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SB-149 California Environmental Quality Act: administrative and judicial procedures: record of proceedings: judicial streamlining. (2023-2024)

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Date Published: 07/10/2023 09:00 PM

Senate Bill No. 149

CHAPTER 60

An act to amend Sections 21167.6, 21181, 21183, 21189.1, and 21189.3 of, and to add Chapter 7 (commencing with Section 21189.80) to Division 13 of, the Public Resources Code, relating to environmental quality, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor July 10, 2023. Filed with Secretary of State July 10, 2023.]

LEGISLATIVE COUNSEL'S DIGEST

SB 149, Caballero. California Environmental Quality Act: administrative and judicial procedures: record of proceedings: judicial streamlining.

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 provides that, in certain specified actions or proceedings, the plaintiff or petitioner may elect to prepare the record of proceedings, subject to certification of its accuracy by the public agency. CEQA requires that a copy of the certified record of proceedings be lodged with the court.

This bill would authorize the public agency to deny the request of the plaintiff or petitioner to prepare the record of proceedings, as provided, in which case the bill would require the public agency or the real party in interest to bear the costs of preparation and certification of the record of proceedings and would prohibit the recovery of those costs from the plaintiff or petitioner. The bill would require the court to schedule a case management conference within 30 days of the filing of an action to review the scope, timing, and cost of the record of proceedings. The bill would require that an electronic copy of the certified record of proceedings be lodged with the court.

The Jobs and Economic Improvement Through Environmental Leadership Act of 2021 (Leadership Act) authorizes the Governor, before January 1, 2024, to certify projects that meet specified requirements for streamlining benefits related to CEQA, including the requirement that judicial actions challenging the action of a lead agency for projects certified by the Governor be resolved, to the extent feasible, within 270 days after the filing of the record of proceedings with the court, and a requirement that the applicant agrees to pay the costs of preparing the record of proceedings for the project concurrent with review and consideration of the project, as specified. The Leadership Act provides that if a lead agency fails to approve a project certified by the Governor before January 1, 2025, the certification is no longer valid. The Leadership Act provides that it is repealed on January 1, 2026.

This bill would extend the Governor's authority to certify a project to before January 1, 2032. The bill would expressly provide that the cost of preparing the record of proceedings for the project is not recoverable from the plaintiff or petitioner before, during, or after any litigation. The bill would provide that if a lead agency fails to approve a project certified by the Governor before January 1, 2033, the certification is no longer valid. The bill would repeal the Leadership Act on January 1, 2034. Because the bill would extend the duties of the lead agency under the Leadership Act, this bill would impose a state-mandated local program.

This bill would establish procedures for the preparation of the record of proceedings for projects that are certified by the Governor as an infrastructure project, as defined. The bill would require an action or proceeding challenging the certification of an EIR for those projects or the granting of any project approvals, including any potential appeals to the court of appeal or the Supreme Court, to be resolved, to the extent feasible, within 270 days of the filing of the record of proceedings with the court. The bill would authorize a project applicant to apply to the Governor for the certification of a project as an infrastructure project. The bill would require the lead agency, within 10 days of the certification of a project, to provide a public notice of the certification, as provided. Because the bill would impose additional duties on a lead agency in conducting the environmental review of a certified project, this bill would impose a state-mandated local program. If a lead agency fails to approve a project certified as an infrastructure project before January 1, 2033, the bill would specify that the certification is no longer valid. The bill would repeal the above provisions on January 1, 2034.

This bill would appropriate \$1,000,000 from the General Fund to the Judicial Council for judicial officer training for implementation of the above provisions.

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.

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

Vote: 2/3 Appropriation: yes Fiscal Committee: yes Local Program: yes

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

SECTION 1. Section 21167.6 of the Public Resources Code is amended to read:

21167.6. Notwithstanding any other law, in all actions or proceedings brought pursuant to Section 21167, except as provided in Section 21167.6.2 or those involving the Public Utilities Commission, all of the following shall apply:

(a) At the time that the action or proceeding is filed, the plaintiff or petitioner shall file a request that the respondent public agency prepare the record of proceedings relating to the subject of the action or proceeding. The request, together with the complaint or petition, shall be served personally upon the public agency not later than 10 business days from the date that the action or proceeding was filed.

(b) (1) (A) The public agency shall prepare and certify the record of proceedings not later than 60 days from the date that the request specified in subdivision (a) was served upon the public agency. Upon certification, the public agency shall lodge an electronic copy of the record of proceedings with the court and shall serve on the parties notice that the record of proceedings has been certified and lodged with the court. The parties shall pay any reasonable costs or fees imposed for the preparation of the record of proceedings in conformance with any law or rule of court.

(B) The court shall schedule a case management conference within 30 days of the filing of the complaint or petition pursuant to this division to review the scope, timing, and cost of the record of proceedings. The parties may stipulate to a partial record of proceedings that does not contain all the documents listed in subdivision (e) if approved by the court.

(2) The plaintiff or petitioner may elect to prepare the record of proceedings by providing a notice of the election to the public agency, or the parties may agree to an alternative method of preparation of the record of proceedings, subject to certification of its accuracy by the public agency, within the 60-day time limit specified in this subdivision.

(3) Notwithstanding paragraph (2), the public agency, within five business days of the receipt of the notice specified in paragraph (2), may deny the request of the plaintiff or petitioner to prepare the record of proceedings, in which case the public agency or the real party in interest shall bear the costs of preparation and certification of the record of proceedings, and those costs shall not be recoverable from the plaintiff or petitioner.

(c) The time limit established by subdivision (b) may be extended only upon the stipulation of all parties who have been properly served in the action or proceeding or upon order of the court. Extensions shall be liberally granted by the court when the size of the record of proceedings renders infeasible compliance with that time limit. There is no limit on the number of extensions that

may be granted by the court, but no single extension shall exceed 60 days unless the court determines that a longer extension is in the public interest.

(d) If the public agency fails to prepare and certify the record of proceedings within the time limit established in paragraph (1) of subdivision (b), or any continuances of that time limit, the plaintiff or petitioner may move for sanctions, and the court may, upon that motion, grant appropriate sanctions.

(e) The record of proceedings shall include, but is not limited to, all of the following items:

(1) All project application materials.

(2) All staff reports and related documents prepared by the respondent public agency with respect to its compliance with the substantive and procedural requirements of this division and with respect to the action on the project.

(3) All staff reports and related documents prepared by the respondent public agency and written testimony or documents submitted by any person relevant to any findings or statement of overriding considerations adopted by the respondent agency pursuant to this division.

(4) Any transcript or minutes of the proceedings at which the decisionmaking body of the respondent public agency heard testimony on, or considered any environmental document on, the project, and any transcript or minutes of proceedings before any advisory body to the respondent public agency that were presented to the decisionmaking body before action on the environmental documents or on the project.

(5) All notices issued by the respondent public agency to comply with this division or with any other law governing the processing and approval of the project.

(6) All written comments received in response to, or in connection with, environmental documents prepared for the project, including responses to the notice of preparation.

(7) All written evidence or correspondence submitted to, or transferred from, the respondent public agency with respect to compliance with this division or with respect to the project.

(8) Any proposed decisions or findings submitted to the decisionmaking body of the respondent public agency by its staff, or the project proponent, project opponents, or other persons.

(9) The documentation of the final public agency decision, including the final environmental impact report, mitigated negative declaration, or negative declaration, and all documents, in addition to those referenced in paragraph (3), cited or relied on in the findings or in a statement of overriding considerations adopted pursuant to this division.

(10) Any other written materials relevant to the respondent public agency's compliance with this division or to its decision on the merits of the project, including the initial study, any drafts of any environmental document, or portions thereof, that have been released for public review, and copies of studies or other documents relied upon in any environmental document prepared for the project and either made available to the public during the public review period or included in the respondent public agency's files on the project, and all internal agency communications, including staff notes and memoranda related to the project or to compliance with this division, but not including communications that are of a logistical nature, such as meeting invitations and scheduling communications, except that any material that is subject to privileges contained in the Evidence Code, or exemptions contained in the California Public Records Act (Division 10 (commencing with Section 7920.000) of Title 1 of the Government Code) shall not be included in the record of proceedings under this paragraph, consistent with existing law.

(11) The full written record before any inferior administrative decisionmaking body whose decision was appealed to a superior administrative decisionmaking body before the filing of litigation.

(f) In preparing the record of proceedings, the party preparing the record of proceedings shall strive to do so at reasonable cost in light of the scope of the record of proceedings.

(g) The clerk of the superior court shall prepare and certify the clerk's transcript on appeal not later than 60 days from the date that the notice designating the papers or records to be included in the clerk's transcript was filed with the superior court, if the party or parties pay any costs or fees for the preparation of the clerk's transcript imposed in conformance with any law or rules of court. Nothing in this subdivision precludes an election to proceed by appendix, as provided in Rule 8.124 of the California Rules of Court.

(h) Extensions of the period for the filing of any brief on appeal may be allowed only by stipulation of the parties or by order of the court for good cause shown. Extensions for the filing of a brief on appeal shall be limited to one 30-day extension for the preparation of an opening brief and one 30-day extension for the preparation of a responding brief, except that the court may

grant a longer extension or additional extensions if it determines that there is a substantial likelihood of settlement that would avoid the necessity of completing the appeal.

(i) At the completion of the filing of briefs on appeal, the appellant shall notify the court of the completion of the filing of briefs, whereupon the clerk of the reviewing court shall set the appeal for hearing on the first available calendar date.

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 under this chapter before January 1, 2032.

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

21183. The Governor may certify a leadership project for streamlining before a lead agency certifies a final environmental impact report for a project under this chapter if all the following conditions are met:

(a) (1) Except as provided in paragraph (2), the project will result in a minimum investment of one hundred million dollars (\$100,000,000) in California upon completion of construction.

(2) Paragraph (1) does not apply to a leadership project described in paragraph (4) of subdivision (b) of Section 21180.

(b) The project creates high-wage, highly skilled jobs that pay prevailing wages and living wages, provides construction jobs and permanent jobs for Californians, helps reduce unemployment, and promotes apprenticeship training. For purposes of this subdivision, a project is deemed to create jobs that pay prevailing wages, create highly skilled jobs, and promote apprenticeship training if the applicant demonstrates to the satisfaction of the Governor that the project will comply with Section 21183.5.

(c) (1) For a project described in paragraph (1), (2), or (3) of subdivision (b) of Section 21180, the project does not result in any net additional emission of greenhouse gases, including greenhouse gas emissions from employee transportation. For purposes of this paragraph, a project is deemed to meet the requirements of this paragraph if the applicant demonstrates to the satisfaction of the Governor that the project will comply with Section 21183.6.

(2) For a project described in paragraph (4) of subdivision (b) of Section 21180, the project does not result in any net additional emission of greenhouse gases, including greenhouse gas emissions from employee transportation.

(d) The 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.

(e) The applicant has entered into a binding and enforceable agreement that all mitigation measures required under 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.

(f) The 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 a certified 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 Section 21185.

(g) The applicant agrees to pay 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. The cost of preparing the record of proceedings for the project shall not be recoverable from the plaintiff or petitioner before, during, or after any litigation.

(h) For a project for which environmental review has commenced, the applicant demonstrates that the record of proceedings is being prepared in accordance with Section 21186.

SEC. 4. Section 21189.1 of the Public Resources Code is amended to read:

21189.1. If, before January 1, 2033, a lead agency fails to approve a project certified by the Governor under this chapter, then the certification expires and is no longer valid.

SEC. 5. Section 21189.3 of the Public Resources Code is amended to read:

21189.3. This chapter shall remain in effect until January 1, 2034, and as of that date is repealed unless a later enacted statute extends or repeals that date.

SEC. 6. Chapter 7 (commencing with Section 21189.80) is added to Division 13 of the Public Resources Code, to read:

CHAPTER 7. Infrastructure Projects

21189.80. The Legislature finds and declares all of the following:

- (a) This division requires that the environmental impacts of development projects be identified and mitigated.
- (b) This division 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) Historic federal and state investments in infrastructure will lead to the development of numerous transportation-related, water-related, technology, and energy facilities across the state that would further California's commitments to reducing emissions of greenhouse gases and protecting its people from the worst extremes of climate change while also leveraging federal resources to increase access to quality jobs in our communities.
- (d) These projects will further generate full-time jobs during construction and additional jobs once the projects are constructed and operating.
- (e) The transportation-related projects would help state, regional, and local agencies more quickly meet the goals of advancing safety, rehabilitating the aging transportation infrastructure, and addressing the impacts of climate change.
- (f) The transportation-related projects will accelerate critical state, regional, and local "fix it first" projects supported by a historic federal and state partnership through Chapter 5 of the Statutes of 2017, and the federal Infrastructure Investment and Jobs Act (Public Law 117-58).
- (g) The purpose of this chapter is to provide unique streamlining benefits under this division for critical state, regional, and local investments in climate resiliency, safety, and infrastructure maintenance while maintaining the environmental and public engagement benefits of this division for projects that provide the public benefits, including environmental and climate-related benefits, described above and to both achieve those benefits and put people to work as soon as possible.

21189.81. For purposes of this chapter, the following definitions apply:

- (a) "Applicant" means a public or private entity or its affiliates, or a person or entity that undertakes a public works project, that proposes a project and its successors, heirs, and assignees.
- (b) "Disadvantaged community" means an area identified by the California Environmental Protection Agency pursuant to Section 39711 of the Health and Safety Code or an area identified as a disadvantaged unincorporated community pursuant to Section 65302.10 of the Government Code.
- (c) "Electrical transmission facility project" means a project for the construction and operation of an electrical transmission facility that meets either of the following:
 - (1) An electrical transmission facility project identified by the Independent System Operator in its annual transmission planning process that meets either of the following criteria:
 - (A) The project will facilitate delivery of electricity from renewable energy resources or zero-carbon resources.
 - (B) The project will facilitate delivery of electricity from energy storage projects.
 - (2) An electrical transmission facility project identified by a local publicly owned electric utility that would satisfy a transmission expansion need approved by the governing body of the local publicly owned electric utility and that meets either of the following criteria:
 - (A) The project will facilitate delivery of electricity from renewable energy resources or zero-carbon resources.
 - (B) The project will facilitate delivery of electricity from energy storage projects.
- (d) (1) "Energy infrastructure project" means any of the following:
 - (A) An eligible renewable energy resource, as defined in Section 399.12 of the Public Utilities Code, excluding resources that utilize biomass fuels.

(B) New energy storage systems of 20 megawatts or more, that are capable of discharging for at least two hours, provided that a pumped hydro facility may qualify only if it is less than or equal to 500 megawatts and has been directly appropriated funding by the state before January 1, 2023.

(C) A project for which the applicant has certified that a capital investment of at least two hundred fifty million dollars (\$250,000,000) made over a period of five years and the project is for either of the following:

(i) The manufacture, production, or assembly of an energy storage system or component manufacturing, wind system or component manufacturing, and solar photovoltaic energy system or component manufacturing.

(ii) The manufacture, production, or assembly of specialized products, components, or systems that are integral to renewable energy or energy storage technologies.

(D) An electric transmission facility project, provided that nothing in this chapter affects the jurisdiction of the California Coastal Commission pursuant to Division 20 (commencing with Section 30000) to regulate such projects if located in the coastal zone.

(E) An energy infrastructure project does not include projects utilizing hydrogen as a fuel.

(2) Any project to develop a facility within the meaning of subdivision (b) of Section 25545 shall meet the requirements of Sections 25545.3.3 and 25545.3.5, except that those requirements shall also apply to solar photovoltaic and terrestrial wind electrical generating power plants with a generating capacity of between 20 and 50 megawatts and energy storage projects capable of storing between 80 and 200 megawatt hours of electrical energy.

(e) "Infrastructure project" means a project that is certified pursuant to Sections 21189.82 and 21189.83 as any of the following:

(1) An energy infrastructure project.

(2) A semiconductor or microelectronic project.

(3) A transportation-related project.

(4) A water-related project.

(f) "Semiconductor or microelectronic project" means a project that meets the requirements related to investment in new or expanded facilities and is awarded funds under the federal Creating Helpful Incentives to Produce Semiconductors Act of 2022 (Public Law 117-167), commonly known as the CHIPS Act of 2022, and the requirements of Section 21183.5.

(g) (1) "Transportation-related project" means a transportation infrastructure project that advances one or more of, and does not conflict with, the following goals related to the Climate Action Plan for Transportation Infrastructure adopted by the Transportation Agency:

(A) Build toward an integrated, statewide rail and transit network.

(B) Invest in networks of safe and accessible bicycle and pedestrian infrastructure.

(C) Include investments in light-, medium-, and heavy-duty zero-emission vehicle infrastructure.

(D) Develop a zero-emission freight transportation system.

(E) Reduce public health and economic harms and maximize community benefits.

(F) Make safety improvements to reduce fatalities and severe injuries of all users towards zero.

(G) Assess and integrate assessments of physical climate risk.

(H) Promote projects that do not significantly increase passenger vehicle travel.

(I) Promote compact infill development while protecting residents and businesses from displacement.

(J) Protect natural and working lands.

(2) Transportation-related projects are public works for the purposes of Section 1720 of the Labor Code and shall comply with the applicable provisions of Chapter 1 (commencing with Section 1720) of Part 7 of Division 2 of the Labor Code.

(h) (1) "Water-related project" means any of the following:

(A) A project that is approved to implement a groundwater sustainability plan that the Department of Water Resources has determined is in compliance with Sections 10727.2 and 10727.4 of the Water Code or to implement an interim groundwater sustainability plan adopted pursuant to Section 10735.6 of the Water Code.

(B) (i) A water storage project funded by the California Water Commission pursuant to Chapter 8 (commencing with Section 79750) of Division 26.7 of the Water Code.

(ii) In addition to clause (i), the applicant shall demonstrate that the project will minimize the intake or diversion of water except during times of surplus water and prioritizes the discharge of water for ecological benefits or to mitigate an emergency, including, but not limited to, dam repair, levee repair, wetland restoration, marshland restoration, or habitat preservation, or other public benefits described in Section 79753 of the Water Code.

(C) Projects for the development of recycled water, as defined in Section 13050 of the Water Code.

(D) Contaminant and salt removal projects, including groundwater desalination and associated treatment, storage, conveyance, and distribution facilities. This shall not include seawater desalination.

(E) Projects exclusively for canal or other conveyance maintenance and repair.

(2) Water-related projects are public works for the purposes of Section 1720 of the Labor Code and shall comply with the applicable provisions of Chapter 1 (commencing with Section 1720) of Part 7 of Division 2 of the Labor Code.

(3) "Water-related project" does not include the design or construction of through-Delta conveyance facilities of the Sacramento-San Joaquin Delta.

21189.82. (a) (1) (A) The Governor may certify a project as an energy infrastructure project for purposes of this chapter if the project meets the requirements of subdivision (d) of Section 21189.81.

(B) In addition to subparagraph (A), if the applicant is not the lead agency, the Governor shall ensure all of the following:

(i) The 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 a certified 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 as provided in the rule of court adopted by the Judicial Council under Section 21189.85.

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

(iii) For a project for which environmental review has commenced, the applicant demonstrates that the record of proceedings is being prepared in accordance with Section 21189.86.

(2) (A) The Governor may certify a project as a semiconductor or microelectronic project for purposes of this chapter if the project meets the requirements of subdivision (f) of Section 21189.81.

(B) In addition to subparagraph (A), if the applicant is not the lead agency, the Governor shall ensure all of the following:

(i) The 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 a certified 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 as provided in the rule of court adopted by the Judicial Council under Section 21189.85.

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

(iii) For a project for which environmental review has commenced, the applicant demonstrates that the record of proceedings is being prepared in accordance with Section 21189.86.

(3) The Governor may certify up to 20 transportation-related projects for purposes of this chapter, including up to 10 state projects proposed by the Department of Transportation and up to 10 local or regional projects, that meet the requirements of subdivision (g) of Section 21189.81.

(4) (A) The Governor may certify a project as a water-related project for purposes of this chapter if the project meets the requirements of subdivision (h) of Section 21189.81.

(B) In addition to subparagraph (A), the Governor shall ensure all of the following:

(i) The 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 a certified 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 as provided in the rule of court adopted by the Judicial Council under Section 21189.85.

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

(iii) For a project for which environmental review has commenced, the applicant demonstrates that the record of proceedings is being prepared in accordance with Section 21189.86.

(C) In addition to subparagraphs (A) and (B), the Governor may certify a project as a water-related project for purposes of this chapter only if the Governor finds that greenhouse gas emissions resulting from the project will be mitigated to the extent feasible.

(b) The Office of Planning and Research may consult with other state agencies on and may issue guidelines regarding applications for and the certification of projects under this chapter. Any guidelines issued under this subdivision are not subject to the rulemaking provisions of the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code).

(c) An applicant for certification of an infrastructure project under this chapter shall do all of the following:

(1) Avoid or minimize significant environmental impacts in any disadvantaged community.

(2) If measures are required pursuant to this division to mitigate significant environmental impacts in a disadvantaged community, mitigate those impacts consistent with this division, including Section 21002. Mitigation measures required under this subdivision shall be undertaken in, and directly benefit, the affected community.

(3) Enter into a binding and enforceable agreement to comply with this subdivision in its application to the Governor and to the lead agency prior to the agency's certification of the environmental impact report for the project.

(d) The Office of Planning and Research shall make evidence and materials submitted for the certification of a project available to the public on its internet website at least 15 days before the certification of the project.

(e) The Governor's decision to certify a project shall not be subject to judicial review.

21189.83. (a) In addition to the requirements of Section 21189.82, with respect to any energy infrastructure project or semiconductor or microelectronic project proposed by a private entity, the Governor may certify the project pursuant to this chapter only if the project does not result in any net additional emission of greenhouse gases, including greenhouse gas emissions from employee transportation. For purposes of this section, a project is deemed to meet the requirements of this section if the applicant demonstrates to the satisfaction of the Governor that the applicant has a binding commitment that it will mitigate impacts resulting from the emission of greenhouse gases, if any, in accordance with Section 21183.6.

(b) In addition to the requirements of Section 21189.82, with respect to any transportation-related project, the Governor may certify the project pursuant to this chapter only if the project does not result in any net additional emission of greenhouse gases, excluding greenhouse gas emissions from employee transportation. For purposes of this section, a project is deemed to meet the requirements of this section if the applicant demonstrates to the satisfaction of the Governor that the applicant has a binding commitment that it will mitigate impacts resulting from the emission of greenhouse gases, if any, preferably through direct emissions reductions where feasible, but where not feasible, then through the use of offsets that are real, permanent, verifiable, and enforceable, and that provide a specific, quantifiable, and direct environmental and public health benefit to the same air pollution control district or air quality management district in which the project is located, but if all of the project impacts cannot be feasibly and fully mitigated in the same air pollution control district or air quality management district, then remaining unmitigated impacts shall be mitigated through the use of offsets that provide a specific, quantifiable, and direct environmental and public health benefit to the region in which the project is located.

(c) The applicant shall be responsible for the costs of preparing an analysis of the emission of greenhouse gases resulting from the project.

21189.84. (a) This chapter applies to a project that is certified by the Governor as an infrastructure project.

(b) An applicant may apply to the Governor for certification and shall provide evidence and materials deemed necessary by the Governor in making a decision on the application for certification.

(c) The Governor shall submit the Governor's proposed certification, and any supporting information, to the Joint Legislative Budget Committee for review and concurrence or nonconcurrence. Within 30 days of receiving the determination, the Joint Legislative Budget Committee shall concur or nonconcur in writing on the certification. If the Joint Legislative Budget Committee fails to concur or nonconcur on a certification within 30 days of the submittal, the project is deemed to be certified.

(d) The Office of Planning and Research may charge a fee to an applicant seeking certification under this chapter for the costs incurred by the Governor's office in implementing this chapter.

21189.85. (a) An action or proceeding brought to attack, review, set aside, void, or annul the certification of an environmental impact report for an infrastructure project subject to this chapter or the granting of any project approvals, including any potential appeals to the court of appeal or the Supreme Court, shall be resolved, to the extent feasible, within 270 days of the filing of the certified record of proceedings with the court.

(b) On or before December 31, 2023, the Judicial Council shall adopt a rule of court to implement this section.

21189.86. Notwithstanding any other law, the preparation and certification of the record of proceedings for an infrastructure project shall be performed in the following manner:

(a) The lead agency for the project shall prepare the record of proceedings under this division concurrently with the administrative process.

(b) All documents and other materials placed in the record of proceedings shall be posted on, and be downloadable from, an internet website maintained by the lead agency commencing with the date of the release of the draft environmental impact report.

(c) The lead agency shall make available to the public in a readily accessible electronic format the draft environmental impact report and all other documents submitted to, or relied on by, the lead agency in preparing the draft environmental impact report.

(d) Any document prepared by the lead agency or submitted by the applicant 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 days after the document is released or received by the lead agency.

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

(f) Within seven 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.

(g) Notwithstanding subdivisions (b) to (f), inclusive, documents submitted to or 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 these documents available in an electronic format no later than the date of the release of the draft environmental impact report, or within five 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.

(h) The lead agency shall certify the final record of proceedings within five days of its approval of the project.

(i) Any dispute arising from 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.

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

(k) The applicant shall pay 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. The cost of preparing the record of proceedings for the project shall not be recoverable from the plaintiff or petitioner before, during, or after any litigation.

21189.87. (a) Within 10 days of the certification of a project pursuant to Section 21189.82, the lead agency shall, at the applicant's expense, if applicable, issue a public notice in no less than 12-point type stating the following:

"THE APPLICANT HAS ELECTED TO PROCEED UNDER CHAPTER 7 (COMMENCING WITH SECTION 21189.80) OF DIVISION 13 OF THE PUBLIC RESOURCES CODE, WHICH PROVIDES, AMONG OTHER THINGS, THAT ANY JUDICIAL ACTION CHALLENGING THE CERTIFICATION OF THE ENVIRONMENTAL IMPACT REPORT (EIR) OR THE APPROVAL OF THE PROJECT DESCRIBED IN THE EIR IS SUBJECT TO THE PROCEDURES SET FORTH IN SECTIONS 21189.85 AND 21189.86 OF THE PUBLIC RESOURCES CODE. A COPY OF CHAPTER 7 (COMMENCING WITH SECTION 21189.80) OF DIVISION 13 OF THE PUBLIC RESOURCES CODE IS INCLUDED BELOW."

(b) The public notice shall be distributed by the lead agency as required for public notices issued under paragraph (3) of subdivision (b) of Section 21092.

21189.88. Except as otherwise provided expressly in this chapter, this chapter does not affect the duty of any party to comply with this division.

21189.89. The provisions of this chapter are severable. If any provision of this chapter or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

21189.90. If before January 1, 2033, a lead agency fails to approve an infrastructure project, then the certification is no longer valid.

21189.91. This chapter shall remain in effect only until January 1, 2034, and as of that date is repealed.

SEC. 7. The sum of one million dollars (\$1,000,000) is hereby appropriated from the General Fund to the Judicial Council for judicial officer training for implementation of this act. These funds are available for expenditure through June 30, 2025.

SEC. 8. 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. 9. 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:

To promote environmental protection and safeguard economic development of California's diverse public resources and people, and enhance the state's ability to maximize federal funding to support those efforts, it is necessary for this act to take effect immediately.