Senate Bill No. 292

Passed the Senate September 9, 2011

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Secretary of the Senate

Passed the Assembly September 7, 2011

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Chief Clerk of the Assembly

This bill was received by the Governor this _____ day of _____, 2011, at _____ o'clock ___M.

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Private Secretary of the Governor

Corrected 9-14-11

CHAPTER _____

An act to add and repeal Section 21168.6.5 of the Public Resources Code, relating to environmental quality.

LEGISLATIVE COUNSEL'S DIGEST

SB 292, Padilla. California Environmental Quality Act: administrative and judicial review procedures: City of Los Angeles: stadium.

(1) The California Environmental Quality Act (CEQA) requires a lead agency, as defined, to prepare, or cause to be prepared, and certify the completion of, an environmental impact report (EIR) on a project that it proposes to carry out or approve that may have a significant effect on the environment or to adopt a negative declaration if it finds that the project will not have that effect. CEQA also requires a lead agency to prepare a mitigated negative declaration for a project that may have a significant effect on the environment if revisions in the project would avoid or mitigate that effect and there is no substantial evidence that the project, as revised, would have a significant effect on the environment.

CEQA establishes administrative procedures for the review and certification of the EIR for a project and judicial review procedures for any action or proceeding brought to challenge the lead agency's decision to certify the EIR or to grant project approvals.

This bill would establish specified administrative and judicial review procedures for the administrative and judicial review of the EIR and approvals granted for a project related to the development of a specified stadium in the City of Los Angeles. Because the lead agency would be required to use these alternative procedures for administrative review of the EIR if the project applicant so chooses, this bill would impose a state-mandated local program. The bill would require the lead agency and applicant to implement specified measures, as a condition of approval of the project, to minimize traffic congestion and air quality impacts that may result from spectators driving to the stadium.

(2) 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.

(3) This bill would make legislative findings and declarations as to the necessity of a special statute for the development of a stadium in the City of Los Angeles.

The people of the State of California do enact as follows:

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

(a) The overall unemployment rate in California is 12.0 percent, in Los Angeles County it is 13.3 percent, and in the City of Los Angeles it is 14.6 percent.

(b) The California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code) requires that the environmental impacts of development projects be identified and mitigated. The act 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) The Los Angeles Convention Center's West Hall is an old and outmoded facility that is inadequate to serve the city's visitor and convention needs. It was constructed 40 years ago and must be replaced to provide a modern, expanded, and more efficient convention hall adequate to meet the city's and region's needs.

(d) The Los Angeles Convention Center, the City of Los Angeles, and the region would greatly benefit from the addition of a multipurpose event center capable of hosting a wide range of events including conventions, exhibitions, and sporting events, as well as artistic and cultural events.

(e) The proposed Convention Center Modernization and Farmers Field Project is a public-private partnership that will result in the replacement of West Hall with a new convention hall and the construction of a new state-of-the-art stadium and multipurpose event center. The stadium will be completely privately financed and the convention hall will be financed from revenues generated by the stadium at no risk to the city's general fund.

(f) The project will generate an estimated 12,000 full-time jobs during construction and 11,000 permanent jobs at the Los Angeles Convention Center and in the hospitality and related industries. It is anticipated that the development of additional hotels, restaurants, and retail uses in the vicinity of the project would generate additional jobs in excess of these estimates.

(g) The project also presents an unprecedented opportunity to implement innovative measures that will significantly reduce traffic and air quality impacts from the project and fully mitigate the greenhouse gas emissions resulting from passenger vehicle trips attributed to the project, which will result in emission reductions and traffic mitigations that will be the best in the nation compared to other comparable stadiums in the United States. The project is located in downtown Los Angeles near several major rail transit facilities and is situated to maximize opportunities to encourage nonautomobile modes of travel to the stadium and convention center.

(h) It is in the interest of the state to expedite judicial review of the Convention Center Modernization and Farmers Field Project as appropriate while protecting the environment and the right of the public to review, comment on, and, if necessary, seek judicial review of, the adequacy of the environmental impact report for the project.

SEC. 2. Section 21168.6.5 is added to the Public Resources Code, to read:

21168.6.5. (a) For the purposes of this section, the following definitions shall apply:

(1) "Applicant" means a private entity or its affiliates that proposes the project and its successors, heirs, and assignees.

(2) "Initial project approval" means any actions, activities, ordinances, resolutions, agreements, approvals, determinations, findings, or decisions taken, adopted, or approved by the lead agency required to allow the applicant to commence the construction of the project, as determined by the lead agency.

(3) "Project" means a project that substantially conforms to the project description for the Convention Center Modernization and Farmers Field Project set forth in the notice of preparation released by the City of Los Angeles on March 17, 2011.

(4) "Stadium" means, except as the context indicates otherwise, the stadium built pursuant to the project for football and other spectator events.

(5) "Subsequent project approval" means any actions, activities, ordinances, resolutions, agreements, approvals, determinations, findings, or decisions by the lead agency required for, or in furtherance of, the project that are taken, adopted, or approved following the initial project approvals until the project obtains certificates of occupancy.

(6) "Trip ratio" means the total annual number of private automobiles arriving at the stadium for spectator events divided by the total annual number of spectators at the events.

(b) (1) This section does not apply to the project and shall become inoperative on the date of the release of the draft environmental impact report and is repealed on January 1 of the following year, if the applicant fails to notify the lead agency prior to the release of the draft environmental impact report for public comment that the applicant is electing to proceed pursuant to this section.

(2) The lead agency shall notify the Secretary of State if the applicant fails to notify the lead agency of its election to proceed pursuant to this section.

(c) (1) (A) Notwithstanding any other law, the procedures set forth in subdivision (d) shall apply to any action or proceeding brought to attack, review, set aside, void, or annul the certification of the environmental impact report for the project or the granting of any initial project approvals.

(B) Notwithstanding any other law, the procedures set forth in subdivision (j) shall apply to any action or proceeding brought to attack, review, set aside, void, or annul any subsequent project approvals.

(2) Notwithstanding any other law, the procedure set forth in subdivision (f) shall apply to the certification of the environmental impact report for the project and to any initial project approvals.

(d) (1) An action or proceeding to attack, set aside, void, or annul a determination, finding, or decision of the lead agency certifying the environmental impact report or granting one or more initial project approvals shall be commenced by filing a petition for a writ of mandate with the Second District Court of Appeal and shall be served on the respondent and the real party in interest

within 30 days of the filing by the lead agency of the notice required by subdivision (a) of Section 21152.

(2) The petitioner shall file and serve the opening brief in support of the petition for writ of mandate within 40 days of the filing of the petition for a writ of mandate.

(3) The respondent and real party in interest shall file and serve any brief in opposition to the petition for writ of mandate within 25 days of the filing of the opening brief.

(4) The petitioner shall file and serve the reply brief within 20 days of the filing of the last opposition brief to the petitioner's opening brief.

(5) Except as provided in paragraph (6), parties to the action shall comply with all applicable California Rules of Court in the filing of the petition for writ of mandate and the briefs.

(6) (A) Rule 8.220 of the California Rules of Court shall not apply to the time periods set forth in paragraphs (2) to (4), inclusive.

(B) If a petitioner fails to file the opening brief pursuant to paragraph (2), the Court of Appeal shall dismiss the petition.

(C) If the respondents and real party in interest fail to file the brief in opposition pursuant to paragraph (3), the Court of Appeal shall decide the petition for writ of mandate based on the record, the opening brief, and any oral argument by the petitioner.

(7) Except upon a showing of extraordinary good cause, the Court of Appeal shall not grant any extensions of time to the deadlines specified in this subdivision. Any extension shall be limited to the minimum amount the Court of Appeal deems to be necessary.

(8) The Court of Appeal may, on its motion or upon request from a party, appoint a special master to assist the Court of Appeal in conducting the expedited judicial review required pursuant to this subdivision. If the Court of Appeal appoints a special master, the applicant shall pay all reasonable costs for the special master, not to exceed one hundred fifty thousand dollars ($150,000). If the Court of Appeal determines that the cost of the special master may exceed one hundred fifty thousand dollars ($150,000), it may request that additional funds be provided by the applicant and, if the applicant agrees to provide the funding, shall use the funds to pay the additional costs of the special master.

(9) The Court of Appeal shall hold a hearing and issue a decision on all petitions for writ of mandate filed pursuant to this subdivision within 60 days of the filing of the last timely reply brief.

(10) (A) A petition for review of the decision rendered by the Court of Appeal shall be filed with the Supreme Court and served on all parties to the petition for writ of mandate within 15 days of the decision.

(B) Any opposition to the petition for review shall be filed and served within 15 days of the filing of the petition for review.

(C) The Supreme Court shall render a decision on the petition for review within 30 days after the filing of the petition for review or within 15 days after the filing of the opposition to the petition for review, whichever is earlier.

(11) All briefs and notices filed pursuant to this subdivision shall be electronically served on parties pursuant to Rule 8.71 of the California Rules of Court. Each party to the petition shall provide an electronic service address at which the party agrees to accept the service.

(12) (A) No provision of law that is inconsistent or conflicts with this subdivision shall apply to a petition for a writ of mandate subject to this subdivision, including, but not limited to, any of the following:

(i) Section 21167.4.

(ii) Subdivisions (a) through (d), inclusive, and (g) through (i), inclusive, of Section 21167.6.

(iii) Subdivision (f) of Section 21167.8.

(iv) Section 21167.6.5.

(v) Sections 66031 through 66035, inclusive, of the Government Code.

(B) Except as provided in this section, including subparagraph (A), the requirements of this division are fully applicable to the project.

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

THIS EIR IS SUBJECT TO SECTION 21168.6.5 OF THE PUBLIC RESOURCES CODE, WHICH PROVIDES, AMONG OTHER THINGS, THAT THE LEAD AGENCY NEED NOT CONSIDER CERTAIN COMMENTS FILED AFTER THE

CLOSE OF THE PUBLIC COMMENT PERIOD FOR THE DRAFT EIR. ANY JUDICIAL ACTION CHALLENGING THE CERTIFICATION OF THE EIR OR THE APPROVAL OF THE PROJECT DESCRIBED IN THE EIR IS SUBJECT TO THE PROCEDURES SET FORTH IN SECTION 21168.6.5 OF THE PUBLIC RESOURCES CODE AND MUST BE FILED WITH THE SECOND DISTRICT COURT OF APPEAL. A COPY OF SECTION 21168.6.5 OF THE PUBLIC RESOURCES CODE IS INCLUDED IN THE APPENDIX TO THIS EIR.

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

(f) (1) Within 10 days after the release of the draft environmental impact report, the lead agency shall conduct an informational workshop to inform the public of the key analyses and conclusions of that report.

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

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

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

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

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

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

(4) The lead agency need not consider written comments submitted after the close of the public comment period, unless those comments address any of the following:

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

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

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

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

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

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

(B) If the notice required by subdivision (a) of Section 21152 is filed after June 1, 2013, this section shall become inoperative as of June 1, 2013, and is repealed as of January 1, 2014.

(C) In the event this section is repealed pursuant to subparagraph (B), the lead agency shall notify the Secretary of State.

(g) (1) For a petition for writ of mandate filed pursuant to this section, the lead agency shall prepare and certify the record of the

proceedings in accordance with this subdivision and in accordance with Rule 3.1365 of the California Rules of Court. The applicant shall pay the lead agency for all costs of preparing and certifying the record of proceedings.

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

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

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

(5) The lead agency shall indicate in the record of the proceedings comments received that were not considered by the lead agency pursuant to paragraph (4) of subdivision (f) and need not include the content of the comments as a part of the record.

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

(7) Within 10 days after being served with a petition for a writ of mandate pursuant to paragraph (1) of subdivision (d), the lead agency shall lodge a copy of the certified record of proceedings with the Court of Appeal.

(8) Any dispute over the content of the record of the proceedings shall be resolved by the Court of Appeal. Unless the Court of

Appeal directs otherwise, a party disputing the content of the record shall file a motion to augment the record at the time it files its initial brief.

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

(h) It is the intent of the Legislature that the project minimize traffic congestion and air quality impacts that may result from private automobile trips to the stadium through the requirements of this division as supplemented, pursuant to subdivision (i), by the implementation of measures that will do both of the following:

(1) Achieve and maintain carbon neutrality by reducing to zero the net emissions of greenhouse gases, as defined in subdivision (g) of Section 38505 of the Health and Safety Code, from private automobile trips to the stadium.

(2) Achieve and maintain a trip ratio that is no more than 90 percent of the trip ratio at any other stadium serving a team in the National Football League.

(i) (1) As a condition of approval of the project subject to this section, the lead agency shall require the applicant to implement measures that will meet the requirements of this division and paragraph (1) of subdivision (h) by the end of the first season during which a National Football League team has played at the stadium. To maximize public health, environmental, and employment benefits, the lead agency shall place the highest priority on feasible measures that will reduce greenhouse gas emissions on the stadium site and in the neighboring communities of the stadium. Offset credits shall be employed by the applicant only after feasible local emission reduction measures have been implemented. The applicant shall, to the extent feasible, place the highest priority on the purchase of offset credits that produce emission reductions within the city or the boundaries of the South Coast Air Quality Management District.

(2) To ensure that the stadium achieves a trip ratio that is no more than 90 percent of the trip ratio at any other stadium serving a team in the National Football League, the applicant shall implement the necessary measures as follows:

(A) Not later than the date of the certification of the environmental impact report for the project, the lead agency shall develop and adopt a protocol to implement this subdivision pursuant to this division and subdivision (h), including, but not

limited to, criteria and guidelines that will be used to determine the trip ratio.

(B) Following the conclusion of the second, third, fourth, and fifth seasons during which a National Football League team has played at the stadium, the applicant shall prepare a report to the lead agency that describes the measures it has undertaken to reduce trips based on the protocol developed and adopted pursuant to subparagraph (A), the trip ratio at the stadium, and the results of those measures. The report shall also include a summary of publicly available data and other data gathered by the applicant regarding average vehicle ridership, nonpassenger automobile modes of arrival, and trip reduction measures undertaken at other stadiums serving a team in the National Football League.

(C) Following the lead agency's review of the report submitted following the fourth season, the lead agency shall determine whether adequate data is available to determine whether the trip ratio at stadium events is more than 90 percent of the trip ratio at any other stadiums serving a National Football League team. If the lead agency concludes that adequate data does not exist, the lead agency shall take necessary steps to collect, or cause to be collected, the data reasonably necessary to make the determination. The applicant shall pay the reasonable costs of collecting the data pursuant to subdivision (a) of Section 21089.

(D) Following the lead agency's review of the report submitted following the fifth season, the lead agency shall determine the trip ratio at stadium events and the lowest trip ratio at any other stadium serving a National Football League team. If the trip ratio at the stadium is more than 90 percent of the trip ratio at the other stadium with the lowest trip ratio, the lead agency shall, within six months following the receipt of the report, require the applicant to implement additional feasible measures that the lead agency determines pursuant to subparagraph (E) will be sufficient for the stadium to achieve the target specified in paragraph (2) of subdivision (h).

(E) Any trip reduction measure used at other stadiums serving a National Football League team shall be presumed to be feasible unless a preponderance of the evidence demonstrates that the measure is infeasible. The lead agency's decision whether to adopt any mitigation measures pursuant to subparagraph (D) other than those used at another stadium serving a National Football League

team shall be governed by the substantial evidence test. This subparagraph does not require the applicant to bear the cost of improving the capacity or performance of transit facilities other than the following:

(i) Temporarily expanding the capacity of a public transit line, as needed, to serve stadium events.

(ii) Providing private charter buses or other similar services, as needed, to serve stadium events.

(iii) Paying its fair share of the cost of measures that expand the capacity of a public fixed or light rail station that is used by spectators attending stadium events.

(F) Any action or proceeding to attack, review, set aside, void, or annul a determination, finding, or decision of the lead agency regarding the additional mitigation measures pursuant to subparagraph (D) shall be commenced within 30 days following the lead agency's filing of the notice required by subdivision (a) of Section 21152 and shall be governed by this division. The procedures set forth in subdivision (d) shall not apply to that action or proceeding. Notwithstanding any other law, compliance or noncompliance with this paragraph shall not result in the stadium being required to cease or limit operations.

(G) If the lead agency requires the applicant to implement additional measures pursuant to subparagraph (D), the applicant shall submit the report described in subparagraph (B) to the lead agency following the conclusion of each subsequent season until the lead agency determines that the applicant has achieved a trip ratio at the stadium that is not more than 90 percent of the trip ratio at any other stadium serving a National Football League team for two consecutive seasons or until the applicant submits the required report following the conclusion of the 10th season, whichever occurs earlier. Nothing in this subparagraph affects the ongoing obligations of the applicant pursuant to subdivision (h) and this subdivision.

(H) All obligations of the applicant set forth in this subdivision or imposed upon the applicant by the lead agency pursuant to this subdivision shall run with the land.

(3) This subdivision and subdivision (h) shall not serve as a basis for any action or proceeding to attack, set aside, void, or annul a determination, finding, or decision of the lead agency in

certifying the environmental impact report for the project or in granting the initial or subsequent project approvals.

(4) The obligations imposed pursuant to this subdivision and subdivision (h) supplement, and do not replace, mitigation measures otherwise imposed on the project pursuant to this division.

(j) (1) An action or proceeding to attack, set aside, void, or annul a determination, finding, or decision of the lead agency granting a subsequent project approval shall be subject to the requirements of Chapter 6 (commencing with Section 21165).

(2) (A) In granting relief in an action or proceeding brought pursuant to this subdivision, the court shall not stay or enjoin the construction or operation of the project unless the court finds either of the following:

(i) The continued construction or operation of the project presents an imminent threat to the public health and safety.

(ii) The project site contains unforeseen important Native American artifacts or unforeseen important historical, archaeological, or ecological values that would be materially, permanently, and adversely affected by the continued construction or operation of the project.

(B) If the court finds that clause (i) or (ii) is satisfied, the court shall only enjoin those specific project activities that present an imminent threat to public health and safety or that materially, permanently, and adversely affect unforeseen important Native American artifacts or unforeseen important historical, archaeological, or ecological values.

(k) The provisions of this section are severable. If any provision of this section 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.

SEC. 3. 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. 4. The Legislature finds and declares that a special law is necessary and that a general law cannot be made applicable within the meaning of Section 16 of Article IV of the California

Constitution because of the unique need for the development of the stadium in the City of Los Angeles, otherwise known as Farmers Field, in an expeditious manner.

Approved _____, 2011

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Governor