

AMENDED IN SENATE JANUARY 12, 2012

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 environmental quality, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

SB 52, as amended, Steinberg. 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.

Vote: $\frac{2}{3}$. 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 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)) requires that the environmental
8 impacts of development projects be identified and mitigated.
9 (c) The act also guarantees the public an opportunity to review
10 and comment on the environmental impacts of a project and to
11 participate meaningfully in the development of mitigation measures
12 for potentially significant environmental impacts.
13 (d) There are large public and private projects under
14 consideration in various regions of the state that would replace old
15 and outmoded facilities with new job-creating facilities to meet
16 those regions' needs while also establishing new, cutting-edge
17 environmental benefits to those regions.
18 (e) These projects are publicly financed, privately financed, or
19 financed from revenues generated from the projects themselves
20 that do not require taxpayer financing.
21 (f) These projects further will generate thousands of full-time
22 jobs during construction and thousands of additional permanent
23 jobs once they are constructed and operating.
24 (g) These projects also present an unprecedented opportunity
25 to implement nation-leading innovative measures that will
26 significantly reduce traffic, air pollution, and other significant
27 environmental impacts, and fully mitigate the greenhouse gas
28 emissions resulting from passenger vehicle trips attributed to the
29 project.
30 (h) These pollution reductions will be the best in the nation
31 compared to other comparable projects in the United States.
32 (i) The purpose of this act is to provide unique and
33 unprecedented streamlining benefits under the California
34 Environmental Quality Act for projects that provide the benefits

1 described above for a limited period of time to put people to work
2 as soon as possible.

3 SEC. 2. Section 21180 of the Public Resources Code is
4 amended to read:

5 21180. For the purposes of this chapter, the following terms
6 shall have the following meanings:

7 (a) “Applicant” means a public or private entity or its affiliates,
8 or a person or entity that undertakes a public works project or
9 proposes a project, and its successors, heirs, and assignees.

10 (b) “Environmental leadership development project,” “leadership
11 project,” or “project” means a project as described in Section 21065
12 that is one of the following:

13 (1) A residential, retail, commercial, sports, cultural,
14 entertainment, or recreational use project that is designed to be
15 certified as LEED silver or better by the United States Green
16 Building Council and that achieves and maintains a 10-percent
17 greater standard for transportation efficiency than for comparable
18 projects. These projects shall be located on an infill site. For a
19 project that is within a metropolitan planning organization for
20 which a sustainable communities strategy or alternative planning
21 strategy is in effect, the infill project shall be consistent with the
22 general use designation, density, building intensity, and applicable
23 policies specified for the project area in either a sustainable
24 communities strategy or an alternative planning strategy, for which
25 the State Air Resources Board, pursuant to subparagraph (H) of
26 paragraph (2) of subdivision (b) of Section 65080 of the
27 Government Code, has accepted a metropolitan planning
28 organization’s determination that the sustainable communities
29 strategy or the alternative planning strategy would, if implemented,
30 achieve the greenhouse gas emission reduction targets.

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

34 (3) A clean energy manufacturing project that manufactures
35 products, equipment, or components used for renewable energy
36 generation, energy efficiency, or for the production of clean
37 alternative fuel vehicles.

38 (c) “Transportation efficiency” means the number of private
39 automobile trips by employees, visitors, or customers of the
40 residential, retail, commercial, sports, cultural, entertainment, or

1 recreational use project divided by the total number of employees,
2 visitors, and customers.

3 SEC. 3. Section 21181 of the Public Resources Code is
4 amended to read:

5 21181. This chapter does not apply to a project if the applicant
6 fails to notify a lead agency prior to the release of the draft
7 environmental impact report for public comment that the applicant
8 is electing to proceed pursuant to this chapter. The lead agency
9 shall notify the Secretary of the Natural Resources Agency if the
10 applicant provides notification pursuant to this chapter.

11 SEC. 4. Section 21183 of the Public Resources Code is
12 amended to read:

13 21183. The Governor ~~may~~ *shall* not certify a leadership project
14 for streamlining pursuant to this chapter unless all the following
15 conditions are met:

16 (a) The project will result in a minimum investment of one
17 hundred million dollars (\$100,000,000) spent on planning, design,
18 and construction of the project.

19 (b) The project creates high-wage, highly skilled jobs that pay
20 prevailing wages and living wages and provide construction jobs
21 and permanent jobs for Californians, and helps reduce
22 unemployment.

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

38 (d) The project applicant has entered into a binding and
39 enforceable agreement that all mitigation measures required
40 pursuant to this division to certify the project under this chapter

1 shall be conditions of approval of the project, and those conditions
2 will be fully enforceable by the lead agency or another agency
3 designated by the lead agency. In the case of environmental
4 mitigation measures, the applicant agrees, as an ongoing obligation,
5 that those measures will be monitored and enforced by the lead
6 agency for the life of the obligation.

7 (e) The project applicant agrees to pay the costs of the Court of
8 Appeal in hearing and deciding any case, including payment of
9 the costs for a special master if deemed appropriate by the court,
10 in a form and manner specified by the Judicial Council, as provided
11 in the Rules of Court adopted by the Judicial Council pursuant to
12 subdivision (b) of Section 21185.

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

17 SEC. 5. Section 21185 of the Public Resources Code is
18 amended to read:

19 21185. (a) Notwithstanding any other law, any action or
20 proceeding alleging that a lead agency has approved or is
21 undertaking a leadership project certified by the Governor in
22 violation of this division shall be conducted in accordance with
23 the following streamlining benefits:

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

26 (2) The Court of Appeal shall issue its decision ~~in the case on~~
27 *all petitions for writ of mandate filed pursuant to this subdivision*
28 within 175 days of the filing of the *last* petition.

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

31 (4) The court may order extensions of time only for good cause
32 and in order to promote the interests of justice.

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

35 SEC. 6. Section 21187 of the Public Resources Code is
36 amended to read:

37 21187. The draft and final environmental impact report shall
38 include a notice in no less than 12-point type stating the following:
39

1 “THIS EIR IS SUBJECT TO CHAPTER 6.5 (COMMENCING
2 WITH SECTION 21178) OF DIVISION 13 OF THE PUBLIC
3 RESOURCES CODE, WHICH PROVIDES, AMONG OTHER
4 THINGS, THAT ANY JUDICIAL ACTION CHALLENGING
5 THE CERTIFICATION OF THE EIR OR THE APPROVAL OF
6 THE PROJECT DESCRIBED IN THE EIR IS SUBJECT TO
7 THE PROCEDURES SET FORTH IN CHAPTER 6.5 AND
8 MUST BE FILED WITH THE COURT OF APPEAL. A COPY
9 OF CHAPTER 6.5 IS INCLUDED IN THE APPENDIX TO THIS
10 EIR.”

11
12 SEC. 7. Section 21189.2 of the Public Resources Code is
13 amended to read:

14 21189.2. The Judicial Council shall report to the Legislature
15 on or before January 1, 2015, on the effects of this chapter on the
16 administration of justice.

17 SEC. 8. No reimbursement is required by this act pursuant to
18 Section 6 of Article XIII B of the California Constitution because
19 a local agency or school district has the authority to levy service
20 charges, fees, or assessments sufficient to pay for the program or
21 level of service mandated by this act, within the meaning of Section
22 17556 of the Government Code.

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

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