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SB-44 California Environmental Quality Act: streamlined judicial review: environmental leadership transit projects. (2021-2022)

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Date Published: 10/08/2021 02:00 PM

Senate Bill No. 44

CHAPTER 633

An act to add and repeal Section 21168.6.9 of the Public Resources Code, relating to environmental quality.

[Approved by Governor October 07, 2021. Filed with Secretary of State October 07, 2021.]

LEGISLATIVE COUNSEL'S DIGEST

SB 44, Allen. California Environmental Quality Act: streamlined judicial review: environmental leadership transit projects.

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 a procedure by which a person may seek judicial review of the decision of the lead agency made pursuant to CEQA.

This bill would, until January 1, 2025, establish specified procedures for the administrative and judicial review of the environmental review and approvals granted for an environmental leadership transit project, as defined, proposed by a public or private entity or its affiliates that is located wholly within the County of Los Angeles or connects to an existing transit project wholly located in that county and that is approved by the lead agency on or before January 1, 2024. The bill would require the project applicant of the environmental leadership transit project to take certain actions in order for those specified procedures to apply to the project. The bill would require the Judicial Council, on or before January 1, 2023, to adopt rules of court establishing procedures requiring actions or proceedings seeking judicial review of the certification of an environmental impact report for an environmental leadership transit project or the granting of any project approval, including any appeals to the court of appeal or the Supreme Court, to be resolved, to the extent feasible, within 365 calendar days of the filing of the certified record of proceedings with the court to an action or proceeding seeking judicial review of the lead agency's action related to an environmental leadership transit project. The bill would require the environmental leadership transit project to meet certain labor requirements. The bill would require the lead agency to prepare the EIR for an environmental leadership transit project in a specified manner and would require the concurrent preparation of the record of proceedings. The bill would specify that these requirements would only apply to the first 7 environmental leadership transit projects obtaining a certified environmental impact report. Because the bill would impose additional duties on the lead agency, this bill would impose a state-mandated local program.

This bill would make legislative findings and declarations as to the necessity of a special statute for the County of Los Angeles.

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.

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

SECTION 1. The Legislature finds and declares all of the following:

(a) The County of Los Angeles is the site of the 2028 Summer Olympic and Paralympic Games, and various transportation agencies have adopted goals to increase public transit opportunities within the county as soon as possible. It is necessary to ensure these public transit options are as sustainable as possible to assist California in meeting its climate change and air quality goals.

(b) In order for California to promote the rapid development of sustainable public transit options, it is the intent of the Legislature that courts take action to quickly resolve actions or proceedings brought pursuant to the California Environmental Quality Act (CEQA) relating to certain environmental leadership transit projects located wholly within the County of Los Angeles or connected to an existing transit project located wholly within the county.

(c) Any existing backlog of civil cases in the Superior Court of California, County of Los Angeles, will not be unduly impacted by prioritizing the resolution of these CEQA actions for all of the following reasons:

(1) It is the intent of the Legislature that only seven environmental leadership transit projects be subject to expedited resolution pursuant to CEQA.

(2) Similar efforts to improve jobs and the economy through environmental leadership development programs, such as Assembly Bill 900 of the 2011–12 Regular Session (Chapter 354 of the Statutes of 2011), have not been shown to negatively impact or exacerbate any existing backlog of civil cases in the County of Los Angeles.

(3) Pursuant to subdivision (b) of Section 21167.1 of the Public Resources Code, the Superior Court of California, County of Los Angeles, has specifically designated five judges to hear CEQA cases such that these judges will be available to hear, and quickly resolve, CEQA cases, including those related to environmental leadership transit projects.

SEC. 2. Section 21168.6.9 is added to the Public Resources Code, to read:

21168.6.9. (a) For purposes of this section, the following definitions apply:

(1) “Environmental leadership transit project” or “project” means a project to construct a fixed guideway and related fixed facilities that meets all of the following conditions:

(A) The fixed guideway operates at zero emissions.

(B) (i) If the project is more than two miles in length, the project reduces emissions by no less than 400,000 metric tons of greenhouse gases directly in the corridor of the project defined in the applicable environmental document over the useful life of the project, without using offsets.

(ii) If the project is no more than two miles in length, the project reduces emissions by no less than 50,000 metric tons of greenhouse gases directly in the corridor of the project defined in the applicable environmental document over the useful life of the project, without using offsets.

(C) The project reduces no less than 30,000,000 vehicle miles traveled in the corridor of the project defined in the applicable environmental document over the useful life of the project.

(D) The project is consistent with the applicable sustainable communities strategy or alternative planning strategy.

(E) The project is consistent with the applicable regional transportation plan.

(F) The project applicant demonstrates how it has incorporated sustainable infrastructure practices to achieve sustainability, resiliency, and climate change mitigation and adaptation goals in the project, including principles, frameworks, or guidelines as recommended by one or more of the following:

(i) The sustainability, resiliency, and climate change policies and standards of the American Society of Civil Engineers.

(ii) The Envision Rating System of the Institute for Sustainable Infrastructure.

(iii) The Leadership in Energy and Environment Design (LEED) rating system of the United States Green Building Council.

(G) The environmental leadership transit project is located wholly within the County of Los Angeles or connects to an existing transit project wholly located in the County of Los Angeles.

(H) For a project meeting the requirements of subparagraphs (A) to (G), inclusive, for which the environmental review pursuant to this division has commenced before January 1, 2022, the project applicant demonstrates that the record of proceedings is being, or has been, prepared in accordance with subdivision (f).

(2) "Fixed guideway" has the same meaning as defined in Section 5302 of Title 49 of the United States Code.

(3) "Project applicant" means a public or private entity or its affiliates that proposes an environmental leadership transit project, and its successors, heirs, and assignees.

(4) "Project labor agreement" has the same meaning as in paragraph (1) of subdivision (b) of Section 2500 of the Public Contract Code.

(5) "Skilled and trained workforce" has the same meaning as provided in Chapter 2.9 (commencing with Section 2600) of Part 1 of Division 2 of the Public Contract Code.

(b) This section applies to an environmental leadership transit project if the project applicant does all of the following:

(1) The project applicant demonstrates compliance with the requirements of Chapter 12.8 (commencing with Section 42649) and Chapter 12.9 (commencing with Section 42649.8) of Part 3 of Division 30, as applicable.

(2) (A) Except as provided in subparagraph (B), the project applicant has entered into a binding and enforceable agreement that all mitigation measures required under this division 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 project applicant agrees, as an ongoing obligation, that those measures will be monitored and enforced by the lead agency for the life of the obligation.

(B) For a project applicant that is a public agency and is also the lead agency, the public agency conditions the approval of the environmental leadership transit project on, and performs, all mitigation measures required under this division. In the case of environmental mitigation measures, the public agency, as an ongoing obligation, shall monitor those measures for the life of the obligation.

(3) The project applicant agrees to pay the costs of the trial court and the court of appeal in hearing and deciding any case challenging a lead agency's action on an environmental leadership transit project under this division, 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 California Rules of Court adopted by the Judicial Council under subdivision (d).

(4) The project applicant agrees to bear the costs of preparing the record of proceedings for the project concurrent with review and consideration of the project under this division, in a form and manner specified by the lead agency for the project.

(c) (1) (A) If the project applicant is a public agency, the project applicant of an environmental leadership transit project shall obtain an enforceable commitment that any bidder, contractor, or other entity undertaking the project will use a skilled and trained workforce to complete the project.

(B) Subparagraph (A) does not apply if either of the following are met:

(i) The project applicant has entered into a project labor agreement that will bind all contractors and subcontractors performing work on the project to use a skilled and trained workforce.

(ii) The bidder, contractor, or other entity has entered into a project labor agreement that will bind all contractors and subcontractors at every tier performing work on the project to use a skilled and trained workforce.

(2) If the project applicant is a private entity, the project applicant of an environmental leadership transit project shall do both of the following:

(A) Certify to the lead agency that either of the following is true:

(i) The entirety of the project is a public work for purposes of Chapter 1 (commencing with Section 1720) of Part 7 of Division 2 of the Labor Code.

(ii) If the project is not in its entirety a public work and the project applicant is not required to pay prevailing wages to all construction workers under Article 2 (commencing with Section 1720) of Chapter 1 of Part 2 of Division 2 of the Labor Code, all construction workers employed on construction of the project will be paid 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, except that apprentices registered in programs approved by the Chief of the Division of Apprenticeship Standards may be paid at least the applicable apprentice prevailing rate. If the project is subject to this clause, then for those portions of the project that are not a public work all of the following shall apply:

(I) The project applicant shall ensure that the prevailing wage requirement is included in all contracts for the performance of all construction work.

(II) All contractors and subcontractors at every tier shall pay to all construction workers employed in the execution of the work at least the general prevailing rate of per diem wages, except that apprentices registered in programs approved by the Chief of the Division of Apprenticeship Standards may be paid at least the applicable apprentice prevailing rate.

(III) Except as provided in subclause (V), all contractors and subcontractors at every tier shall maintain and verify payroll records pursuant to Section 1776 of the Labor Code and make those records available for inspection and copying as provided by that section.

(IV) Except as provided in subclause (V), the obligation of the contractors and subcontractors at every tier to pay prevailing wages 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, or by a joint labor-management committee through a civil action under Section 1771.2 of the Labor Code. 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.

(V) Subclauses (III) and (IV) do not apply if all contractors and subcontractors at every tier 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.

(VI) Notwithstanding subdivision (c) of Section 1773.1 of the Labor Code, the requirement that employer payments not reduce the obligation to pay the hourly straight time or overtime wages found to be prevailing shall not apply if otherwise provided in a bona fide collective bargaining agreement covering the worker. The requirement to pay at least the general prevailing rate of per diem wages does not preclude use of an alternative workweek schedule adopted pursuant to Section 511 or 514 of the Labor Code.

(B) Certify to the lead agency that a skilled and trained workforce will be used to perform all construction work on the project. All of the following requirements shall apply to the project:

(i) The project applicant shall require in all contracts for the performance of work that every contractor and subcontractor at every tier will individually use a skilled and trained workforce to construct the project.

(ii) Every contractor and subcontractor at every tier shall use a skilled and trained workforce to construct the project.

(iii) (I) Except as provided in subclause (II), the project applicant shall provide to the lead agency, on a monthly basis while the project or contract is being performed, a report demonstrating compliance with Chapter 2.9 (commencing with Section 2600) of Part 1 of Division 2 of the Public Contract Code. A monthly report provided to the lead agency pursuant to this subclause shall be a public record under the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1) and shall be open to public inspection. A project applicant that fails to provide a monthly report demonstrating compliance with Chapter 2.9 (commencing with Section 2600) of Part 1 of Division 2 of the Public Contract Code shall be subject to a civil penalty of ten thousand dollars (\$10,000) per month for each month for which the report has not been provided. Any contractor or subcontractor that fails to use a skilled and trained workforce shall be subject to a civil penalty of two hundred dollars (\$200) per calendar day for each worker employed in contravention of the skilled and trained workforce requirement. Penalties may be assessed by the Labor Commissioner within 18 months of completion of the project using the same procedures for issuance of civil wage and penalty assessments pursuant to Section 1741 of the Labor Code, and may be reviewed pursuant to the same procedures in Section 1742 of the Labor Code. Penalties shall be paid to the State Public Works Enforcement Fund.

(II) Subclause (I) shall not apply if all contractors and subcontractors at every tier performing work on the project are subject to a project labor agreement that requires compliance with the skilled and trained workforce requirement and provides for enforcement of that obligation through an arbitration procedure.

(d) On or before January 1, 2023, the Judicial Council shall adopt rules of court that apply to any action or proceeding brought to attack, review, set aside, void, or annul the certification of an environmental impact report for an environmental leadership transit project or the granting of any project approval that require the action or proceeding, including any potential appeals to the court of appeal or the Supreme Court, to be resolved, to the extent feasible, within 365 calendar days of the filing of the certified record of proceedings with the court.

(e) (1) (A) The draft and final environmental impact report for an environmental leadership transit project shall include a notice in not less than 12-point type stating the following:

THIS ENVIRONMENTAL IMPACT REPORT IS SUBJECT TO SECTION 21168.6.9 OF THE PUBLIC RESOURCES CODE, WHICH PROVIDES, AMONG OTHER THINGS, THAT THE LEAD AGENCY NEED NOT CONSIDER CERTAIN COMMENTS FILED AFTER THE CLOSE OF THE PUBLIC COMMENT PERIOD, IF ANY, FOR THE DRAFT ENVIRONMENTAL IMPACT REPORT. ANY JUDICIAL ACTION CHALLENGING THE CERTIFICATION OR ADOPTION OF THE ENVIRONMENTAL IMPACT REPORT OR THE APPROVAL OF THE PROJECT DESCRIBED IN SECTION 21168.6.9 OF THE PUBLIC RESOURCES CODE IS SUBJECT TO THE PROCEDURES SET FORTH IN THAT SECTION. A COPY OF SECTION 21168.6.9 OF THE PUBLIC RESOURCES CODE IS INCLUDED IN THE APPENDIX TO THIS ENVIRONMENTAL IMPACT REPORT.

(B) For an environmental leadership transit project for which a draft environmental impact report was issued before January 1, 2022, the lead agency shall, before February 1, 2022, or before the public hearing on the certification of the environmental impact report, whichever is earlier, provide the notice specified in subparagraph (A), in writing, to all parties that have requested notification regarding the project. The lead agency shall include that notice and the appendix required pursuant to paragraph (2) in the final environmental impact report for the project.

(C) For an environmental leadership transit project for which a final environmental impact report was issued before January 1, 2022, the lead agency shall, before February 1, 2022, or before the issuance of the notice of determination, whichever is earlier, do both of the following:

(i) Issue an addendum to the final environmental impact report containing the notice specified in subparagraph (A) and the appendix required pursuant to paragraph (2).

(ii) Provide notice, in writing, of the addendum to all parties that have requested notification regarding the project.

(2) The draft environmental impact report and final environmental impact report shall contain, as an appendix, the full text of this section.

(3) Within 10 calendar days after the release of the draft environmental impact report, the lead agency shall conduct an informational workshop to inform the public of the key analyses and conclusions of that document, as applicable.

(4) Within 10 calendar days before the close of the public comment period, the lead agency shall hold a public hearing to receive testimony on the draft environmental impact report. A transcript of the hearing shall be included as an appendix to the final environmental impact report, as applicable.

(5) (A) Within five calendar days following the close of the public comment period, a commenter on the draft environmental impact report may submit to the lead agency a written request for nonbinding mediation, as applicable. The lead agency shall participate in nonbinding mediation with all commenters who submitted timely comments on the draft environmental impact report and who requested the mediation. Mediation conducted pursuant to this paragraph shall end no later than 35 calendar days after the close of the public comment period.

(B) A request for mediation shall identify all areas of dispute raised in the comment submitted by the commenter that are to be mediated.

(C) The lead agency shall select one or more mediators who shall be retired judges or recognized experts with at least five years' experience in land use and environmental law or science, or mediation. The lead agency shall bear the costs of mediation.

(D) A mediation session shall be conducted on each area of dispute with the parties requesting mediation on that area of dispute.

(E) The lead agency shall adopt, as a condition of approval, any measures agreed upon by the lead agency and any commenter who requested mediation. A commenter who agrees to a measure pursuant to this subparagraph shall not raise the issue addressed by that measure as a basis for an action or proceeding challenging the lead agency's decision to certify the environmental impact report or to grant project approval.

(6) The lead agency need not consider written comments on the draft environmental impact report submitted after the close of the public comment period, unless those comments address any of the following:

(A) New issues raised in the response to comments by the lead agency.

(B) New information released by the lead agency subsequent to the release of the draft environmental impact report, such as new information set forth or embodied in a staff report, proposed permit, proposed resolution, ordinance, or similar documents.

(C) Changes made to the project after the close of the public comment period.

(D) Proposed conditions for approval, mitigation measures, or proposed findings required by Section 21081 or a proposed reporting or monitoring program required by paragraph (1) of subdivision (a) of Section 21081.6, if the lead agency releases those documents subsequent to the release of the draft environmental impact report.

(E) New information that was not reasonably known and could not have been reasonably known during the public comment period.

(7) The lead agency shall file the notice required by subdivision (a) of Section 21152 within five calendar days after the last initial project approval.

(f) (1) The lead agency shall prepare and certify the record of proceedings in accordance with this subdivision and in accordance with Rule 3.1365 of the California Rules of Court.

(2) No later than three business days following the date of the release of the draft environmental impact report, the lead agency shall make available to the public in a readily accessible electronic format the draft environmental impact report and all other documents relied on by the lead agency in the preparation of the draft environmental impact report. A document prepared by the lead agency after the date of the release of the draft environmental impact report that is a part of the record of proceedings shall be made available to the public in a readily accessible electronic format within five business days after the document is prepared by the lead agency.

(3) Notwithstanding paragraph (2), documents relied on by the lead agency that were not prepared specifically for the project and are copyright protected are not required to be made readily accessible in an electronic format. For those copyright protected documents, the lead agency shall make an index of the documents available in an electronic format no later than the date of the release of the draft environmental impact report, or within five business days if the document is received or relied on by the lead agency after the release of the draft environmental impact report. The index shall specify the libraries or lead agency offices in which hardcopies of the copyrighted materials are available for public review.

(4) The lead agency shall encourage written comments on the project to be submitted in a readily accessible electronic format, and shall make any such comments available to the public in a readily accessible electronic format within five calendar days of their receipt.

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

(6) The lead agency shall indicate in the record of proceedings comments received that were not considered by the lead agency pursuant to paragraph (6) of subdivision (e) and need not include the content of the comments as a part of the record of proceedings.

(7) Within five calendar days after the filing of the notice required by subdivision (a) of Section 21152, the lead agency shall certify the record of proceedings for the approval or determination and shall provide an electronic copy of the record of proceedings to a party that has submitted a written request for a copy. The lead agency may charge and collect a reasonable fee from a party requesting a copy of the record of proceedings for the electronic copy, which shall not exceed the reasonable cost of reproducing that copy.

(8) Within 10 calendar days after being served with a complaint or a petition for a writ of mandate, the lead agency shall lodge a copy of the certified record of proceedings with the superior court.

(9) Any dispute over the content of the record of proceedings shall be resolved by the superior court. Unless the superior court directs otherwise, a party disputing the content of the record of proceedings shall file a motion to augment the record of proceedings at the time it files its initial brief.

(10) The contents of the record of proceedings shall be as set forth in subdivision (e) of Section 21167.6.

(g) This section applies only to an environmental leadership transit project that is approved by the lead agency on or before January 1, 2024.

(h) This section shall only apply to the first seven projects obtaining a certified environmental impact report and meeting the requirements of this section.

(i) This section shall remain in effect only until January 1, 2025, and as of that date is repealed.

SEC. 3. The Legislature finds and declares that a special statute is necessary and that a general statute cannot be made applicable within the meaning of Section 16 of Article IV of the California Constitution because of the unique circumstances existing in the County of Los Angeles, as described in Section 1 of this act.

SEC. 4. 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.