

## ASSEMBLY THIRD READING

AB 2840 (Reyes)

As Amended April 21, 2022

Majority vote

**SUMMARY**

Requires local agencies to impose measures that reduce the impacts to public health and safety associated with a qualifying logistics use project, and to require those projects to meet specified work force requirements.

**Major Provisions**

- 1) Requires a local agency that is approving the development or expansion of any qualifying logistics use project that is adjacent to a sensitive receptor to impose one of the following on the development:
  - a) A setback of within 1,000 feet.
  - b) Alternative mitigation measures that will reduce the project's impacts to public health and safety in a manner comparable to imposing a setback of 1,000 feet. A local agency that uses this option must make written findings that the alternative measures provide protection comparable to the setback requirement.
- 2) Requires a local agencies to require project applicants 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:
  - a) "Qualifying logistics use" means any logistics use with 100,000 or more square feet of building space, including, but not limited to, warehouses.
  - b) "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.

## COMMENTS

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

The California Environmental Quality Act (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. 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. 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."

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.

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 The California Air Resources Board (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% 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.

### **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."

### **Arguments in Support**

The California Nurses Association writes in support, "Warehousing activities, including the transport and storage of goods, results in large amounts of pollution, specifically Nitrous Oxide (NOx) and Carbon Dioxide emissions. In the south coast region, the goods movement is associated with 52% of all NOx emissions, and the energy consumption needed to operate a warehouse result in a 'considerable amount of CO2 emissions.' These pollution-producing warehouses are disproportionately located in low-income and minority neighborhoods; where the proximity of diesel trucks and warehousing activities threatens the health, safety, and overall quality of life to the communities living and working near busy roads and logistics facilities."

### **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."

## **FISCAL COMMENTS**

According to the Assembly Appropriations Committee, "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."

## **VOTES**

### **ASM LOCAL GOVERNMENT: 5-1-2**

**YES:** Aguiar-Curry, Bloom, Boerner Horvath, Luz Rivas, Robert Rivas

**NO:** Lackey

**ABS, ABST OR NV:** Ramos, Voepel

**ASM APPROPRIATIONS: 12-4-0**

**YES:** Holden, Bryan, Calderon, Carrillo, Mike Fong, Gabriel, Eduardo Garcia, Jones-Sawyer, Quirk, Robert Rivas, Akilah Weber, Wilson

**NO:** Bigelow, Megan Dahle, Davies, Fong

**UPDATED**

VERSION: April 21, 2022

CONSULTANT: Hank Brady / L. GOV. / (916) 319-3958

FN: 0002379