

AMENDED IN SENATE JUNE 14, 2018

AMENDED IN ASSEMBLY APRIL 18, 2018

AMENDED IN ASSEMBLY MARCH 22, 2018

CALIFORNIA LEGISLATURE—2017–18 REGULAR SESSION

ASSEMBLY BILL

No. 3030

Introduced by Assembly Member Caballero

February 16, 2018

An act to add Section 21080.48 to the Public Resources Code, relating to environmental quality.

LEGISLATIVE COUNSEL'S DIGEST

AB 3030, as amended, Caballero. California Environmental Quality Act: exemption: qualified opportunity zones.

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. CEQA exempts certain projects from its requirements.

Existing federal law authorizes the governor of a state to nominate a specified number of census tracts that meet certain requirements as a qualified opportunity zone and authorizes the Treasury Secretary to designate those tracts as qualified opportunity zones. Existing federal

law provides certain federal tax incentives to a taxpayer who invests in a qualified opportunity fund, which is an investment vehicle organized for the purpose of investing in qualified opportunity zone property, as prescribed.

This bill would exempt a project that is financed by a qualified opportunity fund and that meets certain requirements from CEQA. *The bill would require the project proponent to make certain certifications regarding the project.* The bill would require a lead agency, before making a determination that the project is exempt from CEQA, to hold a noticed public hearing on the project, as specified. The bill would require the lead agency, if it determines that a project is exempt from CEQA under the above exemption and determines to approve or carry out the project, to file a specified notice with the Office of Planning and Research. Because a lead agency would have to determine the applicability of the exemption, to take certain specified action before determining that a project is exempt, and to file a notice with the Office of Planning and Research, the bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

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

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

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

- 1 SECTION 1. Section 21080.48 is added to the Public Resources
- 2 Code, to read:
- 3 21080.48. (a) For purposes of this section, ~~“qualified the~~
- 4 *following definitions apply:*
- 5 (1) *“Qualified opportunity fund”* has the same meaning as
- 6 defined in subsection (d) of Section 1400Z-2 of Title 26 of the
- 7 United States Code.
- 8 (2) *“Skilled and trained workforce”* has the same meaning as
- 9 *provided in Chapter 2.9 (commencing with Section 2600) of Part*
- 10 *1 of Division 2 of the Public Contract Code.*
- 11 (b) This division does not apply to a project that meets all of
- 12 the following requirements:

- 1 (1) Is financed by a qualified opportunity fund.
- 2 (2) At least 50 percent of the project is affordable housing and
- 3 at least two-thirds of the development's square footage is
- 4 designated residential.
- 5 (3) Is not located on a site requiring demolition of affordable
- 6 housing or conversion of rental units to for-sale units, or a site
- 7 with mobilehomes or other special occupancies.
- 8 ~~(4) Ensures payment of prevailing wages and employment of a~~
- 9 ~~skilled and trained workforce.~~
- 10 ~~(5)~~
- 11 (4) Is consistent with the general plan land use designation and
- 12 policies, zoning and municipal or county ordinances, policies, and
- 13 mitigation.
- 14 ~~(6) Does not require a conditional use permit, subdivision,~~
- 15 ~~zoning variances, or a change to the general plan or zoning land~~
- 16 ~~use designation.~~
- 17 ~~(7)~~
- 18 (5) Complies with previously approved applicable mitigation
- 19 measures and standards.
- 20 ~~(8)~~
- 21 (6) Does not require a water supply assessment.
- 22 ~~(9)~~
- 23 (7) Has available existing utilities and schools to serve the
- 24 project.
- 25 ~~(10)~~
- 26 (8) Does not have any risk of exposure to hazardous substances
- 27 that exceed local, state, or federal standards.
- 28 ~~(11)~~
- 29 (9) Is not located on a site that has culture or historic resources.
- 30 ~~(12)~~
- 31 (10) Is not located on a site that is in or on any of the following:
- 32 ~~(A) The coastal zone.~~
- 33 ~~(B)~~
- 34 (A) Farmland.
- 35 ~~(C)~~
- 36 (B) Wetland.
- 37 ~~(D) Fire zone or area with high risk of fires or explosions.~~
- 38 ~~(E) Earthquake fault zone.~~
- 39 ~~(F)~~
- 40 (C) Flood area.

- 1 ~~(G)~~
- 2 (D) Land subject to ground failure or designated for protection
- 3 of natural resources.
- 4 ~~(H)~~
- 5 (E) Land under a conservation easement.
- 6 ~~(I)~~
- 7 (II) Does not have any significant impacts that have not been
- 8 publicly disclosed, analyzed, and mitigated.
- 9 (c) *The proponent of a project described in subdivision (b) shall*
- 10 *do both of the following, as applicable:*
- 11 (1) *Certify to the local agency that either of the following is*
- 12 *true, as applicable:*
- 13 (A) *The entirety of the project is a public work for purposes of*
- 14 *Chapter 1 (commencing with Section 1720) of Part 7 of Division*
- 15 *2 of the Labor Code.*
- 16 (B) *If the project is not in its entirety a public work, that all*
- 17 *construction workers employed in the execution of the project will*
- 18 *be paid at least the general prevailing rate of per diem wages for*
- 19 *the type of work and geographic area, as determined by the*
- 20 *Director of Industrial Relations pursuant to Sections 1773 and*
- 21 *1773.9 of the Labor Code, except that apprentices registered in*
- 22 *programs approved by the Chief of the Division of Apprenticeship*
- 23 *Standards may be paid at least the applicable apprentice prevailing*
- 24 *rate. If the project is subject to this subparagraph, for those*
- 25 *portions of the project that are not a public work, all of the*
- 26 *following shall apply:*
- 27 (i) *The project proponent shall ensure that the prevailing wage*
- 28 *requirement is included in all contracts for the performance of the*
- 29 *work.*
- 30 (ii) *All contractors and subcontractors shall pay to all*
- 31 *construction workers employed in the execution of the work at*
- 32 *least the general prevailing rate of per diem wages, except that*
- 33 *apprentices registered in programs approved by the Chief of the*
- 34 *Division of Apprenticeship Standards may be paid at least the*
- 35 *applicable apprentice prevailing rate.*
- 36 (iii) *Except as provided in clause (v), all contractors and*
- 37 *subcontractors shall maintain and verify payroll records pursuant*
- 38 *to Section 1776 of the Labor Code and make those records*
- 39 *available for inspection and copying as provided in therein.*

1 (iv) Except as provided in clause (v), the obligation of the
2 contractors and subcontractors to pay prevailing wages may be
3 enforced by the Labor Commissioner through the issuance of a
4 civil wage and penalty assessment pursuant to Section 1741 of the
5 Labor Code, which may be reviewed pursuant to Section 1742 of
6 the Labor Code within 18 months after the completion of the
7 project by an underpaid worker through an administrative
8 complaint or civil action, or by a joint labor-management
9 committee through a civil action under Section 1771.2 of the Labor
10 Code. If a civil wage and penalty assessment is issued, the
11 contractor, subcontractor, and surety on a bond or bonds issued
12 to secure the payment of wages covered by the assessment shall
13 be liable for liquidated damages pursuant to Section 1742.1 of the
14 Labor Code.

15 (v) Clauses (iii) and (iv) shall not apply if all contractors and
16 subcontractors performing work on the project are subject to a
17 project labor agreement that requires the payment of prevailing
18 wages to all construction workers employed in the execution of
19 the project and provides for enforcement of that obligation through
20 an arbitration procedure. For purposes of this clause, “project
21 labor agreement” has the same meaning as set forth in paragraph
22 (1) of subdivision (b) of Section 2500 of the Public Contract Code.

23 (vi) Notwithstanding subdivision (c) of Section 1773.1 of the
24 Labor Code, the requirement that employer payments not reduce
25 the obligation to pay the hourly straight time or overtime wages
26 found to be prevailing shall not apply if otherwise provided in a
27 bona fide collective bargaining agreement covering the worker.
28 The requirement to pay at least the general prevailing rate of per
29 diem wages does not preclude use of an alternative workweek
30 schedule adopted pursuant to Section 511 or 514 of the Labor
31 Code.

32 (2) (A) Certify to the local agency that a skilled and trained
33 workforce will be used to complete the project.

34 (B) If the project proponent has certified that a skilled and
35 trained workforce will be used to complete the project, the
36 following shall apply:

37 (i) The project proponent shall require in all contracts for the
38 performance of work that every contractor and subcontractor at
39 every tier will individually use a skilled and trained workforce to
40 complete the project.

- 1 (ii) Every contractor and subcontractor shall use a skilled and
- 2 trained workforce to complete the project.
- 3 (iii) Except as provided in clause (iv), the project proponent
- 4 shall provide to the local agency, on a monthly basis while the
- 5 project or contract is being performed, a report demonstrating
- 6 compliance with Chapter 2.9 (commencing with Section 2600) of
- 7 Part 1 of Division 2 of the Public Contract Code. A monthly report
- 8 provided to the local agency pursuant to this clause shall be a
- 9 public record under the California Public Records Act (Chapter
- 10 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the
- 11 Government Code) and shall be open to public inspection. A
- 12 project proponent that fails to provide a monthly report
- 13 demonstrating compliance with Chapter 2.9 (commencing with
- 14 Section 2600) of Part 1 of Division 2 of the Public Contract Code
- 15 shall be subject to a civil penalty of ten thousand dollars (\$10,000)
- 16 per month for each month for which the report has not been
- 17 provided. Any contractor or subcontractor that fails to use a skilled
- 18 and trained workforce shall be subject to a civil penalty of two
- 19 hundred dollars (\$200) per day for each worker employed in
- 20 contravention of the skilled and trained workforce requirement.
- 21 Penalties may be assessed by the Labor Commissioner within 18
- 22 months of completion of the project using the procedures for
- 23 issuance of civil wage and penalty assessments set forth in Section
- 24 1741 of the Labor Code, and may be reviewed pursuant to the
- 25 procedures set forth in Section 1742 of the Labor Code. Penalties
- 26 shall be paid to the State Public Works Enforcement Fund.
- 27 (iv) Clause (iii) shall not apply if all contractors and
- 28 subcontractors performing work on the project are subject to a
- 29 project labor agreement that requires compliance with the skilled
- 30 and trained workforce requirement and provides for enforcement
- 31 of that obligation through an arbitration procedure. For purposes
- 32 of this clause, “project labor agreement” has the same meaning
- 33 as set forth in paragraph (1) of subdivision (b) of Section 2500 of
- 34 the Public Contract Code.
- 35 (e)
- 36 (d) Prior to determining that a project is exempt pursuant to this
- 37 section, the lead agency shall do all of the following:
- 38 (1) Ensure that the project proponent has met the requirements
- 39 of subdivision (c).
- 40 (†)

1 (2) Issue and publish a draft determination that the project is
2 exempt pursuant to this section.

3 ~~(2)~~

4 (3) (A) Hold a noticed public hearing no earlier than 30 days
5 following the publication of the draft determination and at least
6 30 days prior to the issuance of a final determination in areas
7 affected by the project to hear and respond to public comments.

8 (B) Publication of the notice shall be no fewer times than
9 required by Section 6061 of the Government Code, by the lead
10 agency in a newspaper of general circulation in the area affected
11 by the proposed project. If more than one area will be affected,
12 the notice shall be published in the newspaper with the largest
13 circulation from among the newspapers of general circulation in
14 those areas.

15 ~~(d)~~

16 (e) If the lead agency determines that a project is not subject to
17 this division pursuant to this section and it determines to approve
18 or carry out the project, the lead agency shall file a notice with the
19 Office of Planning and Research in the manner specified in
20 subdivisions (b) and (c) of Section 21152 at least 30 days following
21 the noticed public hearing.

22 SEC. 2. No reimbursement is required by this act pursuant to
23 Section 6 of Article XIII B of the California Constitution because
24 a local agency or school district has the authority to levy service
25 charges, fees, or assessments sufficient to pay for the program or
26 level of service mandated by this act, within the meaning of Section
27 17556 of the Government Code.