

Date of Hearing: May 11, 2022

ASSEMBLY COMMITTEE ON APPROPRIATIONS

Chris Holden, Chair

AB 2840 (Reyes) – As Amended April 21, 2022

Policy Committee: Local Government

Vote: 5 - 1

Urgency: No

State Mandated Local Program: Yes

Reimbursable: No

**SUMMARY:**

This bill prohibits the development of a qualifying logistics use (warehouse) adjacent to a sensitive receptor (residence, school, daycare, hospital, etc.). This bill further requires a developer of a logistics use project to use 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 local agency from approving the development or expansion of any qualifying logistics use adjacent to a sensitive receptor unless the local agency does either of the following:
  - a) Imposes a minimum setback on the project of 1,000 feet.
  - b) Imposes alternative measures on the project that will reduce the project's impacts to public health and safety in a manner comparable to imposing the minimum setback of 1,000 feet. A local agency that chooses this option must make written findings based upon substantial evidence in the record that the alternative measures will comparably reduce the project's impacts to public health and safety compared to the setback.
- 2) Requires a local agency to require a project applicant to develop a written construction careers agreement that specifies both of the following:
  - a) All construction work, repairs and renovations for the 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 project will go to local residents.
- 3) Defines "qualifying logistics use" as any logistics use with 100,000 or more square feet of building space, including, but not limited to, warehouses.
- 4) Defines "sensitive receptors" as a residence, school, daycare facility, healthcare facility, community center, place of worship, incarceration facility or public playground, recreation field or recreation center.
- 5) Declares this bill addresses a matter of statewide concern rather than a municipal affair and therefore applies to all cities, including charter cities.

**FISCAL EFFECT:**

No state costs. Local costs resulting from this bill are not reimbursable by the state because local agencies have general authority to charge and adjust planning and permitting fees to cover their administrative expenses associated with new planning mandates.

#### COMMENTS:

- 1) **Purpose.** This bill seeks to better protect the health and safety of residents and workers impacted by warehouses. According to the author,

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) **Background.** California has experienced a boom in warehouse development in the last decade, likely due, in part, to the rise of e-commerce and consumer expectations for rapid shipping. The Environmental Justice Bureau at the California Attorney General's Office observes, in the Inland Empire alone, 150 million square feet of new industrial space was developed from 2009 to 2019, and 21 of the largest 100 logistics leases signed in 2019, were located in the Inland Empire.

Approval of discretionary projects such as warehouse facilities is subject to the California Environmental Quality Act (CEQA). Under CEQA, the lead agency must prepare an environmental impact report (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 can use this authority to approve projects that significantly impact local residents.

This bill prohibits a local agency from locating a warehouse adjacent to a home, school, daycare or other sensitive receptor. This type of direct facility regulation is typically done by a local agency through its 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.

- 3) **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.

4) **Arguments in Opposition.** The California Chamber of Commerce writes in opposition:

[This bill] 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.

- 5) **Related Legislation.** AB 2798 (V. Fong), of this legislative session, prohibits a local agency from denying a permit for a short-term freight transportation use submitted by a developer, if the proposed use is in conformity with applicable plans, programs and ordinances, solely because the developer has a pending development application, or is concurrently submitting a development application, for a freight transportation project on that land. AB 2798 is pending in this committee.
- 6) **Previous Legislation.** AB 1547 (Reyes), of this legislative session, among other provisions, would have prohibited public agencies from siting warehouse developments within 3,000 yards of a sensitive land use. This bill was set, but never heard, in the Assembly Natural Resources Committee.

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