

ASSEMBLY BILL

No. 1805

Introduced by Assembly Members Charles Calderon and Nestande

February 10, 2010

An act to add and repeal Section 21099 of the Public Resources Code, relating to the environment, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

AB 1805, as introduced, Charles Calderon. Environment: California Environmental Quality Act (CEQA).

(1) 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 provides for the judicial review of a lead agency's decision to certify an EIR.

The bill would enact the CEQA Litigation Protection Pilot Program of 2010 and would require the Business, Transportation and Housing Agency to select projects that meet specified requirements from specified regions for each calendar year between 2010 and 2014. The bill would exempt from judicial review, pursuant to CEQA, a lead agency's decision to certify the EIR of, or to adopt a mitigated negative

declaration based on an initial study for, the selected projects, a lead agency's and responsible agency's approval of the selected project, and the Business, Transportation and Housing Agency's selection of the projects. The bill would require the Business, Transportation and Housing Agency, by December 31 of each year, to submit an annual report to the Governor and to the Legislature summarizing the designation of projects, and the job creation and investment attributable to the designated projects.

The bill would repeal the pilot program as of January 1, 2016.

(2) This bill would declare that it is to take effect immediately as an urgency statute.

Vote: $\frac{2}{3}$. 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 21099 is added to the Public Resources
- 2 Code, to read:
- 3 21099. (a) This section shall be known as the CEQA Litigation
- 4 Protection Pilot Program of 2010.
- 5 (b) (1) Notwithstanding other law, a lead agency's decision to
- 6 certify an environmental impact report or to adopt a mitigated
- 7 negative declaration based on an initial study for a project selected
- 8 by the Business, Transportation and Housing Agency pursuant to
- 9 this section is not subject to review by a court pursuant to this
- 10 division.
- 11 (2) A lead or responsible agency's decision to approve a project
- 12 selected by the Business, Transportation and Housing Agency
- 13 pursuant to this section is not subject to review by a court pursuant
- 14 to this division.
- 15 (3) The selection or designation of a project by the Business,
- 16 Transportation and Housing Agency pursuant to this section is not
- 17 subject to review by a court pursuant to this division.
- 18 (c) For the calendar year 2010, within 60 days of the effective
- 19 date of this act, the Business, Transportation and Housing Agency
- 20 shall solicit applications for an exemption provided pursuant to
- 21 this section.
- 22 (d) Within 150 days of the effective date of this act, the
- 23 Business, Transportation and Housing Agency shall select 25
- 24 projects for the purposes of subdivision (b) as follows:

1 (1) Ten projects located in the counties of Imperial, Los Angeles,
2 Orange, Riverside, San Bernardino, and San Diego.

3 (2) Five projects located in the counties of Alameda, Contra
4 Costa, Marin, Napa, San Francisco, Santa Clara, Solano, and
5 Sonoma.

6 (3) Five projects located in the counties of Fresno, Kern, Kings,
7 Madera, Merced, Sacramento, San Joaquin, Stanislaus, and Tulare.

8 (4) Five projects located in the rest of the state.

9 (e) Within 150 days of the effective date of this act, the Business,
10 Transportation and Housing Agency shall identify five alternative
11 projects in a region identified in subdivision (d) for the purposes
12 of subdivision (i).

13 (f) Within 150 days of the effective date of this act, the Business,
14 Transportation and Housing Agency shall provide to the Legislature
15 and the public a list of the projects selected pursuant to subdivisions
16 (d) and (e) for public comments.

17 (f) (1) Within 190 days of the effective date of this act, the
18 Business, Transportation and Housing Agency shall hold at least
19 one public hearing in each region specified in subdivision (d) to
20 consider public comments on the selected projects in each region
21 specified in subdivisions (d) and (e).

22 (2) The Legislature may provide formal comments to the
23 Business, Transportation and Housing Agency through legislative
24 committees designated by the Speaker of the Assembly and the
25 Senate Committee on Rules for their respective houses.

26 (h) Within 210 days of the effective date of this act, the
27 Business, Transportation and Housing Agency shall finalize the
28 selection of the projects pursuant to subdivisions (d) and (e).

29 (i) (1) For a project to qualify for the exemption pursuant to
30 subdivision (b), the lead agency for the project shall certify to the
31 Business, Transportation and Housing Agency that it is the lead
32 agency's expectation that the environmental impact report for the
33 project will be certified within 12 months after the effective date
34 of this act.

35 (2) If an environmental impact report of a project selected
36 pursuant to subdivision (d) is not certified within 12 months after
37 the effective date of this act, the exemption provided in subdivision
38 (b) does not apply to that project.

39 (3) If an environmental impact report of a project selected
40 pursuant to subdivision (d) is not certified within 12 months after

1 the effective date of this act, the Business, Transportation and
2 Housing Agency shall select an alternative project identified
3 pursuant to subdivision (e) with an environmental impact report
4 that has been certified within 12 months after the effective date of
5 this act from that respective region for the purposes of subdivision
6 (b).

7 (j) In selecting a project for the purpose of this section, the
8 Business, Transportation and Housing Agency shall consider the
9 following:

10 (1) The number and quality of jobs that will be created by the
11 project.

12 (2) The amount of capital investment made by the project.

13 (3) A balance between projects sponsored by public and private
14 entities.

15 (k) In each of the four calendar years following the effective
16 date of this act, from 2011 to 2014, inclusive, the Business,
17 Transportation and Housing Agency shall select 25 projects for
18 the purposes of subdivision (b), subject to the same regional
19 limitations as specified in subdivision (d), and subject to the same
20 time deadlines as set forth in subdivisions (c) to (i), inclusive,
21 except that the times shall be calculated from January 1 of each
22 calendar year. In each calendar year, projects or groups of projects
23 may be designated on a periodic basis in advance of those
24 deadlines, if notice and hearing are provided as set forth in
25 subdivisions (f) and (g).

26 (l) By December 31 of each year, the Business, Transportation
27 and Housing Agency shall submit an annual report on this pilot
28 program to the Governor and to the Legislature, summarizing the
29 designation of projects pursuant to this section. This annual report
30 shall also summarize the job creation and investment attributable
31 to the designated projects, and may provide additional information
32 regarding the implementation of the designated projects.

33 (m) This section shall remain in effect only until January 1, 2016,
34 and as of that date is repealed, unless a later enacted statute, that
35 is enacted before January 1, 2016, deletes or extends that date.

36 SEC. 2. This act is an urgency statute necessary for the
37 immediate preservation of the public peace, health, or safety within
38 the meaning of Article IV of the Constitution and shall go into
39 immediate effect. The facts constituting the necessity are:

1 To foster employment opportunities in the state by limiting the
2 abuse of the court system to stop projects after they have been
3 certified as meeting the requirements of the California
4 Environmental Quality Act (Division 13 (commencing with Section
5 21000) of the Public Resources Code) for the protection of public
6 peace, health, or safety, it is necessary for this act to take effect
7 immediately.

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