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SB-286 Offshore wind energy projects. (2023-2024)

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Senate Bill No. 286

CHAPTER 386

An act to add Sections 30001.3, 30601.4, 30616, and 30617 to, and to add Chapter 6 (commencing with Section 7100) to Part 2 of Division 6 of, the Public Resources Code, relating to public resources.

[Approved by Governor October 07, 2023. Filed with Secretary of State October 07, 2023.]

LEGISLATIVE COUNSEL'S DIGEST

SB 286, McGuire. Offshore wind energy projects.

(1) Existing law, the California Coastal Act of 1976, requires anyone wishing to perform or undertake any development in the coastal zone, except as specified, in addition to obtaining any other permit required by law from any local government or from any state, regional, or local agency, to obtain a coastal development permit from the California Coastal Commission or a local government with a certified local coastal program, as provided. The act authorizes the commission to process and act upon a consolidated coastal development permit application if a proposed project requires a coastal development permit from both a local government with a certified local coastal program and the commission and if the applicant, the local government, and the commission consent to consolidate the permit action.

This bill would require the commission to process a consolidated coastal development permit for any new development that requires a coastal development permit and that is associated with, appurtenant to, or necessary for the construction and operation of offshore wind energy projects, and transmission facilities needed for those projects, located in the coastal zone, provided that public participation is not substantially impaired by the review of the consolidated coastal development permit, as provided. The bill would require the commission to forward an application for a consolidated coastal development permit to local governmental agencies having land use and related jurisdiction in the area in which the project would occur and would authorize those local governmental agencies to review and comment on the application, as provided.

(2) 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. 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.

This bill would require the State Lands Commission to be the lead agency for purposes of CEQA for offshore wind energy projects and to prepare, or cause to be prepared, all environmental documents required by law. The bill would require the California Coastal Commission and the State Lands Commission to coordinate with relevant local, state, and federal agencies to encourage and facilitate the preparation of joint environmental documents pursuant to CEQA and the federal National Environmental Policy Act of 1969 for proposed offshore wind energy projects.

(3) Existing law requires the State Energy Resources Conservation and Development Commission (Energy Commission), in coordination with specified state entities and other relevant federal, state, and local agencies, to develop a strategic plan for offshore wind energy developments installed off the California coast in federal waters, and requires the Energy Commission to submit the strategic plan to the Natural Resources Agency and the Legislature on or before June 30, 2023.

This bill would establish the California Offshore Wind Energy Fisheries Working Group, composed of representatives of the California Coastal Commission, the Department of Fish and Wildlife, the State Lands Commission, the Ocean Protection Council, representatives of the commercial and recreational fishing industries, the offshore wind energy industry, representatives of relevant federal agencies, representatives of California Native American tribes with affected tribal fisheries, and other stakeholders, as determined by the California Coastal Commission. The bill would require the California Coastal Commission, in coordination with the Department of Fish and Wildlife, to convene the working group on or before January 1, 2025, for the purpose of developing a statewide strategy for ensuring that offshore wind energy projects avoid and minimize impacts to ocean fisheries to the maximum extent possible, avoid, minimize, and mitigate impacts to fishing and fisheries in a manner that prioritizes fishery productivity, viability, and long-term resilience, and fairly and reasonably compensate persons engaged in the commercial and recreational fishing industries and tribal fisheries for economic impacts to ocean fisheries resulting from offshore wind energy projects. The bill would require the statewide strategy to include best practices for addressing impacts to the commercial and recreational fishing industries, tribal fisheries, and environmental resources associated with offshore wind energy projects, as specified, and to be completed on or before January 1, 2026. The bill would require the California Coastal Commission to adopt the statewide strategy on or before May 1, 2026, and to review the statewide strategy as needed to determine if changes are necessary. The bill would require an applicant seeking approval or concurrence from a state agency for an offshore wind energy project to comply with the terms, recommendations, and best practices established in the statewide strategy.

The bill would require the working group to develop a framework for reasonable compensatory mitigation for unavoidable impacts associated with offshore wind energy projects, including a payment structure to reasonably compensate commercial, tribal, and recreational fisheries and impacted commercial fish processors. The bill would require the payment structure to include, among other things, investments in fleet improvements to promote resiliency, reasonable compensation for the commercial fishing industry for personal property losses caused by offshore wind energy projects, and reasonable compensation for lost commercial and tribal revenue due to reduced fishing grounds, as specified. The bill would require the State Lands Commission or a local trustee of granted public trust lands to consider including within a lease for an offshore wind energy project reasonable compensatory mitigation for unavoidable impacts to fishing and tribal interests. The bill would create the Offshore Wind Energy Resiliency Fund and would require the State Lands Commission to deposit revenue generated from an offshore wind energy project lease in the fund. The bill would make moneys in the fund available, upon appropriation by the Legislature, for reasonable compensatory mitigation for unavoidable impacts associated with offshore wind energy projects.

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

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

SECTION 1. Chapter 6 (commencing with Section 7100) is added to Part 2 of Division 6 of the Public Resources Code, to read:

CHAPTER 6. Leases for Offshore Wind Energy Projects

7100. (a) Notwithstanding Section 6217, the commission shall deposit revenue generated from an offshore wind energy project lease in the Offshore Wind Energy Resiliency Fund, which is hereby created in the State Treasury. Moneys in the fund shall be available, upon appropriation by the Legislature, for the purposes described in paragraph (7) of subdivision (c) of Section 30616.

(b) The commission or a local trustee of granted public trust lands, when issuing a lease for purposes of an offshore wind energy project, shall consider including within the lease reasonable compensatory mitigation for unavoidable impacts to fishing and tribal interests pursuant to Section 30616. In considering the inclusion of reasonable compensatory mitigation, the commission or a local trustee of granted public trust lands shall consider the recommendations for reasonable compensatory mitigation made by the California Offshore Wind Energy Fisheries Working Group established pursuant to Section 30616, including the working group's recommendations for a payment structure to reasonably compensate commercial, tribal, and recreational fisheries and impacted commercial fish processors for unavoidable impacts associated with offshore wind energy projects.

SEC. 2. Section 30001.3 is added to the Public Resources Code, to read:

30001.3. The Legislature finds and declares all of the following:

(a) Offshore wind energy generation is an important component of California's renewable energy portfolio.

(b) While offshore wind energy generation can provide significant climate and economic benefits, industrial scale development and deployment of offshore wind energy will also have impacts on coastal and ocean resources, fisheries, and coastal communities that are not yet fully understood.

(c) The urgency of the climate crisis and the importance of ocean health to maintaining a livable planet necessitate the expeditious development of offshore wind energy generation facilities and associated infrastructure in a manner that also avoids, minimizes, and mitigates impacts to ocean and coastal resources to the maximum extent practicable.

(d) Through science-based monitoring and mitigation, meaningful engagement with affected communities, adaptive management, and equitable workforce development, California can be a world leader in the rapid, just, and environmentally sustainable generation of renewable energy from offshore wind.

SEC. 3. Section 30601.4 is added to the Public Resources Code, to read:

30601.4. (a) (1) The commission shall process a consolidated coastal development permit for any new development that requires a coastal development permit and that is associated with, appurtenant to, or necessary for the construction and operation of offshore wind energy projects, and transmission facilities needed for those projects, located in the coastal zone, as defined in this division. Section 30601.3 applies to a consolidated coastal development permit pursuant to this section, except that paragraph (2) of subdivision (a) of Section 30601.3 does not apply, and provided that public participation is not substantially impaired by the review of the consolidated coastal development permit.

(2) Upon receipt of an application for purposes of this subdivision, the commission shall forward the application to local governmental agencies having land use and related jurisdiction in the area in which the project would occur. The local governmental agencies may review the application and submit comments on, among other things, applicable provisions of the local coastal program and other appropriate aspects of the design, construction, or operation of the proposed site and related facility.

(3) The commission shall coordinate with affected local governmental agencies to incorporate or otherwise address their recommendations in the final consolidated coastal development permit, including measures to address impacts from offshore wind development and respond to community needs, consistent with this division.

(4) The commission shall engage with federally recognized and nonfederally recognized California Native American tribes with fisheries that could be affected by future development associated with a lease for an offshore wind energy project on all elements of the lessees' project development process, including measures to address impacts from offshore wind development and respond to community needs, consistent with the commission's tribal consultation policy.

(5) To avoid duplication and to increase regulatory efficiency, the commission and the State Lands Commission shall coordinate with relevant local, state, and federal agencies to encourage and facilitate the preparation of joint environmental documents pursuant to the California Environmental Quality Act (Division 13 (commencing with Section 21000)) and the federal National Environmental Policy Act of 1969 (42 U.S.C. Sec. 4321 et seq.) for projects proposed pursuant to this section.

(b) (1) The State Lands Commission shall be the lead agency for purposes of the California Environmental Quality Act for offshore wind energy projects pursuant to this division and shall prepare, or cause to be prepared, all environmental documents required by law.

(2) Paragraph (1) does not affect the determination of which entity shall serve as a lead agency for the purposes of the California Environmental Quality Act for projects undertaken pursuant to Chapter 8 (commencing with Section 30700).

SEC. 4. Section 30616 is added to the Public Resources Code, to read:

30616. (a) (1) The California Offshore Wind Energy Fisheries Working Group is hereby established. The working group shall be composed of representatives of the commission, the Department of Fish and Wildlife, the State Lands Commission, the Ocean Protection Council, representatives of the commercial and recreational fishing industries, the offshore wind energy industry, representatives of relevant federal agencies, representatives of California Native American tribes with affected tribal fisheries, and other stakeholders as appropriate, as determined by the commission.

(2) The number of representatives in the working group representing the commercial and recreational fishing industries, the offshore wind energy industry, California Native American tribes with affected tribal fisheries, and any other stakeholders included in the working group, as specified in paragraph (1), shall be determined by the commission.

(b) On or before January 1, 2025, the commission, in coordination with the Department of Fish and Wildlife, shall convene the working group for the purpose of developing a statewide strategy for ensuring that offshore wind energy projects avoid and minimize impacts to ocean fisheries to the maximum extent possible, avoid, minimize, and mitigate impacts to fishing and

fisheries in a manner that prioritizes fishery productivity, viability, and long-term resilience, and fairly and reasonably compensate persons engaged in the commercial and recreational fishing industries and tribal fisheries for economic impacts to ocean fisheries resulting from offshore wind energy projects.

(c) The statewide strategy developed pursuant to this section shall include best practices for addressing impacts to the commercial and recreational fishing industries, tribal fisheries, and environmental resources associated with offshore wind energy projects, including, but not limited to, the following:

(1) Protocols for communication among impacted parties.

(2) A methodology for a comprehensive project-level socioeconomic analysis of direct and indirect impacts to commercial and recreational fishing industries and tribal fisheries.

(3) Best practices for offshore surveys and data collection to assess impacts.

(4) Best practices for avoidance and minimization of impacts, including the use of evidence-informed adaptive management.

(5) A template for a fishing agreement that includes all relevant elements of the statewide strategy.

(6) A template for an agreement addressing tribal fishing interests that includes all relevant elements of the statewide strategy.

(7) (A) A framework for reasonable compensatory mitigation for unavoidable impacts to the commercial and recreational fishing industries and tribal fisheries.

(B) The framework for reasonable compensatory mitigation shall include a payment structure to reasonably compensate commercial, tribal, and recreational fisheries and impacted commercial fish processors for unavoidable impacts associated with offshore wind energy projects, including for all of the following:

(i) Investments in fleet improvements to promote resiliency.

(ii) Reasonable compensation for the commercial fishing industry for personal property losses caused by offshore wind energy projects. The working group shall ensure that payments for purposes of this clause provide sufficient funds for the entire lifetime of the offshore wind energy project to reasonably compensate the commercial fishing industry for all lost personal property.

(iii) Reasonable compensation for lost commercial and tribal revenue due to reduced fishing grounds.

(iv) Funding for robust monitoring and evaluation of offshore wind turbines and their impact on fisheries and the surrounding environment.

(v) A proportionate amount from each lessee that is sufficient to cover state costs pursuant to this section, including, but not limited to, the costs of the working group's activities and other administrative expenses.

(8) A recognition of locally negotiated agreements between the fishing industry and offshore wind energy leaseholders.

(d) (1) The working group shall complete the statewide strategy, including the framework for reasonable compensatory mitigation for unavoidable impacts, on or before January 1, 2026.

(2) The commission shall review for consistency with Chapter 3 (commencing with Section 30200), modify as necessary, and adopt, the statewide strategy, including the framework for reasonable compensatory mitigation for unavoidable impacts, on or before May 1, 2026.

(3) (A) An applicant seeking approval or concurrence from a state agency for an offshore wind energy project shall comply with the terms, recommendations, and best practices established in the statewide strategy, as adopted by the commission.

(B) The commission shall ensure that the terms, recommendations, and best practices established in the statewide strategy, as adopted by the commission, are implemented.

(4) The commission shall review the statewide strategy as needed to determine if any changes are necessary. At a regularly noticed public hearing, the commission shall present the outcome of any review pursuant to this paragraph and may, by resolution, authorize the reconvening of the working group.

(e) Representatives of the commercial fishing industry, recreational fishing industry, and California Native American tribes who participate in the working group shall be compensated for expenses reasonably incurred for approved working group activities, including attendance at meetings, at a rate of fifty dollars (\$50) per hour, up to no more than five hundred dollars (\$500) per day. Representatives of the commercial fishing industry, recreational fishing industry, and California Native American tribes may also

receive reimbursement for reasonable travel expenses. Funds used to compensate representatives of the commercial fishing industry, recreational fishing industry, and California Native American tribes pursuant to this subdivision shall be paid from the Offshore Wind Energy Resiliency Fund to the extent funds are available pursuant to subdivision (b) of Section 7100.

SEC. 5. Section 30617 is added to the Public Resources Code, to read:

30617. As part of the commission's federal consistency process, when reviewing a workforce development plan submitted to the federal Bureau of Ocean Energy Management consistent with conditions 5 and 6 of the commission's Consistency Determination CD-0001-22 and Consistency Determination CD-0004-22 and existing statutory requirements, the commission shall consult with representatives of labor organizations for the construction trades and maritime and longshore workforce in furtherance of providing for career and workforce training and retraining for individuals whose livelihoods are disrupted by the development of offshore wind energy projects.

SEC. 6. The provisions of this act are severable. If any provision of this act 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.