

AMENDED IN SENATE SEPTEMBER 4, 2015

CALIFORNIA LEGISLATURE—2015–16 FIRST EXTRAORDINARY SESSION

SENATE BILL

No. 11

Introduced by Senator Berryhill

**(Coauthors: Senators Anderson, Bates, Fuller, Gaines, Huff,
Morrell, Runner, Stone, and Vidak)**

~~(Coauthor: Assembly Member Bigelow)~~ *Coauthors: Assembly Member Bigelow, Members Bigelow,
Brough, Chang, Gallagher, and Lackey)*

July 16, 2015

~~An act to amend Section 21080.37 of the Public Resources Code, relating to the California Environmental Quality Act. An act to add Sections 21080.36 and 21168.6.7 to the Public Resources Code, relating to environmental quality.~~

LEGISLATIVE COUNSEL'S DIGEST

SB 11, as amended, Berryhill. ~~California Environmental Quality Act: exemption:—roadway—improvement.~~ *Environmental quality: transportation infrastructure.*

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 establishes a procedure by which a person may seek judicial review of the decision of the lead agency made pursuant to CEQA.

This bill would exempt from these CEQA provisions a project that consists of the inspection, maintenance, repair, restoration, reconditioning, relocation, replacement, or removal of existing

transportation infrastructure if certain conditions are met, and would require the person undertaking these projects to take certain actions, including providing notice to an affected public agency of the project's exemption. Because a lead agency would be required to determine if a project qualifies for this exemption, this bill would impose a state-mandated local program.

This bill would also, in an action or proceeding seeking judicial review under CEQA, prohibit a court from staying or enjoining a transportation infrastructure project that is included in a sustainable communities strategy or an alternate planning strategy and for which a programmatic EIR has been certified unless it makes specified findings. For purpose of these provisions, the bill would specify that a transportation infrastructure project includes a project that consists of new construction of transportation infrastructure or a project that consists of the inspection, maintenance, repair, restoration, reconditioning, relocation, replacement, or removal of existing transportation infrastructure.

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 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 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, until January 1, 2016, exempts a project or an activity to repair, maintain, or make minor alterations to an existing roadway, as defined, other than a state roadway, if the project or activity is carried out by a city or county with a population of less than 100,000 persons to improve public safety and meets other specified requirements.~~

~~This bill would extend the above-referenced exemption until January 1, 2025, and delete the limitation of the exemption to projects or activities in cities and counties with a population of less than 100,000 persons. The bill would also expand the exemption to include state roadways.~~

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: ~~no~~-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) *The state has an urgent need to repair and complete public*
4 *safety improvements to existing transportation infrastructure,*
5 *including highways, roadways, bridges, tunnels, transit systems,*
6 *and paths and sidewalks serving bicycles or pedestrians, or both.*
7 (b) *The state also has an urgent need to improve transportation*
8 *infrastructure to meet urgent mobility, greenhouse gas reduction,*
9 *and economic policy goals. Specifically, each metropolitan*
10 *planning organization in the state has completed a sustainable*
11 *communities strategy or alternative planning strategy to reduce*
12 *greenhouse gas emissions consistent with targets initially*
13 *established, and required to be periodically updated through 2050,*
14 *by the State Air Resources Board, as required by Section 65080*
15 *of the Government Code. Each of these sustainable communities*
16 *strategies or alternate planning strategies is required by*
17 *subdivision (d) of Section 65080 of the Government Code to be*
18 *updated either every four or five years to meet applicable new*
19 *requirements, including new greenhouse gas reduction targets*
20 *established by the State Air Resources Board. The environmental*
21 *impacts and feasible mitigation measures for each of these*
22 *sustainable communities strategies or alternate planning strategies*
23 *are required to be fully assessed in compliance with the California*
24 *Environmental Quality Act (Division 13 (commencing with Section*
25 *21000) of the Public Resources Code). The transportation system*
26 *improvements included in each adopted sustainable communities*
27 *strategy or alternative planning strategy, and accompanying*
28 *regional transportation plan, are subject to review and approval*
29 *by each metropolitan planning organization as well as the State*

1 *Air Resources Board, as informed by a certified programmatic*
 2 *environmental impact report.*

3 *(c) The Legislature intends to reduce duplicative environmental*
 4 *reviews and avoid unwarranted delays of repairs and public safety*
 5 *improvements to existing transportation infrastructure and to*
 6 *transportation infrastructure improvements included in approved*
 7 *sustainable communities strategies or alternative planing strategies*
 8 *adopted, and periodically updated, pursuant to Section 65080 of*
 9 *the Government Code.*

10 *SEC. 2. Section 21080.36 is added to the Public Resources*
 11 *Code, to read:*

12 *21080.36. (a) This division does not apply to a project that*
 13 *consists of the inspection, maintenance, repair, restoration,*
 14 *reconditioning, relocation, replacement, or removal of existing*
 15 *transportation infrastructure, including, but not limited to,*
 16 *highways, roadways, bridges, tunnels, transit systems, and paths*
 17 *and sidewalks serving bicycles or pedestrians, or both, if the*
 18 *project meets both of the following conditions:*

19 *(1) The project is located within an existing right-of-way, and*
 20 *any area surrounding the right-of-way that is to be altered as a*
 21 *result of construction activities that are necessary for the*
 22 *completion of the project will be restored to its condition before*
 23 *the project.*

24 *(2) The project applicant agrees to comply with all conditions*
 25 *otherwise authorized by law, imposed by the city or county*
 26 *planning department as part of any local agency permit process,*
 27 *that are required to mitigate potential impacts of the proposed*
 28 *project, and to otherwise comply with the Keene-Nejedly California*
 29 *Wetlands Preservation Act (Chapter 7 (commencing with Section*
 30 *5810) of Division 5), the California Endangered Species Act*
 31 *(Chapter 1.5 (commencing with Section 2050) of Division 3 of the*
 32 *Fish and Game Code), and other applicable state laws, and with*
 33 *all applicable federal laws.*

34 *(b) If a project meets the requirements of subdivision (a), the*
 35 *person undertaking the project shall do all of the following:*

36 *(1) Notify, in writing, any affected public agency, including, but*
 37 *not limited to, any public agency having permit, land use,*
 38 *environmental, public health protection, or emergency response*
 39 *authority of the exemption of the project from this division under*
 40 *subdivision (a).*

1 (2) *Provide notice to the public in the affected area in a manner*
2 *consistent with paragraph (3) of subdivision (b) of Section 21092.*

3 (3) *In the case of a private right-of-way over private property,*
4 *receive from the underlying property owner permission to access*
5 *the property.*

6 (4) *Comply with all conditions otherwise authorized by law,*
7 *imposed by the city or county planning department as part of any*
8 *local agency permit process, that are required to mitigate potential*
9 *impacts of the proposed project, and to otherwise comply with the*
10 *Keene-Nejedly California Wetlands Preservation Act (Chapter 7*
11 *(commencing with Section 5810) of Division 5), the California*
12 *Endangered Species Act (Chapter 1.5 (commencing with Section*
13 *2050) of Division 3 of the Fish and Game Code), and other*
14 *applicable state laws, and with all applicable federal laws.*

15 *SEC. 3. Section 21168.6.7 is added to the Public Resources*
16 *Code, to read:*

17 *21168.6.7. (a) This section shall apply to a transportation*
18 *infrastructure project that is included in a sustainable communities*
19 *strategy or an alternative planning strategy approved by a*
20 *metropolitan planning organization pursuant to Section 65080 of*
21 *the Government Code, for which a programmatic environmental*
22 *impact report has been certified. For purposes of this section, a*
23 *transportation infrastructure project includes a project that*
24 *consists of new construction of transportation infrastructure or a*
25 *project that consists of the inspection, maintenance, repair,*
26 *restoration, reconditioning, relocation, replacement, or removal*
27 *of existing transportation infrastructure.*

28 (b) *In any action or proceeding to attack, review, set aside,*
29 *void, or annul a determination, finding, or decision of a public*
30 *agency with respect to a transportation infrastructure project*
31 *described in subdivision (a), the court shall not stay or enjoin the*
32 *construction or operation of the transportation infrastructure*
33 *project unless the court finds either of the following:*

34 (1) *The continued construction or operation of the transportation*
35 *infrastructure project presents an imminent threat to the public*
36 *health and safety.*

37 (2) *The transportation infrastructure project contains unforeseen*
38 *important Native American artifacts or unforeseen important*
39 *historical, archaeological, or ecological values that would be*
40 *materially, permanently, and adversely affected by the continued*

1 *construction or operation of the transportation infrastructure*
 2 *project unless the court stays or enjoins the construction or*
 3 *operation of the transportation infrastructure project.*

4 *(c) If the court finds that paragraph (1) or (2) of subdivision*
 5 *(b) is satisfied, the court shall only enjoin those specific activities*
 6 *associated with the transportation infrastructure project that*
 7 *present an imminent threat to public health and safety or that*
 8 *materially, permanently, and adversely affect unforeseen important*
 9 *Native American artifacts or unforeseen important historical,*
 10 *archaeological, or ecological values.*

11 *(d) An action or proceeding to attack, set aside, void, or annul*
 12 *a determination, finding, or decision of the lead agency or*
 13 *responsible agency granting subsequent project approval for a*
 14 *transportation infrastructure project included in the programmatic*
 15 *environmental impact review described in subdivision (a) shall be*
 16 *subject to the judicial remedy limitations of this section.*

17 *(e) Where an action or proceeding brought pursuant to this*
 18 *section challenges portions or aspects of a project other than the*
 19 *transportation infrastructure project meeting the criteria of*
 20 *subdivision (a), and those portions or specific project activities*
 21 *are severable from the transportation infrastructure project, the*
 22 *court may enter an order as to those parties or aspects of the*
 23 *project other than the transportation infrastructure project that*
 24 *includes one or more of the remedies set forth in Section 21168.9.*

25 *(f) The provisions of this section are severable. If any provision*
 26 *of this section or its application is held invalid, that invalidity shall*
 27 *not affect other provisions or applications that can be given effect*
 28 *without the invalid provision or application.*

29 *SEC. 4. No reimbursement is required by this act pursuant to*
 30 *Section 6 of Article XIII B of the California Constitution because*
 31 *a local agency or school district has the authority to levy service*
 32 *charges, fees, or assessments sufficient to pay for the program or*
 33 *level of service mandated by this act, within the meaning of Section*
 34 *17556 of the Government Code.*

35 ~~SECTION 1. Section 21080.37 of the Public Resources Code~~
 36 ~~is amended to read:~~

37 ~~21080.37. (a) This division does not apply to a project or an~~
 38 ~~activity to repair, maintain, or make minor alterations to an existing~~
 39 ~~roadway if all of the following conditions are met:~~

40 ~~(1) (A) The project does not cross a waterway.~~

1 (B) For purposes of this paragraph, “waterway” means a bay,
2 estuary, lake, pond, river, slough, or a perennial, intermittent, or
3 ephemeral stream, lake, or estuarine-marine shoreline.

4 (2) The project involves negligible or no expansion of an
5 existing use beyond that existing at the time of the lead agency’s
6 determination.

7 (3) (A) The site of the project does not contain wetlands or
8 riparian areas and does not have significant value as a wildlife
9 habitat, and the project does not harm any species protected by the
10 federal Endangered Species Act of 1973 (16 U.S.C. Sec. 1531 et
11 seq.), the Native Plant Protection Act (Chapter 10 (commencing
12 with Section 1900) of Division 2 of the Fish and Game Code), or
13 the California Endangered Species Act (Chapter 1.5 (commencing
14 with Section 2050) of Division 3 of the Fish and Game Code), and
15 the project does not cause the destruction or removal of any species
16 protected by a local ordinance.

17 (B) For the purposes of this paragraph:

18 (i) “Riparian areas” mean those areas transitional between
19 terrestrial and aquatic ecosystems and that are distinguished by
20 gradients in biophysical conditions, ecological processes, and biota.
21 A riparian area is an area through which surface and subsurface
22 hydrology connect waterbodies with their adjacent uplands. A
23 riparian area includes those portions of terrestrial ecosystems that
24 significantly influence exchanges of energy and matter with aquatic
25 ecosystems. A riparian area is adjacent to perennial, intermittent,
26 and ephemeral streams, lakes, and estuarine-marine shorelines.

27 (ii) “Significant value as a wildlife habitat” includes wildlife
28 habitat of national, statewide, regional, or local importance; habitat
29 for species protected by the federal Endangered Species Act of
30 1973 (16 U.S.C. Sec. 1531, et seq.), the California Endangered
31 Species Act (Chapter 1.5 (commencing with Section 2050) of
32 Division 3 of the Fish and Game Code), or the Native Plant
33 Protection Act (Chapter 10 (commencing with Section 1900) of
34 Division 2 of the Fish and Game Code); habitat identified as
35 candidate, fully protected, sensitive, or species of special status
36 by local, state, or federal agencies; or habitat essential to the
37 movement of resident or migratory wildlife.

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

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

4 (4) The project does not impact cultural resources.

5 (5) The roadway does not affect scenic resources, as provided
6 pursuant to subdivision (e) of Section 21084.

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

9 (1) Include measures in the project to mitigate potential
10 vehicular traffic and safety impacts and bicycle and pedestrian
11 safety impacts.

12 (2) Hold a noticed public hearing on the project to hear and
13 respond to public comments. The hearing on the project may be
14 conducted with another noticed lead agency public hearing.
15 Publication of the notice shall be no fewer times than required by
16 Section 6061 of the Government Code, by the lead agency in a
17 newspaper of general circulation in the area.

18 (e) For purposes of this section, “roadway” means a roadway
19 as defined pursuant to Section 530 of the Vehicle Code and the
20 previously graded and maintained shoulder that is within a roadway
21 right-of-way of no more than five feet from the edge of the
22 roadway.

23 (d) (1) If a state agency determines that a project is not subject
24 to this division pursuant to this section, and it approves or
25 determines to carry out that project, it shall file a notice with the
26 Office of Planning and Research in the manner specified in
27 subdivisions (b) and (e) of Section 21108.

28 (2) If a local agency determines that a project is not subject to
29 this division pursuant to this section, and it approves or determines
30 to carry out that project, it shall file a notice with the Office of
31 Planning and Research, and with the county clerk in the county in
32 which the project will be located in the manner specified in
33 subdivisions (b) and (e) of Section 21152.

34 (e) This section shall remain in effect only until January 1, 2025,
35 and as of that date is repealed, unless a later enacted statute, that
36 is enacted before January 1, 2025, deletes or extends that date.

O