

ASSEMBLY BILL

No. 2713

Introduced by Assembly Member Knight

February 19, 2010

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

LEGISLATIVE COUNSEL'S DIGEST

AB 2713, as introduced, Knight. Environment: CEQA.

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. The 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.

This bill would make technical, nonsubstantive changes to the CEQA.

Vote: majority. Appropriation: no. Fiscal committee: no.
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:

1 21080. (a) Except as otherwise provided in this division, this
2 division shall apply to discretionary projects proposed to be carried
3 out or approved by public agencies, including, but not limited to,
4 the enactment and amendment of zoning ordinances, the issuance
5 of zoning variances, the issuance of conditional use permits, and
6 the approval of tentative subdivision maps unless the project is
7 exempt from this division.

8 (b) This division does not apply to any of the following
9 activities:

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

12 (2) Emergency repairs to public service facilities necessary to
13 maintain service.

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

21 (4) Specific actions necessary to prevent or mitigate an
22 emergency.

23 (5) Projects ~~which~~ *that* a public agency rejects or disapproves.

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

39 (7) Activities or approvals necessary to the bidding for, hosting
40 or staging of, and funding or carrying out of, an Olympic games

1 under the authority of the International Olympic Committee, except
2 for the construction of facilities necessary for the Olympic games.

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

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

17 (10) A project for the institution or increase of passenger or
18 commuter services on rail or highway rights-of-way already in
19 use, including modernization of existing stations and parking
20 facilities.

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

25 (12) Facility extensions not to exceed four miles in length ~~which~~
26 *that* are required for the transfer of passengers from or to exclusive
27 public mass transit guideway or busway public transit services.

28 (13) A project for the development of a regional transportation
29 improvement program, the state transportation improvement
30 program, or a congestion management program prepared pursuant
31 to Section 65089 of the Government Code.

32 (14) ~~Any~~ *A* project or portion ~~thereof~~ *of the project* located in
33 another state ~~which~~ *that* will be subject to environmental impact
34 review pursuant to the National Environmental Policy Act of 1969
35 (42 U.S.C. Sec. 4321 et seq.) or similar state laws of that state.
36 Any emissions or discharges that would have a significant effect
37 on the environment in this state are subject to this division.

38 (15) Projects undertaken by a local agency to implement a rule
39 or regulation imposed by a state agency, board, or commission
40 under a certified regulatory program pursuant to Section 21080.5.

1 ~~Any~~ A site-specific effect of the project—~~which~~ *that* was not
2 analyzed as a significant effect on the environment in the plan or
3 other written documentation required by Section 21080.5 is subject
4 to this division.

5 (16) The selection, credit, and transfer of emission credits by
6 the South Coast Air Quality Management District pursuant to
7 Section 40440.14 of the Health and Safety Code, until the repeal
8 of that section on January 1, 2012, or a later date.

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

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

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

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

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

33 (2) Substantial evidence is not argument, speculation,
34 unsubstantiated opinion or narrative, evidence that is clearly
35 inaccurate or erroneous, or evidence of social or economic impacts
36 that do not contribute to, or are not caused by, physical impacts
37 on the environment.

38 (f) As a result of the public review process for a mitigated
39 negative declaration, including administrative decisions and public
40 hearings, the lead agency may conclude that certain mitigation

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

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