

Date of Hearing: April 20, 2022

ASSEMBLY COMMITTEE ON LOCAL GOVERNMENT

Cecilia Aguiar-Curry, Chair

AB 2840 (Reyes) – As Amended March 24, 2022

SUBJECT: Qualifying logistics use projects.

SUMMARY: Prohibits the development of qualifying logistics use projects within 1,000 feet of a sensitive receptor, and requires public agencies to require all other logistics use projects to employ a skilled and trained work force and to dedicate a set percentage of jobs created by the project to local residents. Specifically, **this bill:**

- 1) Prohibits a public agency from approving the development or expansion of any qualifying logistics use within 1,000 feet of sensitive receptors, measured from property line to property line using a straight line.
- 2) Requires public agencies to require a project applicant seeking to develop a qualifying logistics use to develop a written construction careers agreement that specifies both of the following:
 - a) All construction work, repairs and renovations for the qualifying logistics use project will be performed by a skilled and trained workforce, as defined in the Public Contracts Code.
 - b) A set percentage of jobs created by projects will go to local residents.
- 3) Defines the following terms for the purposes of this bill:
 - a) “Development or expansion of any qualifying logistics use” means any of the following:
 - i) The development of any qualifying logistics use.
 - ii) The expansion of any existing qualifying logistics use.
 - iii) The expansion of any existing logistics use, where the logistics use after the expansion would constitute a qualifying logistics use.
 - b) “Public agency” means any state agency, board, or commission, any city, county, or city and county, or any regional agency, public district, redevelopment agency, or other political subdivision.
 - c) “Qualifying logistics use” means any logistics use with 100,000 or more square feet of building space, including, but not limited to, warehouses.
 - d) “Sensitive receptors” means one or more of the following:
 - i) A residence, including, but not limited to, a private home, apartment, condominium unit, group home, dormitory unit, retirement home, or shelter.
 - ii) A school, including, but not limited to, preschool, prekindergarten, or school maintaining kindergarten or any of grades 1 to 12, inclusive.

- iii) A daycare facility, including, but not limited to, in-home daycare.
 - iv) A health care facility, including, but not limited to, any hospital, medical clinic, community clinic, medical center, nursing home, long-term care facility, hospices, convalescent facility, or similar live-in housing.
 - v) A community center.
 - vi) An established community place of worship.
 - vii) An incarceration facility, including, but not limited to, a prison or jail.
 - viii) A public playground, public recreation field, or public recreation center.
- 4) Provides that no reimbursement is required by this bill, pursuant to Section 6 of Article XIII B of the California Constitution, because a local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this bill.

EXISTING LAW:

- 1) Allows a city or a county to “make and enforce within its limits, all local, police, sanitary and other ordinances and regulations not in conflict with general laws.” It is from this fundamental power (commonly called the police power) that cities and counties derive their authority to regulate behavior to preserve the health, safety, and welfare of the public, including land use authority.
- 2) Requires, pursuant to Planning and Zoning Law, every city and county to adopt a general plan that sets out planned uses for all of the area covered by the plan, and requires the general plan to include seven mandatory elements, including a housing element.
- 3) Establishes Housing Element law which requires cities and counties to prepare a housing element that includes, but is not limited to the following:
 - b) An assessment of housing needs and an inventory of resources and constraints relevant to meeting those needs.
 - c) A statement of the community’s goals, quantified objectives, and policies relative to the maintenance, preservation, improvement, and development of housing.
 - d) A program that sets forth a schedule of actions during the planning period that the local government is undertaking or intends to undertake to implement the policies and achieve the goals and objectives of the housing element. This program must, among other criteria:
 - i) Promote housing throughout the community for all persons regardless of race, religion, sex, marital status, ancestry, national origin, color, familial status, or disability, as specified.
 - ii) Affirmatively further fair housing, and include an assessment of fair housing in the jurisdiction that must include all of the following components:

- (1) A summary of fair housing issues in the jurisdiction and an assessment of the jurisdiction's fair housing enforcement and fair housing outreach capacity.
 - (2) An analysis of available federal, state, and local data and knowledge to identify integration and segregation patterns and trends, racially or ethnically concentrated areas of poverty, disparities in access to opportunity, and disproportionate housing needs within the jurisdiction, including displacement risk.
 - (3) An assessment of the contributing factors for the fair housing issues.
 - (4) An identification of the jurisdiction's fair housing priorities and goals, giving highest priority to those factors that limit or deny fair housing choice or access to opportunity, or negatively impact fair housing or civil rights compliance, and identifying the metrics and milestones for determining what fair housing results will be achieved.
 - (5) Strategies and actions to implement those priorities and goals.
- 4) Defines "affirmatively furthering fair housing" to mean taking meaningful actions, in addition to combating discrimination, that overcome patterns of segregation and foster inclusive communities free from barriers that restrict access to opportunity based on protected characteristics. Specifically, affirmatively furthering fair housing means taking meaningful actions that, taken together, address significant disparities in housing needs and in access to opportunity, replacing segregated living patterns with truly integrated and balanced living patterns, transforming racially and ethnically concentrated areas of poverty into areas of opportunity, and fostering and maintaining compliance with civil rights and fair housing laws. The duty to affirmatively further fair housing extends to all of a public agency's activities and programs relating to housing and community development.
 - 5) Requires that public agencies, as specified, must administer its programs and activities relating to housing and community development in a manner to affirmatively further fair housing, and take no action that is materially inconsistent with its obligation to affirmatively further fair housing.
 - 6) Requires, pursuant to the California Environmental Quality Act (CEQA) lead agencies with the principal responsibility for carrying out or approving a proposed project to prepare a negative declaration, mitigated negative declaration, or an environmental impact report (EIR) for this action, unless the project is exempt from CEQA.

FISCAL EFFECT: This bill is keyed fiscal and contains a state-mandated local program.

COMMENTS:

- 1) **Author's Statement.** According to the author, "It is the State's role to ensure that communities are safe and healthy for the residents of California. We have to protect communities that are impacted by warehouses; as well as protect the workers that build the warehouses and the workers who will work inside the facilities. Warehouses are being built near our schools and communities and our families suffer from the emissions of diesel truck traffic nearly every day, all day. We must find a balance between the logistics industry and the protection of residents health. I believe it is time for the state to establish reasonable

standards to protect communities while at the same time allow commerce to flourish. This bill simply requires a buffer zone between warehouse facilities and sensitive receptors while containing labor protections.”

- 2) **Bill Summary.** This bill requires new and expanded warehouse and logistics facilities that are larger than 100,000 square feet to dedicate a set percentage of jobs created by the facility to local residents and to employ a skilled and trained workforce for the construction, repair and renovation of new and expanded projects. This bill additionally will prohibit the development or expansion of warehouses and other logistics facilities within 1,000 feet of sensitive receptors such as schools, homes, hospitals, daycares, places of worship, and other sensitive activities.
- 3) **CEQA and Local Approval.** CEQA requires the state and local governments to study and mitigate, to the extent feasible, the environmental impacts of proposed projects, providing a key protection for the environment and residents of California. Under CEQA, a local agency carrying out a discretionary project must first determine if the project may have a significant effect on the environment. Projects can include jurisdiction-wide efforts such as the update of a general plan, approval of jurisdiction-wide contracts (e.g., waste hauling contracts or water service), and zoning ordinance amendments. A project can also include individual development actions such as the approval of warehouses, stadiums, gas storage facilities, and other types of developments. In the case of any discretionary project, if a local agency finds that the potential for significant environmental impacts exists, CEQA requires the agency to prepare and certify the completion of an environmental impact report (EIR).

CEQA places the burden on the approving agency to affirmatively show that it has considered feasible mitigation and alternatives that can lessen or avoid identified impacts through a statement of findings for each identified significant impact. The CEQA Guidelines provide direction on the content of the statement of the findings, and states that one or more of the following findings must be identified for each impact:

- a) Changes or alterations have been required in, or incorporated into, the project which avoid or substantially lessen the significant environmental effect as identified in the final EIR.
- b) Such changes or alterations are within the responsibility and jurisdiction of another public agency and not the agency making the finding. Such changes have been adopted by such other agency or can and should be adopted by such other agency.
- c) Specific economic, legal, social, technological, or other considerations, including provision of employment opportunities for highly trained workers, make infeasible the mitigation measures or project alternatives identified in the final EIR.

A lead agency may approve a project with unavoidable (unmitigated) adverse environmental impacts. When doing so, CEQA requires the agency to make a statement in the record of its views on the ultimate balancing of the merits of approving the project despite the environmental impacts in a “statement of overriding considerations.”

- 4) **Logistics Development in California.** The proliferation of e-commerce and consumer expectations for rapid shipping contributed to a boom in warehouse development in California. The Environmental Justice Bureau at the California Attorney General’s Office notes that in the Inland Empire alone, 150 million square feet of new industrial space was developed from 2009-

2019, and that 21 of the largest 100 logistics leases signed in 2019 were located in the Inland Empire.

Approval of discretionary projects such as the warehouse facilities noted above is subject to CEQA and the lead agency must prepare an EIR if the project may have potentially significant environmental impacts. However, CEQA authorizes lead agencies to prepare a statement of overriding considerations and approve a project with unmitigated or unavoidable impacts. In practice, cities and counties may exercise this authority to approve projects that may significantly impact local residents. For example, the City of Perris prepared a Statement of Facts and Findings and Overriding Considerations for a proposed logistics development involving more than 1.7 million square feet of warehouse space. The City found in the Final EIR that the proposed project, located 300 feet from existing residents, would create long-term operational emission and cumulative criteria pollutants that constituted significant and unavoidable impacts. However, The City found such unmitigated effects were acceptable in view of specified overriding considerations. Among the overriding considerations cited were the creation of 685 new jobs and an estimated increase of \$215,000 in additional city tax revenue.

- 5) **Affirmatively Further Fair Housing.** Assembly Bill 686 (Santiago), Chapter 958, Statutes of 2018), establishes a state mandate that expands the duty of all California’s public agencies to affirmatively further fair housing. With the passage of AB 686, state and local public agencies are required to affirmatively further fair housing through deliberate action to explicitly address, combat, and relieve disparities resulting from past and current patterns of segregation to foster more inclusive communities. The law specifies that public agencies have a “mandatory duty” to “take no action that is materially inconsistent with its obligation to affirmatively further fair housing.” According to HCD, materially inconsistent actions include those that have a disparate impact on protected classes (e.g., zoning or siting toxic or polluting land uses or projects near a disadvantaged community).

The Attorney General’s office recently exercised enforcement of AB 686 when it sent a letter to the County of Fresno to express concerns with Fresno County’s draft General Plan. The Attorney General’s letter found that (among other potential violations) the proposed plan likely violates housing discrimination laws, including the mandatory duty to affirmatively further fair housing. In support of this finding, the Attorney General noted the County’s draft General Plan targets two disproportionately Hispanic communities that rank among the most polluted statewide for new industrial development, bringing additional pollution to these communities. Two satellite images of the affected communities found in the appendix to the Attorney General’s letter demonstrate that the subject communities are surrounded by industrial uses.¹

- 6) **Advanced Clean Fleets.** In March of this year, the California Air Resources Board (CARB) released a summary of its draft Advanced Clean Fleets (ACF) regulation. The proposed regulatory concepts CARB is exploring include requirements that all new heavy-duty drayage trucks sold in 2024 will be zero-emission trucks and that by 2035 all operating drayage trucks will be zero-emission. These measures are intended to significantly reduce emissions in communities located near seaports, railyards, warehouses, and distribution centers, which are disproportionately affected by high truck traffic from medium and heavy-duty trucks. While the proposed regulations could significantly reduce one of the greatest emissions sources associated with logistics centers, the pending regulations are subject to change throughout the rulemaking process.

¹ <https://oag.ca.gov/system/files/attachments/press-docs/Final%20Fresno%20County%20GP%20Letter.pdf>

- 7) **Indirect Intervention.** The laws, policies, and proposals noted above may be implemented or enforced in a manner that indirectly mitigates the potential impacts new warehouse development projects can impose on public health and safety, and the environment. CEQA requires local agencies to consider alternatives and identify mitigation measures or overriding considerations that state that the impacts are balanced by economic and other considerations. State law related to affirmatively furthering fair housing imposes a mandatory duty on local agencies to implement policies that affirmatively further fair housing, and to not implement policies that adversely impact that duty. In practice, the Attorney General may exercise his discretion to enforce this law, and did so in Fresno by citing fair housing violations in the County's General Plan. Finally, CARB's proposed regulation, if adopted, would reduce diesel emissions, benefiting communities located close to major sources of truck traffic and truck idling, such as warehouses. All of these policies constitute general equity and environmental protections measures that may, with varying degrees of success, mitigate the potential impacts associated with warehouse development. None of the laws, policies or proposals noted above directly focus on impacts associated with warehouse developments.
- 8) **Best Practices and Mitigation Measures.** Under Attorney General Xavier Becerra, the Office of the Attorney General adopted a guidance memo titled *Warehouse Projects: Best Practices and Mitigation Measures to Comply with the California Environmental Quality Act*. The memo identifies best practices for avoiding and mitigating impacts associated with warehouse development. The memo relies heavily on research prepared by CARB. Among the recommendations proposed in the memo related to the siting and design of warehouses the memo notes that a best practice includes "Per CARB guidance, siting warehouse facilities so that their property lines are at least 1,000 feet from the property lines of the nearest sensitive receptors." The underlying data the memo cites in support of this recommendation found an 80 percent drop off in the concentration of diesel particulate matter emissions from distribution centers at approximately 1,000 feet. CARB and the South Coast Air Quality Management District analyses indicate that providing a separation of 1,000 feet would substantially reduce diesel particulate matter concentrations and public exposure downwind of a distribution center.
- 9) **Direct Intervention.** In contrast to the policies above that address environmental and equity concerns generally, this bill seeks to codify measures that are specifically focused on warehouse developments. This bill would enact a prohibition on locating warehouses within 1,000 feet of sensitive receptors as recommended by the Attorney General's office. This type of direct facility regulation is typically applied by local agencies through their local land use authority; however, the state also develops setback requirements for certain activities and facilities as a public health measure. For example, the California Department of Conservation is currently considering regulations to prohibit the approval of new oil wells within a setback exclusion zone of 3,200 feet of sensitive receptors. The proposed regulations include a definition of sensitive receptor that largely mirrors the language proposed in this bill.
- 10) **Policy Considerations.** The Committee may wish to consider the following: as drafted, the bill imposes a rigid standard that supersedes local land use authority by imposing a statewide setback requirement for one category of facility. The potential impacts of this measure are difficult to quantify as it is unclear how many parcels zoned for logistics use are located at least 1,000 feet from sensitive receptors. A setback is one measure a local agency may impose to mitigate environmental impacts; however, this is not the only measure that could mitigate impacts, and future measures could be equally or more effective. As drafted, the bill

is inflexible and does not allow for innovation that could achieve an equally effective reduction in impacts to public health and safety.

Measurable reductions in impacts to public health and safety are achieved when logistics facilities are located more than 1,000 feet from sensitive receptors. However, other measures working in concert with a more modest setback could conceivably achieve comparable reductions. As noted above the establishment of zero-emission drayage fleets could substantially reduce air quality impacts associated with these facilities. This bill establishes 1,000 feet as the only standard that is acceptable for the approval of new logistics facilities.

The Committee may wish to consider a technology/methodology neutral approach that establishes the public health protections achieved through a 1,000-foot setback as the default standard, but allows the application of alternative measures. While the standard imposed is rigid, the requirement can be agnostic as to the method used to achieve the standard.

11) **Committee Amendments.** To address the concerns noted above, the Committee may wish to consider the following amendments:

- a) Delete the prohibition on the development of new and expanded qualifying logistics uses within 1,000 feet of sensitive receptors.
- b) Prohibit local agencies from approving new and expanded qualifying logistics uses that are adjacent to sensitive receptors unless the local agency does one of the following:
 - i) Impose a minimum setback on the qualifying logistics use that conforms to the best practices and mitigation measure guidance for warehouse projects prepared by the California Attorney General.
 - ii) Impose alternative measures on the qualifying logistics use that will reduce the project's impacts to public health and safety in a manner comparable to imposing the setback recommended in the Attorney General's guidance. Specify that a local agency must make written findings based upon substantial evidence in the record that the alternative measures imposed by the local agency on the project will comparably reduce the project's impacts to public health and safety compared to the setback.
- c) Delete "public agency" as defined and specify that the bill applies to a "local agency," which means a city, including a charter city, county, or a city and county.

12) **Related Legislation.** AB 2798 (V. Fong) Applies aspects of the Housing Crisis Act (HCA) to freight development projects and the underlying zoning for these projects. Streamlines the approval of freight development projects and requires concurrent approval of temporary freight use projects and freight development projects on land zoned for industrial and agricultural development. This bill is pending in this committee.

13) **Previous Legislation.** AB 1547 (Reyes) of 2021, among other provisions, would have prohibited public agencies from siting warehouse developments within 3,000 yards of a sensitive land use. This bill was held in the Assembly Natural Resources Committee.

14) **Arguments in Support.** The Western Center on Law and Poverty writes in support, "Improperly-sited logistics facilities give rise to a range of serious adverse impacts on

environmental quality, public health, and housing in the neighborhoods surrounding the facilities. A single logistics facility may attract thousands of truck and car trips per day, exposing nearby sensitive uses to hazardous diesel fuel and non-exhaust emissions and roadway dust which can contribute to many adverse health outcomes including cancer, asthma, cardiovascular disease, and premature mortality. Heavy-duty truck trips passing by sensitive uses twenty-four hours a day also generate significant noise and vibration within nearby structures, which can make hearing and sleep difficult, and undermine pedestrian and bicyclist safety. Other impacts of improperly-sited logistics facilities include but are not limited to nighttime light impacts from building and parking lot illumination which interfere with sleep and heat emission from the sprawling concrete warehouse structures which result in increased ambient temperatures and higher energy costs to cool nearby structures. While CEQA plays a critical role in mitigating the impacts of logistics facilities, it is clear that no amount of mitigation can overcome the impacts of large logistics centers when they are sited next to sensitive use and land use regulations to require a minimal distance between new facilities and sensitive uses is necessary.”

15) **Arguments in Opposition.** The California Chamber of Commerce writes in opposition, “AB 2840 is an extreme policy that casts aside CEQA, one of the most protective environmental laws in the nation, and all other environmental laws and regulations in California that ensure responsible development, in favor of a wholesale development ban. Existing laws and regulations already require qualifying logistics use projects and warehouses to comply with a plethora of applicable local, state and federal environmental laws, such as the Porter-Cologne Water Quality Control Act, the Clean Water Act, the Clean Air Act, CARB and Regional AQMD rules and regulations, uniform building codes, fire codes, and of course CEQA, which ensures any potential impacts like increased traffic, noise or air impacts are fully disclosed and mitigated.

“In other words, existing law already forces new projects or the expansion of an existing facility to undergo the most rigorous environmental analysis and mitigation measures in the country.”

Double-Referral. This bill is double-referred to the Assembly Housing and Community Development Committee.

REGISTERED SUPPORT / OPPOSITION:

Support

California Environmental Voters
Catholic Charities, Diocese of Stockton
Center for Community Action & Environmental Justice
Central California Asthma Collaborative
Central California Environmental Justice Network
Disability Rights California
Leadership Counsel for Justice & Accountability
Sierra Club California
Western Center on Law & Poverty

Opposition

African American Farmers of California
Agricultural Council of California
American Chemistry Council
Associated General Contractors of California
Brea Chamber of Commerce
Building Owners and Managers Association of California
California Beer and Beverage Distributors
California Builders Alliance
California Building Industry Association
California Building Industry Association (CBIA)
California Business Properties Association
California Business Roundtable
California Chamber of Commerce
California Cotton Ginners & Growers Association
California Farm Bureau
California Fresh Fruit Association
California Grocers Association
California League of Food Producers
California Manufacturers & Technology Association
California Railroads
California Retailers Association
California Short Line Railroad Association
California State Council of Laborers
California Trucking Association
California Walnut Commission
Carlsbad Chamber of Commerce
Carson Dominguez Employer Alliance
Corona Chamber of Commerce
Ema Truck & Engine Manufacturers Association
Fresno Chamber of Commerce
Futureports
Glendora Chamber of Commerce
Greater High Desert Chamber of Commerce
Greater Riverside Chambers of Commerce
Grower-shipper Association of Central California
Inland Empire Chamber Legislative Alliance
Inland Empire Economic Partnership (IEEP)
Innovating Commerce Serving Communities
International Union of Operating Engineers, Cal-nevada Conference
LA Canada Flintridge Chamber of Commerce
Laguna Niguel Chamber of Commerce
Lodi Chamber of Commerce
Long Beach Area Chamber of Commerce
Naiop of California
Newport Beach Chamber of Commerce
Nisei Farmers League
Orange County Business Council

Sacramento Regional Builders Exchange
San Mateo Area Chamber of Commerce
Santa Barbara South Coast Chamber of Commerce
Santa Clarita Valley Chamber of Commerce
Southern California Contractors Association
Specialty Equipment Market Association (SEMA)
State Building and Construction Trades Council of Ca
Torrance Area Chamber of Commerce
Tulare Chamber of Commerce
United Contractors (UCON)
Ventura Chamber of Commerce
West Ventura County Business Alliance
Western Agricultural Processors Association
Western Growers Association
Western Independent Refiners Association
Western Plant Health Association
Western Propane Gas Association
Western Wood Preservers Institute

Analysis Prepared by: Hank Brady / L. GOV. / (916) 319-3958