

Introduced by Senator GalgianiFebruary 21, 2013

An act to amend Section 21080 of the Public Resources Code, relating to environmental quality.

LEGISLATIVE COUNSEL'S DIGEST

SB 525, as introduced, Galgiani. California Environmental Quality Act: exemptions.

The California Environmental Quality Act (CEQA) requires a lead agency, as defined, to prepare, or cause to be prepared, and certify 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. Existing law exempts certain activities from CEQA, including a project for the institution or increase of passenger or commuter services on rail or highway rights-of-way already in use, including modernization of existing stations and parking facilities.

This bill would provide that a project by the San Joaquin Regional Rail Commission and the High-Speed Rail Authority to improve the existing tracks, structure, bridges, signaling systems, and associated appurtenances located on the existing railroad right-of-way used by the Altamont Commuter Express service qualifies for this exemption from CEQA.

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

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

1 SECTION 1. Section 21080 of the Public Resources Code is
2 amended to read:

3 21080. (a) Except as otherwise provided in this division, this
4 division shall apply to discretionary projects proposed to be carried
5 out or approved by public agencies, including, but not limited to,
6 the enactment and amendment of zoning ordinances, the issuance
7 of zoning variances, the issuance of conditional use permits, and
8 the approval of tentative subdivision maps unless the project is
9 exempt from this division.

10 (b) This division does not apply to any of the following
11 activities:

12 (1) Ministerial projects proposed to be carried out or approved
13 by public agencies.

14 (2) Emergency repairs to public service facilities necessary to
15 maintain service.

16 (3) Projects undertaken, carried out, or approved by a public
17 agency to maintain, repair, restore, demolish, or replace property
18 or facilities damaged or destroyed as a result of a disaster in a
19 disaster-stricken area in which a state of emergency has been
20 proclaimed by the Governor pursuant to Chapter 7 (commencing
21 with Section 8550) of Division 1 of Title 2 of the Government
22 Code.

23 (4) Specific actions necessary to prevent or mitigate an
24 emergency.

25 (5) Projects which a public agency rejects or disapproves.

26 (6) Actions undertaken by a public agency relating to any
27 thermal powerplant site or facility, including the expenditure,
28 obligation, or encumbrance of funds by a public agency for
29 planning, engineering, or design purposes, or for the conditional
30 sale or purchase of equipment, fuel, water (except groundwater),
31 steam, or power for a thermal powerplant, if the powerplant site
32 and related facility will be the subject of an environmental impact
33 report, negative declaration, or other document, prepared pursuant
34 to a regulatory program certified pursuant to Section 21080.5,
35 which will be prepared by the State Energy Resources Conservation
36 and Development Commission, by the Public Utilities Commission,
37 or by the city or county in which the powerplant and related facility
38 would be located if the environmental impact report, negative

1 declaration, or document includes the environmental impact, if
2 any, of the action described in this paragraph.

3 (7) Activities or approvals necessary to the bidding for, hosting
4 or staging of, and funding or carrying out of, an Olympic games
5 under the authority of the International Olympic Committee, except
6 for the construction of facilities necessary for the Olympic games.

7 (8) The establishment, modification, structuring, restructuring,
8 or approval of rates, tolls, fares, or other charges by public agencies
9 which the public agency finds are for the purpose of (A) meeting
10 operating expenses, including employee wage rates and fringe
11 benefits, (B) purchasing or leasing supplies, equipment, or
12 materials, (C) meeting financial reserve needs and requirements,
13 (D) obtaining funds for capital projects necessary to maintain
14 service within existing service areas, or (E) obtaining funds
15 necessary to maintain those intracity transfers as are authorized
16 by city charter. The public agency shall incorporate written findings
17 in the record of any proceeding in which an exemption under this
18 paragraph is claimed setting forth with specificity the basis for the
19 claim of exemption.

20 (9) All classes of projects designated pursuant to Section 21084.

21 (10) A project for the institution or increase of passenger or
22 commuter services on rail or highway rights-of-way already in
23 use, including modernization of existing stations and parking
24 facilities. *A project by the San Joaquin County Regional Rail*
25 *Commission and the High-Speed Rail Authority to improve the*
26 *existing tracks, structure, bridges, signaling systems, and*
27 *associated appurtenances located on the existing railroad*
28 *right-of-way used by the Altamont Commuter Express service*
29 *qualifies for the exemption under this paragraph.*

30 (11) A project for the institution or increase of passenger or
31 commuter service on high-occupancy vehicle lanes already in use,
32 including the modernization of existing stations and parking
33 facilities.

34 (12) Facility extensions not to exceed four miles in length which
35 are required for the transfer of passengers from or to exclusive
36 public mass transit guideway or busway public transit services.

37 (13) A project for the development of a regional transportation
38 improvement program, the state transportation improvement
39 program, or a congestion management program prepared pursuant
40 to Section 65089 of the Government Code.

1 (14) Any project or portion thereof located in another state
2 which will be subject to environmental impact review pursuant to
3 the National Environmental Policy Act of 1969 (42 U.S.C. Sec.
4 4321 et seq.) or similar state laws of that state. Any emissions or
5 discharges that would have a significant effect on the environment
6 in this state are subject to this division.

7 (15) Projects undertaken by a local agency to implement a rule
8 or regulation imposed by a state agency, board, or commission
9 under a certified regulatory program pursuant to Section 21080.5.
10 Any site-specific effect of the project which was not analyzed as
11 a significant effect on the environment in the plan or other written
12 documentation required by Section 21080.5 is subject to this
13 division.

14 (c) If a lead agency determines that a proposed project, not
15 otherwise exempt from this division, would not have a significant
16 effect on the environment, the lead agency shall adopt a negative
17 declaration to that effect. The negative declaration shall be prepared
18 for the proposed project in either of the following circumstances:

19 (1) There is no substantial evidence, in light of the whole record
20 before the lead agency, that the project may have a significant
21 effect on the environment.

22 (2) An initial study identifies potentially significant effects on
23 the environment, but (A) revisions in the project plans or proposals
24 made by, or agreed to by, the applicant before the proposed
25 negative declaration and initial study are released for public review
26 would avoid the effects or mitigate the effects to a point where
27 clearly no significant effect on the environment would occur, and
28 (B) there is no substantial evidence, in light of the whole record
29 before the lead agency, that the project, as revised, may have a
30 significant effect on the environment.

31 (d) If there is substantial evidence, in light of the whole record
32 before the lead agency, that the project may have a significant
33 effect on the environment, an environmental impact report shall
34 be prepared.

35 (e) (1) For the purposes of this section and this division,
36 substantial evidence includes fact, a reasonable assumption
37 predicated upon fact, or expert opinion supported by fact.

38 (2) Substantial evidence is not argument, speculation,
39 unsubstantiated opinion or narrative, evidence that is clearly
40 inaccurate or erroneous, or evidence of social or economic impacts

1 that do not contribute to, or are not caused by, physical impacts
2 on the environment.

3 (f) As a result of the public review process for a mitigated
4 negative declaration, including administrative decisions and public
5 hearings, the lead agency may conclude that certain mitigation
6 measures identified pursuant to paragraph (2) of subdivision (c)
7 are infeasible or otherwise undesirable. In those circumstances,
8 the lead agency, prior to approving the project, may delete those
9 mitigation measures and substitute for them other mitigation
10 measures that the lead agency finds, after holding a public hearing
11 on the matter, are equivalent or more effective in mitigating
12 significant effects on the environment to a less than significant
13 level and that do not cause any potentially significant effect on the
14 environment. If those new mitigation measures are made conditions
15 of project approval or are otherwise made part of the project
16 approval, the deletion of the former measures and the substitution
17 of the new mitigation measures shall not constitute an action or
18 circumstance requiring recirculation of the mitigated negative
19 declaration.

20 (g) Nothing in this section shall preclude a project applicant or
21 any other person from challenging, in an administrative or judicial
22 proceeding, the legality of a condition of project approval imposed
23 by the lead agency. If, however, any condition of project approval
24 set aside by either an administrative body or court was necessary
25 to avoid or lessen the likelihood of the occurrence of a significant
26 effect on the environment, the lead agency's approval of the
27 negative declaration and project shall be invalid and a new
28 environmental review process shall be conducted before the project
29 can be reapproved, unless the lead agency substitutes a new
30 condition that the lead agency finds, after holding a public hearing
31 on the matter, is equivalent to, or more effective in, lessening or
32 avoiding significant effects on the environment and that does not
33 cause any potentially significant effect on the environment.

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