

**Introduced by Senator Wiener**  
(Principal coauthor: Assembly Member Wicks)  
(Coauthor: Assembly Member Ahrens)

February 20, 2025

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An act to amend Sections 21080.1 and 21167.6 of, and to add Sections 21080.08, 21083.03, and 21165.5 to, the Public Resources Code, relating to environmental quality.

LEGISLATIVE COUNSEL'S DIGEST

SB 607, as introduced, Wiener. California Environmental Quality Act: categorical exemptions: infill projects.

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 requires the Office of Land Use and Climate Innovation to prepare and develop proposed guidelines for the implementation of CEQA by public agencies and requires the Secretary of the Natural Resources Agency to certify and adopt those proposed guidelines. CEQA requires those adopted guidelines to include a list of classes of projects that have been determined not to have a significant effect on

the environment and exempts those classes of projects from CEQA, commonly known as categorical exemptions.

This bill would require a lead agency to limit the scope of an environmental impact report to the condition of a categorical exemption that the lead agency determines, after a preliminary review of the project, disqualifies the project from eligibility under the categorical exemption, if the lead agency determines that the project meets all other conditions of the categorical exemption except for the one condition that disqualifies it, as specified. The bill would require that a lead agency's determination to adopt a negative declaration or mitigated negative declaration be upheld if there is a fair argument that substantial evidence supports the determination. The bill would provide that these provisions do not apply to a project to construct or that is related to a distribution center or oil and gas infrastructure. The bill would exempt from the requirements of CEQA, except as provided, a rezoning that is consistent with an approved housing element. Because the bill would require a lead agency to determine the applicability of this exemption, the bill would impose a state-mandated local program.

This bill would require the office, on or before July 1, 2026, to map the eligible urban infill sites within every incorporated city in the state, as provided. The bill would require the office, on or before July 1, 2026, to prepare, develop, and transmit to the agency for certification and adoption refinements to the infill development project categorical exemption, as provided. The bill would provide that specified regulations related to the significant effect exception to the use of a categorical exemption do not apply to an infill project that meets all conditions of the infill development project categorical exemption. The bill would require, if an infill project is not eligible for the infill development project categorical exemption, only the reasons for the ineligibility be subject to CEQA review. The bill would provide that these provisions do not apply to a project to construct or that is related to a distribution center or oil and gas infrastructure.

CEQA requires an action or proceeding to attack, review, set aside, void, or annul certain acts or decisions of a public agency to be commenced according to specified processes, including that at the time that the action or proceeding is filed, the plaintiff or petitioner shall file a request that the respondent public agency prepare the record of proceedings relating to the subject of the action or proceeding, and requires the record of proceedings to include specified items and materials, including, among other things, all internal agency

communications, including staff notes and memoranda related to the project or to compliance with CEQA, but excluding communications that are of a logistical nature, as specified.

This bill would also exclude communications of persons tangential to or far removed from project decisionmaking from the materials to be included in the record of proceedings, except as provided.

This bill would require, except as provided, if an action or proceeding alleging that a lead agency improperly applied to a project a statutory or categorical exemption is successful, the subsequent environmental review for the project be limited to the facts the action or proceeding relied upon that disqualified the project from the statutory or categorical exemption.

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.

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

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

1 SECTION 1. Section 21080.08 is added to the Public Resources  
2 Code, to read:

3 21080.08. (a) This division does not apply to a rezoning that  
4 is consistent with an approved housing element.

5 (b) Subdivision (a) does not apply to a rezoning that would  
6 allow for the construction of a distribution center or for oil and  
7 gas infrastructure.

8 SEC. 2. Section 21080.1 of the Public Resources Code is  
9 amended to read:

10 21080.1. (a) (1) The lead agency shall be responsible for  
11 determining whether an environmental impact report, a negative  
12 declaration, or a mitigated negative declaration shall be required  
13 for any project ~~which~~ *that* is subject to this division. That  
14 determination shall be final and conclusive on all persons, including  
15 responsible agencies, unless challenged as provided in Section  
16 21167.

17 (2) (A) *The lead agency shall limit the scope of an*  
18 *environmental impact report to the condition of a categorical*

1 exemption that the lead agency determines, after a preliminary  
2 review of the project, disqualifies the project from eligibility under  
3 the categorical exemption, if the lead agency determines that the  
4 project meets all other conditions of the categorical exemption  
5 except for the one condition that disqualifies it.

6 (B) This paragraph does not apply to a project that is  
7 disqualified from a categorical exemption for failing to meet two  
8 or more conditions of the categorical exemption.

9 (C) This paragraph does not apply to a project to construct or  
10 that is related to a distribution center or oil and gas infrastructure.

11 (3) (A) The lead agency's determination to adopt a negative  
12 declaration or mitigated negative declaration shall be upheld if  
13 there is a fair argument that substantial evidence supports the  
14 determination.

15 (B) This paragraph does not apply to a project to construct or  
16 that is related to a distribution center or oil and gas infrastructure.

17 (b) In the case of a project described in subdivision (c) of Section  
18 21065, the lead agency shall, upon the request of a potential  
19 applicant, provide for consultation prior to the filing of the  
20 application regarding the range of actions, potential alternatives,  
21 mitigation measures, and any potential and significant effects on  
22 the environment of the project.

23 SEC. 3. Section 21083.03 is added to the Public Resources  
24 Code, to read:

25 21083.03. (a) On or before July 1, 2026, the Office of Land  
26 Use and Climate Innovation shall prepare, develop, and transmit  
27 to the Natural Resources Agency for certification and adoption  
28 refinements to the infill development project categorical exemption  
29 pursuant to Section 15332 of Title 14 of the California Code of  
30 Regulations that establish all of the following:

31 (1) For purposes of compliance with subdivision (a) of Section  
32 15332 of Title 14 of the California Code of Regulations, a project  
33 is also eligible if it is consistent with the zoning designated by the  
34 local jurisdiction's most recently adopted housing element,  
35 provided that the housing element has been certified by the  
36 Department of Housing and Community Development to be in  
37 compliance with state law.

38 (2) Notwithstanding that a project may or may not be  
39 substantially surrounded by urban uses pursuant to subdivision (b)  
40 of Section 15332 of Title 14 of the California Code of Regulations,

1 that a project is in compliance with subdivision (b) of Section  
2 15332 of Title 14 of the California Code of Regulations if it is  
3 located within an area that the Office of Land Use and Climate  
4 Innovation has determined to be an eligible urban infill site  
5 pursuant to subdivision (b).

6 (3) Objective and measurable thresholds for an effect upon the  
7 environment to be considered significant for purposes of  
8 subdivision (d) of Section 15332 of Title 14 of the California Code  
9 of Regulations.

10 (b) On or before July 1, 2026, the Office of Land Use and  
11 Climate Innovation shall map the eligible urban infill sites within  
12 every incorporated city in the state where, notwithstanding that an  
13 area may or may not be substantially surrounded by urban uses,  
14 the local jurisdiction's most recent general plan or most recently  
15 adopted housing element certified by the Department of Housing  
16 and Community Development to be in compliance with state law  
17 has a zoning designation that is consistent with infill development.

18 (c) Subdivision (c) of Section 15300.2 of Title 14 of the  
19 California Code of Regulations does not apply to Section 15332  
20 of Title 14 of the California Code of Regulations.

21 (d) If an infill project is not eligible for the categorical  
22 exemption pursuant to Section 15332 of Title 14 of the California  
23 Code of Regulations, only the reasons for the ineligibility shall be  
24 subject to CEQA review.

25 (e) This section and refinements developed by the Office of  
26 Land Use and Climate Innovation does not apply to a project to  
27 construct or that is related to a distribution center or oil and gas  
28 infrastructure.

29 SEC. 4. Section 21165.5 is added to the Public Resources Code,  
30 to read:

31 21165.5. (a) If an action or proceeding alleging that a lead  
32 agency improperly applied to a project a statutory exemption  
33 pursuant to this division, or a categorical exemption, is successful,  
34 the subsequent environmental review for the project shall be limited  
35 to the facts the action or proceeding relied upon that disqualified  
36 the project from the statutory or categorical exemption.

37 (b) This section does not apply to a project to construct or that  
38 is related to a distribution center or oil and gas infrastructure.

39 SEC. 5. Section 21167.6 of the Public Resources Code is  
40 amended to read:

1 21167.6. Notwithstanding any other law, in all actions or  
2 proceedings brought pursuant to Section 21167, except as provided  
3 in Section 21167.6.2 or those involving the Public Utilities  
4 Commission, all of the following shall apply:

5 (a) At the time that the action or proceeding is filed, the plaintiff  
6 or petitioner shall file a request that the respondent public agency  
7 prepare the record of proceedings relating to the subject of the  
8 action or proceeding. The request, together with the complaint or  
9 petition, shall be served personally upon the public agency not  
10 later than 10 business days from the date that the action or  
11 proceeding was filed.

12 (b) (1) (A) The public agency shall prepare and certify the  
13 record of proceedings not later than 60 days from the date that the  
14 request specified in subdivision (a) was served upon the public  
15 agency. Upon certification, the public agency shall lodge an  
16 electronic copy of the record of proceedings with the court and  
17 shall serve on the parties notice that the record of proceedings has  
18 been certified and lodged with the court. The parties shall pay any  
19 reasonable costs or fees imposed for the preparation of the record  
20 of proceedings in conformance with any law or rule of court.

21 (B) The court shall schedule a case management conference  
22 within 30 days of the filing of the complaint or petition pursuant  
23 to this division to review the scope, timing, and cost of the record  
24 of proceedings. The parties may stipulate to a partial record of  
25 proceedings that does not contain all the documents listed in  
26 subdivision (e) if approved by the court.

27 (2) The plaintiff or petitioner may elect to prepare the record  
28 of proceedings by providing a notice of the election to the public  
29 agency, or the parties may agree to an alternative method of  
30 preparation of the record of proceedings, subject to certification  
31 of its accuracy by the public agency, within the 60-day time limit  
32 specified in this subdivision.

33 (3) Notwithstanding paragraph (2), the public agency, within  
34 five business days of the receipt of the notice specified in paragraph  
35 (2), may deny the request of the plaintiff or petitioner to prepare  
36 the record of proceedings, in which case the public agency or the  
37 real party in interest shall bear the costs of preparation and  
38 certification of the record of proceedings, and those costs shall not  
39 be recoverable from the plaintiff or petitioner.

1 (c) The time limit established by subdivision (b) may be  
2 extended only upon the stipulation of all parties who have been  
3 properly served in the action or proceeding or upon order of the  
4 court. Extensions shall be liberally granted by the court when the  
5 size of the record of proceedings renders infeasible compliance  
6 with that time limit. There is no limit on the number of extensions  
7 that may be granted by the court, but no single extension shall  
8 exceed 60 days unless the court determines that a longer extension  
9 is in the public interest.

10 (d) If the public agency fails to prepare and certify the record  
11 of proceedings within the time limit established in paragraph (1)  
12 of subdivision (b), or any continuances of that time limit, the  
13 plaintiff or petitioner may move for sanctions, and the court may,  
14 upon that motion, grant appropriate sanctions.

15 (e) The record of proceedings shall include, but is not limited  
16 to, all of the following items:

17 (1) All project application materials.

18 (2) All staff reports and related documents prepared by the  
19 respondent public agency with respect to its compliance with the  
20 substantive and procedural requirements of this division and with  
21 respect to the action on the project.

22 (3) All staff reports and related documents prepared by the  
23 respondent public agency and written testimony or documents  
24 submitted by any person relevant to any findings or statement of  
25 overriding considerations adopted by the respondent agency  
26 pursuant to this division.

27 (4) Any transcript or minutes of the proceedings at which the  
28 decisionmaking body of the respondent public agency heard  
29 testimony on, or considered any environmental document on, the  
30 project, and any transcript or minutes of proceedings before any  
31 advisory body to the respondent public agency that were presented  
32 to the decisionmaking body before action on the environmental  
33 documents or on the project.

34 (5) All notices issued by the respondent public agency to comply  
35 with this division or with any other law governing the processing  
36 and approval of the project.

37 (6) All written comments received in response to, or in  
38 connection with, environmental documents prepared for the project,  
39 including responses to the notice of preparation.

1 (7) All written evidence or correspondence submitted to, or  
2 transferred from, the respondent public agency with respect to  
3 compliance with this division or with respect to the project.

4 (8) Any proposed decisions or findings submitted to the  
5 decisionmaking body of the respondent public agency by its staff,  
6 or the project proponent, project opponents, or other persons.

7 (9) The documentation of the final public agency decision,  
8 including the final environmental impact report, mitigated negative  
9 declaration, or negative declaration, and all documents, in addition  
10 to those referenced in paragraph (3), cited or relied on in the  
11 findings or in a statement of overriding considerations adopted  
12 pursuant to this division.

13 (10) Any other written materials relevant to the respondent  
14 public agency's compliance with this division or to its decision on  
15 the merits of the project, including the initial study, any drafts of  
16 any environmental document, or portions thereof, that have been  
17 released for public review, and copies of studies or other documents  
18 relied upon in any environmental document prepared for the project  
19 and either made available to the public during the public review  
20 period or included in the respondent public agency's files on the  
21 project, and all internal agency communications, including staff  
22 notes and memoranda related to the project or to compliance with  
23 this division, but not including communications *of persons*  
24 *tangential to or far removed from project decisionmaking, unless*  
25 *those communications are related to a project that would construct*  
26 *or is related to a distribution center or oil and gas infrastructure,*  
27 *or that are of a logistical nature, such as meeting invitations and*  
28 *scheduling communications, except that any material that is subject*  
29 *to privileges contained in the Evidence Code, or exemptions*  
30 *contained in the California Public Records Act (Division 10*  
31 *(commencing with Section 7920.000) of Title 1 of the Government*  
32 *Code) shall not be included in the record of proceedings under this*  
33 *paragraph, consistent with existing law.*

34 (11) The full written record before any inferior administrative  
35 decisionmaking body whose decision was appealed to a superior  
36 administrative decisionmaking body before the filing of litigation.

37 (f) In preparing the record of proceedings, the party preparing  
38 the record of proceedings shall strive to do so at reasonable cost  
39 in light of the scope of the record of proceedings.

1 (g) The clerk of the superior court shall prepare and certify the  
2 clerk's transcript on appeal not later than 60 days from the date  
3 that the notice designating the papers or records to be included in  
4 the clerk's transcript was filed with the superior court, if the party  
5 or parties pay any costs or fees for the preparation of the clerk's  
6 transcript imposed in conformance with any law or rules of court.  
7 Nothing in this subdivision precludes an election to proceed by  
8 appendix, as provided in Rule 8.124 of the California Rules of  
9 Court.

10 (h) Extensions of the period for the filing of any brief on appeal  
11 may be allowed only by stipulation of the parties or by order of  
12 the court for good cause shown. Extensions for the filing of a brief  
13 on appeal shall be limited to one 30-day extension for the  
14 preparation of an opening brief and one 30-day extension for the  
15 preparation of a responding brief, except that the court may grant  
16 a longer extension or additional extensions if it determines that  
17 there is a substantial likelihood of settlement that would avoid the  
18 necessity of completing the appeal.

19 (i) At the completion of the filing of briefs on appeal, the  
20 appellant shall notify the court of the completion of the filing of  
21 briefs, whereupon the clerk of the reviewing court shall set the  
22 appeal for hearing on the first available calendar date.

23 SEC. 6. No reimbursement is required by this act pursuant to  
24 Section 6 of Article XIII B of the California Constitution because  
25 a local agency or school district has the authority to levy service  
26 charges, fees, or assessments sufficient to pay for the program or  
27 level of service mandated by this act, within the meaning of Section  
28 17556 of the Government Code.