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SB-1136 California Environmental Quality Act: expedited environmental review: climate change regulations. (2021-2022)

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CALIFORNIA LEGISLATURE— 2021–2022 REGULAR SESSION

SENATE BILL

NO. 1136

Introduced by Senator Portantino

February 16, 2022

An act to amend Sections 21159, 21159.1, 21159.2, and 21159.4 of, and to add Section 21159.5 to, the Public Resources Code, relating to environmental quality.

LEGISLATIVE COUNSEL'S DIGEST

SB 1136, Portantino. California Environmental Quality Act: expedited environmental review: climate change regulations.

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 requires specified public agencies, including air pollution control districts and air quality management districts, to perform, at the time of adoption of a rule or regulation requiring the installation of pollution control equipment or a performance standard or treatment requirement, an environmental analysis of the reasonably foreseeable methods of compliance.

This bill would also require those specified public agencies, at the time of adoption of a rule or regulation requiring the reduction in emissions of greenhouse gases, criteria air pollutants, or toxic air contaminants, to perform an environmental analysis of the reasonably foreseeable methods of compliance. By imposing additional requirements on air districts, this bill would impose a state-mandated local program.

CEQA authorizes the use of a focused EIR for a project that consists solely of the installation of pollution control equipment required by those specified public agencies in compliance with those rules or regulations.

This bill would require those projects to comply with certain labor requirements in order for the use of a focused EIR.

CEQA requires lead agencies to perform the environmental review for projects consisting solely of compliance with a performance standard or treatment requirement imposed by those specified public agencies in a certain manner.

This bill would additionally require those projects to comply with certain labor requirements. To the extent that this requirement would impose additional duties on lead agencies, 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.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: yes

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

SECTION 1. Section 21159 of the Public Resources Code is amended to read:

21159. (a) An agency listed in Section 21159.4 shall perform, at the time of the adoption of a rule or regulation requiring the installation of pollution control equipment or the reduction in emissions of greenhouse gases, criteria air pollutants, or toxic air contaminants, or compliance with a performance standard or treatment requirement, including a rule or regulation that requires the installation of pollution control equipment or the reduction in emissions of greenhouse gases, criteria air pollutants, or toxic air contaminant, or compliance with a performance standard or treatment requirement adopted pursuant to the California Global Warming Solutions Act of 2006 (Division 25.5 (commencing with Section 38500) of the Health and Safety Code), an environmental analysis of the reasonably foreseeable methods of compliance. In preparing this analysis, the agency may use numerical ranges or averages where specific data is not available; however, the agency shall not be required to engage in speculation or conjecture. The environmental analysis shall, at minimum, include all of the following:

(1) An analysis of the reasonably foreseeable environmental impacts of the methods of compliance.

(2) An analysis of reasonably foreseeable feasible mitigation measures.

(3) An analysis of reasonably foreseeable alternative means of compliance with the rule or regulation.

(4) For a rule or regulation that requires the installation of pollution control equipment adopted pursuant to the California Global Warming Solutions Act of 2006 (Division 25.5 (commencing with Section 38500) of the Health and Safety Code), the analysis shall also include reasonably foreseeable greenhouse gas emission impacts of compliance with the rule or regulation.

(b) The preparation of an environmental impact report at the time of adopting a rule or regulation pursuant to this division shall be deemed to satisfy the requirements of this section.

(c) The environmental analysis shall take into account a reasonable range of environmental, economic, and technical factors, population and geographic areas, and specific sites.

(d) This section does not require the agency to conduct a project-level analysis.

(e) For purposes of this article, "performance standard" includes process or raw material changes or product reformulation.

(f) This section is not intended, and may not be used, to delay the adoption of any rule or regulation for which an analysis is required to be performed pursuant to this section.

SEC. 2. Section 21159.1 of the Public Resources Code is amended to read:

21159.1. (a) A focused environmental impact report may be used if a project meets all of the following requirements:

(1) The project consists solely of either of the following:

(A) Installation of pollution control equipment required by a rule or regulation of an agency listed in subdivision (a) of Section 21159.4 and other components necessary to complete the installation of that equipment.

(B) Installation of pollution control equipment and other components necessary to complete the installation of that equipment that reduces greenhouse gases required by a rule or regulation of an agency listed in Section 21159.4 pursuant

to the California Global Warming Solutions Act of 2006 (Division 25.5 (commencing with Section 38500) of the Health and Safety Code).

(2) The agency certified an environmental impact report on the rule or regulation or reviewed it pursuant to a certified regulatory program, and, in either case, the review included an assessment of growth inducing impacts and cumulative impacts of, and alternatives to, the project.

(3) The environmental review required by paragraph (2) was completed within five years of certification of the focused environmental impact report.

(4) An environmental impact report is not required pursuant to Section 21166.

(5) The project satisfies the requirements of Section 21159.5.

(b) The discussion of significant effects on the environment in the focused environmental impact report shall be limited to project-specific potentially significant effects on the environment of the project that were not discussed in the environmental analysis of the rule or regulation required pursuant to subdivision (a) of Section 21159. A discussion of growth-inducing impacts or cumulative impacts shall not be required in the focused environmental impact report, and the discussion of alternatives shall be limited to a discussion of alternative means of compliance, if any, with the rule or regulation.

SEC. 3. Section 21159.2 of the Public Resources Code is amended to read:

21159.2. (a) If a project consists solely of compliance with a performance standard or treatment requirement imposed by an agency listed in Section 21159.4, the lead agency for the compliance project shall, to the greatest extent feasible, use the environmental analysis required pursuant to subdivision (a) of Section 21159 in the preparation of a negative declaration, mitigated negative declaration, or environmental impact report on the compliance project or in otherwise fulfilling its responsibilities under this division. The use of numerical averages or ranges in an environmental analysis shall not relieve a lead agency of its obligations under this division to identify and evaluate the environmental effects of a compliance project.

(b) If the lead agency determines that an environmental impact report on the compliance project is required, the lead agency shall prepare an environmental impact report which addresses only the project-specific issues related to the compliance project or other issues that were not discussed in sufficient detail in the environmental analysis to enable the lead agency to fulfill its responsibilities under Section 21100 or 21151, as applicable. The mitigation measures imposed by the lead agency for the project shall relate only to the significant effects on the environment to be mitigated. The discussion of alternatives shall be limited to a discussion of alternative means of compliance, if any, with the rule or regulation.

(c) This section applies only to projects that comply with the requirements of Section 21159.5.

SEC. 4. Section 21159.4 of the Public Resources Code is amended to read:

21159.4. (a) This article shall apply to all of the following agencies:

- (1) The State Air Resources Board.
- (2) A district as defined in Section 39025 of the Health and Safety Code.
- (3) The State Water Resources Control Board.
- (4) A California regional water quality control board.
- (5) The Department of Toxic Substances Control.
- (6) The Department of Resources Recycling and Recovery.

(b) (1) This article shall apply to the State Energy Resources Conservation and Development Commission and the Public Utilities Commission for rules and regulations requiring the installation of pollution control equipment adopted pursuant to the California Global Warming Solutions Act of 2006 (Division 25.5 (commencing with Section 38500) of the Health and Safety Code).

(2) This article does not apply to an action that is not subject to this division.

SEC. 5. Section 21159.5 is added to the Public Resources Code, to read:

21159.5. (a) For purposes of this section, the following definitions apply:

- (1) "Project" means a project described in Section 21159.1 or 21159.2.

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

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

(b) (1) To qualify for the application of Section 21159.1 or 21159.2, a project undertaken by a public agency shall be a public work for which prevailing wages shall be paid for purposes of Chapter 1 (commencing with Section 1720) of Part 7 of Division 2 of the Labor Code, as applicable.

(2) To qualify for the application of Section 21159.1 or 21159.2, for a project undertaken by a public agency, except as provided in paragraph (3), an entity shall not be prequalified or shortlisted or awarded a contract by the public agency to perform any portion of the project unless the entity provides an enforceable commitment to the public agency 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 or contract that falls within an apprenticeable occupation in the building and construction trades.

(3) Paragraph (2) does not apply if any of the following requirements are met:

(A) The public agency has entered into a project labor agreement that will bind all contractors and subcontractors at every tier performing work on the project or contract to use a skilled and trained workforce, and the entity agrees to be bound by that project labor agreement.

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

(C) 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 work on the project or contract to use a skilled and trained workforce.

(c) To qualify for the application of Section 21159.1 or 21159.2, for a project undertaken by a private entity, the applicant shall do both of the following:

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

(A) 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.

(B) If the project is not in its entirety a public work, all construction workers employed in the execution 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 under 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 subparagraph, then, for those portions of the project that are not a public work, all of the following shall apply:

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

(ii) All contractors and subcontractors at every tier shall pay to all construction workers employed in the execution of the work on the project or contract 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) (I) Except as provided in subclause (III), all contractors and subcontractors at every tier shall maintain and verify payroll records under Section 1776 of the Labor Code and make those records available for inspection and copying as provided by that section.

(II) Except as provided in subclause (III), the obligation of all 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 under Section 1741 of the Labor Code, which may be reviewed under Section 1742 of the Labor Code, within 18 months after the completion of the project, 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 under Section 1742.1 of the Labor Code.

(III) Subclauses (I) and (II) do not apply if all contractors and subcontractors at every tier performing work on the project or contract 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 or contract and provides for enforcement of that obligation through an arbitration procedure.

(iv) 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 under Section 511 or 514 of the Labor Code.

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

(A) The 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 complete the project.

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

(C) (i) Except as provided in clause (ii), the 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 under this clause shall be a public record under the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code) and shall be open to public inspection. An 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 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 under Section 1741 of the Labor Code, and may be reviewed under the same procedures in Section 1742 of the Labor Code. Penalties shall be paid to the State Public Works Enforcement Fund.

(ii) Clause (i) does 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.

SEC. 6. 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.