



ASSOCIATION OF
ENVIRONMENTAL
PROFESSIONALS

April 15, 2011

The Honorable Anthony J. Cannella
State Capitol, Room 3048
Sacramento, CA 95814

Regarding SB 241
The "CEQA Litigation Protection Pilot Program of 2011"

Position: Oppose

Dear Senator Cannella,

The Association of Environmental Professionals (AEP) must respectfully oppose your SB 241 that would enact the "CEQA Litigation Protection Pilot Program of 2011," with the effect of exempting from judicial review, pursuant to the California Environmental Quality Act (CEQA), the environmental impact reports (EIRs) for up to 125 projects.

The proposed program would require the Business, Transportation and Housing Agency (BT&H) to select up to 25 projects per year for the calendar years 2012 through 2016, inclusive. These projects would be selected on the basis of their potential job creation and financial investment. SB 241 expressly provides that a lead agency's decision to certify an EIR, or a mitigated negative declaration (MND), prepared pursuant to CEQA would be exempt from judicial review. SB 241 would further exempt from judicial review the process by which BT&H would select these projects. Finally, AEP understands that the impetus for this proposed legislation is the perceived abuse of the litigation process *via* challenges under CEQA, and the concomitant delay and expense such abuses may cause.

AEP has consistently supported amendments to CEQA and the CEQA Guidelines that would: curb abuses of the CEQA process; encourage the early submission of comments on projects; encourage the early outreach and structured participation of citizens in development decisions; clarify and augment the powers of the judiciary to dispose of merit-less CEQA challenges; and expedite or "fast-track" judicial review of CEQA challenges.

AEP is a non-profit organization of California's environmental professionals. AEP members are involved in every stage of the evaluation, analysis, assessment, and litigation of projects subject to CEQA. For over thirty years, AEP has dedicated itself to improving the technical expertise and professional qualifications of its membership, as well as educating the public on the value of California's laws protecting the environment, managing our natural resources, and promoting responsible land use and urban growth. AEP's membership is broad and diverse, incorporating representatives from public agencies, the private sector and non-governmental organizations. AEP is keenly aware of the circumstances in which both the CEQA

and judicial review processes suffer abuse.

AEP is concerned that the proposed legislation is not without its own potential for abuse. The proposed legislation may simply substitute a new set of grounds for administrative appeal and litigation for the current practices, thus failing to provide any appreciable streamlining or increased certainty for project stakeholders while also potentially running afoul of protections afforded by the United States and California constitutions.

AEP would welcome the opportunity of working with the Legislature and the Administration toward solutions that embrace our mutual recognition that a healthy economy and a healthy environment are not mutually exclusive. Should you have any questions or need additional information regarding our comments, please do not hesitate to contact our lobbyist, Mr. Allan Lind, at 916-761-1373.

Sincerely,



C. Eugene Talmadge
President, Association of Environmental Professionals

Cc.: The Honorable Joe Simitian, Chair, Senate Committee on Environmental Quality
Mr. Ken Alex, Governor's Office
Mr. Allan Lind, Allan Lind & Associates