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UNFINISHED BUSINESS

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Bill No: SB 288  
Author: Wiener (D), et al.  
Amended: 8/12/20  
Vote: 21

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SENATE ENERGY, U. & C. COMMITTEE: 11-0, 4/10/19  
AYES: Hueso, Moorlach, Chang, Dodd, Hill, McGuire, Rubio, Skinner, Stern,  
Stone, Wiener  
NO VOTE RECORDED: Bradford, Hertzberg

SENATE APPROPRIATIONS COMMITTEE: 4-2, 5/16/19  
AYES: Portantino, Bradford, Hill, Wieckowski  
NOES: Bates, Jones

SENATE FLOOR: 38-0, 5/23/19  
AYES: Allen, Archuleta, Atkins, Bates, Beall, Borgeas, Bradford, Caballero,  
Chang, Dodd, Durazo, Galgiani, Glazer, Grove, Hertzberg, Hill, Hueso,  
Hurtado, Jackson, Jones, Leyva, McGuire, Mitchell, Monning, Moorlach,  
Morrell, Nielsen, Pan, Portantino, Roth, Rubio, Skinner, Stern, Stone, Umberg,  
Wieckowski, Wiener, Wilk

ASSEMBLY FLOOR: 65-3, 8/30/20 - See last page for vote

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

**SOURCE:** Bay Area Council  
San Francisco Planning and Urban Research Association  
Silicon Valley Leadership Group

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**DIGEST:** This bill exempts from the California Environmental Quality Act (CEQA), until 2023, various transit-related projects such as pedestrian and bicycle facilities projects, transit prioritization projects, and projects for the institution or

increase of new bus rapid transit, bus, or light rail service on existing public rights-of-way or existing highway rights-of-way.

*Assembly Amendments* delete the bill's contents, which previously related to the Democratic Party of California, and insert amendments that create various CEQA exemptions for transit-related projects.

### **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, mitigated declaration, or environmental impact report (EIR) for this action, unless the project is exempt from CEQA (Public Resources Code (PRC) §21000 et seq.).
- 2) Exempts from CEQA, until January 1, 2021, 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 (PRC §21080.20).
- 3) Contains other exemptions relating to transit, for example:
  - a) Projects for the institution or increase of passenger or commuter services on rail or highway rights-of-way already in use, including modernization of existing stations and parking facilities (PRC §21080(b)(10)).
  - b) Projects 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 (PRC §21080(b)(11)).
  - c) Facility extensions not to exceed four miles in length which are required for the transfer of passengers from or to exclusive mass transit guideway or busway public transit services (PRC §21080(b)(12)).
  - d) Projects for the development of a regional transportation improvement program, the state transportation improvement program, or a congestion management program (PRC §21080(b)(13)); however construction projects implementing these programs are subject to CEQA.
  - e) Restriping of streets or highways to relieve traffic congestion (PRC §21080.19).

This bill:

- 1) Extends the bicycle transportation plan exemption an additional 9 years, until January 1, 2030, and removes the requirement that a lead agency prepare an assessment of traffic and safety impacts and include measures in the plan to mitigate vehicular traffic impacts and bicycle and pedestrian safety impacts.
- 2) Exempts from CEQA, until January 1, 2023, the following 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, 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) A project to construct or maintain infrastructure to charge or refuel zero-emission transit buses, provided the project meets certain conditions.
  - g) The maintenance, repair, relocation, replacement, or removal of any utility infrastructure associated with a project described in (a) through (f).
  - h) A project that consists exclusively of a combination of (a) through (g).
  - i) A project carried out by a city or county to reduce minimum parking requirements.
- 3) Subjects each of the projects described in (2), except a project described in (i), to the following requirements:
  - a) Be carried out by a public agency and the public agency is the lead agency.
  - b) Be located in an urbanized area.
  - c) Be located on or within an existing public right-of-way.
  - d) Must not 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) The lead agency certifies that the project will be completed by a skilled and trained workforce, except as provided.
- 4) Requires a project exceeding \$100,000,000 to also meet all of the following:

- a) Must 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 project.
  - b) Construction impacts are fully mitigated consistent with applicable law.
  - c) The lead agency completes and considers results of a project business case and a racial equity analysis, as specified.
  - d) The lead agency holds noticed public hearings, as prescribed by the bill.
- 5) Requires the lead agency to file a notice of exemption with the Office of Planning and Research and the county clerk of the county in which the project is located if the lead agency determines the project is not subject to CEQA pursuant to the bill.

## **Background**

- 1) *Overview of CEQA Process.* CEQA provides a process for evaluating the environmental effects of a project, and includes statutory exemptions, as well as categorical exemptions in the CEQA guidelines. If a project is not exempt from CEQA, an initial study is prepared to determine whether a 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 (ND). If the initial study shows that the project may have a significant effect on the environment, the lead agency must prepare an environmental impact report (EIR).
- 2) *CEQA and the National Environmental Protection Act (NEPA).* NEPA is the federal equivalent of CEQA. If the project involves a “major federal action” with significant impacts, an environmental impact statement (EIS) under NEPA may be required. Some transit projects, such as highway improvement projects, are also funded with federal funds and are therefore also subject to NEPA.
- 3) *Categorical exemptions.* In addition to statutory exemptions, CEQA Guidelines include categorical exemptions that apply to some transit projects, including:
  - 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, ... and other alterations such as the addition of bicycle facilities, including but not limited to bicycle parking, bicycle-share facilities and bike lanes, transit improvements such as bus lanes, pedestrian crossings, street trees, and other similar alterations that do not create additional automobile lanes." (Sec. 15301(c), CEQA Guidelines);

- Replacement or reconstruction of existing structures or facilities on the same site and with substantial same purpose and capacity (Sec. 15302, CEQA Guidelines);
- Construction or placement of minor structures accessory to existing commercial, industrial, or institutional facilities, specifically including on-premises signs, small parking lots, and seasonal or temporary use structures in facilities designed for public use (Sec. 15311, CEQA Guidelines);
- 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 (Sec. 15304 (h), CEQA Guidelines).

Unlike statutory exemptions, categorical exemptions are not absolute. A categorical exemption may be denied or challenged if any of the following apply:

- The project results in damage to scenic resources within a highway officially designated as a state scenic highway.
- The project site is on a hazardous waste site.
- The project may cause substantial adverse change in the significance of a historical resource.
- There is a reasonable possibility of significant effect on the environment due to unusual circumstances;
- Significant cumulative impacts from projects of the same type will result; or
- For certain categorical exemptions, the project will have impacts on a uniquely sensitive environment.

4) *CEQA Survey of State Agencies*. In October 2017, the Senate Environmental Quality Committee conducted a survey of state agencies regarding CEQA in order 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. State agencies were asked to provide the following:

- The number of projects of which the agency was the lead agency over the five-year time period, and of these, the number that were:
  - Exempt from CEQA through either a categorical exemption or a statutory exemption.
  - Subject to a ND or mitigated ND.
  - Subject to an EIR.
- Of the projects for which an EIR was prepared, how many were also subject to NEPA.

- The number of CEQA lawsuits filed against them.

According to the results, the Department of Transportation (DOT) reported 3,259 projects during the five year period. Of those 3,259 projects, DOT reported 29 CEQA lawsuits being filed. It is noted that multiple lawsuits could have been filed for a single project. The DOT also reported the following:

- Required an EIR: 62 projects
- Categorical exemptions: 2,890 projects
- Statutory exemptions: 44 projects
- ND/MND: 263 projects

## Comments

- 1) *Purpose of Bill.* According to the author, “SB 288 will jumpstart sustainable transportation projects as an essential part of California’s economic recovery from COVID-19. Now is the time to accelerate common-sense projects that create jobs, revive local economies, improve transportation, connect communities, improve public health, and reduce greenhouse gas emissions. In addition, SB 288 is a no-cost stimulus for the state. Many projects already have local funding. These targeted exemptions can shave project timelines by 6 months to 4 years, putting dollars—and people—to work more quickly. Better certainty and lower costs also make projects more competitive for federal funding. Additionally, investments in bicycle lanes, complete streets and public transit are proven job generators, creating 10-13 jobs per million dollars spent and a 5 to 1 economic return in direct and indirect spending. As cities around the world begin to reopen their economies, many are moving swiftly to invest in sustainable transportation and transit. With SB 288, California can continue its commitment to global leadership and more quickly deliver the safe and affordable transportation that people want and need.”
- 2) *What do we lose when we remove the environment review of CEQA?* 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 considerations such as air quality, impacts to neighboring facilities, pressure on underlying infrastructure, and analyzes those impacts in the context of one another.

Projects considered environmentally beneficial, such as improving bicycle transportation in urbanized areas or new light rail service lines and stations, may also have significant impacts on the environment.

“CEQA operates, not by dictating pro-environmental outcomes, but rather by mandating that ‘decision makers and the public’ study the likely environmental effects of contemplated government actions and thus make fully informed decisions regarding those actions. ... In other words, CEQA does not care what decision is made as long as it is an informed one.” (*Citizens Coalition Los Angeles v. City of Los Angeles* (2018) 26 Cal. App. 5th 561, 577.)

- 3) *Codifying categorical exemptions for many transit-related projects.* According to the CEQA survey, almost 90% of DOT projects were approved as a categorical exemption. This bill would codify many of these types of projects, making them statutory exemptions. As noted above, unlike a categorical exemption, a statutory exemption cannot be denied or challenged for reasons such as cumulative impacts and unusual circumstances.
- 4) *CEQA litigation.* The only tool for enforcing CEQA is civil litigation. So, eliminating the possibility of litigation means taking away the ability for anyone to enforce the law.

Some cite CEQA litigation as a problem but do not indicate the result of that litigation. For example, were significant impacts that were not evaluated in the initial document 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)?

The volume of CEQA litigation is low considering the thousands of projects subject to CEQA each year as well as the volume of civil litigation in general statewide. In its report, *CEQA in the 21<sup>st</sup> Century*, BAE Urban Economics found that less than 1% of projects reviewed under CEQA were subject to litigation. The CEQA State Agency Survey, published by this committee in October 2017, found similar results for DOT projects (see above). And if a project is the subject of litigation, perhaps the cause of action has merit and ensures compliance with the law.

- 5) *Mega projects that have been incorporated into a program EIR.* A program EIR is an EIR prepared for a series of actions that can be characterized as one large project.

A program EIR, however, does not shield a project from subsequent environmental review. Generally, an agency must examine the individual project that is subject to the program EIR and determine whether additional environmental review is required. The agency's determination is based on (a) whether the project is within the overall scope of the program EIR, (b) whether the project will result in environmental effects that were not examined in the program EIR, (c) whether there are changes in the project or in the circumstances that require evaluation of new significant environmental effects, and (d) the availability of new information that was not known and could not have been known when the previous EIR was prepared.

A project that is more than \$100,000,000 and incorporated into a programmatic EIR, but is exempt from CEQA pursuant to this bill, would not be subject to further environmental review if any of the above factors are triggered.

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

According to the Assembly Appropriations Committee, there will be negligible state impact.

**SUPPORT:** (Verified 8/30/20)

Bay Area Council (co-source)  
San Francisco Bay Area Planning and Urban Research Association (co-source)  
Silicon Valley Leadership Group (co-source)  
Alameda-Contra Costa Transit District  
Altamont Corridor Express  
American Planning Association, California Chapter  
Amplify Power, Inc.  
California Bicycle Coalition  
California Downtown Association  
California Hydrogen Coalition  
California Transit Association  
California YIMBY  
CALSTART INC.  
Circulate San Diego  
City of Oakland  
City of San Jose  
City of Santa Monica  
Council of California Goodwill Industries  
East Bay for Everyone  
East Bay Leadership Council



Greater Sacramento Economic Council  
Greenbelt Alliance  
Greenpower Motor Company  
League of Women Voters of California  
Livermore Amador Valley Transit Authority  
Los Angeles Area Chamber of Commerce  
Los Angeles County Metropolitan Transportation Authority  
Marin County Bicycle Coalition  
Mayor Eric Garcetti, City of Los Angeles  
Mayor of City & County of San Francisco London Breed  
Metropolitan Transit System  
Metropolitan Transportation Commission  
Monterey Bay Economic Partnership  
Move LA  
Napa Valley Transportation Authority  
Natural Resources Defense Fund  
North Bay Leadership Council  
Paired Power, INC.  
Peninsula Corridor Joint Powers Board (Caltrain)  
Rails to Trails Conservancy  
REACH  
Regional Economic Association Leaders Coalition  
Sacramento Area Council of Governments  
San Bernardino County Transportation Authority  
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 Gabriel Valley Economic Partnership  
San Joaquin Regional Rail Authority  
San Joaquin Valley Regional Transportation Planning Agencies  
San Mateo County Transit District  
San Mateo County Transportation Authority  
Santa Cruz Area Chamber of Commerce  
Santa Rosa Metro Chamber of Commerce  
Seamless Bay Area  
Silicon Valley Organization  
Solano Transportation Authority  
Southern California Contractors Association  
Southern California Leadership Council

**SPUR**

Sunline Transit Agency  
The Lion Electric Co.  
Transbay Coalition  
Transportation Authority of Marin  
Tranzito  
Tri Valley-San Joaquin Valley Regional Rail Authority  
Tri-Valley Wheels  
Ventura County Transportation Commission

**OPPOSITION:** (Verified 8/30/20)

California Environmental Justice Alliance  
Center on Race, Poverty & the Environment  
City of Rancho Palos Verdes  
Communities for A Better Environment  
Physicians for Social Responsibility - Los Angeles  
People Organizing to Demand Environmental and Economic Rights  
SF Ocean Edge  
Sunset-Parkside Education and Action Committee

**ASSEMBLY FLOOR:** 65-3, 8/30/20

**AYES:** Arambula, Bauer-Kahan, Berman, Bigelow, Bloom, Bonta, Burke, Calderon, Carrillo, Cervantes, Chau, Chen, Chiu, Choi, Chu, Cooley, Cooper, Cunningham, Megan Dahle, Daly, Diep, Flora, Fong, Friedman, Gabriel, Gallagher, Eduardo Garcia, Gipson, Gloria, Gonzalez, Gray, Grayson, Holden, Irwin, Jones-Sawyer, Kalra, Kiley, Lackey, Levine, Low, Maienschein, Mathis, Mayes, McCarty, Medina, Mullin, Nazarian, Obernolte, O'Donnell, Petrie-Norris, Quirk, Quirk-Silva, Ramos, Luz Rivas, Robert Rivas, Rodriguez, Blanca Rubio, Salas, Santiago, Smith, Ting, Waldron, Weber, Wood, Rendon

**NOES:** Brough, Muratsuchi, Mark Stone

**NO VOTE RECORDED:** Aguiar-Curry, Boerner Horvath, Eggman, Frazier, Cristina Garcia, Kamlager, Limón, Patterson, Reyes, Voepel, Wicks

Prepared by: Genevieve M. Wong / E.Q. / (916) 651-4108  
8/31/20 0:45:12

\*\*\*\* **END** \*\*\*\*