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SB-734 Environmental quality: Jobs and Economic Improvement Through Environmental Leadership Act of 2011. (2015-2016)

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Senate Bill No. 734

CHAPTER 210

An act to amend Sections 21178, 21181, 21183, 21189.1, and 21189.3 of, and to add Section 21184.5 to, the Public Resources Code, relating to environmental quality, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor August 26, 2016. Filed with Secretary of State August 26, 2016.]

LEGISLATIVE COUNSEL'S DIGEST

SB 734, Galgiani. Environmental quality: 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 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.

The Jobs and Economic Improvement Through Environmental Leadership Act of 2011 authorizes the Governor, until January 1, 2016, to certify projects meeting certain requirements, including the requirement that the project creates high-wage, highly skilled jobs that pay prevailing wages and living wages, for streamlining benefits provided by that act. The act provides that if a lead agency fails to approve a project certified by the Governor before January 1, 2017, then the certification expires and is no longer valid. The act requires a lead agency to prepare the record of proceedings for the certified project concurrent with the preparation of the environmental documents. The act is repealed by its own terms on January 1, 2017.

This bill would extend the authority of the Governor to certify a project to January 1, 2018. The bill would provide that the certification expires and is no longer valid if the lead agency fails to approve a certified project before January 1, 2019. If a project is certified by the Governor, the bill would require contractors and subcontractors to pay to all construction workers employed in the execution of the project at least the general prevailing rate of per diem wages and would provide for the enforcement of this requirement. The bill would repeal the act on January 1, 2019. Because the bill would extend the obligation of the lead agency to prepare concurrently the record of proceedings, this bill would impose a state-mandated local program.

This bill would, notwithstanding any other law, require a multifamily residential project certified pursuant to the act to provide private vehicle parking spaces that are priced and rented or purchased separately from dwelling units, except as provided.

(2) 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.

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

Vote: 2/3 Appropriation: no Fiscal Committee: yes Local Program: yes

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 21178 of the Public Resources Code is amended to read:

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

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

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

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

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

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

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

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

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

SEC. 2. Section 21181 of the Public Resources Code is amended to read:

21181. This chapter does not apply to a project if the Governor does not certify the project as an environmental leadership development project eligible for streamlining pursuant to this chapter prior to January 1, 2018.

SEC. 3. Section 21183 of the Public Resources Code is amended to read:

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

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

(b) (1) The project creates high-wage, highly skilled jobs that pay prevailing wages and living wages and provide construction jobs and permanent jobs for Californians, and helps reduce unemployment. For purposes of this subdivision, "jobs that pay prevailing wages" means that all construction workers employed in the execution of the project will receive at least the general prevailing rate of per diem wages for the type of work and geographic area, as determined by the Director of Industrial Relations pursuant to Sections 1773 and 1773.9 of the Labor Code. If the project is certified for streamlining, the project applicant shall include this requirement in all contracts for the performance of the work.

(2) (A) If the project is certified pursuant to this chapter, contractors and subcontractors shall pay to all construction workers employed in the execution of the project at least the general prevailing rate of per diem wages.

(B) Except as provided in subparagraph (C), the obligation of the contractors and subcontractors to pay prevailing wages pursuant to subparagraph (A) may be enforced by the Labor Commissioner through the issuance of a civil wage and penalty assessment pursuant to Section 1741 of the Labor Code, which may be reviewed pursuant to Section 1742 of the Labor Code, within 18 months after the completion of the project, or by an underpaid worker through an administrative complaint or civil action. If a civil wage and penalty assessment is issued, the contractor, subcontractor, and surety on a

bond or bonds issued to secure the payment of wages covered by the assessment shall be liable for liquidated damages pursuant to Section 1742.1 of the Labor Code.

(C) Subparagraph (B) does not apply if all contractors and subcontractors performing work on the project are subject to a project labor agreement that requires the payment of prevailing wages to all construction workers employed in the execution of the project and provides for enforcement of that obligation through an arbitration procedure. For purposes of this subparagraph, "project labor agreement" has the same meaning as set forth in paragraph (1) of subdivision (b) of Section 2500 of the Public Contract Code.

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

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

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

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

SEC. 4. Section 21184.5 is added to the Public Resources Code, to read:

21184.5. (a) Notwithstanding any other law, except as provided in subdivision (b), a multifamily residential project certified under this chapter shall provide unbundled parking, such that private vehicle parking spaces are priced and rented or purchased separately from dwelling units.

(b) Subdivision (a) shall not apply if the dwelling units are subject to affordability restrictions in law that prescribe rent or sale prices, and the cost of parking spaces cannot be unbundled from the cost of dwelling units.

SEC. 5. Section 21189.1 of the Public Resources Code is amended to read:

21189.1. If, prior to January 1, 2019, a lead agency fails to approve a project certified by the Governor pursuant to this chapter, then the certification expires and is no longer valid.

SEC. 6. Section 21189.3 of the Public Resources Code is amended to read:

21189.3. This chapter shall remain in effect until January 1, 2019, and as of that date is repealed unless a later enacted statute extends or repeals that date.

SEC. 7. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because a local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act, within the meaning of Section 17556 of the Government Code.

SEC. 8. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to reauthorize the Governor to certify projects as environmental leadership development projects in 2016 and prevent a one-year gap in this authorization, it is necessary that this act take effect immediately.