

Assembly Bill No. 1039

CHAPTER 31

An act to add Section 21157.7 to, and to add and repeal Sections 21080.12, 21080.14, and 21080.16 of, the Public Resources Code, to add and repeal Section 820.1 of the Streets and Highways Code, and to add and repeal Article 3.5 (commencing with Section 8650) of Chapter 3 of Part 4 of Division 5 of the Water Code, relating to government.

[Approved by Governor May 19, 2006. Filed with
Secretary of State May 19, 2006.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1039, Nunez. Government: environment: bonds: transportation.

(1) Existing law, 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, as defined, or to adopt a negative declaration if it finds that the project will not have that effect, unless the project is exempt from the act.

CEQA provides for various exemptions from the requirements of the act.

This bill would exempt specified levee, and highway and bridge seismic retrofit projects, from CEQA. To the extent that the bill would require a local agency to determine whether the exemption applies to a project, the bill would impose a state-mandated local program.

The bill would provide for a master environmental impact report, as specified, for a plan adopted by the Department of Transportation for improvements to regional segments of Highway 99 funded by specified bond funds.

(2) Existing law gives the Department of Transportation full possession and control of state highways and associated property. Existing federal law requires the United States Secretary of Transportation to carry out a surface transportation project delivery pilot program, as specified. The secretary is authorized to permit up to 5 states, including California, to participate in the program and California has agreed to that participation.

This bill would, until January 1, 2009, provide that the State of California consents to the jurisdiction of the federal courts with regard to the compliance, discharge, or enforcement of the responsibilities assumed pursuant to the surface transportation project delivery pilot program, and would make related provisions. The bill would require the department to submit a specified report to the Legislature by January 1, 2008, relating to the surface transportation project delivery pilot program.

(3) Existing law requires permits or approval from various agencies for repairing or constructing levees.

This bill would provide for a consolidated permit or approval for urgent levee repairs funded by specified bond funds.

(4) 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.

(5) Specified provisions of the bill would become operative only if the Highway Safety, Traffic Reduction, Air Quality, and Port Security Bond Act of 2006 or the Disaster Preparedness and Flood Prevention Bond Act of 2006, respectively, is approved by the voters at the November 7, 2006, statewide general election.

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

SECTION 1. Section 21080.12 is added to the Public Resources Code, to read:

21080.12. (a) This division does not apply to the repair of critical levees of the State Plan for Flood Control specified pursuant to Section 8361 of the Water Code within an existing levee footprint to meet standards of public health and safety funded pursuant to Section 5096.821, except as otherwise provided in Section 15300.2 of Title 14 of the California Code of Regulations.

(b) For purposes of undertaking urgent levee repairs, the lead agency shall do all of the following:

(1) Conduct outreach efforts in the vicinity of the project to ensure public awareness of the proposed repair work prior to approval of the project.

(2) To the extent feasible, comply with standard construction practices, including, but not limited to, any rules, guidelines, or regulations adopted by the applicable air district for construction equipment and for control of particulate matter emissions.

(3) To the extent feasible, use equipment powered by emulsified diesel fuel, electricity, natural gas, or ultralow sulfur diesel as an alternative to conventional diesel-powered construction equipment.

(c) This section shall remain in effect only until July 1, 2016, and as of that date is repealed, unless a later enacted statute, that is enacted before July 1, 2016, deletes or extends that date.

SEC. 2. Section 21080.14 is added to the Public Resources Code, to read:

21080.14. (a) The following seismic retrofit projects, as defined by the Department of Transportation's directive dated May 4, 2006, for the structural modification of an existing highway structure or the replacement of a highway structure by a newly constructed highway structure, with

substantially the same purpose and capacity as the existing structure, within an existing right-of-way, or immediately adjacent right-of-way, shall be exempt from this division:

- (1) The I-880 Fifth Avenue Overhead in Alameda County.
- (2) The I-880 High Street Separation Overhead in Alameda County.
- (3) The SR 101 Hollister Avenue Overcrossing in Santa Barbara County.
- (4) The Schuyler Heim Bridge in Los Angeles County.
- (5) The Mojave River Bridge on SR 18 in San Bernardino County.

(b) For a project specified in subdivision (a), the Department of Transportation shall do all of the following:

- (1) Conduct outreach efforts in the vicinity of the project to ensure public awareness of the proposed repair work prior to approval of the seismic retrofit project.
- (2) To the extent feasible, comply with standard construction practices, including, but not limited to, any rules, guidelines, or regulations adopted by the applicable air district for construction equipment.
- (3) Comply with measures for control of particulate matter emissions recommended by the applicable air district.
- (4) To the extent feasible, use equipment powered by emulsified diesel fuel, electricity, natural gas, or ultralow sulfur diesel as an alternative to conventional diesel-powered construction equipment.

(c) This section shall remain in effect only until the date that the Director of Transportation certifies to the Secretary of Business, Transportation and Housing that all construction activities for the seismic retrofit projects specified in subdivision (a) are complete, or until June 30, 2010, whichever occurs first, and as of that date is repealed.

SEC. 3. Section 21080.16 is added to the Public Resources Code, to read:

21080.16. (a) This division does not apply to a seismic retrofit project on an existing local bridge, except as otherwise provided in Section 15300.2 of Title 14 of the California Code of Regulations, that is identified pursuant to Section 179.1 of the Streets and Highways Code.

(b) For purposes of undertaking the seismic retrofit project, the lead agency shall do all of the following:

- (1) Conduct outreach efforts in the vicinity of the project to ensure public awareness of the proposed project prior to approval of the project.
- (2) To the extent feasible, comply with standard construction practices, including, but not limited to, any rules, guidelines, or regulations adopted by the applicable air district for construction equipment and for control of particulate matter emissions.
- (3) To the extent feasible, use equipment powered by emulsified diesel fuel, electricity, natural gas, or ultralow sulfur diesel as an alternative to conventional diesel-powered construction equipment.

(c) For purposes of this section an “existing local bridge” means a bridge that is located on a local street or highway.

(d) For purposes of this section a “seismic retrofit project” means a project urgently needed to bring a dangerous and unsafe bridge up to contemporary seismic standards and retaining the same purposes, capacity, and location as the existing bridge.

(e) This section shall remain in effect only until January 1, 2011, and as of that date is repealed, unless a later enacted statute, this is enacted before January 1, 2011, deletes or extends that date.

SEC. 4. Section 21157.7 is added to the Public Resources Code, to read:

21157.7. (a) For purposes of this section, a master environmental impact report is a document prepared in accordance with subdivision (c) for the projects described in subdivision (b) that, upon certification, is followed by review of subsequent projects as provided in Sections 21157.1 and 21157.5.

(b) A master environmental impact report may be prepared for a plan adopted by the Department of Transportation for improvements to regional segments of Highway 99 funded pursuant to subdivision (b) of Section 8879.23 of the Government Code, to streamline, coordinate, and improve environmental review.

(c) The report shall include all of the following:

(1) A detailed statement as required by Section 21100.

(2) A description of the anticipated highway improvements along Highway 99 that would be within the scope of the master environmental impact report, that contains sufficient information about all phases of the Highway 99 construction activities, including, but not limited to, all of the following:

(A) The specific types of improvements that will be undertaken.

(B) The anticipated location and alternative locations for any of the Highway 99 improvements, including overpasses, bridges, railroad crossings, and interchanges.

(C) A capital outlay or capital improvement program, or other scheduling or implementing device that governs the construction activities associated with the Highway 99 improvements.

(d) Notwithstanding Section 21157.6, the master environmental impact report shall not be used for the purposes of this section, if the certification of the master environmental impact report occurred more than seven years prior to the filing of an application for the subsequent project.

SEC. 5 Section 820.1 is added to the Streets and Highways Code, to read:

820.1. (a) The State of California consents to the jurisdiction of the federal courts with regard to the compliance, discharge, or enforcement of the responsibilities assumed by the department pursuant to Section 326 of, and subsection (a) of Section 327 of, Title 23 of the United States Code.

(b) In any action brought pursuant to the federal laws described in subdivision (a), no immunity from suit may be asserted by the department pursuant to the Eleventh Amendment to the United States Constitution, and any immunity is hereby waived.

(c) The department shall not delegate any of its responsibilities assumed pursuant to the federal laws described in subdivision (a) to any political subdivision of the state or its instrumentalities.

(d) The department shall, no later than January 1, 2008, submit a report to the Legislature that includes the following:

(1) A comparative analysis of the environmental review process under the National Environmental Policy Act (Chapter 55 (commencing with Section 4321) of Title 42 of the United States Code) for the 30 projects, excluding those projects categorically excluded from environmental review, undertaken immediately preceding the enactment of this section that involved the Federal Highway Administration and the environmental review process for all projects undertaken following the enactment of this section that did not involve the Federal Highway Administration. This analysis should address the following:

(A) For each project included in the analysis, the environmental review process under the National Environmental Policy Act, including which state and federal agencies reviewed the environmental documents and the amount of time the documents were reviewed by each agency, shall be described.

(B) The points in the environmental review process under the National Environmental Policy Act when project delays occurred and the nature of the delays.

(C) The time saved in the environmental review process for projects undertaken following the enactment of this section in comparison to the review process for projects undertaken prior to the enactment of this section. The points in the review process when time was saved.

(D) The circumstances when the Federal Highway Administration hindered and facilitated project delivery.

(2) All financial costs incurred by the department to assume the responsibilities pursuant to Section 326 of, and subsection (a) of Section 327 of, Title 23 of the United States Code, including, but not limited to, the following:

(A) Personnel to conduct and review environmental documents and to manage litigation.

(B) Administrative costs.

(C) Litigation.

(3) An explanation of all litigation initiated against the department for the responsibilities assumed pursuant to Section 326 of, and subsection (a) of Section 327 of, Title 23 of the United States Code.

(4) A comparison of all costs and benefits of assuming these responsibilities.

(e) This section shall remain in effect only until January 1, 2009, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2009, deletes or extends that date. The state shall remain liable for any decisions made or responsibilities assumed and exercised, prior to the repeal of this section under this subdivision, pursuant to applicable federal statutes of limitation for filing citizens' suits in federal court.

(f) Nothing in this section affects the obligation of the department to comply with state and federal law.

SEC. 6. Article 3.5 (commencing with Section 8650) is added to Chapter 3 of Part 4 of Division 5 of the Water Code, to read:

Article 3.5. Urgent Levee Repair Funded Through General Obligation Bonds

8650. As used in this article, the following terms have the following meaning:

(a) “Consolidated permit or approval” means a permit or approval incorporating the permit or approval conditions pursuant to the program administered by each permitting or approving agency into a single, unified permit or approval document.

(b) “Permit or approval” means any of the following:

(1) A lake or streambed alteration agreement entered into pursuant to Chapter 6 (commencing with Section 1600) of Division 2 of the Fish and Game Code.

(2) An incidental take permit issued pursuant to Article 3 (commencing with Section 2080) of Chapter 1.5 of, or Chapter 10 (commencing with Section 2800) of, Division 3 of the Fish and Game Code.

(3) Waste discharge requirements issued by a regional water quality control board pursuant to Division 7 (commencing with Section 13000).

(4) Any other permit or approval by a permitting or approving agency that participates in a consolidated permit. A permit or approval does not include a certification or decision pursuant to Division 13 (commencing with Section 21000) of the Public Resources Code.

(c) “Permitting agency” means any of the following:

(1) The Department of Fish and Game.

(2) A regional water quality control board.

(3) The local agency responsible for the administration of the requirements imposed pursuant to Section 13370.5.

(4) A certified unified program agency as provided in Chapter 6.11 (commencing with Section 25404) of Division 20 of the Health and Safety Code.

(5) Any other state, regional, or local permitting agency for the project that participates in a consolidated permit for urgent levee repair.

(d) “Secretary” means the Secretary of the Resources Agency.

(e) “Urgent levee repair” means the repair of critical levees of the State Plan for Flood Control specified pursuant to Section 8361 within the existing levee footprint to meet standards of public health and safety.

8650.6. The secretary shall convene, in a duly noticed public hearing, those permitting agencies with jurisdiction over urgent levee repairs for the purposes of coordinating and issuing unified, consolidated permits for each project for levee repairs funded by the Disaster Preparedness and

Flood Prevention Bond Fund of 2006, to reduce or eliminate unnecessary duplication, overlap, and paperwork associated with those permits.

8650.7. Nothing in this article affects the requirements, duties, or authority established by statute or regulation on a permitting agency.

8650.8. This article shall remain in effect only until July 1, 2016, and as of that date is repealed, unless a later enacted statute, that is enacted before July 1, 2016, deletes or extends that date.

SEC. 7. 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. 8. Sections 2 to 5, inclusive, of this act shall become operative only if the Highway Safety, Traffic Reduction, Air Quality, and Port Security Bond Act of 2006 is approved by the voters at the November 7, 2006, statewide general election. Sections 1 and 6 of this act shall become operative only if the Disaster Preparedness and Flood Prevention Bond Act of 2006 is approved by the voters at the November 7, 2006, statewide general election.