

AMENDED IN ASSEMBLY SEPTEMBER 9, 2011
AMENDED IN ASSEMBLY SEPTEMBER 6, 2011
AMENDED IN ASSEMBLY SEPTEMBER 1, 2011
AMENDED IN ASSEMBLY AUGUST 23, 2011
AMENDED IN ASSEMBLY AUGUST 17, 2011
AMENDED IN ASSEMBLY JULY 14, 2011

SENATE BILL

No. 226

Introduced by Senators Simitian and Vargas
(Coauthor: Senator Rubio)
(Coauthor: ~~Assembly Member Solorio~~)
(Coauthors: *Assembly Members Perea and Solorio*)

February 9, 2011

An act to amend Section 65919.10 of the Government Code, and to amend Sections 21083.9 and 21084 of, *and* to add Sections 21080.35, 21094.5, and 21094.5.5 to, ~~and to add and repeal Section 21155.4 of,, 21094.5.5, and 25500.1 to,~~ the Public Resources Code, relating to environmental quality.

LEGISLATIVE COUNSEL'S DIGEST

SB 226, as amended, Simitian. Environmental quality.

(1) The California Environmental Quality Act (CEQA) requires a lead agency to prepare, or cause to be prepared, and certify the completion of, an environmental impact report (EIR) on a project, as defined, 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.

This bill would exempt from the requirements of CEQA the installation of a solar energy system, including associated equipment, on the roof of an existing building or an existing parking lot meeting specified conditions. Because a lead agency would be required to determine whether a project would be exempt under this provision, this bill would impose a state-mandated local program.

(2) CEQA requires a lead agency to call a scoping meeting for a project of statewide, regional, or areawide significance, and requires the lead agency to provide notice of at least one of those scoping meetings to specified entities, including a county or city that borders on a county or city within which the project is located, unless otherwise designated annually by agreement between the lead agency and county or city. Existing law requires, prior to action by a legislative body to adopt or substantially amend a general plan, the planning agency to refer the proposed action to a city or county within or abutting the area covered by the proposal.

This bill would authorize this referral of a proposed action to adopt or substantially amend a general plan of a city or county to be conducted concurrently with the scoping meeting. The city or county would be authorized to submit specified comments at the scoping meeting.

(3) CEQA authorizes the Secretary of the Natural Resources Agency to certify and adopt guidelines to include a list of classes of projects that have been determined not to have a significant effect on the environment and are exempted from the requirements of CEQA (categorical exemption).

This bill would provide that a project's greenhouse gas emissions are not, in and of themselves, deemed to cause the exemption to be inapplicable under specified conditions.

This bill would require the Office of Planning and Research, on or before July 1, 2012, to prepare, develop, and transmit to the Natural Resources Agency, and the Secretary of the Natural Resources Agency, on or before January 1, 2013, to certify and adopt guidelines for statewide standards for infill projects that would promote specified goals and priorities.

~~(4) CEQA authorizes the use of a sustainable communities environmental assessment or modified EIR for the purposes of CEQA for a transit priority project meeting specified requirements.~~

~~This bill would authorize, until the adoption by a metropolitan planning organization of a sustainable communities strategy, the use of a sustainable communities environmental assessment or modified~~

~~EIR for a transit proximity project meeting specified conditions. This bill would repeal this authorization on January 1, 2015.~~

~~(5)~~

~~(4) CEQA limits its application, in the case of the approval of a subdivision map or a project that is consistent with the zoning or community plan for which an EIR was certified, to effects upon the environment that are peculiar to the parcel on which the project is located and were not addressed as significant effects in the EIR or if new information shows the effects upon the environment will be more significant than described in the prior EIR.~~

~~This bill would similarly limit the application of CEQA in the case of the approval of an infill project, as defined, that satisfies all applicable statewide standards established in the guidelines under (3) above if an EIR was certified for a planning level decision, as defined. Because this bill would require a lead agency to determine whether a project qualifies under this provision, this bill would impose a state-mandated local program.~~

~~(6)~~

~~(5) Existing law authorizes a county and a city to agree upon a procedure for referral to, and comment by, the city or county concerning the other entity's proposals to adopt or amend all or part of a general or specific plan or zoning ordinance, as specified.~~

~~This bill would make a technical, nonsubstantive change to this authorization.~~

~~(6) Existing law vests the State Energy Resources Conservation and Development Commission with the exclusive power to certify thermal powerplants. Under CEQA, the thermal powerplants certification process is a certified regulatory program and is therefore exempt from certain requirements under CEQA.~~

~~The bill would provide that the thermal powerplants certification process would be applicable to owners of specified proposed solar thermal powerplants who are proposing to convert the facility from solar thermal technology to photovoltaic technology.~~

~~(7) 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. The Legislature finds and declares all of the
2 following:

3 (a) In 2008, the Legislature passed and the Governor signed
4 Senate Bill 375, which was chaptered as Chapter 726 of the Statutes
5 of 2008, requiring metropolitan planning organizations to adopt a
6 sustainable community strategy that will comprehensively integrate
7 land use planning, transportation investments, and climate policy.
8 Part of Chapter 726 of the Statutes of 2008 includes incentives
9 under the California Environmental Quality Act (Division 13
10 (commencing with Section 21000) of the Public Resources Code)
11 to encourage development patterns that would help implement the
12 sustainable communities strategy.

13 (b) Metropolitan planning organizations will begin adopting
14 these strategies in 2011, but adoption will not be complete until
15 2013.

16 (c) One of the incentives created under Chapter 726 of the
17 Statutes of 2008 is the sustainable communities environmental
18 assessment that provides a more expeditious review under the
19 California Environmental Quality Act for residential and mixed-use
20 residential projects that have a proximity to transit.

21 (d) Because of the severe recession that continues to impact
22 California and because of the need to promote jobs in the
23 construction industry, it is important to make the sustainable
24 communities assessment available as early as possible in order to
25 promote the construction of projects that will foster the use of
26 transit.

27 SEC. 2. Section 65919.10 of the Government Code is amended
28 to read:

29 65919.10. If the proposed action is a change in a zoning
30 ordinance, the county or city need not refer the zoning proposal
31 to an affected city or county, as the case may be, if the zoning
32 proposal is consistent with the general plan and the general plan
33 proposal was referred and acted upon pursuant to this chapter.

34 SEC. 3. Section 21080.35 is added to the Public Resources
35 Code, to read:

36 21080.35. (a) Except as provided in subdivision (d), this
37 division does not apply to the installation of a solar energy system
38 on the roof of an existing building or at an existing parking lot.

1 (b) For the purposes of this section, the following terms mean
2 the following:

3 (1) “Existing parking lot” means an area designated and used
4 for parking of vehicles *as of the time of the application for the*
5 *solar energy system and for at least the previous two years*
6 ~~primarily for customers or employees of a commercial or industrial~~
7 ~~use, or students or employees of a public institutional use,~~
8 ~~passengers or employees of a transit or transportation passenger~~
9 ~~facility, or residents of a multifamily residential use consisting of~~
10 ~~five or more living units, consistent with requirements of the city~~
11 ~~or county, or applicable public agency, for those uses.~~

12 (2) “Solar energy system” includes all associated equipment.
13 Associated equipment consists of parts and materials that enable
14 the generation and use of solar electricity or solar-heated water,
15 including any monitoring and control, safety, conversion, and
16 emergency responder equipment *necessary to connect to the*
17 *customer’s electrical service or plumbing and any equipment,* as
18 well as any equipment necessary to connect the energy generated
19 to the electrical grid, *whether that connection is onsite or on an*
20 *adjacent parcel of the building and separated only by an improved*
21 *right-of-way.* “Associated equipment” does not include a
22 substation.

23 (c) (1) Associated equipment shall be located on the same parcel
24 of the building, except that associated equipment necessary to
25 connect the energy generated to the electrical grid may be located
26 immediately adjacent to the parcel of the building or immediately
27 adjacent to the parcel of the building and separated only by an
28 improved right-of-way.

29 (2) Associated equipment shall not occupy more than 500 square
30 feet of ground surface and the site of the associated equipment
31 shall not contain plants protected by the Native Plant Protection
32 Act (Chapter 10 (commencing with Section 1900) of Division 2
33 of the Fish and Game Code).

34 (d) This section does not apply if the associated equipment
35 would otherwise require one of the following:

36 (1) An individual federal permit pursuant to Section 401 or 404
37 of the federal Clean Water Act (33 U.S.C. Sec. 1341 or 1344) or
38 waste discharge requirements pursuant to the Porter-Cologne Water
39 Quality Control Act (Division 7 (commencing with Section 13000)
40 of the Water Code).

1 (2) An individual take permit for species protected under the
2 federal Endangered Species Act of 1973 (16 U.S.C. Sec. 1531 et
3 seq.) or the California Endangered Species Act (Chapter 1.5
4 (commencing with Section 2050) of Division 3 of the Fish and
5 Game Code).

6 (3) A streambed alteration permit pursuant to Chapter 6
7 (commencing with Section 1600) of Division 2 of the Fish and
8 Game Code.

9 (e) This section does not apply if the installation of a solar
10 energy system at an existing parking lot involves either of the
11 following:

12 (1) The removal of a tree required to be planted, maintained, or
13 protected pursuant to local, state, or federal requirements, unless
14 the tree dies and there is no requirement to replace the tree.

15 (2) The removal of a native tree over 25 years old.

16 (f) *This section does not apply to any transmission or*
17 *distribution facility or connection.*

18 SEC. 4. Section 21083.9 of the Public Resources Code is
19 amended to read:

20 21083.9. (a) Notwithstanding Section 21080.4, 21104, or
21 21153, a lead agency shall call at least one scoping meeting for
22 either of the following:

23 (1) A proposed project that may affect highways or other
24 facilities under the jurisdiction of the Department of Transportation
25 if the meeting is requested by the department. The lead agency
26 shall call the scoping meeting as soon as possible, but not later
27 than 30 days after receiving the request from the Department of
28 Transportation.

29 (2) A project of statewide, regional, or areawide significance.

30 (b) The lead agency shall provide notice of at least one scoping
31 meeting held pursuant to paragraph (2) of subdivision (a) to all of
32 the following:

33 (1) A county or city that borders on a county or city within
34 which the project is located, unless otherwise designated annually
35 by agreement between the lead agency and the county or city.

36 (2) A responsible agency.

37 (3) A public agency that has jurisdiction by law with respect to
38 the project.

39 (4) A transportation planning agency or public agency required
40 to be consulted pursuant to Section 21092.4.

1 (5) An organization or individual who has filed a written request
2 for the notice.

3 (c) For an entity, organization, or individual that is required to
4 be provided notice of a lead agency public meeting, the requirement
5 for notice of a scoping meeting pursuant to subdivision (b) may
6 be met by including the notice of a scoping meeting in the public
7 meeting notice.

8 (d) A scoping meeting that is held in the city or county within
9 which the project is located pursuant to the federal National
10 Environmental Policy Act of 1969 (42 U.S.C. Sec. 4321 et seq.)
11 and the regulations adopted pursuant to that act shall be deemed
12 to satisfy the requirement that a scoping meeting be held for a
13 project subject to paragraph (2) of subdivision (a) if the lead agency
14 meets the notice requirements of subdivision (b) or subdivision
15 (c).

16 (e) The referral of a proposed action to adopt or substantially
17 amend a general plan to a city or county pursuant to paragraph (1)
18 of subdivision (a) of Section 65352 of the Government Code may
19 be conducted concurrently with the scoping meeting required
20 pursuant to this section, and the city or county may submit its
21 comments as provided pursuant to subdivision (b) of that section
22 at the scoping meeting.

23 SEC. 5. Section 21084 of the Public Resources Code is
24 amended to read:

25 21084. (a) The guidelines prepared and adopted pursuant to
26 Section 21083 shall include a list of classes of projects that have
27 been determined not to have a significant effect on the environment
28 and that shall be exempt from this division. In adopting the
29 guidelines, the Secretary of the Natural Resources Agency shall
30 make a finding that the listed classes of projects referred to in this
31 section do not have a significant effect on the environment.

32 (b) A project's greenhouse gas emissions shall not, in and of
33 themselves, be deemed to cause an exemption adopted pursuant
34 to subdivision (a) to be inapplicable if the project complies with
35 all applicable regulations or requirements adopted to implement
36 statewide, regional, or local plans consistent with Section 15183.5
37 of Title 14 of the California Code of Regulations.

38 (c) A project that may result in damage to scenic resources,
39 including, but not limited to, trees, historic buildings, rock
40 outcroppings, or similar resources, within a highway designated

1 as an official state scenic highway, pursuant to Article 2.5
2 (commencing with Section 260) of Chapter 2 of Division 1 of the
3 Streets and Highways Code, shall not be exempted from this
4 division pursuant to subdivision (a). This subdivision does not
5 apply to improvements as mitigation for a project for which a
6 negative declaration has been approved or an environmental impact
7 report has been certified.

8 (d) A project located on a site that is included on any list
9 compiled pursuant to Section 65962.5 of the Government Code
10 shall not be exempted from this division pursuant to subdivision
11 (a).

12 (e) The changes made to this section by Chapter 1212 of the
13 Statutes of 1991 apply only to projects for which applications have
14 not been deemed complete on or before January 1, 1992, pursuant
15 to Section 65943 of the Government Code.

16 (f) A project that may cause a substantial adverse change in the
17 significance of an historical resource, as specified in Section
18 21084.1, shall not be exempted from this division pursuant to
19 subdivision (a).

20 SEC. 6. Section 21094.5 is added to the Public Resources Code,
21 to read:

22 21094.5. (a) (1) If an environmental impact report was
23 certified for a planning level decision of a city or county, the
24 application of this division to the approval of an infill project shall
25 be limited to the effects on the environment that (A) are specific
26 to the project or to the project site and were not addressed as
27 significant effects in the prior environmental impact report or (B)
28 substantial new information shows the effects will be more
29 significant than described in the prior environmental impact report.
30 A lead agency's determination pursuant to this section shall be
31 supported by substantial evidence.

32 (2) An effect of a project upon the environment shall not be
33 considered a specific effect of the project or a significant effect
34 that was not considered significant in a prior environmental impact
35 report, or an effect that is more significant than was described in
36 the prior environmental impact report if uniformly applicable
37 development policies or standards adopted by the city, county, or
38 the lead agency, would apply to the project and the lead agency
39 makes a finding, based upon substantial evidence, that the

1 development policies or standards will substantially mitigate that
2 effect.

3 (b) If an infill project would result in significant effects that are
4 specific to the project or the project site, or if the significant effects
5 of the infill project were not addressed in the prior environmental
6 impact report, or are more significant than the effects addressed
7 in the prior environmental impact report, and if a mitigated negative
8 declaration or a sustainable communities environmental assessment
9 could not be otherwise adopted, an environmental impact report
10 prepared for the project analyzing those effects shall be limited as
11 follows:

12 (1) Alternative locations, *densities, and building intensities* to
13 the project need not be considered.

14 (2) Growth inducing impacts of the project need not be
15 considered.

16 (c) This section applies to an infill project that satisfies both of
17 the following:

18 (1) The project satisfies any of the following:

19 (A) Is consistent with the general use designation, density,
20 building intensity, and applicable policies specified for the project
21 area in either a sustainable communities strategy or an alternative
22 planning strategy for which the State Air Resources Board,
23 pursuant to subparagraph (H) of paragraph (2) of subdivision (b)
24 of Section 65080 of the Government Code, has accepted a
25 metropolitan planning organization's determination that the
26 sustainable communities strategy or the alternative planning
27 strategy would, if implemented, achieve the greenhouse gas
28 emission reduction targets.

29 (B) Consists of a small walkable community project located in
30 an area designated by a city for that purpose.

31 (C) Is located within the boundaries of a metropolitan planning
32 organization that has not yet adopted a sustainable communities
33 strategy *or alternative planning strategy*, and the project has a
34 residential density of at least 20 units per acre or a floor area ratio
35 of at least 0.75.

36 (2) Satisfies all applicable statewide performance standards
37 contained in the guidelines adopted pursuant to Section 21094.5.5.

38 (d) This section applies after the Secretary of the Natural
39 Resources Agency adopts and certifies the guidelines establishing
40 statewide standards pursuant to Section 21094.5.5.

- 1 (e) For the purposes of this section, the following terms mean
2 the following:
- 3 ~~(1) “Infill project” means a project that is any of the following:~~
4 ~~(A) (i) Residential, or retail or commercial uses.~~
5 ~~(ii) Retail or commercial use shall have a floor area ratio for~~
6 ~~those uses of at least 0.5.~~
7 ~~(B) A transit station.~~
8 ~~(C) A school.~~
9 ~~(D) A public office building.~~
- 10 (1) *“Infill project” means a project that meets the following*
11 *conditions:*
12 *(A) Consists of any one, or combination, of the following uses:*
13 *(i) Residential.*
14 *(ii) Retail or commercial, where no more than one-half of the*
15 *project area is used for parking.*
16 *(iii) A transit station.*
17 *(iv) A school.*
18 *(v) A public office building.*
19 *(B) Is located within an urban area on a site that has been*
20 *previously developed, or on a vacant site where at least 75 percent*
21 *of the perimeter of the site adjoins, or is separated only by an*
22 *improved public right-of-way from, parcels that are developed*
23 *with qualified urban uses.*
- 24 (2) “Planning level decision” means the enactment or
25 amendment of a general plan, community plan, specific plan, or
26 zoning code.
- 27 (3) “Prior environmental impact report” means the
28 environmental impact report certified for a planning level decision,
29 as supplemented by any subsequent or supplemental environmental
30 impact reports, negative declarations, or addenda to those
31 documents.
- 32 (4) “Small walkable community project” means a project that
33 is in an incorporated city, which is not within the boundary of a
34 metropolitan planning organization and that satisfies the following
35 requirements:
- 36 (A) Has a project area of approximately one-quarter mile
37 diameter of contiguous land completely within the existing
38 incorporated boundaries of the city.
- 39 (B) Has a project area that includes a residential area adjacent
40 to a retail downtown area.

1 (C) The project has a density of at least eight dwelling units per
2 acre or a floor area ratio for retail or commercial use of not less
3 than 0.50.

4 (5) *“Urban area” includes either an incorporated city or an*
5 *unincorporated area that is completely surrounded by one or more*
6 *incorporated cities that meets both of the following criteria:*

7 (A) *The population of the unincorporated area and the*
8 *population of the surrounding incorporated cities equal a*
9 *population of 100,000 or more.*

10 (B) *The population density of the unincorporated area is equal*
11 *to, or greater than, the population density of the surrounding cities.*

12 SEC. 7. Section 21094.5.5 is added to the Public Resources
13 Code, to read:

14 21094.5.5. (a) On or before July 1, 2012, the Office of
15 Planning and Research shall prepare, develop, and transmit to the
16 Natural Resources Agency for certification and adoption guidelines
17 for the implementation of Section 21094.5 and the Secretary of
18 the Natural Resources Agency, on or before January 1, 2013, shall
19 certify and adopt the guidelines.

20 (b) The guidelines prepared pursuant to this section shall include
21 statewide standards for ~~projects on infill sites~~ *infill projects* that
22 may be amended from time to time and promote all of the
23 following:

24 (1) The implementation of the land use and transportation
25 policies in the Sustainable Communities and Climate Protection
26 Act of 2008 (Chapter 728 of the Statutes of 2008).

27 (2) The state planning priorities specified in Section 65041.1
28 of the Government Code and in the most recently adopted
29 Environmental Goals and Policy Report issued by the Office of
30 Planning and Research supporting infill development.

31 (3) The reduction of greenhouse gas emissions under the
32 California Global Warming Solutions Act of 2006 (Division 25.5
33 (commencing with Section 38500) of the Health and Safety Code).

34 (4) The reduction in per capita water use pursuant to Section
35 10608.16 of the Water Code.

36 (5) The creation of a transit village development district
37 consistent with Section 65460.1 of the Government Code.

38 (6) Substantial energy efficiency improvements, including
39 improvements to projects related to transportation energy.

1 (7) Protection of public health, including the health of vulnerable
2 populations from air or water pollution, or soil contamination.

3 (c) The standards for projects on infill sites shall be updated as
4 frequently as necessary to ensure the protection of the environment.

5 SEC. 8. Section 21155.4 is added to the Public Resources Code,
6 to read:

7 21155.4. (a) A transit proximity project that (1) includes a
8 major transit stop as part of the project, or (2) that is located within
9 one-half mile of an existing major transit stop or an existing
10 high-quality transit corridor may be reviewed under the procedures
11 set forth in subdivision (b) or (c) of Section 21155.2 if the project
12 has incorporated all mitigation measures or best practices
13 recommended to be included with the project for protection of
14 public health by the local air district, air pollution control district,
15 or air quality management district. Mitigation measures or best
16 practices adopted by a local air district, air pollution control district,
17 or air quality management district shall include, but are not limited
18 to, the following:

19 (1) The best available control technology for high efficiency
20 particle air filtration:

21 (2) Optimization of air intake locations to minimize indoor air
22 pollution:

23 (3) Consideration of tree landscaping and the setback of
24 residential buildings away from pollution sources.

25 (b) For purposes of this section, a transit proximity project is
26 one that satisfies paragraphs (1) and (2) of subdivision (b) of
27 Section 21155 and is located within an urbanized area.

28 (c) For the purpose of this section, the following definitions
29 apply:

30 (1) "Major transit stop" has the same meaning as set forth in
31 Section 21064.3.

32 (2) "High-quality transit corridor" has the same meaning as set
33 forth in subdivision (b) of Section 21155.

34 (3) This section shall apply only to projects located within a
35 metropolitan planning organization and shall cease to apply to
36 projects upon the adoption by that metropolitan planning
37 organization of a sustainable communities strategy pursuant to
38 Section 65080 of the Government Code.

1 ~~(d) This section shall remain in effect only until January 1, 2015,~~
2 ~~and as of that date is repealed, unless a later enacted statute, that~~
3 ~~is enacted before January 1, 2015, deletes or extends that date.~~

4 *SEC. 8. Section 25500.1 is added to the Public Resources Code,*
5 *to read:*

6 *25500.1. (a) The owner of a proposed solar thermal*
7 *powerplants, for which an application for certification was filed*
8 *with the commission after August 15, 2007, and certified by the*
9 *commission and, of a project on federal land, for which a record*
10 *of decision was issued by the Department of the Interior or the*
11 *Bureau of Land Management before September 1, 2011, may*
12 *petition the commission not later than June 30, 2012, to review*
13 *an amendment to the facility's certificate to convert the facility,*
14 *in whole or in part, from solar thermal technology to photovoltaic*
15 *technology, without the need to file an entirely new application*
16 *for certification or notice of intent pursuant to Section 25502,*
17 *provided that the commission prepares supplemental environmental*
18 *review documentation, provides for public notice and comment*
19 *on the supplemental environmental review, and holds at least one*
20 *public hearing on the proposal.*

21 *(b) The Department of Fish and Game and the State Water*
22 *Resources Board shall provide comments to the commission on*
23 *the water resource and water quality effects of the proposed*
24 *powerplants. The commission shall incorporate all feasible*
25 *mitigation measures identified by the department and the board.*

26 *(c) For a facility specified in subdivision (a), this chapter shall*
27 *continue to apply, notwithstanding that the facility or part of the*
28 *facility would otherwise be excluded pursuant to Section 25120.*

29 *(d) The commission shall process a petition submitted under*
30 *this section pursuant to Section 1769 of Title 20 of the California*
31 *Code of Regulations.*

32 *(e) This section shall not apply to any project if the project's*
33 *certificate was timely challenged pursuant to Section 25531.*

34 *SEC. 9. No reimbursement is required by this act pursuant to*
35 *Section 6 of Article XIII B of the California Constitution because*
36 *a local agency or school district has the authority to levy service*
37 *charges, fees, or assessments sufficient to pay for the program or*

- 1 level of service mandated by this act, within the meaning of Section
- 2 17556 of the Government Code.

O