

Date of Hearing: August 6, 2020

ASSEMBLY COMMITTEE ON NATURAL RESOURCES
Laura Friedman, Chair
SB 288 (Wiener) – As Amended July 27, 2020

SENATE VOTE: 38-0 (not relevant)

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

SUMMARY: Exempts specified toll lane, transit, bicycle, and pedestrian projects from the California Environmental Quality Act (CEQA).

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) 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, 2021.
 - b) A bicycle lane project in an urbanized area that is consistent with a local bicycle transportation plan, until January 1, 2021.
 - c) 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.
 - d) 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.
 - e) 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.

THIS BILL:

- 1) Exempts the following 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 and facilities that improve reliability and reduce delay, including, but not limited to, signal priority and train control systems or transportation communications networks.
 - d) On highways with existing public transit service or that will be implementing public transit service within three years of the conversion, a project for the designation and conversion of existing general purpose lanes to exclusive lanes for high-occupancy vehicle lanes or high occupancy toll lanes, or for the conversion of high-occupancy vehicle lanes to high occupancy toll lanes.
 - e) 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.
 - f) 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.
 - g) The maintenance, repair, relocation, replacement, or removal of any utility infrastructure associated with a project listed above.
 - h) A project that combines any of the components of a project listed above.
- 2) 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.
- 3) Requires a project exceeding \$100,000,000 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) The lead agency completes and considers the results of a project business case and a racial equity analysis.

- c) The lead agency holds specified public meetings.
- 4) Requires the lead agency to certify that the project will be completed by a skilled and trained workforce, as specified.
- 5) Extends the sunset of the exemption for bicycle transportation plans from 2021 to 2030, and repeals the requirement for the lead agency to prepare an assessment of any traffic and safety impacts of the project and include measures in the bicycle transportation plan to mitigate potential vehicular traffic impacts and bicycle and pedestrian safety impacts.

FISCAL EFFECT: Unknown

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 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. We cannot afford to delay common-sense projects that create jobs, revive local economies, improve transportation, connect communities, improve public health, and reduce greenhouse gas emissions.

3) **Suggested amendments.** The author and the committee may wish to consider the following amendments:

- a) Specify transit prioritization project types that are eligible for exemption – i.e., signal priority and train control systems or transportation communications networks.
- b) Eliminate exemption for conversion of existing lanes to high-occupancy vehicle lanes or high occupancy toll lanes.
- c) Require the lead agency to determine that a project claiming an exemption:
 - i) Is consistent with the applicable general plan and regional transportation plan for which an EIR has been certified.
 - ii) Construction impacts are fully mitigated consistent with applicable law.
- d) Amend the definition of “urbanized area” so that it is consistent with the existing CEQA definition (Section 21071 of the Public Resources Code), rather than the U.S. Census Bureau definition.
- e) Require a notice of exemption to be filed with the Office of Planning and Research, in addition to the county where the project is located.
- f) Sunset the new exemptions on January 1, 2023.

REGISTERED SUPPORT / OPPOSITION:

Support

Alameda-Contra Costa Transit District
City & County of San Francisco Mayor London Breed
City of Oakland
Greenbelt Alliance
Metropolitan Transportation Commission
Napa Valley Transportation Authority
Sacramento Area Council of Governments
San Bernardino Associated Governments

San Diego Regional Chamber of Commerce
Seamless Bay Area
Shasta Living Streets
Silicon Valley Leadership Group
Transbay Coalition
Ventura County Transportation Commission

Opposition

Associated Builders and Contractors - Southern California Chapter (unless amended)
California Environmental Justice Alliance (unless amended)
Center on Race, Poverty & the Environment (unless amended)
Communities for a Better Environment (unless amended)
Physicians for Social Responsibility - Los Angeles (unless amended)
Plumbing-Heating-Cooling Contractors Association of California (unless amended)
Sierra Club California
Sunset-Parkside Education and Action Committee (SPEAK)
Western Electrical Contractors Association (unless amended)

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