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california legislature—2011–12 regular session

ASSEMBLY BILL

No. 900

Introduced by Assembly Members Buchanan and Gordon
(Principal coauthor: Senator Steinberg)
(Coauthors: Assembly Members Block and Pan)
(Coauthors: Senators Calderon, Lieu, and Rubio)

February 17, 2011

An act to add and repeal Chapter 6.5 (commencing with Section 21178) of Division 13 of the Public Resources Code, relating to environmental quality, ~~and declaring the urgency thereof, to take effect immediately.~~

Legislative Counsel's Digest

AB 900, as amended, Buchanan. Jobs and Economic Improvement Through Environmental Leadership Act of 2011.

(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 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.

This bill would enact the Jobs and Economic Improvement Through Environmental Leadership Act of 2011 and establish 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 would authorize the Governor to certify a leadership project for streamlining pursuant to the act if certain conditions are met. The bill would repeal the act as of January 1, 2015.

Because the lead agency would be required to use these alternative procedures for creating the administrative record if the project applicant so chooses and the project is certified by the Governor, this bill would impose a state-mandated local program. The bill would require, among other things, that the project create high-wage, highly skilled jobs and not result in any net additional emission of greenhouse gases, including greenhouse gas emissions from employee transportation.

(2) This bill would make legislative findings and declarations as to the act's unique and unprecedented streamlining benefits under the California Environmental Quality Act.

(3) 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.

(4) This bill would become operative only if SB 292 is enacted and takes effect on or before January 1, 2012.

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

Vote: $\frac{5}{3}$ -majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

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

1 SECTION 1. Chapter 6.5 (commencing with Section 21178)
2 is added to Division 13 of the Public Resources Code, to read:

3
4 Chapter 6.5. Jobs and Economic Improvement Through
5 Environmental Leadership Act of 2011
6

7 21178. The Legislature finds and declares all of the following:

8 (a) The overall unemployment rate in California is 12 percent,
9 and in certain regions of the state that rate exceeds 13 percent.

10 (b) The California Environmental Quality Act (Division 13
11 (commencing with Section 21000) of the Public Resources Code)
12 requires that the environmental impacts of development projects
13 be identified and mitigated.

14 (c) The act also guarantees the public an opportunity to review
15 and comment on the environmental impacts of a project and to
16 participate meaningfully in the development of mitigation measures
17 for potentially significant environmental impacts.

18 (d) There are large projects under consideration in various
19 regions of the state that would replace old and outmoded facilities
20 with new job-creating facilities to meet those regions' needs while
21 also establishing new, cutting-edge environmental benefits to those
22 regions.

23 (e) These projects are privately financed or financed from
24 revenues generated from the projects themselves and do not require
25 taxpayer financing.

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

29 (g) These projects also present an unprecedented opportunity
30 to implement nation-leading innovative measures that will
31 significantly reduce traffic, air quality, and other significant
32 environmental impacts, and fully mitigate the greenhouse gas
33 emissions resulting from passenger vehicle trips attributed to the
34 project.

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

37 (i) The purpose of this act is to provide unique and
38 unprecedented streamlining benefits under the California

1 Environmental Quality Act for projects that provide the benefits
2 described above for a limited period of time to put people to work
3 as soon as possible.

4 21180. For the purposes of this chapter, the following terms
5 shall have the following meanings:

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

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

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

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

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

37 (c) “Transportation efficiency” means the number of vehicle
38 trips by employees, visitors, or customers of the residential, retail,
39 commercial, sports, cultural, entertainment, or recreational use

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

3 21181. This chapter does not apply to a project if the applicant
4 fails to notify a lead agency prior to the release of the draft
5 environmental impact report for public comment that the applicant
6 is electing to proceed pursuant to this chapter. The lead agency
7 shall notify the Secretary of the Natural Resources Agency if the
8 applicant fails to provide notification pursuant to this section.

9 21182. A person proposing to construct a leadership project
10 may apply to the Governor for certification that the leadership
11 project is eligible for streamlining provided by this chapter. The
12 person shall supply evidence and materials that the Governor deems
13 necessary to make a decision on the application. Any evidence or
14 materials shall be made available to the public at least 15 days
15 before the Governor certifies a project pursuant to this chapter.

16 21183. The Governor may certify a leadership project for
17 streamlining pursuant to this chapter if all the following conditions
18 are met:

19 (a) The project will result in a minimum investment of one
20 hundred million dollars (\$100,000,000) in California upon
21 completion of construction.

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

26 (c) The project does not result in any net additional emission
27 of greenhouse gases, including greenhouse gas emissions from
28 employee transportation, as determined by the State Air Resources
29 Board pursuant to Division 25.5 (commencing with Section 38500)
30 of the Health and Safety Code.

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

1 (e) The project applicant agrees to pay the costs of the Court of
2 Appeal in hearing and deciding any case, including payment of
3 the costs for the appointment of a special master if deemed
4 appropriate by the court, in a form and manner specified by the
5 Judicial Council, as provided in the Rules of Court adopted by the
6 Judicial Council pursuant to subdivision (f) of Section 21185.

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

11 21184. (a) The Governor may certify a project for streamlining
12 pursuant to this chapter if it complies with the conditions specified
13 in Section 21183.

14 (b) (1) Prior to certifying a project, the Governor shall make a
15 determination that each of the conditions specified in Section 21183
16 has been met. These findings are not subject to judicial review.

17 (2) (A) If the Governor determines that a leadership project is
18 eligible for streamlining pursuant to this chapter, he or she shall
19 submit that determination, and any supporting information, to the
20 Joint Legislative Budget Committee for review and concurrence
21 or nonconcurrence.

22 (B) Within 30 days of receiving the determination, the Joint
23 Legislative Budget Committee shall concur or nonconcur in writing
24 on the determination.

25 (C) If the Joint Legislative Budget Committee fails to concur
26 or nonconcur on a determination by the Governor within 30 days
27 of the submittal, the leadership project is deemed to be certified.

28 (c) The Governor may issue guidelines regarding application
29 and certification of projects pursuant to this chapter. Any guidelines
30 issued pursuant to this subdivision are not subject to the rulemaking
31 provisions of the Administrative Procedure Act (Chapter 3.5
32 (commencing with Section 11340) of Part 1 of Division 3 of Title
33 2 of the Government Code).

34 21185. (a) Notwithstanding any other law, any action or
35 proceeding alleging that a public agency or has approved or is
36 undertaking a leadership project certified by the Governor in
37 violation of this division shall be conducted in accordance with
38 the following streamlining benefits:

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

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

6 (3) The Court of Appeal shall issue its decision in the case within
7 175 days of the filing of the petition.

8 (4) The court may appoint a master to assist the court in
9 managing and processing the case.

10 (5) The court may grant extensions of time only for good cause
11 shown and in order to promote the interests of justice.

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

14 21186. Notwithstanding any other law, the preparation and
15 certification of the administrative record for a leadership project
16 certified by the Governor shall be performed in the following
17 manner:

18 (a) The lead agency for the project shall prepare the
19 administrative record pursuant to this division concurrently with
20 the administrative process.

21 (b) All documents and other materials placed in the
22 administrative record shall be posted on, and be downloadable
23 from, an Internet Web site maintained by the lead agency
24 commencing with the date of the release of the draft environmental
25 impact report.

26 (c) The lead agency shall make available to the public in a
27 readily accessible electronic format the draft environmental impact
28 report and all other documents submitted to, or relied on by, the
29 lead agency in the preparation of the draft environmental impact
30 report.

31 (d) A document prepared by the lead agency or submitted by
32 the applicant after the date of the release of the draft environmental
33 impact report that is a part of the record of the proceedings shall
34 be made available to the public in a readily accessible electronic
35 format within five business days after the document is released or
36 received by the lead agency.

37 (e) The lead agency shall encourage written comments on the
38 project to be submitted in a readily accessible electronic format,
39 and shall make any comment available to the public in a readily
40 accessible electronic format within five days of its receipt.

1 (f) Within seven business days after the receipt of any comment
2 that is not in an electronic format, the lead agency shall convert
3 that comment into a readily accessible electronic format and make
4 it available to the public in that format.

5 (g) The lead agency shall certify the final administrative record
6 within five days of its approval of the project.

7 (h) Any dispute arising from the administrative record shall be
8 resolved by the Court of Appeal pursuant to Section 21185.

9 21187. The draft and final environmental impact report shall
10 include a notice in no less than 12-point type stating the following:

11
12 “THIS EIR IS SUBJECT TO CHAPTER 6.5 (COMMENCING
13 WITH SECTION 21178) OF THE PUBLIC RESOURCES CODE,
14 WHICH PROVIDES, AMONG OTHER THINGS, THAT ANY
15 JUDICIAL ACTION CHALLENGING THE CERTIFICATION
16 OF THE EIR OR THE APPROVAL OF THE PROJECT
17 DESCRIBED IN THE EIR IS SUBJECT TO THE PROCEDURES
18 SET FORTH IN SECTION 21178.2 OF THE PUBLIC
19 RESOURCES CODE AND MUST BE FILED WITH THE
20 COURT OF APPEAL. A COPY OF CHAPTER 6.5 OF THE
21 PUBLIC RESOURCES CODE IS INCLUDED IN THE
22 APPENDIX TO THIS EIR.”

23
24 21188. The provisions of this chapter are severable. If any
25 provision of this chapter or its application is held to be invalid,
26 that invalidity shall not affect any other provision or application
27 that can be given effect without the invalid provision or application.

28 21189. Except as otherwise provided expressly in this chapter,
29 nothing in this chapter affects the duty of any party to comply with
30 this division.

31 21189.1. (a) If a lead agency fails to certify an environmental
32 impact report for a leadership project subject to this chapter on or
33 before June 1, 2014, this chapter shall not apply to that project.
34 The lead agency shall notify the Secretary of the Natural Resources
35 Agency by July 1, 2014, if an environmental impact report subject
36 to this chapter has not been certified by that date.

37 (b) If, prior to June 1, 2014, a certification issued pursuant to
38 this chapter has not been used or the time period during which an
39 action or proceeding, for purposes of Section 21185, may be filed

1 under this chapter has not elapsed, the certification expires and is
2 no longer valid.

3 21189.2. The Judicial Council shall report to the Legislature
4 on or before January 1, 2015, on the effects of this chapter, which
5 shall include, but not be limited to, a description of the benefits,
6 costs, and detriments of the certification of leadership projects
7 pursuant to this chapter.

8 21189.3. This chapter shall remain in effect until January 1,
9 2015, and as of that date is repealed unless a later enacted statute
10 extends or repeals that date.

11 SEC. 2. No reimbursement is required by this act pursuant to
12 Section 6 of Article XIII B of the California Constitution because
13 a local agency or school district has the authority to levy service
14 charges, fees, or assessments sufficient to pay for the program or
15 level of service mandated by this act, within the meaning of Section
16 17556 of the Government Code.

17 SEC. 3. This act shall become operative only if Senate Bill
18 292 of the 2011–12 Regular Session is enacted and takes effect
19 on or before January 1, 2012.

20 ~~SEC. 4. This act is an urgency statute necessary for the~~
21 ~~immediate preservation of the public peace, health, or safety within~~
22 ~~the meaning of Article IV of the Constitution and shall go into~~
23 ~~immediate effect. The facts constituting the necessity are:~~

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