

AMENDED IN SENATE JANUARY 4, 2012

SENATE BILL

No. 52

Introduced by Senator Steinberg

(Coauthors: Assembly Members Buchanan and Gordon)

December 15, 2010

An act to amend Sections 21178, 21180, 21181, 21183, 21185, 21187, and 21189.2 of the Public Resources Code, relating to ~~water, and making an appropriation therefor.~~ environmental quality, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

SB 52, as amended, Steinberg. ~~Water quality: Sacramento Regional County Sanitation District.~~ *Environmental quality: jobs and economic improvement.*

(1) 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 establishes procedures for creating the administrative record and judicial review procedure for any action or proceeding brought to challenge the lead agency's decision to certify the EIR or to grant project approvals.

The Jobs and Economic Improvement Through Environmental Leadership Act of 2011 establishes alternative procedures for creating the administrative record and specified judicial review procedures for the judicial review of the EIR and approvals granted for a leadership project related to the development of a residential, retail, commercial, sports, cultural, entertainment, or recreational use project, or clean renewable energy or clean energy manufacturing project. The act authorizes the Governor, upon application, to certify a leadership project for streamlining pursuant to the act if certain conditions are met.

The act requires that the project result in a minimum investment of \$100,000,000 in California upon completion of construction and not result in any net additional emission of greenhouse gases, including greenhouse gas emissions from employee transportation.

This bill would require instead that a project result in a minimum investment of \$100,000,000 spent on planning, design, and construction of the project. The bill, in order to maximize public health, environmental, and employment benefits, would require a lead agency to place the highest priority on feasible measures that will reduce greenhouse gas emissions on the project site and in the neighboring communities of the project site.

(2) The act requires a party seeking judicial review of the EIR to bring concurrently other claims alleging a public agency has granted land use approvals or a leadership project in violation of relevant laws.

This bill would repeal this provision.

(3) The act requires the Judicial Council to report to the Legislature on or before January 1, 2015, on the effects of the act, including specific information on benefits, costs, and detriments.

The bill would require instead that the Judicial Council report to the Legislature on the effects of the act on the administration of justice. The bill also would make technical and clarifying changes.

Because a lead agency would be required to perform additional actions, this bill would impose a state-mandated local program.

(4) 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.

(5) *This bill would declare that it is to take effect immediately as an urgency statute.*

~~The Disaster Preparedness and Flood Prevention Bond Act of 2006, a bond act approved by the voters at the November 7, 2006, statewide general election, authorizes the issuance of bonds in the amount of \$4,090,000,000 for the purposes of financing disaster preparedness and flood prevention projects. Of those funds, \$300,000,000 is available to the Department of Water Resources, upon appropriation by the Legislature, for grants for storm water flood management projects that meet prescribed requirements.~~

~~The Safe Drinking Water, Water Quality and Supply, Flood Control, River and Coastal Protection Bond Act of 2006, an initiative bond act approved by the voters at the November 7, 2006, statewide general election, authorizes the issuance of bonds in the amount of \$5,388,000,000 for the purposes of financing a safe drinking water, water quality and supply, flood control, and resource protection program. Of those funds, \$130,000,000 is available to the department for grants to implement water quality improvement projects that meet prescribed requirements.~~

~~This bill would appropriate \$50,000,000 to the department from the above bond acts, as specified, to provide financial assistance to the Sacramento Regional County Sanitation District to offset rate increases associated with the costs of capital improvements to the district's regional sewage treatment plant as a result of the issuance of a specified national pollutant discharge elimination system permit and waste discharge requirements.~~

Vote: ~~majority~~^{2/3}. Appropriation: ~~yes~~-no. Fiscal committee: yes. State-mandated local program: ~~no~~-yes.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 21178 of the Public Resources Code is
- 2 amended to read:
- 3 21178. The Legislature finds and declares all of the following:
- 4 (a) The overall unemployment rate in California is 12 percent,
- 5 and in certain regions of the state that rate exceeds 13 percent.
- 6 (b) The California Environmental Quality Act (Division 13
- 7 (commencing with Section 21000) of the Public Resources Code)
- 8 21000)) requires that the environmental impacts of development
- 9 projects be identified and mitigated.

1 (c) The act also guarantees the public an opportunity to review
2 and comment on the environmental impacts of a project and to
3 participate meaningfully in the development of mitigation measures
4 for potentially significant environmental impacts.

5 (d) There are large *public and private* projects under
6 consideration in various regions of the state that would replace old
7 and outmoded facilities with new job-creating facilities to meet
8 those regions' needs while also establishing new, cutting-edge
9 environmental benefits to those regions.

10 (e) These projects are *publicly financed*, privately financed, or
11 financed from revenues generated from the projects themselves
12 ~~and that~~ do not require taxpayer financing.

13 (f) These projects further will generate thousands of full-time
14 jobs during construction and thousands of additional permanent
15 jobs once they are constructed and operating.

16 (g) These projects also present an unprecedented opportunity
17 to implement nation-leading innovative measures that will
18 significantly reduce traffic, air-~~quality~~ *pollution*, and other
19 significant environmental impacts, and fully mitigate the
20 greenhouse gas emissions resulting from passenger vehicle trips
21 attributed to the project.

22 (h) These pollution reductions will be the best in the nation
23 compared to other comparable projects in the United States.

24 (i) The purpose of this act is to provide unique and
25 unprecedented streamlining benefits under the California
26 Environmental Quality Act for projects that provide the benefits
27 described above for a limited period of time to put people to work
28 as soon as possible.

29 *SEC. 2. Section 21180 of the Public Resources Code is*
30 *amended to read:*

31 21180. For the purposes of this chapter, the following terms
32 shall have the following meanings:

33 (a) "Applicant" means a public or private entity or its affiliates,
34 or a person or entity that undertakes a public works project, ~~that~~
35 *or* proposes a project, and its successors, heirs, and assignees.

36 (b) "Environmental leadership development project," "leadership
37 project," or "project" means a project as described in Section 21065
38 that is one the following:

39 (1) A residential, retail, commercial, sports, cultural,
40 entertainment, or recreational use project that is *designed to be*

1 certified as LEED silver or better by the United States Green
2 Building Council and, ~~where applicable~~, that achieves *and*
3 *maintains* a 10-percent greater standard for transportation efficiency
4 than for comparable projects. These projects ~~must~~ *shall* be located
5 on an infill site. For a project that is within a metropolitan planning
6 organization for which a sustainable communities strategy or
7 alternative planning strategy is in effect, the infill project shall be
8 consistent with the general use designation, density, building
9 intensity, and applicable policies specified for the project area in
10 either a sustainable communities strategy or an alternative planning
11 strategy, for which the State Air Resources Board, pursuant to
12 subparagraph (H) of paragraph (2) of subdivision (b) of Section
13 65080 of the Government Code, has accepted a metropolitan
14 planning organization's determination that the sustainable
15 communities strategy or the alternative planning strategy would,
16 if implemented, achieve the greenhouse gas emission reduction
17 targets.

18 (2) A clean renewable energy project that generates electricity
19 exclusively through wind or solar, but not including waste
20 incineration or conversion.

21 (3) A clean energy manufacturing project that manufactures
22 products, equipment, or components used for renewable energy
23 generation, energy efficiency, or for the production of clean
24 alternative fuel vehicles.

25 (c) "Transportation efficiency" means the number of ~~vehicle~~
26 *private automobile* trips by employees, visitors, or customers of
27 the residential, retail, commercial, sports, cultural, entertainment,
28 or recreational use project divided by the total number of
29 employees, visitors, and customers.

30 *SEC. 3. Section 21181 of the Public Resources Code is*
31 *amended to read:*

32 21181. This chapter does not apply to a project if the applicant
33 fails to notify a lead agency prior to the release of the draft
34 environmental impact report for public comment that the applicant
35 is electing to proceed pursuant to this chapter. The lead agency
36 shall notify the Secretary of the Natural Resources Agency if the
37 applicant ~~fails to provide~~ *provides* notification pursuant to this
38 ~~section~~ *chapter*.

39 *SEC. 4. Section 21183 of the Public Resources Code is*
40 *amended to read:*

1 21183. The Governor may *not* certify a leadership project for
2 streamlining pursuant to this chapter ~~if~~ *unless* all the following
3 conditions are met:

4 (a) The project will result in a minimum investment of one
5 hundred million dollars (\$100,000,000) ~~in California upon~~
6 ~~completion of construction~~ *spent on planning, design, and*
7 *construction of the project.*

8 (b) The project creates high-wage, highly skilled jobs that pay
9 prevailing wages and living wages and provide construction jobs
10 and permanent jobs for Californians, and helps reduce
11 unemployment.

12 (c) The project does not result in any net additional emission
13 of greenhouse gases, including greenhouse gas emissions from
14 employee transportation, as determined by the State Air Resources
15 Board pursuant to Division 25.5 (commencing with Section 38500)
16 of the Health and Safety Code. *To maximize public health,*
17 *environmental, and employment benefits, the lead agency shall*
18 *place the highest priority on feasible measures that will reduce*
19 *greenhouse gas emissions on the project site and in the neighboring*
20 *communities of the project site. Offset credits shall be employed*
21 *by the applicant only after feasible local emission reduction*
22 *measures have been implemented. The applicant shall, to the extent*
23 *feasible, place the highest priority on the purchase of offset credits*
24 *that produce emission reductions within the boundaries of an*
25 *applicable air pollution control district or air quality management*
26 *district.*

27 (d) The project applicant has entered into a binding and
28 enforceable agreement that all mitigation measures required
29 pursuant to this division to certify the project under this chapter
30 shall be conditions of approval of the project, and those conditions
31 will be fully enforceable by the lead agency or another agency
32 designated by the lead agency. In the case of environmental
33 mitigation measures, the applicant agrees, as an ongoing obligation,
34 that those measures will be monitored and enforced by the lead
35 agency for the life of the obligation.

36 (e) The project applicant agrees to pay the costs of the Court of
37 Appeal in hearing and deciding any case, including payment of
38 the costs for ~~the appointment of~~ a special master if deemed
39 appropriate by the court, in a form and manner specified by the

1 Judicial Council, as provided in the Rules of Court adopted by the
2 Judicial Council pursuant to subdivision ~~(f)~~ (b) of Section 21185.

3 (f) The project applicant agrees to pay the costs of preparing
4 the administrative record for the project concurrent with review
5 and consideration of the project pursuant to this division, in a form
6 and manner specified by the lead agency for the project.

7 *SEC. 5. Section 21185 of the Public Resources Code is*
8 *amended to read:*

9 21185. (a) Notwithstanding any other law, any action or
10 proceeding alleging that a ~~public~~ *lead* agency ~~or~~ has approved or
11 is undertaking a leadership project certified by the Governor in
12 violation of this division shall be conducted in accordance with
13 the following streamlining benefits:

14 (1) The action or proceeding shall be filed in the Court of Appeal
15 with geographic jurisdiction over the project.

16 ~~(2) Any party bringing such a claim shall also file concurrently~~
17 ~~any other claims alleging that a public agency has granted land~~
18 ~~use approvals for the leadership project in violation of the law.~~
19 ~~The Court of Appeal shall have original jurisdiction over all those~~
20 ~~claims.~~

21 ~~(3)~~

22 (2) The Court of Appeal shall issue its decision in the case within
23 175 days of the filing of the petition.

24 ~~(4)~~

25 (3) The court may appoint a master to assist the court in
26 managing and processing the case.

27 ~~(5)~~

28 (4) The court may ~~grant~~ *order* extensions of time only for good
29 cause ~~shown~~ and in order to promote the interests of justice.

30 (b) On or before July 1, 2012, the Judicial Council shall adopt
31 Rules of Court to implement this chapter.

32 *SEC. 6. Section 21187 of the Public Resources Code is*
33 *amended to read:*

34 21187. The draft and final environmental impact report shall
35 include a notice in no less than 12-point type stating the following:
36

37 “THIS EIR IS SUBJECT TO CHAPTER 6.5 (COMMENCING
38 WITH SECTION 21178) *OF DIVISION 13 OF THE PUBLIC*
39 *RESOURCES CODE, WHICH PROVIDES, AMONG OTHER*
40 *THINGS, THAT ANY JUDICIAL ACTION CHALLENGING*

1 THE CERTIFICATION OF THE EIR OR THE APPROVAL OF
 2 THE PROJECT DESCRIBED IN THE EIR IS SUBJECT TO
 3 THE PROCEDURES SET FORTH IN ~~SECTION 21178.2 OF~~
 4 ~~THE PUBLIC RESOURCES CODE CHAPTER 6.5~~ AND MUST
 5 BE FILED WITH THE COURT OF APPEAL. A COPY OF
 6 CHAPTER 6.5 ~~OF THE PUBLIC RESOURCES CODE~~ IS
 7 INCLUDED IN THE APPENDIX TO THIS EIR.”

8 *SEC. 7. Section 21189.2 of the Public Resources Code is*
 9 *amended to read:*

10 21189.2. The Judicial Council shall report to the Legislature
 11 on or before January 1, 2015, on the effects of this chapter, ~~which~~
 12 ~~shall include, but not be limited to, a description of the benefits,~~
 13 ~~costs, and detriments of the certification of leadership projects~~
 14 ~~pursuant to this chapter on the administration of justice.~~

15 *SEC. 8. No reimbursement is required by this act pursuant to*
 16 *Section 6 of Article XIII B of the California Constitution because*
 17 *a local agency or school district has the authority to levy service*
 18 *charges, fees, or assessments sufficient to pay for the program or*
 19 *level of service mandated by this act, within the meaning of Section*
 20 *17556 of the Government Code.*

21 *SEC. 9. This act is an urgency statute necessary for the*
 22 *immediate preservation of the public peace, health, or safety within*
 23 *the meaning of Article IV of the Constitution and shall go into*
 24 *immediate effect. The facts constituting the necessity are:*

25 *The continued economic crisis in the state requires immediate*
 26 *attention and the expedited processes provided by this legislation*
 27 *for projects that provide important environmental and economic*
 28 *benefits will serve as a basis for new and increased economic*
 29 *development in the state.*

30 ~~SECTION 1. The Legislature finds and declares that the costs~~
 31 ~~of improving water quality and protecting the beneficial uses of~~
 32 ~~water in the area known as the Sacramento-San Joaquin Delta are~~
 33 ~~a shared responsibility that should be borne by all beneficiaries of~~
 34 ~~water resources from the Sacramento-San Joaquin Delta, and not~~
 35 ~~solely by businesses and residents of the Sacramento region. To~~
 36 ~~that end, it is the intent of the Legislature, in enacting this act, to~~
 37 ~~appropriate funds for the purpose of financing improvements to~~
 38 ~~the Sacramento Regional County Sanitation District regional~~
 39 ~~sewage treatment plant.~~

1 ~~SEC. 2.—The sum of fifty million dollars (\$50,000,000) is hereby~~
2 ~~appropriated to the Department of Water Resources to provide~~
3 ~~financial assistance to the Sacramento Regional County Sanitation~~
4 ~~District to offset rate increases associated with the costs of capital~~
5 ~~improvements to the district’s regional sewage treatment plant as~~
6 ~~a result of the issuance of a national pollutant discharge elimination~~
7 ~~system permit and waste discharge requirements for the regional~~
8 ~~sewage treatment plant that were adopted by the California~~
9 ~~Regional Water Quality Control Board, Central Valley Region,~~
10 ~~on December 9, 2010, in accordance with the following schedule:~~
11 ~~(a) Thirteen million dollars (\$13,000,000) from the funds made~~
12 ~~available pursuant to Section 5096.827 of the Public Resources~~
13 ~~Code for a grant to the Sacramento Regional County Sanitation~~
14 ~~District for the purposes of this section.~~
15 ~~(b) Thirty-seven million dollars (\$37,000,000) from the funds~~
16 ~~made available pursuant to, and consistent with, Section 75029 of~~
17 ~~the Public Resources Code for a grant to the Sacramento Regional~~
18 ~~County Sanitation District for the purposes of this section.~~