

Senate Bill No. 226

CHAPTER 469

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, 21094.5.5, and 25500.1 to, the Public Resources Code, relating to environmental quality.

[Approved by Governor October 4, 2011. Filed with
Secretary of State October 4, 2011.]

LEGISLATIVE COUNSEL'S DIGEST

SB 226, 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 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.

(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.

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

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

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

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

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

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

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

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

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

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

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

(1) “Existing parking lot” means an area designated and used for parking of vehicles as of the time of the application for the solar energy system and for at least the previous two years.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) 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 the county or city.

(2) A responsible agency.

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

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

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

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

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

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

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

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

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

(c) A project that may result in damage to scenic resources, including, but not limited to, trees, historic buildings, rock outcroppings, or similar resources, within a highway designated as an official state scenic highway, pursuant to Article 2.5 (commencing with Section 260) of Chapter 2 of Division 1 of the Streets and Highways Code, shall not be exempted from this division pursuant to subdivision (a). This subdivision does not apply to improvements as mitigation for a project for which a negative declaration has been approved or an environmental impact report has been certified.

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

(e) The changes made to this section by Chapter 1212 of the Statutes of 1991 apply only to projects for which applications have not been deemed

complete on or before January 1, 1992, pursuant to Section 65943 of the Government Code.

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

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

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

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

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

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

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

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

(1) The project satisfies any of the following:

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

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

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

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

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

(e) For the purposes of this section, the following terms mean the following:

(1) “Infill project” means a project that meets the following conditions:

(A) Consists of any one, or combination, of the following uses:

(i) Residential.

(ii) Retail or commercial, where no more than one-half of the project area is used for parking.

(iii) A transit station.

(iv) A school.

(v) A public office building.

(B) Is located within an urban area on a site that has been previously developed, or on a vacant site where at least 75 percent of the perimeter of the site adjoins, or is separated only by an improved public right-of-way from, parcels that are developed with qualified urban uses.

(2) “Planning level decision” means the enactment or amendment of a general plan, community plan, specific plan, or zoning code.

(3) “Prior environmental impact report” means the environmental impact report certified for a planning level decision, as supplemented by any subsequent or supplemental environmental impact reports, negative declarations, or addenda to those documents.

(4) “Small walkable community project” means a project that is in an incorporated city, which is not within the boundary of a metropolitan planning organization and that satisfies the following requirements:

(A) Has a project area of approximately one-quarter mile diameter of contiguous land completely within the existing incorporated boundaries of the city.

(B) Has a project area that includes a residential area adjacent to a retail downtown area.

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

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

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

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

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

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

(b) The guidelines prepared pursuant to this section shall include statewide standards for infill projects that may be amended from time to time and promote all of the following:

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

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

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

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

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

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

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

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

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

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

(b) The Department of Fish and Game and the State Water Resources Board shall provide comments to the commission on the water resource and water quality effects of the proposed powerplants. The commission shall

incorporate all feasible mitigation measures identified by the department and the board.

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

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

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

SEC. 9. 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.