

Date of Hearing: June 13, 2022

ASSEMBLY COMMITTEE ON NATURAL RESOURCES

Luz Rivas, Chair

SB 922 (Wiener) – As Amended May 11, 2022

SENATE VOTE: 24-1

SUBJECT: California Environmental Quality Act: exemptions: transportation-related projects

SUMMARY: Expands California Environmental Quality Act (CEQA) exemptions for specified transit, bicycle and pedestrian projects, and extends these exemptions from 2023 to 2030.

EXISTING LAW:

- 1) CEQA requires lead agencies with the principal responsibility for carrying out or approving a proposed project to prepare a negative declaration, mitigated negative declaration, or environmental impact report (EIR) for this action, unless the project is exempt from CEQA.
- 2) CEQA exempts specified transportation project types, including the following:
 - a) Approval of a bicycle transportation plan for an urbanized area for restriping of streets and highways, bicycle parking and storage, signal timing, and related signage, until January 1, 2030.
 - b) A project for the institution or increase of passenger or commuter service on rail or highway rights-of-way already in use, including modernization of existing stations and parking facilities.
 - c) A project for the institution or increase of passenger or commuter service on high-occupancy vehicle lanes already in use, including the modernization of existing stations and parking facilities.
 - d) Facility extensions not to exceed four miles in length which are required for the transfer of passengers from or to exclusive public mass transit guideway or busway public transit services.
- 3) SB 288 (Wiener), Chapter 200, Statutes of 2020, added temporary CEQA exemptions for the following “clean transportation” project types:
 - a) Pedestrian and bicycle facilities, including bicycle parking, bicycle sharing facilities, and bikeways.
 - b) Projects that improve customer information and wayfinding for transit riders, bicyclists, or pedestrians.
 - c) Transit prioritization projects, as defined.
 - d) On highways with existing public transit service or that will be implementing public transit service within six months of the conversion, a project for the designation and conversion of general purpose lanes or highway shoulders to bus-only lanes, for use either during peak congestion hours or all day.
 - e) A project for the institution or increase of new bus rapid transit, bus, or light rail service, including the construction of stations, on existing public rights-of-way or existing highway rights-of-way, whether or not the right-of-way is in use for public mass transit.

- f) The maintenance, repair, relocation, replacement, or removal of any utility infrastructure associated with a project listed above.
 - g) A project to construct or maintain infrastructure to charge or refuel zero-emission transit buses, as specified.
 - h) A project that combines any of the components of a project listed above.
 - i) A project carried out by a city or county to reduce minimum parking requirements.
- 4) SB 288 requires exempt projects meet all of the following criteria:
- a) A public agency is carrying out the project and is the lead agency for the project.
 - b) The project is located in an urbanized area, as defined.
 - c) The project is located on or within an existing public right-of-way.
 - d) The project does not add physical infrastructure that increases new automobile capacity on existing rights-of-way except for minor modifications needed for the efficient and safe movement of transit vehicles, such as extended merging lanes. The project shall not include the addition of any auxiliary lanes.
 - e) The construction of the project does not require the demolition of affordable housing units, including rent-controlled units and units occupied by low-income tenants.
- 5) SB 288 requires a project exceeding \$100 million to also meet all of the following criteria:
- a) The project is incorporated in a regional transportation plan, sustainable communities strategy, general plan, or other plan that has undergone a programmatic-level environmental review within 10 years of the approval of the project.
 - b) Construction impacts are fully mitigated.
 - c) The lead agency completes and considers the results of a project business case and a racial equity analysis.
 - d) The lead agency holds specified public meetings.
- 6) SB 288 requires the lead agency to certify that the project will be completed by a skilled and trained workforce, as specified.
- 7) SB 288 sunsets the section adding the exemptions above on January 1, 2023.

THIS BILL:

- 1) Exempts from CEQA, until January 1, 2030, active transportation plans and pedestrian plans, if the lead agency holds noticed public hearings and files a notice of exemption (NOE) with the Office of Planning and Research (OPR).
- 2) For the exemptions added by SB 288, extends the January 1, 2023 sunset until 2030, and makes the following changes to SB 288's general requirements:
 - a) Allows a local agency, instead of requiring a public agency, to carry out the project and be the lead agency.
 - b) Prohibits a project from inducing single-occupancy vehicle trips, adding additional highway lanes, widening highways, or adding physical infrastructure or striping to highways except as specified.

- 3) Makes the following changes to individual SB 288 project exemptions:
 - a) Applies to pedestrian and bicycle facilities that improve safety, access, or mobility.
 - b) Expands “transit prioritization projects” to include:
 - i) Signal and sign changes such as the installation of traffic signs or new signals.
 - ii) Conversion to dedicated transit lanes, including transit queue jump or bypass lanes and turn restrictions.
 - iii) Narrowing of lanes to allow for dedicated transit lanes or transit reliability improvements.
 - iv) Widening of existing transit travel lanes by removing or restricting street parking.
 - v) Transit stop access and safety improvements.
 - c) Exempts the designation and conversion of general purpose lanes to high-occupancy vehicle lanes or bus-only lanes, or highway shoulders to part-time transit lanes. Defines “part-time transit lanes” as designated highway shoulders that support the operation of transit vehicles during specified times and are not open to nonpublic transit vehicles at any time.
 - d) Exempts projects for the institution or increase of existing BRT, bus, or light rail service, including the rehabilitation of stations, terminals, or existing operations facilities, as specified. Retroactively applies these changes to projects where lead agency filed an NOE before January 1, 2023.
 - e) Expands exemption for projects to construct or maintain infrastructure to charge or refuel zero-emission buses to include infrastructure for zero-emission transit trains and ferries. Requires specified noticed public meetings for this exemption to apply.
 - f) Exempts eliminating minimum parking requirements, instituting parking maximums, removing or restricting parking, and implementing transportation demand management requirements or programs.
- 4) Requires, for SB 288 projects that exceed \$100 million the local agency to complete an analysis of residential displacement and suggest anti-displacement strategies, designs, or actions where 50 percent of the project or project’s stops and stations are located in an area that is at-risk of residential displacement, as identified by the lead agency, and that will have a maximum of 15-minute peak headways.

FISCAL EFFECT: According to the Senate Appropriations Committee, pursuant to Senate Rule 28.8, negligible state costs.

COMMENTS:

- 1) **Background.** CEQA provides a process for evaluating the environmental effects of applicable projects undertaken or approved by public agencies. If a project is not exempt from CEQA, an initial study is prepared to determine whether the project may have a significant effect on the environment. If the initial study shows that there would not be a significant effect on the environment, the lead agency must prepare a negative declaration. If the initial study shows that the project may have a significant effect on the environment, the lead agency must prepare an EIR.

Generally, an EIR must accurately describe the proposed project, identify and analyze each significant environmental impact expected to result from the proposed project, identify mitigation measures to reduce those impacts to the extent feasible, and evaluate a range of reasonable alternatives to the proposed project. Prior to approving any project that has received environmental review, an agency must make certain findings. If mitigation measures are required or incorporated into a project, the agency must adopt a reporting or monitoring program to ensure compliance with those measures.

CEQA actions taken by public agencies can be challenged in superior court once the agency approves or determines to carry out the project. CEQA appeals are subject to unusually short statutes of limitations. Generally, a petition must be filed within 30 to 35 days, depending on the type of decision. The courts are required to give CEQA actions preference over all other civil actions. The petitioner must request a hearing within 90 days of filing the petition and, generally, briefing must be completed within 90 days of the request for hearing.

CEQA includes statutory exemptions for certain transportation project types (listed above). In addition, the CEQA Guidelines include categorical exemptions that apply to some transportation projects, including: (1) work on existing facilities where there is negligible expansion of an existing use, specifically including "(e)xisting highways and streets, sidewalks, gutters, bicycle and pedestrian trails, and similar facilities" (Section 15301(c), CEQA Guidelines); and (2) minor public or private alterations in the condition of land, water, and/or vegetation which do not involve removal of healthy, mature, scenic trees, except for forestry or agricultural purposes, specifically including the creation of bicycle lanes on existing rights-of-way (Section 15304 (h), CEQA Guidelines).

If a project is not exempt from CEQA, but the initial study shows that it would not result in a significant effect on the environment, the lead agency must prepare a negative declaration, and no EIR is required.

2) **Author's statement:**

SB 922 will extend the sunset of SB 288, ensuring that sustainable transportation projects are not unnecessarily delayed. SB 288 provides an exemption for specified transportation projects, those that provide inherent environmental benefits and improve the safety and accessibility of our transportation system, from CEQA. Although CEQA is crucial for protecting our communities, each step of the CEQA process is subject to appeals and lawsuits that can increase project costs and create delays. It's not unusual for it to take three to four years and millions of dollars to resolve a single lawsuit, while appeals regularly take six months to resolve. When CEQA is misused as a tool to delay or halt critically needed projects, it has real consequences for California – making it more difficult to build the active transportation and sustainable transit projects that will result in a safer, healthier, and equitable future for all Californians.

SB 288 successfully exempted sustainable transportation projects that should not be reviewed under this process, and in the short time since its passage, has resulted in numerous projects being built out. Thus far, ten projects have been streamlined across the state, including protecting pedestrian walkways and bikeways, building out bus rapid transit projects, and expanding electric vehicle charging options. Seven of these ten

projects are located in disadvantaged communities, resulting in expanded equitable transportation options for neighborhoods that are currently shouldering a disproportionate burden of the state's vehicle pollution. Additionally, bike lane, complete street and public transit projects are proven to create jobs and increase investment in local businesses, with ten to thirteen jobs per million dollars spent, and a five to one economic return in direct and indirect spending and support for local businesses.

Beyond the projects actually built under SB 288, numerous others have been identified by transit agencies as 'under consideration' to utilize the SB 288 exemption. Without the extension present in SB 922, these projects will be subject to review, lawsuits, and appeals under CEQA, resulting in potentially year-long delays, or agencies determining that the projects simply aren't feasible without this exemption.

The necessity for this exemption is only bolstered by the federal Bipartisan Infrastructure Law, which will increase California's transit fund allocation. This funding will be crucial to California's economic recovery, and SB 922 will ensure these funds are more efficiently and effectively utilized.

- 3) **Back so soon?** SB 288, approved by this committee and enacted in 2020, was billed as a measure to speed investment in "shovel-ready" clean transportation to boost COVID economic recovery. An essential part of the SB 288 agreement was a two-year sunset. At the time, the author said "SB 288 will jumpstart sustainable transportation projects as an essential part of California's economic recovery from COVID-19, unlocking opportunities for getting people and economy back to work."

According to OPR, the total NOEs filed under SB 288 has been 22.

- 4) **Without CEQA, or a similar review, how will a lead agency confirm that certain conditions have been met?** This bill includes criteria that may be difficult to clearly determine at the time an exemption is claimed, absent further analysis. For example:
- a) The project does not induce single-occupancy vehicle trips.
 - b) The project's construction impacts are fully mitigated.

Because a CEQA exemption can be challenged in court on the basis it was improperly claimed, it may also be difficult to defend claims where there is little or no record to support the agency's determination.

REGISTERED SUPPORT / OPPOSITION:

Support

American Planning Association, California Chapter
 Bay Area Council
 California Downtown Association
 California Transit Association
 CalStart
 City of Pleasanton
 City of Redwood City

ClimatePlan
East Bay for Everyone
East Bay Leadership Council
East Bay Transit Riders Union
Friends of Caltrain
League of California Cities
League of Women Voters of California
Los Angeles County Metropolitan Transportation Authority
Los Feliz Neighborhood Council
Mayor Eric Garcetti, City of Los Angeles
Mayor of City & County of San Francisco London Breed
Metropolitan Transportation Commission
Monterey-Salinas Transit District
Natural Resources Defense Council
North Bay Leadership Council
Orange County Transportation Authority
Peninsula Corridor Joint Powers Board (CALTRAIN)
Planning and Conservation League
Safe Routes to School National Partnership
San Diego Regional Chamber of Commerce
San Francisco Bay Area Rapid Transit District (BART)
San Francisco Bay Area Water Emergency Transportation Authority
San Francisco Municipal Transportation Agency
San Joaquin Regional Transit District
San Jose Chamber of Commerce
San Luis Obispo Council of Governments
San Mateo County Transit District
Silicon Valley Leadership Group
Solano Transportation Authority
Southern California Association of Governments
SPUR
Valley Industry and Commerce Association
Walk San Francisco

Opposition

None on file.

Analysis Prepared by: Lawrence Lingbloom / NAT. RES. /