
UNFINISHED BUSINESS

Bill No: SB 922
Author: Wiener (D), et al.
Amended: 8/4/22
Vote: 21

SENATE ENVIRONMENTAL QUALITY COMMITTEE: 5-0, 3/28/22
AYES: Allen, Gonzalez, Skinner, Stern, Wieckowski
NO VOTE RECORDED: Bates, Dahle

SENATE APPROPRIATIONS COMMITTEE: Senate Rule 28.8

SENATE FLOOR: 24-1, 5/16/22
AYES: Allen, Archuleta, Atkins, Dodd, Durazo, Eggman, Glazer, Hertzberg,
Hueso, Hurtado, Jones, Kamlager, Laird, Leyva, McGuire, Min, Ochoa Bogh,
Pan, Portantino, Roth, Rubio, Skinner, Wieckowski, Wiener
NOES: Bates
NO VOTE RECORDED: Becker, Borgeas, Bradford, Caballero, Cortese, Dahle,
Gonzalez, Grove, Limón, Melendez, Newman, Nielsen, Stern, Umberg, Wilk

ASSEMBLY FLOOR: 71-2, 8/8/22 - See last page for vote

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

SOURCE: Author

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

Assembly Amendments establish specified public notice and meeting requirements for projects that exceed \$50 million.

ANALYSIS:

Existing law, under CEQA:

- 1) Requires lead agencies with the principal responsibility for carrying out or approving a proposed discretionary project to prepare a negative declaration (ND), mitigated ND, or environmental impact report (EIR) for this action, unless the project is exempt from CEQA (CEQA includes various statutory exemptions, as well as categorical exemptions in the CEQA Guidelines). (Public Resources Code (PRC) §21000 et seq.).
- 2) Exempts from CEQA, until January 1, 2030, bicycle transportation plans for an urbanized area for restriping of streets and highways, bicycle parking and storage, signal timing to improve street and highway intersection operations, and related signage for bicycles, pedestrians, and vehicles under certain conditions if the lead agency holds noticed public hearings in areas affected by the bicycle transportation plan and files a notice of exemption (NOE) with Office of Planning and Research (OPR). (PRC §21080.20)
- 3) Exempts from CEQA, until January 1, 2023, the following projects (SB 288 projects):
 - a) Pedestrian and bicycle facilities, including new facilities.
 - b) Projects that improve customer information and wayfinding for transit riders, bicyclists, or pedestrians.
 - c) Transit prioritization projects.
 - 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.
 - e) A project for the institution or increase of new bus rapid transit (BRT), bus, or light rail service, including the construction of stations, as specified.
 - f) A project to construct or maintain infrastructure to charge or refuel zero-emission transit buses, as specified.
 - g) The maintenance, repair, relocation, replacement, or removal of any utility infrastructure associated with a project described in a) through f), above.
 - h) A project that consists exclusively of a combination of a) through g), above.
 - i) A project carried out by a city or county to reduce minimum parking requirements.
- 4) Subjects each of the projects described in 3) above, not including a project to reduce minimum parking requirements, to the following requirements:
 - a) Carried out by a public agency and the public agency is the lead agency.

- b) Located in an urbanized area.
 - c) Located on or within an existing public right-of-way.
 - d) Cannot add physical infrastructure that increases new automobile capacity on existing rights-of-way, except as provided.
 - e) Does not require demolition of affordable housing units.
 - f) Lead agency certification that the project will be completed by a skilled and trained workforce, except as provided.
- 5) Requires a project described in 3) that exceeds \$100 million to also:
- a) Be 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) Fully mitigate construction impacts are fully consistent with applicable law.
 - c) Require the lead agency to complete and consider results of a project business case and a racial equity analysis, as specified.
 - d) Require lead agency to hold noticed public hearings, as prescribed.

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 an NOE with OPR.
- 2) Provides that for the SB 288 projects extends the January 1, 2023 sunset until 2030, and makes the following changes to SB 288 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 public 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 public 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 antidisplacement 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.
- 5) Establishes specified public notice and meeting requirements for projects that exceed \$50 million.

Background

CEQA and transportation projects. In October 2017, the Senate Environmental Quality Committee conducted a survey of state agencies regarding CEQA to gain a better understanding of CEQA compliance and litigation. The survey covered a period of five years, Fiscal Years 2011/12 to 2015/16.

The Department of Transportation (DOT) reported the most number of projects with 3,259 projects during the five-year period. Breakdown of the DOT results are as follows:

- Exempt through a categorical exemption: 2,890 projects (88%).
- Exempt through a statutory exemptions: 44 projects (1.3%).

- Subject to an ND/mitigated ND: 263 projects (8%).
- Subject to an EIR: 62 projects (1.9%) .
- Total CEQA challenges filed: 29 (less than 1%) (multiple lawsuits could have been filed against a single project, making the number of projects challenged potentially lower).

SB 288. SB 288 (Wiener, Chapter 200, Statutes of 2020) was enacted as a way to “jumpstart the sustainable transportation projects as an essential part of California’s economic recovery from COVID-19.”

According to OPR, 22 projects have filed an NOE pursuant to SB 288.

Comments

- 1) *Look before you leap.* Often groups will seek a CEQA exemption to expedite construction of a particular type of project and reduce costs. Providing an exemption, however, can overlook the benefits of environmental review: to inform decisionmakers and the public about project impacts and identify ways to avoid or significantly reduce environmental damage. Environmental review includes more than just looking at the impacts on a wetland or a threatened species; it can look at things such as air quality, impacts to neighboring facilities such as hospitals and schools, pressure on underlying infrastructure, and more, and analyzes those impacts in the context of one another.

CEQA is a process. It does not dictate the outcome of a project but rather is a disclosure mechanism that guarantees public involvement and transparency in the project approval process. A CEQA exemption takes away that guarantee. Absent CEQA, a project can be assumed to be “fine as is,” without consideration of community concerns or the potential for improvement through public input. Absent CEQA, public participation can vary jurisdiction to jurisdiction and project to project, or sometimes, not be included at all.

Under this bill, various transit projects would be exempt from CEQA. Public notice and meetings are required for projects that exceed \$50,000,000 and for hydrogen refueling infrastructure.

- 2) *Even “environmental” projects can have environmental impacts.* A transit project, even if considered sustainable and with environmental benefits, could have environmental impacts. However, due to the exemptions provided under this bill, those impacts may not be known or mitigated. For example:

- Construction of a new light rail station may result in adverse noise and air quality impacts for nearby residents, or sensitive uses such as schools, senior centers, and hospitals.
- Construction of a project could cause traffic congestion to a sensitive land-use such as a hospital.

3) *Less than 1% of transportation projects are litigated.* The only tool for enforcing CEQA is civil litigation and eliminating the possibility of litigation means taking away the ability to enforce the law. Without CEQA, a project with significant, unknown environmental impacts can proceed without any mitigation measures. Groups such as environmental justice groups or neighborhood groups will be unable to protect communities from being disproportionately impacted by unmitigated, avoidable, significant environmental impacts such as air pollution.

Some cite CEQA litigation as a problem but do not indicate the result of that litigation. For example, were significant impacts that were not initially evaluated ultimately addressed? What would have been the result if those impacts had not been mitigated (e.g. exposure of people to hazards, congestion, or inadequate public services)? Did the project improve as a result of the CEQA process?

The volume of CEQA litigation is low considering the thousands of projects subject to CEQA each year as well as the overall volume of civil litigation statewide. In its 2021 report, *CEQA: California's Living Environmental Law*, The Housing Workshop found that about 2% of projects were subject to litigation between 2013-2019. These findings are consistent with the CEQA State Agency Survey results for transportation projects which found that over the course of five years, less than 1% of DOT transportation projects were subject to a CEQA challenge.

4) *Almost 90% of transportation projects are exempt from CEQA.* According to the CEQA survey, 88% of DOT projects were categorically exemption (an additional 1.3% were statutorily exempt). SB 288 exemptions made, and the expansion of those exemptions under this bill make, many transit projects that were previously categorically exempt instead statutorily exempt. The main difference between a categorical and statutory exemption is that a categorical exemption can be challenged if certain conditions are present such as, for example, the project being on a hazardous waste site or the project having a significant effect on the environment due to unusual circumstances, among others.

- 5) *Hydrogen might help us meet our climate goals, but it is also volatile.* SB 922 expands the exemption for zero-emission bus infrastructure to include infrastructure for zero-emission trains and ferries. While the deployment of zero-emission technology such as hydrogen is appealing from an emissions perspective, the associated environmental impacts of its supporting infrastructure may be significant. Although hydrogen fuel stations for zero emission buses and passenger cars are located through the state, and safety measures are taken when installing those stations, some have expressed concern over exempting these types of projects from CEQA due to hydrogen's volatility and the potential for significant risk of damage to surrounding communities. SB 922 requires noticed public meetings for hydrogen infrastructure.
- 6) *The limit does not exist.* The exemptions provided by this bill contain no restrictions on size. While not concerning for some projects, such as signal and sign changes, the lack of guardrails or public participation for larger projects can be concerning due to the associated environmental impacts. For example:
- A project that updates or converts an entire light rail system, such as Bay Area Rapid Transit (BART), into new energy-efficient technology could potentially be exempt. While BART certainly provides an important mode of public transportation, providing hundreds of thousands of residents and visitors with an affordable way to move throughout the Bay Area, a project that updates its infrastructure to incorporate the new technology could have significant environmental impacts associated with the construction of that transition.
 - A project that institutes or increases BRT or light rail service, although on existing public right-of-way or highways right-of-way, could potentially be of any length as long as it is within an urbanized area or urbanized cluster.
 - Hydrogen storage tanks used in infrastructure of hydrogen buses, trains, and ferries could be of any size. Similarly, charging stations and maintenance facilities for electric buses and trains could be of any size.

SB 922 requires projects that exceed \$50 million to include public notice and meetings, thereby increasing public participation for many of the larger projects that previously were not required to have public meetings under SB 288.

FISCAL EFFECT: Appropriation: No Fiscal Com.: Yes Local: No

According to the Assembly Appropriations Committee, enactment of this bill would result in negligible state costs.

SUPPORT: (Verified 8/8/22)

21st Century Alliance
Alameda County Transportation Commission
Alameda-Contra Costa Transit District
American Planning Association, California Chapter
Amplify Power
Association of Environmental Professionals
Bay Area Council
California Bicycle Coalition
California Downtown Association
California State Association of Counties
California Transit Association
California YIMBY
CALSTART Inc.
Circulate San Diego
Cities of Alameda, Berkeley, Los Altos, Pleasanton, Redwood City, San Jose,
Thousand Oaks, and Tustin
Climateplan
East Bay for Everyone
East Bay Transit Riders Union
Friends of Caltrain
Greenbelt Alliance
League of California Cities
League of Women Voters of California
Los Angeles County Metropolitan Transportation Authority
Los Feliz Neighborhood Council
Marin County Bicycle Coalition
Mayor Eric Garcetti, City of Los Angeles
Mayor London Breed, City & County of San Francisco
Metropolitan Transportation Commission
Midpeninsula Regional Open Space District
Monterey-Salinas Transit
Move LA, a Project of Community Partners
North Bay Leadership Council
North Westwood Neighborhood Council
Peninsula Corridor Joint Powers Board
Planning and Conservation League
Rails-to-trails Conservancy
Sacramento Area Council of Governments
Safe Routes Partnership

Safe Routes to School National Partnership
 San Bernardino Associated Governments
 San Diego Metropolitan Transit System
 San Diego Regional Chamber of Commerce
 San Francisco Bay Area Water Emergency Transportation Authority
 San Francisco Municipal Transportation Agency
 San Joaquin Joint Powers Authority
 San Joaquin Regional Rail Commission
 San Joaquin Regional Transit District
 Seamless Bay Area
 Silicon Valley Leadership Group
 Southern California Regional Rail Authority
 SPUR
 Sunline Transit Agency
 Transform
 Valley Industry and Commerce Association
 Walk San Francisco

OPPOSITION: (Verified 8/8/22)

None received

ARGUMENTS IN SUPPORT: According to the California Transit Association, one of the co-sponsors of this bill, "...SB 288 aims to protect development of clean transportation projects that will reduce greenhouse gas emissions by bringing online more public transit and active transportation projects sooner. These clean transportation projects include developing new bus rapid transit projects, expansion of bus or light-rail services, transit prioritization projects (as defined), projects that improve customer information and wayfinding for commuters, projects to construct and maintain infrastructure to charge or refuel zero-emission vehicles, projects to reduce minimum parking requirements, and projects for pedestrian and bicycle facilities."

ASSEMBLY FLOOR: 71-2, 8/8/22

AYES: Aguiar-Curry, Alvarez, Arambula, Bennett, Berman, Bloom, Boerner
 Horvath, Mia Bonta, Carrillo, Cervantes, Chen, Choi, Cooley, Cooper,
 Cunningham, Daly, Davies, Flora, Mike Fong, Fong, Friedman, Gabriel,
 Gallagher, Cristina Garcia, Eduardo Garcia, Gipson, Grayson, Haney, Holden,
 Irwin, Jones-Sawyer, Kalra, Kiley, Lackey, Lee, Levine, Low, Maienschein,
 Mathis, Mayes, McCarty, McKinnor, Medina, Mullin, Muratsuchi, Nazarian,
 Nguyen, O'Donnell, Patterson, Petrie-Norris, Quirk, Quirk-Silva, Ramos, Reyes,

Luz Rivas, Robert Rivas, Blanca Rubio, Salas, Santiago, Seyarto, Smith, Ting, Valladares, Villapudua, Waldron, Ward, Akilah Weber, Wicks, Wilson, Wood, Rendon

NOES: Bauer-Kahan, Stone

NO VOTE RECORDED: Bigelow, Bryan, Calderon, Megan Dahle, Gray, Rodriguez, Voepel

Prepared by: Genevieve M. Wong / E.Q. / (916) 651-4108
8/10/22 14:12:36

**** END ****