have a significant effect on the environment. If the initial study shows that there would not be a significant effect on the environment, the lead agency must prepare a negative declaration. If the initial study shows that the project

may have a significant effect on the environment, the lead agency must prepare an EIR.

Generally, 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. Prior to approving a project that has received environmental review, an agency must make certain findings. If mitigations measures are required or incorporated into a project, the agency must adopt a reporting or monitoring program to ensure compliance with those measures.

- 2) *Notice of Determination (NOD)*. The goal of informing the public of environmental impacts of a project is one of the pillars of CEQA and a NOD helps serve this purpose. A NOD is a brief notice filed by a public agency after it approves or determines to carry out a project. The NOD must include the project name, description, location, lead agency's name, and the date of project approval. For an EIR, it also must summarize the project's significant impacts and state whether mitigation measures were made as conditions of approval, findings were prepared, a mitigation monitoring or reporting program as adopted, and a statement of overriding considerations was adopted.
- 3) *Notice of Exemption (NOE)*. NOEs are a type of NOD. Lead agencies may, but are not required to, file an NOE when it has determined that a project is not subject to CEQA. CEQA Guidelines encourage public agencies to make NOEs available in electronic format on the internet.

## Comments

- 1) *Purpose of Bill*. According to the author, "AB 819 would require certain posting, filing and notice requirements under the California Environmental Quality Act (CEQA) to be satisfied through electronic means to increase public access and involvement.

"This bill would increase transparency in the environmental review process; modernizing the filing of CEQA-related reports. Communicating documents has become quick and painless through the means of email or the posting of documents on a company's website. CEQA was enacted 50 years ago, long before this facilitating technology could be utilized. AB 819 updates the CEQA process to reflect this new technology to improve the accessibility and ease of the process."

2) *Executive Order N-54-20*. On March 4, 2020, Governor Newsome proclaimed a State of Emergency in California as a result of the COVID-19 pandemic and issued Executive Order N-54-20. In that executive order, among other things, specified CEQA filing, posting, notice, and public access requirements were suspended and instead the order permitted certain posting and filing requirements to be carried out electronically. Specifically, the lead agency was required to do all of the following:

- Post materials on the relevant agency's or applicant's website for the same period that physical posting would have otherwise been required;
- Submit all materials electronically to the State Clearinghouse CEQAnet Web Portal; and
- Engage in outreach to any individuals and entities known by the lead agency, responsible agency, or project applicable to be parties interested in the project.

AB 819 codifies these electronic public access requirements, supplementing the current notice requirements.

3) *Adding to CEQA's robust notice requirements through modernization*. Public participation and transparency in a local government's decision to certify or approve a project is a cornerstone of CEQA; helping to support informed decision making. To that end, CEQA notice requirements are robust, ensuring that impacted communities and citizens have the opportunity to engage. AB 819 adds to the notice requirements by requiring environmental review documents and notices be posted on the lead agency's website. This modernization will help increase public awareness of projects and their ability to participate. The electronic posting and filing of notices will also help the CEQA process run more efficiently.

### **Related/Prior Legislation**

AB 609 (Levine, 2020) had provisions similar to this bill. The bill was referred to this committee but did not receive a hearing date.

SB 80 (Wieckowski, 2017) provided specified notice requirements regarding posting on websites and sending notices via email pursuant to CEQA. This bill also made filing a Notice of Determination mandatory for a project subject to a categorical exemption. SB 80 was vetoed by Governor Brown.

**SOURCE:** Author

**SUPPORT:**

American Planning Association, California Chapter  
Association of California Water Agencies (ACWA)  
California Apartment Association  
California Chamber of Commerce

**OPPOSITION:**

None received

**-- END --**