

AMENDED IN SENATE AUGUST 24, 2012  
AMENDED IN SENATE AUGUST 7, 2012  
AMENDED IN ASSEMBLY JANUARY 13, 2012  
AMENDED IN ASSEMBLY JANUARY 4, 2012  
AMENDED IN ASSEMBLY MARCH 29, 2011  
CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

**ASSEMBLY BILL**

**No. 890**

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**Introduced by Assembly Members Olsen and Perea**  
**(Coauthors: Assembly Members Garrick, Gorell, Grove, Harkey,**  
**and Silva)**  
(Coauthors: Senators Berryhill, Harman, Rubio, and Runner)

February 17, 2011

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An act to add and repeal Section 21080.37 of the Public Resources Code, relating to the environment.

LEGISLATIVE COUNSEL'S DIGEST

AB 890, as amended, Olsen. Environment: CEQA exemption: roadway improvement.

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 exempts from its requirements specified projects or activities.

This bill would, until January 1, 2016, exempt a project or an activity to repair, maintain, or make minor alterations to an existing roadway, *as defined*, if the project or activity is ~~initiated~~ *carried* by a city or county to improve public safety, ~~does not cross a waterway, and involves negligible or no expansion of existing use meeting specified requirements.~~

CEQA authorizes a state agency, whenever it determines that a project is not subject to CEQA pursuant to designated provisions and the state agency approves or determines to carry out the project, to file a specified notice of that approval or determination with the Office of Planning and Research. CEQA authorizes a local agency, whenever it determines that a project is not subject to CEQA pursuant to designated provisions and the local agency approves or determines to carry out the project, to file a specified notice of that approval or determination with the county clerk of each county in which the project will be located.

~~This bill would require a state agency that determines that such a roadway improvement project is not subject to CEQA, and the state agency approves or determines to carry out that project, to file a specified notice with the Office of Planning and Research. The bill also would require a local agency that makes such a determination and approves and determines to carry out that project, to file a specified notice with the Office of Planning and Research, and with the county clerk in the county in which the project will be located. Because the bill would impose new duties on local agencies with regard to providing notice of project determinations, 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, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.~~

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

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

1 SECTION 1. Section 21080.37 is added to the Public Resources  
2 Code, to read:

3 21080.37. (a) This division does not apply to a project or an  
4 activity to repair, maintain, or make minor alterations to an existing  
5 roadway if all of the following conditions are met:

6 (1) The project is ~~initiated~~ *carried out* by a city or county with  
7 *a population of less than 100,000 persons* to improve public safety.

8 (2) (A) The project does not cross a waterway.

9 (B) *For purposes of the paragraph, "waterway" means a bay,*  
10 *estuary, lake, pond, river, slough, or a perennial, intermittent, or*  
11 *ephemeral stream, lake, or estuarine-marine shoreline.*

12 (3) The project involves negligible or no expansion of an  
13 existing use *beyond that existing at the time of the lead agency's*  
14 *determination.*

15 (4) *The roadway is not a state roadway.*

16 (5) (A) *The site of the project does not contain wetlands or*  
17 *riparian areas and does not have significant value as a wildlife*  
18 *habitat, and the project does not harm any species protected by*  
19 *the federal Endangered Species Act of 1973 (16 U.S.C. Sec. 1531*  
20 *et seq.), the Native Plant Protection Act (Chapter 10 (commencing*  
21 *with Section 1900) of Division 2 of the Fish and Game Code), or*  
22 *the California Endangered Species Act (Chapter 1.5 (commencing*  
23 *with Section 2050) of Division 3 of the Fish and Game Code), and*  
24 *the project does not cause the destruction or removal of any species*  
25 *protected by a local ordinance.*

26 (B) *For the purposes of this paragraph:*

27 (i) *"Riparian areas" mean those areas transitional between*  
28 *terrestrial and aquatic ecosystems and that are distinguished by*  
29 *gradients in biophysical conditions, ecological processes, and*  
30 *biota. A riparian area is an area through which surface and*  
31 *subsurface hydrology connect waterbodies with their adjacent*  
32 *uplands. A riparian area includes those portions of terrestrial*  
33 *ecosystems that significantly influence exchanges of energy and*  
34 *matter with aquatic ecosystems. A riparian area is adjacent to*  
35 *perennial, intermittent, and ephemeral streams, lakes, and*  
36 *estuarine-marine shorelines.*

37 (ii) *"Significant value as a wildlife habitat" includes wildlife*  
38 *habitat of national, statewide, regional, or local importance;*

1 *habitat for species protected by the federal Endangered Species*  
2 *Act of 1973 (16 U.S.C. Sec. 1531, et seq.), the California*  
3 *Endangered Species Act (Chapter 1.5 (commencing with Section*  
4 *2050) of Division 3 of the Fish and Game Code), or the Native*  
5 *Plant Protection Act (Chapter 10 (commencing with Section 1900)*  
6 *of Division 2 of the Fish and Game Code); habitat identified as*  
7 *candidate, fully protected, sensitive, or species of special status*  
8 *by local, state, or federal agencies; or habitat essential to the*  
9 *movement of resident or migratory wildlife.*

10 (iii) *“Wetlands” has the same meaning as in the United States*  
11 *Fish and Wildlife Service Manual, Part 660 FW 2 (June 21, 1993).*

12 (iv) *“Wildlife habitat” means the ecological communities upon*  
13 *which wild animals, birds, plants, fish, amphibians, and*  
14 *invertebrates depend for their conservation and protection.*

15 (6) *The project does not impact cultural resources.*

16 (7) *The roadway does not affect scenic resources, as provided*  
17 *pursuant to subdivision (c) of Section 21084.*

18 (b) *Prior to determining that a project is exempt pursuant to*  
19 *this section, the lead agency shall do both of the following:*

20 (1) *Include measures in the project to mitigate potential*  
21 *vehicular traffic and safety impacts and bicycle and pedestrian*  
22 *safety impacts.*

23 (2) *Hold a noticed public hearing on the project to hear and*  
24 *respond to public comments. The hearing on the project may be*  
25 *conducted with another noticed lead agency public hearing.*  
26 *Publication of the notice shall be no fewer times than required by*  
27 *Section 6061 of the Government Code, by the public agency in a*  
28 *newspaper of general circulation in the area.*

29 (c) *For purposes of this section, “roadway” means a roadway*  
30 *as defined pursuant to Section 530 of the Vehicle Code and the*  
31 *previously graded and maintained shoulder that is within a*  
32 *roadway right-of-way of no more than five feet from the edge of*  
33 *the roadway.*

34 ~~(b) (1) Whenever a state agency determines that a project is~~  
35 ~~not subject to this division pursuant to this section, and it approves~~  
36 ~~or determines to carry out that project, the state agency shall file~~  
37 ~~a notice with the Office of Planning and Research in the manner~~  
38 ~~specified in subdivisions (b) and (c) of Section 21108.~~

39 ~~(2)~~

1 (d) Whenever a local agency determines that a project is not  
2 subject to this division pursuant to this section, and it approves or  
3 determines to or carry out that project, the local agency shall file  
4 a notice with the Office of Planning and Research, and with the  
5 county clerk in the county in which the project will be located in  
6 the manner specified in subdivisions (b) and (c) of Section 21152.

7 ~~(e)~~

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

11 ~~SEC. 2. If the Commission on State Mandates determines that~~  
12 ~~this act contains costs mandated by the state, reimbursement to~~  
13 ~~local agencies and school districts for those costs shall be made~~  
14 ~~pursuant to Part 7 (commencing with Section 17500) of Division~~  
15 ~~4 of Title 2 of the Government Code.~~