

**Introduced by Senator Jackson**February 2, 2017

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An act to amend Sections 21080, 21100, and 21151 of the Public Resources Code, relating to environmental quality.

## LEGISLATIVE COUNSEL'S DIGEST

SB 224, as introduced, Jackson. California Environmental Quality Act: baseline conditions.

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.

This bill would prohibit the lead agency, in determining the baseline physical conditions by which a lead agency determines whether a project has a significant effect on the environment, from considering the effects of certain actions on the environment.

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:

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. For purposes of this paragraph, “highway” shall have  
25 the same meaning as defined in Section 360 of the Vehicle Code.

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

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

33 (13) A project for the development of a regional transportation  
34 improvement program, the state transportation improvement  
35 program, or a congestion management program prepared pursuant  
36 to Section 65089 of the Government Code.

37 (14) Any project or portion thereof located in another state  
38 which will be subject to environmental impact review pursuant to  
39 the National Environmental Policy Act of 1969 (42 U.S.C. Sec.  
40 4321 et seq.) or similar state laws of that state. Any emissions or

1 discharges that would have a significant effect on the environment  
2 in this state are subject to this division.

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

10 (c) (1) If a lead agency determines that a proposed project, not  
11 otherwise exempt from this division, would not have a significant  
12 effect on the environment, the lead agency shall adopt a negative  
13 declaration to that effect. The negative declaration shall be prepared  
14 for the proposed project in either of the following circumstances:

15 (1)

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

19 (2)

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

29 (2) *In determining the baseline physical conditions by which a*  
30 *lead agency determines whether a project has a significant effect*  
31 *on the environment, the lead agency shall not consider*  
32 *modifications to the environment at the project site caused by*  
33 *either of the following:*

34 (A) *Action undertaken without an environmental review pursuant*  
35 *to paragraph (2) or (4) of subdivision (b).*

36 (B) *Action that is unpermitted or illegal at the time the action*  
37 *was undertaken.*

38 (d) If there is substantial evidence, in light of the whole record  
39 before the lead agency, that the project may have a significant

1 effect on the environment, an environmental impact report shall  
2 be prepared.

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

6 (2) Substantial evidence is not argument, speculation,  
7 unsubstantiated opinion or narrative, evidence that is clearly  
8 inaccurate or erroneous, or evidence of social or economic impacts  
9 that do not contribute to, or are not caused by, physical impacts  
10 on the environment.

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

28 (g) Nothing in this section shall preclude a project applicant or  
29 any other person from challenging, in an administrative or judicial  
30 proceeding, the legality of a condition of project approval imposed  
31 by the lead agency. If, however, any condition of project approval  
32 set aside by either an administrative body or court was necessary  
33 to avoid or lessen the likelihood of the occurrence of a significant  
34 effect on the environment, the lead agency's approval of the  
35 negative declaration and project shall be invalid and a new  
36 environmental review process shall be conducted before the project  
37 can be reapproved, unless the lead agency substitutes a new  
38 condition that the lead agency finds, after holding a public hearing  
39 on the matter, is equivalent to, or more effective in, lessening or

1 avoiding significant effects on the environment and that does not  
2 cause any potentially significant effect on the environment.

3 SEC. 2. Section 21100 of the Public Resources Code is  
4 amended to read:

5 21100. (a) All lead agencies shall prepare, or cause to be  
6 prepared by contract, and certify the completion of, an  
7 environmental impact report on any project which they propose  
8 to carry out or approve that may have a significant effect on the  
9 environment. Whenever feasible, a standard format shall be used  
10 for environmental impact reports.

11 (b) The environmental impact report shall include a detailed  
12 statement setting forth all of the following:

13 (1) All significant effects on the environment of the proposed  
14 project.

15 (2) In a separate section:

16 (A) Any significant effect on the environment that cannot be  
17 avoided if the project is implemented.

18 (B) Any significant effect on the environment that would be  
19 irreversible if the project is implemented.

20 (3) Mitigation measures proposed to minimize significant effects  
21 on the environment, including, but not limited to, measures to  
22 reduce the wasteful, inefficient, and unnecessary consumption of  
23 energy.

24 (4) Alternatives to the proposed project.

25 (5) The growth-inducing impact of the proposed project.

26 (c) The report shall also contain a statement briefly indicating  
27 the reasons for determining that various effects on the environment  
28 of a project are not significant and consequently have not been  
29 discussed in detail in the environmental impact report.

30 (d) (1) For purposes of this section, any significant effect on  
31 the environment shall be limited to substantial, or potentially  
32 substantial, adverse changes in physical conditions which exist  
33 within the area as defined in Section 21060.5.

34 (2) *In determining the baseline physical conditions by which a*  
35 *lead agency determines whether a project has a significant effect*  
36 *on the environment, the lead agency shall not consider*  
37 *modifications to the environment at the project site caused by*  
38 *either of the following:*

39 (A) *Action undertaken without an environmental review pursuant*  
40 *to paragraph (2) or (4) of subdivision (b) of Section 21080.*

1 (B) Action that is unpermitted or illegal at the time the action  
2 was undertaken.

3 (e) Previously approved land use documents, including, but not  
4 limited to, general plans, specific plans, and local coastal plans,  
5 may be used in cumulative impact analysis.

6 SEC. 3. Section 21151 of the Public Resources Code is  
7 amended to read:

8 21151. (a) All local agencies shall prepare, or cause to be  
9 prepared by contract, and certify the completion of, an  
10 environmental impact report on any project that they intend to  
11 carry out or approve which may have a significant effect on the  
12 environment. When a report is required by Section 65402 of the  
13 Government Code, the environmental impact report may be  
14 submitted as a part of that report.

15 (b) (1) For purposes of this section, any significant effect on  
16 the environment shall be limited to substantial, or potentially  
17 substantial, adverse changes in physical conditions which exist  
18 within the area as defined in Section 21060.5.

19 (2) *In determining the baseline physical conditions by which a*  
20 *lead agency determines whether a project has a significant effect*  
21 *on the environment, the lead agency shall not consider*  
22 *modifications to the environment at the project site caused by*  
23 *either of the following:*

24 (A) *Action undertaken without an environmental review pursuant*  
25 *to paragraph (2) or (4) of subdivision (b) of Section 21080.*

26 (B) *Action that is unpermitted or illegal at the time the action*  
27 *was undertaken.*

28 (c) If a nonelected decisionmaking body of a local lead agency  
29 certifies an environmental impact report, approves a negative  
30 declaration or mitigated negative declaration, or determines that  
31 a project is not subject to this division, that certification, approval,  
32 or determination may be appealed to the agency's elected  
33 decisionmaking body, if any.