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SB-886 California Environmental Quality Act: exemption: public universities: university housing development projects. (2021-2022)

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Senate Bill No. 886

CHAPTER 663

An act to add and repeal Section 21080.58 of the Public Resources Code, relating to environmental quality.

[Approved by Governor September 28, 2022. Filed with Secretary of State September 28, 2022.]

LEGISLATIVE COUNSEL'S DIGEST

SB 886, Wiener. California Environmental Quality Act: exemption: public universities: university housing development 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 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.

This bill would, until January 1, 2030, exempt from CEQA a university housing development project, as defined, carried out by a public university, as defined, on real property owned by the public university if the project meets certain requirements, including that each building within the project is certified as Leadership in Energy and Environmental Design (LEED) platinum or better by the United States Green Building Council, that the project's construction impacts are fully mitigated, and that the project is not located, in whole or in part, on certain types of sites, including a site that is within a special flood hazard area subject to inundation by a 1% annual chance flood or within a regulatory floodway as determined by the Federal Emergency Management Agency, as provided. The bill, with respect to a site that is within a special flood hazard area subject to inundation by a 1% annual chance flood or within a regulatory floodway, would prohibit a local government from denying an application on the basis that a public university did not comply with any additional permit requirement, standard, or action adopted by that local government applicable to the site if the public university is able to satisfy all applicable federal qualifying criteria in order to demonstrate that the site meets these criteria and is otherwise eligible to be exempt from CEQA pursuant to the above requirements. By imposing additional duties on local governments, this bill would impose a state-mandated local program. The bill would provide that a university housing development project is not exempt from CEQA if, among other things, the project would require the demolition of specified housing or a historic structure that is listed on a national, state, or local historic register. The bill would require the public university to hold at least one noticed public hearing to hear and respond to public comments before determining that the university housing development project is exempt under the bill's provisions. The bill would require the lead agency, before the issuance of a certificate of occupancy for each building within a project, to obtain the LEED certification of the building, and to make a determination that all construction impacts of the project have been fully mitigated and issue a notice of that determination. The bill would require the lead agency to file the LEED certification and the notice with the Office of Planning and Research and the county clerk of the county in which the project is located. The bill would require the Office of Planning and Research and the county clerk to make the certification and notice available to the public. To the extent that this bill would impose additional duties on a local agency, including the county clerk, this bill would impose a state-mandated local program.

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. Section 21080.58 is added to the Public Resources Code, to read:

21080.58. (a) For purposes of this section, the following definitions apply:

(1) "Faculty and staff housing project" means one or more housing facilities to be occupied by faculty or staff of one or more campuses, and owned by a public university, including dining, academic, and faculty and staff support service spaces and other necessary and usual attendant and related facilities and equipment.

(2) "Public university" means the University of California, the California State University, or the California Community Colleges.

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

(4) "Student housing project" means one or more housing facilities to be occupied by students of one or more campuses and owned by a public university, including dining, academic and student support service spaces, and other necessary and usual attendant and related facilities and equipment.

(5) "University housing development project" or "project" means a student housing project or a faculty and staff housing project that is not located, in whole or in part, on a site that is any of the following:

(A) Either prime farmland or farmland of statewide importance, as defined pursuant to United States Department of Agriculture land inventory and monitoring criteria, as modified for California, and designated on the maps prepared by the Farmland Mapping and Monitoring Program of the Department of Conservation, or land zoned or designated for agricultural protection or preservation by a local ballot measure that was approved by the voters of that jurisdiction.

(B) Wetlands, as defined in the United States Fish and Wildlife Service Manual, Part 660 FW 2 (June 21, 1993).

(C) Within a very high fire hazard severity zone, as determined by the State Fire Marshal pursuant to Section 51178 of the Government Code, or within a high or very high fire hazard severity zone as indicated on maps adopted by the State Fire Marshal pursuant to Section 4202. This subparagraph does not apply to sites excluded from the specified fire hazard severity zones by a local agency, pursuant to subdivision (b) of Section 51179 of the Government Code, or sites that have adopted fire hazard mitigation measures pursuant to existing building standards or state fire mitigation measures applicable to the project.

(D) Either a hazardous waste site listed pursuant to Section 65962.5 of the Government Code or a hazardous substances release site designated by the Department of Toxic Substances Control pursuant to Section 25356 of the Health and Safety Code, unless the State Department of Public Health, State Water Resources Control Board, or Department of Toxic Substances Control has cleared the site for residential use or residential mixed uses.

(E) Within a delineated earthquake fault zone as determined by the State Geologist in any official maps published by the State Geologist, unless the project complies with applicable seismic protection building code standards adopted by the California Building Standards Commission under the California Building Standards Law (Part 2.5 (commencing with Section 18901) of Division 13 of the Health and Safety Code), and by any local building department under Chapter 12.2 (commencing with Section 8875) of Division 1 of Title 2 of the Government Code.

(F) Within a special flood hazard area subject to inundation by a 1 percent annual chance flood (100-year flood) as determined by the Federal Emergency Management Agency in any official maps published by the Federal Emergency Management Agency. If a public university is able to satisfy all applicable federal qualifying criteria in order to demonstrate that the site satisfies this subparagraph and is otherwise eligible to be exempt from this division pursuant to this section, a local government shall not deny an application on the basis that the public university did not comply with any additional permit requirement, standard, or action adopted by that local government that is applicable to that site. A project may be located on a site described in this subparagraph if either of the following are met:

(i) The site has been subject to a Letter of Map Revision prepared by the Federal Emergency Management Agency and issued to the local government.

(ii) The site meets Federal Emergency Management Agency requirements necessary to meet minimum flood plain management criteria of the National Flood Insurance Program pursuant to Part 59 (commencing with Section 59.1) and

Part 60 (commencing with Section 60.1) of Subchapter B of Chapter I of Title 44 of the Code of Federal Regulations.

(G) Within a regulatory floodway as determined by the Federal Emergency Management Agency in any official maps published by the Federal Emergency Management Agency, unless the project has received a no-rise certification in accordance with Section 60.3(d)(3) of Title 44 of the Code of Federal Regulations. If a public university is able to satisfy all applicable federal qualifying criteria in order to demonstrate that the site satisfies this subparagraph and is otherwise eligible to be exempt from this division pursuant to this section, a local government shall not deny an application on the basis that the public university did not comply with any additional permit requirement, standard, or action adopted by that local government that is applicable to that site.

(H) Lands identified for conservation in an adopted natural community conservation plan pursuant to the Natural Community Conservation Planning Act (Chapter 10 (commencing with Section 2800) of Division 3 of the Fish and Game Code), habitat conservation plan pursuant to the federal Endangered Species Act of 1973 (16 U.S.C. Sec. 1531 et seq.), or other adopted natural resource protection plan.

(I) Habitat for protected species identified as candidate, sensitive, or species of special status by a state or federal agency, fully protected species, or species protected by the federal Endangered Species Act of 1973 (16 U.S.C. Sec. 1531 et seq.), the California Endangered Species Act (Chapter 1.5 (commencing with Section 2050) of Division 3 of the Fish and Game Code), or the Native Plant Protection Act (Chapter 10 (commencing with Section 1900) of Division 2 of the Fish and Game Code).

(J) Lands under conservation easement.

(b) Except as provided in subdivision (c), this division does not apply to a university housing development project carried out by a public university on real property owned by the public university that meets all of the following requirements:

(1) (A) (i) If the university housing development project is carried out by the University of California, the university housing development project is consistent with the most recent long range development plan environmental impact report prepared pursuant to Section 21080.09 and certified on or after January 1, 2018, and any applicable tiered environmental analysis, so long as none of the events specified in Section 21166 have occurred.

(ii) If the university housing development project is carried out by the California State University or the California Community Colleges, the university housing development project is consistent with the most recent master plan environmental impact report prepared pursuant to Section 21080.09 and certified no more than 10 years before the determination that the exemption under this section applies and with any applicable tiered environmental analysis, so long as none of the events specified in Section 21166 have occurred.

(B) For purposes of subparagraph (A), the project is consistent with the relevant environmental impact report or applicable tiered environmental analysis, if there's substantial evidence in the record that would allow a reasonable person to find it consistent.

(2) Each building within the university housing development project is certified as Leadership in Energy and Environmental Design (LEED) platinum or better by the United States Green Building Council.

(3) No more than one-third of the project square footage shall be used for dining, academic, or student support service spaces, or other necessary and usual attendant and related facilities and equipment.

(4) The project is either within one-half mile of a major transit stop or one-half mile of the campus boundary, as defined by the public university's long range development plan or master plan, as appropriate, or has 15 percent lower per capita vehicle miles traveled as compared to that for the jurisdiction in which the university housing development project is located.

(5) The project has a transportation demand management program.

(6) The project's construction impacts are fully mitigated consistent with applicable law.

(7) (A) The project does not result in any net additional emission of greenhouse gases, as determined by an independent third-party evaluation approved by the lead agency.

(B) To maximize public health and environmental benefits, the public university shall ensure that the measures will reduce the emissions of greenhouse gases in the project area and in the neighboring communities.

(C) Not less than 50 percent of the greenhouse gas emissions reductions necessary to achieve the requirement of this paragraph shall be from local, direct greenhouse gas emissions reduction measures, including, but not limited to, any of the following:

(i) Project design features or onsite reduction measures, or both design features and onsite reduction measures, that include, but are not limited to, any of the following:

(I) Implementing project design features that enable the project to exceed the building energy efficiency standards set forth in Part 6 (commencing with Section 100) of Title 24 of the California Code of Regulations, except for 50 percent of emissions reductions attributable to design features necessary to meet the LEED platinum certification requirement.

(II) Requiring a transportation demand management program to reduce single-occupancy vehicular travel and vehicle miles traveled.

(III) Providing onsite renewable energy generation, including a solar roof on the project with a minimum peak generation capacity of 500 kilowatts.

(IV) Providing solar-ready roofs.

(V) Providing cool roofs and cool parking promoting cool surface treatment for new parking facilities.

(ii) Offsite reduction measures in neighboring communities, including, but not limited to, any of the following:

(I) Providing funding to an offsite mitigation project consisting of replacing buses, trolleys, or other transit vehicles with zero-emission vehicles.

(II) Providing offsite safety or other improvements for bicycles, pedestrians, and transit connections.

(III) Undertaking or funding building retrofits to improve the energy efficiency of existing buildings.

(D) (i) The public university may obtain offset credits for up to 50 percent of the greenhouse gas emissions reductions necessary to achieve the requirement of this subdivision that produce emissions reductions within the jurisdiction that the university housing development project is located. Any offset credits shall be verified by a third party accredited by the State Air Resources Board, and shall be undertaken in a manner consistent with Division 25.5 (commencing with Section 38500) of the Health and Safety Code, including, but not limited to, the requirement that the offset be real, permanent, quantifiable, verifiable, and enforceable, and shall be undertaken from sources in the same community in which the project is located or adjacent communities.

(ii) If 50 percent of greenhouse gas emissions reductions necessary to achieve no additional emissions of greenhouse gases cannot be feasibly and fully mitigated by offset credits as described in clause (i), the mitigation of the remaining emissions of greenhouse gases shall be achieved pursuant to the following priority:

(I) Offset credits that would also reduce the emissions of criteria air pollutants or toxic air contaminants. The offsets shall be undertaken in a manner consistent with Division 25.5 (commencing with Section 38500) of the Health and Safety Code, including, but not limited to, the requirement that the offsets be real, permanent, quantifiable, verifiable, and enforceable, and shall be undertaken from sources in the community within which the project is located or in adjacent communities.

(II) If the remaining emissions of greenhouse gases cannot be feasibly or fully mitigated by the offsets credits described in subclause (I), the remaining unmitigated greenhouse gas emissions shall be mitigated through the use of offsets that would also reduce emissions of criteria air pollutants or toxic air contaminants and shall be undertaken in a manner consistent with subclause (I) and shall be undertaken from sources that provide a specific, quantifiable, and direct environmental and public health benefit to the community in which the project is located.

(E) It is the intent of the Legislature, in enacting this paragraph, to maximize the environmental and public health benefits from measures to mitigate the emissions of greenhouse gases of a university housing development project to those people that are impacted most by the project.

(8) All contractors and subcontractors at every tier on the project will be required to pay prevailing wages in accordance with Chapter 1 (commencing with Section 1720) of Part 7 of Division 2 of the Labor Code.

(9) (A) An entity shall not be prequalified or shortlisted or awarded a contract to perform work on the project unless the entity provides an enforceable commitment to the public university that the entity and its contractors and subcontractors at every tier will use a skilled and trained workforce to perform all work on the project that falls within an apprenticeshipable occupation in the building and construction trades, in accordance with Chapter 2.9 (commencing with Section 2600) of Part 1 of Division 2 of the Public Contract Code.

(B) This paragraph does not apply if any of the following requirements are met:

(i) The public university 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, and the entity agrees to be bound by that project labor agreement.

(ii) The project is being performed under the extension or renewal of a project labor agreement that was entered into by the public university before January 1, 2023.

(iii) The entity has entered into a project labor agreement that will bind the entity and all of its contractors and subcontractors at every tier performing the project to use a skilled and trained workforce.

(10) (A) Except as provided in subparagraph (B), for a project carried out by the University of California, all cleaning, maintenance, groundskeeping, food service, or other work traditionally performed by persons with University of California Service Unit (SX) job classifications shall be performed only by employees of the University of California at any facility, building, property, or space that is part of the project.

(B) Subparagraph (A) does not apply to, and shall not restrict the performance of, work done under contract and paid for in whole or in part out of public funds when the work is either of the following:

(i) Construction, alteration, demolition, installation, cleanup work at the construction jobsite, or repair work, including work performed during the design and all phases of construction, including preconstruction and postconstruction phases.

(ii) Carpentry, electrical, plumbing, glazing, painting, and other craftwork designed to preserve, protect, or keep a publicly owned facility in a safe and continuously usable condition, including repairs, cleaning, and other operations on machinery and other equipment permanently attached to the building or real property as fixtures.

(11) (A) The public university holds at least one noticed public hearing in the project area to hear and respond to public comments before determining that a university housing development project is exempt pursuant to this section.

(B) The public university shall give public notice of the meeting to the last known name and address of all the organizations and individuals that have previously requested notice and shall also give the general public notice using at least one of the following procedures:

(i) Publication of the notice in a newspaper of general circulation in the area affected by the project. If more than one area will be affected, the notice shall be published in the newspaper of largest circulation from among the newspapers of general circulation in those areas.

(ii) Posting of the notice onsite and offsite in the area where the project is located.

(iii) Posting of the notice on the public university's internet website and social media accounts.

(12) The public university files a notice of exemption with the Office of Planning and Research pursuant to subdivisions (b) to (d), inclusive, of Section 21108.

(c) (1) The public university or a relevant public agency with authority to issue a certificate of occupancy for a building within the project shall not issue the certificate of occupancy for the building unless both of the following occurs:

(A) The lead agency receives certification of LEED platinum or better from the United States Green Building Council for the building.

(B) The lead agency determines that the construction impacts of the project have been fully mitigated as required pursuant to paragraph (6) of subdivision (b) and issues a notice making that determination.

(2) The lead agency shall file the certificate and the notice described in paragraph (1) with the Office of Planning and Research and the county clerk of the county in which the project is located. Subdivision (c) of Section 21108 and subdivision (c) of Section 21152 shall apply to the certificate and notice filed pursuant to this paragraph.

(3) An action or proceeding alleging that the certificate of occupancy has been issued in violation of this subdivision shall be commenced within 35 days of the filing by the lead agency of the certificate and notice under this subdivision.

(d) The exemption from this division provided by subdivision (b) does not apply to a university housing development project that meets any of the following criteria:

(1) The project would require the demolition of any of the following:

(A) Housing that is subject to a recorded covenant, ordinance, or law that restricts rents to levels affordable to persons and families of moderate, low, or very low income.

(B) Housing that is subject to any form of rent or price control through a public entity's valid exercise of its police power.

(C) Housing that has been occupied by tenants within the past 10 years.

(D) A historic structure that is listed on a national, state, or local historic register.

(2) The project is located on a site that was previously used for housing that was occupied by tenants and was demolished within 10 years before the public university submits an application under this section.

(3) The project is located on a site that contains housing units that are occupied by tenants and the housing units are offered for sale, or were subsequently offered for sale, to the general public by a subdivider or subsequent owner of the site.

(4) The project consists of more than 2,000 units or 4,000 beds.

(e) This section shall remain in effect only until January 1, 2030, and as of that date is repealed.

SEC. 2. 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.