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AB-2798 Freight: development projects. (2021-2022)

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Assembly Bill No. 2798

CHAPTER 535

An act to add and repeal Article 5.4 (commencing with Section 65957.8) and Article 5.5 (commencing with Section 65958) of Chapter 4.5 of Division 1 of Title 7 of the Government Code, relating to land use, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 25, 2022. Filed with Secretary of State September 25, 2022.]

LEGISLATIVE COUNSEL'S DIGEST

AB 2798, Fong. Freight: development projects.

(1) The Planning and Zoning Law, among other things, requires the legislative body of each county and city to adopt a comprehensive, long-term general plan for the physical development of the county or city and of any land outside its boundaries that relates to its planning. That law authorizes the legislative body, if it deems it to be in the public interest, to amend all or part of an adopted general plan, as provided. That law also authorizes the legislative body of any county or city, pursuant to specified procedures, to adopt ordinances that, among other things, regulate the use of buildings, structures, and land as between industry, business, residences, open space, and other purposes.

The Permit Streamlining Act requires public agencies to approve or disapprove of a development project within certain timeframes, as specified. The act requires a public agency, upon its determination that an application for a development project is incomplete, to include a list and a thorough description of the specific information needed to complete the application. Existing law authorizes the applicant to submit the additional material to the public agency, requires the public agency to determine whether the submission of the application together with the submitted materials is complete within 30 days of receipt, and provides for an appeal process from the public agency's determination. Existing law requires a final written determination by the agency on the appeal no later than 60 days after receipt of the applicant's written appeal.

Existing law, the California Environmental Quality Act (CEQA), requires a lead agency, as defined, to prepare, or cause to be prepared, and to certify the completion of, an environmental impact report on a project that it proposes to 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 regulations establish a categorical exemption for existing facilities.

This bill, until January 1, 2024, would prohibit a local agency from denying a permit for a short-term freight transportation use, as defined, that is submitted by a developer on a parcel if the proposed use is in conformity with all applicable plans, programs, and ordinances, among other things, that apply to the land, solely because the developer has a pending development application, or is concurrently submitting a development application, for a freight transportation project on that land. The bill would restrict the application of its provisions to land zoned for industrial or agricultural uses, subject to specified conditions, as of the date of the application submission. If a governing body of a California port adopts real estate agreements, tariffs, ordinances, or other entitlements to allow for a short-term port freight transportation use or freight transportation infrastructure, the bill, until January 1,

2024, would provide that the use be considered an existing facility with negligible or no expansion of use for the purposes of CEQA. By imposing new duties on local agencies with regard to local planning and zoning, the bill would impose a state-mandated local program.

(2) The bill would include findings that changes proposed by this bill address a matter of statewide concern rather than a municipal affair and, therefore, apply to all cities, including charter cities.

(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 with regard to certain mandates no reimbursement is required by this act for a specified reason.

With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains costs so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

(4) 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. The Legislature finds and declares all of the following:

(a) California is experiencing the effects of an unprecedented global supply chain crisis with disruptions to goods movement caused and exacerbated by the COVID-19 pandemic and surges in product demand which outstrip equipment supply and availability.

(b) The impacts of the global supply chain are driving costs and threatening access of California exporters to foreign markets, which in turn threatens the sustainable economic growth of the state.

(c) The primary purpose of this act is to encourage the development and growth of California-originated export cargoes, improve access to foreign markets for California's exported goods by reducing the real costs of transportation, and create and support jobs provided by California employers who are able to grow their export business and maintain their export market.

(d) California's exporters and the international trade that they facilitate are critical components of the state economy by directly or indirectly employing millions of Californians, contributing billions of dollars in economic activity, and generating significant local and state tax revenues as a result of this activity. As such, our exports must be given the ability to successfully compete and continue to grow.

(e) The development, improvement, expansion, and maintenance of the state's exporting of cargoes from farming, distribution, manufacturing, fabrication, assembly, processing, and warehousing sites in California are essential to the growth of the state's economic well-being and the ability of those businesses and workers associated with trade-related industries to continue to compete cost effectively on a regional, national, and global scale.

(f) The global pandemic has demonstrated that access to the global supply chain in times of excessive demand can be limited by extenuating factors beyond the control of Californians, and that the impacts of a lack of access to equipment, vessels, and foreign markets on the California exporter and the California export economy can be significant. California must be able to protect and nurture its exporters in the wake of the pandemic and assist exporters to weather increased costs of access to foreign markets.

SEC. 2. Article 5.4 (commencing with Section 65957.8) is added to Chapter 4.5 of Division 1 of Title 7 of the Government Code, to read:

Article 5.4. Short-term Port Freight Transportation Use

65957.8. For purposes of this article:

(a) "California port" means the jurisdictions and uses of the Port of Humboldt Bay, Port of Los Angeles, Port of Long Beach, Port of San Diego, Port of Hueneme, Port of Redwood City, Port of West Sacramento, Port of Richmond, Port of San Francisco, Port of Oakland, or Port of Stockton.

(b) "Existing facility" means the operation, repair, maintenance, permitting, leasing, licensing, or minor alteration of existing public or private structures, facilities, mechanical equipment, or topographical features, involving negligible or no expansion of existing or former use.

(c) "Freight transportation infrastructure" means any physical improvements to a port-owned parcel or parcel within the jurisdiction of a California port that facilitate and support short-term port freight transportation uses.

(d) "Short-term port freight transportation use" means all temporary, freight-related transportation uses, including, but not limited to, the parking, storage, interchange, or inspection of any intermodal equipment, including chassis, containers, and trucks related to freight transportation activity, on a port-owned parcel or parcel within the jurisdiction of a California port, if the use is consistent, compliant, and in conformity with all applicable plans, programs, policies, ordinances, standards, requirements, or other similar provisions that apply to the land.

65957.85. (a) When the governing body of a California port or its designee adopts real estate agreements, tariffs, ordinances, or other applicable entitlements to allow for a short-term port freight transportation use or freight transportation infrastructure, the use shall be considered an existing facility for purposes of the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code).

(b) It is the intent of the Legislature in enacting this section to clarify that a project may be eligible for an exemption established pursuant to Section 21084 of the Public Resources Code, including, but not limited to, an exemption described in Section 15301, 15302, or 15303 of Title 14 of the California Code of Regulations.

65957.9. This article shall remain in effect only until January 1, 2024, and as of that date is repealed.

SEC. 3. Article 5.5 (commencing with Section 65958) is added to Chapter 4.5 of Division 1 of Title 7 of the Government Code, to read:

Article 5.5. Short-term Freight Transportation Use Permit Application Decision

65958. For purposes of this article, the following definitions apply:

(a) "Freight transportation infrastructure" means any physical improvements to property which facilitate the use of freight transportation, including, but not limited to, the parking, storage, interchange, or inspection of any trucks or intermodal equipment, including chassis or containers, and any improvements specifically related to the support of that same activity.

(b) "Freight transportation project" means any project to develop freight transportation infrastructure on an industrial or agricultural zoned parcel.

(c) "Short-term freight transportation use" means all temporary, freight-related transportation uses, including, but not limited to, the parking, storage, interchange, or inspection of any intermodal equipment, including chassis, containers, and trucks related to freight transportation activity. "Freight transportation infrastructure" and "freight transportation projects" do not constitute a short-term freight transportation use.

65958.1. A local agency shall not deny a permit for a short-term freight transportation use that is submitted by a developer on a parcel if the proposed use is consistent, compliant, and in conformity with all applicable plans, programs, policies, ordinances, standards, requirements, or other similar provisions, that apply to the land solely because the developer has a pending development application, or is concurrently submitting a development application, for a freight transportation project on that land.

65958.2. (a) Short-term freight transportation use pursuant to this article is an allowable use only on land zoned for industrial or agricultural uses if the use is consistent, compliant, and in conformity with all applicable plans, programs, policies, ordinances, standards, requirements, or other similar provisions that apply to the land, as of the date of the application submission.

(b) This article does not apply to any use of property that is zoned for residential or commercial uses.

65958.3. No actions, ministerial or discretionary, are authorized, required, or directed by this article to a local agency other than those permitting requirements imposed by other applicable law.

65958.4. This article does not supersede any other local, state, and federal laws applicable to short-term freight transportation uses except as specifically provided in this article.

65958.5. This article does not prohibit a local agency from imposing workforce or labor standards on any application, permit, project, or development for short-term freight transportation use.

65958.6. This article shall remain in effect only until January 1, 2024, and as of that date is repealed.

SEC. 4. The Legislature finds and declares that adequate freight transportation infrastructure, in light of the severe impacts of the supply chain crisis resulting from the COVID-19 pandemic on all sectors of the economy of this state, is a matter of statewide

concern and is not a municipal affair as that term is used in Section 5 of Article XI of the California Constitution. Therefore, Section 3 of this act, adding Article 5.5 (commencing with Section 65958) to Chapter 4.5 of Division 1 of Title 7 of the Government Code, applies to all cities, including charter cities.

SEC. 5. 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 or because costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

However, if the Commission on State Mandates determines that this act contains other costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.

SEC. 6. 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 California Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to alleviate the effects of the global supply chain crisis induced by the COVID-19 pandemic and to provide immediate benefits to impacted California businesses and boost the competitiveness of the state economy as soon as possible, it is necessary that this act take effect immediately.