
SENATE COMMITTEE ON GOVERNANCE AND FINANCE

Senator Anna M. Caballero, Chair

2021 - 2022 Regular

Bill No: AB 2840

Author: Reyes

Version: 6/13/22

Consultant: Favorini-Csorba

Hearing Date: 6/29/22

Tax Levy: No

Fiscal: Yes

QUALIFYING LOGISTICS USE PROJECTS

Requires cities and counties within the Counties of Riverside and San Bernardino to impose setbacks of 1,000 feet from residences, schools, and other “sensitive receptors,” or equivalently protective alternative measures, as specified.

Background

Land use planning. The California Constitution allows cities and counties 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.

Planning and Zoning Law. State law provides additional powers and duties for cities and counties regarding land use. The Planning and Zoning Law requires every county and city to adopt a general plan that sets out planned uses for all of the area covered by the plan. A general plan must include specified mandatory “elements,” including a land use element that specifies that general types and intensities of use that are allowed in different areas covered by the general plan. Cities’ and counties’ major land use decisions—including most zoning ordinances and other aspects of development permitting—must be consistent with their general plans. The Planning and Zoning Law also establishes a planning agency in each city and county, which may be a separate planning commission, administrative body, or the legislative body of the city or county itself. Cities and counties must provide a path to appeal a decision to the planning commission and/or the city council or county board of supervisors. Local governments have broad authority to define the specific approval processes needed to satisfy these considerations. Some housing projects can be permitted by city or county planning staff “ministerially” or without further approval from elected officials, but most large housing projects require “discretionary” approvals from local governments, such as a conditional use permit or a change in zoning laws. This process requires hearings by the local planning commission and public notice and may require additional approvals.

Local governments use their police power to enact zoning ordinances that shape the physical form of development and the allowable activities in an area. These ordinances can also include conditions on development to address aesthetics, community impacts, or other particular site-specific considerations.

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. 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. 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.”

Warehouses and other logistics uses. 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.

Supply chain challenges. According to a recent publication by the Legislative Analyst’s Office, “In order for businesses to produce and deliver goods and services to the consumer, goods must be transported from one place to another. Businesses often use ports, freight rail, and commercial trucks to move goods across international and state lines. For example, about 40 percent of U.S. imports and 25 percent of U.S. exports pass through the Ports of Los Angeles and Long Beach, which are both situated on San Pedro Bay.... In recent months, ports have experienced higher than normal levels of congestion. This is in part due to greater consumer demand for goods, which has resulted in a record volume of cargo at many ports. For example, in 2021, the San Pedro Bay ports processed 14.3 percent more cargo than in 2018. As a result, there is a growing backlog of ships waiting to offload and pick up goods at ports... Across all goods and services purchased by U.S. consumers, prices have risen by 7 percent over the past year, a considerably faster rate than recent history. Rising consumer prices primarily arise from a surge in the amount of goods consumers want to buy met with businesses struggling to produce and deliver those goods. One result of this dynamic is a dramatic increase in ocean freight costs, which businesses may pass on to consumers through higher prices. Port congestion appears to be a key driver of rising freight costs. Port congestion also may reduce the availability of some goods to retailers, which could increase the prices of some consumer goods.”

Warehouse impacts. Numerous studies have correlated the presence of warehouses with negative health effects on nearby communities, due primarily to the truck traffic associated with the warehouses. Under Attorney General Xavier Becerra, the Office of the Attorney General (OAG) adopted a guidance memo titled *Warehouse Projects: Best Practices and Mitigation*

Measures to Comply with the California Environmental Quality Act. The memo notes: “among other pollutants, diesel trucks visiting warehouses emit nitrogen oxide (NO_x)—a primary precursor to smog formation and a significant factor in the development of respiratory problems like asthma, bronchitis, and lung irritation—and diesel particulate matter (a subset of fine particulate matter that is smaller than 2.5 micrometers)—a contributor to cancer, heart disease, respiratory illnesses, and premature death. Trucks and on-site loading activities can also be loud, bringing disruptive noise levels during 24/7 operation that can cause hearing damage after prolonged exposure.”

A staff report from the South Coast Air Quality Management District (South Coast AQMD) analyzed the impacts of warehouses at different distances and found that:

- Communities within ½ mile of large warehouses had scored more poorly on measures of environmental health than the basin as a whole;
- These communities have significantly higher proportions of Hispanic residents than the basin as a whole;
- Risks posed from particulate matter are also higher for populations located within ½ mile of warehousing facilities; and
- Measures of environmental health improve the further communities are from warehouses.

Warehouse mitigation measures. The OAG’s 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) in 2005. 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.” Sensitive receptors are areas that children, the elderly, and other vulnerable populations congregate, such as residences or schools. 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, and associated cancer risk, at approximately 1,000 feet. CARB and South Coast AQMD analyses indicate that providing a separation of 1,000 feet substantially reduces diesel particulate matter concentrations and public exposure downwind of a distribution center.

The Attorney General also intervened in a recent warehouse development, reaching a settlement with the City of Fontana in April 2022 resolving allegations that the city violated CEQA by approving a 205,000 square foot warehouse project that borders a public high school and is located in a low-income neighborhood. As part of the settlement, the warehouse developer must implement mitigation measures and the city adopted an ordinance that requires new warehouse developments of greater than 400,000 square feet to be powered by solar energy, use zero emission (ZE) equipment on site, and set loading docks back by at least 300 feet from sensitive receptors, such as residences or schools.

Warehouse Actions and Investments to Reduce Emissions (WAIRE) program. On May 7, 2021, the South Coast AQMD approved Rule 2305 to establish the WAIRE program “to reduce nitrogen oxide and diesel emissions associated with warehouses, help meet federal standards and improve public health, especially in communities located near warehouses in the South Coast AQMD.” The WAIRE program requires warehouse operators to annually earn a specified

number of points, based on the number and type of truck trips to and from a warehouse, to offset the impacts of those trips. To earn points, warehouse operators must deploy a collection of mitigation measures picked from a menu of options pay a mitigation fee that will fund net-zero emission and zero-emission truck incentive programs. Mitigation measures can include:

- Acquiring zero emissions (ZE) or net-zero emissions (NZE) trucks, or receiving visits from those trucks;
- Installing or using onsite ZE charging or fueling infrastructure;
- Installation or use of onsite solar panels; and
- Installing or replacing high-efficiency filters at nearby sensitive receptors.

The WAIRE program phases in compliance requirements, such that currently, only warehouses of over 250,000 square feet are required to comply. Warehouses of 150,000 to 250,000 square feet must comply by December 31, 2023, and warehouses of 100,000 to 150,000 square feet must comply by December 31, 2024.

The author wants to require local governments to adopt setbacks or other measures that mitigate the impacts of new logistics uses.

Proposed Law

Assembly Bill 2840 prohibits the County of Riverside, the County of San Bernardino, and cities within those counties from approving a new or expanded qualifying logistics use that is adjacent to a sensitive receptor unless the city or county imposes a setback of at least 1,000 feet on the use, or alternative measures that will reduce the project's impacts to public health and safety in a manner comparable to imposing the 1,000 foot setback. A city or county that chooses to impose alternative measures must make written findings that the alternative measures will comparably reduce the project's impacts to public health and safety. The city or county must also require the project to use a skilled and trained workforce for construction and to fill some percentage of the jobs produced by the project with local residents.

The bill applies to any logistics use with 100,000 or more square feet of building space, including new facilities that exceed that size, expansions of facilities that already exceed that size, or expansions that would increase the size of a logistics use to 100,000 square feet or greater.

AB 2840 defines "sensitive receptor" to mean a residence, school, daycare facility, healthcare facility, community center, place of worship, incarceration facility, or public recreation facility. It includes findings and declarations to support its purposes.

State Revenue Impact

No estimate.

Comments

1. Purpose of the bill. According to the author, "Warehouse development has accelerated drastically in the Inland Empire over the past decade, and it is set to continue with an estimated

40% of the nation's goods currently traveling through the Inland Empire and a record-breaking number of goods continuing to arrive at the Ports of Los Angeles and Long Beach in 2022. This development is occurring while there is significant population growth in the area. According to the US Census Bureau, the Inland Empire has experienced the 5th largest population growth in the United States over the last decade. This has impacted residents of Riverside and San Bernardino Counties, where growth has caused warehouses to be built near schools, daycares, residential neighborhoods, and other sensitive receptors. These warehouses bring with them the diesel emissions of trucks moving goods across the country.

“It is critical that we strike the right balance between supporting the logistics sector and our state's supply chain while also protecting the health and safety of California residents impacted by warehouse development. AB 2840 establishes a good neighbor policy for logistics developments and sensitive receptors that requires a 1,000ft setback in order to build or expand logistics facilities of 100,000 square feet or more. This bill offers a practical solution that protects residents of Riverside and San Bernardino Counties while allowing responsible development to continue.”

2. One size fits all. The California Constitution grants local city councilmembers and boards of supervisors broad authority to protect the welfare of their residents. One key way local officials exert this authority is through land use decisions—general plan elements and zoning ordinances that allow certain uses in particular areas, and impose requirements on those uses to offset their impacts and balance competing needs in the community. New warehouses and other logistics uses are constructed pursuant to these policies. In adopting these ordinances, local governments go through the CEQA process to identify impacts and adopt mitigation measures. Local officials also approve specific projects, and discretionary approvals of individual projects also must comply with CEQA. On the other hand, CEQA authorizes lead agencies to prepare a “statement of overriding considerations,” which allows a city, county, or other public agency to approve a project with unmitigated or unavoidable impacts. In practice, some cities and counties have exercised this authority to approve projects that may significantly impact local residents, including through air pollution, citing the creation of local jobs or increased revenues. AB 2840 removes some discretion from local officials by mandating that they impose a 1,000 foot setback or comparable alternative measures on warehouse uses, even if those officials believe that their communities as a whole would benefit from lesser measures that enable more development. It also mandates specified labor policies, including the use of skilled and trained workers for construction, that some opponents state could burden construction of logistics uses. Should these decisions be left up to local officials?

3. Unintended consequences. By requiring large setbacks from existing sensitive sites, AB 2840 has the potential to push warehouse development further from already developed areas because there may be relatively few infill sites for warehouses that can comply with the setback requirements. A study of AB 2840 commissioned by logistics developers indicates that the bill could increase vehicle miles traveled (VMT) by trucks by 57 percent over what would otherwise occur given the setback distances in the bill. Those VMT increases could be accompanied by related increases in air pollution emissions (including greenhouse gas emissions) and trucking costs. On the other hand, this analysis assumes that the same number of truck trips will occur under the bill as without it. However, if the cost of transportation increases as a result of the bill, that could depress demand for logistics and associated VMT. Additionally, AB 2840 allows local governments to adopt alternative measures that have an equivalent effect as the setback requirements, which may allow developers of logistics uses to continue to locate their facilities

closer to ports and customers than they would if they had to strictly adhere to the 1,000 foot setback requirement. Finally, it is unclear that a 1,000 foot setback is sufficiently protective of public health: a recent CARB staff report, *Concept Paper for the Freight Handbook*, noted that the 1,000 foot setback distance identified in their previous research could be a starting point because it was based on reducing exposure and cancer risk by 80 percent, but that “in most cases, 80 percent reduction in cancer risk would still result in high residual cancer risks for most facility types, based on the latest health science and health risk assessments in development applications CARB has reviewed. Staff therefore suggests examining, at minimum, the distances needed to achieve an 85, 90, and 95 percent reduction in concentration and cancer risk.” In any case, significant uncertainties about the impacts and efficacy of measures such as those proposed in AB 2840 remain. Because AB 2840 has the potential for significant unintended consequences, additional information on the setbacks that are needed to protect public health and the broader economic and environmental impacts of those setbacks may be needed. A study of these impacts could include scenario analysis that compares different setback requirements and identifies alternative options that might be equally protective of public health. Alternatively, a lesser setback requirement, potentially combined with a higher threshold for qualifying logistics uses or a short-term sunset, could reduce the likelihood of unintended consequences while providing a relatively immediate measure to protect public health for the residents most likely to be impacted by these uses.

4. WAIRE’s the beef? Opponents of AB 2840 highlight several existing regulatory requirements that already apply to warehouse developments. Among them include CEQA; enforcement actions by the Attorney General; the South Coast AQMD’s Rule 2305, which established the WAIRE program; and a proposed Clean Fleet rule by CARB that 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 (trucks that transfer goods from ports to warehouses) will be zero-emission. Accordingly, opponents argue that AB 2840’s rules are unnecessary given the other measures in place to protect public health. However, some opponents of the measure have also filed suit to invalidate Rule 2305. The lawsuit alleges that the ISR is an unconstitutional tax, is preempted by and violates the federal Clean Air Act, and is preempted by the Federal Aviation Administration Authorization Act of 1994. Accordingly, it is unclear if this regulation will stand following the litigation. A mandate that local governments offer a menu of options for alternative measures to the bill’s setback requirements and require that the options include the payment of mitigation fees would better align with Rule 2305.

5. Economic subsidies. Some cities have used economic development subsidies to lure warehouses to their jurisdictions because the Bradley-Burns component rate of the state’s sales tax’, allocates revenue from sales to either the point of sale or the place where principal negotiations for the sale occurred, often a warehouse, rather than the residence of the purchaser. Under these agreements, the local agency approves the warehouse project in exchange for the retailer sourcing some or all of its sales from the region or the entire state to that facility. The local agency then rebates sales tax revenue back to the retailer. AB 485 (Medina, 2019) requires local agencies that offer economic development subsidies for warehouse uses to publicly report certain information prior to approving the subsidy. That information must be posted on the website of the Governor's Office of Business and Economic Development (GO-Biz). According to the GO-Biz website, one such agreement has occurred since the law became effective: in 2020 the City of Ontario approved a sales tax rebate to Nike, Inc. until 2032 that returns 50 percent of the revenues attributable to annual taxable sales received by the City for a 580,000 square foot warehouse facility. The subsidy is expected to total approximately \$17.25

million over the life of the agreement. Because these facilities generate emissions that can harm the health of residents, the Committee may wish to consider the relationship between these facilities and whether local governments offering economic development subsidies also negatively affects the health of its residents..

6. Let's be clear. The Committee may wish to consider the following clarifying amendments to AB 2840 to:

- Clarify that the bill applies to buildings with 100,000 square feet of warehouse space. Currently the bill may unintentionally capture mixed use developments of over 100,000 that include a small portion of logistics uses.
- Require the determination on whether a setback is required to be made at the time a completed application is filed with the local government. Currently, it is unclear whether a setback must be applied if a new sensitive receptor is constructed while an application for a logistics use is pending.

7. Mandate. The California Constitution generally requires the state government to reimburse the costs of new or expanded state mandated local programs. Because AB 2840 imposes new duties on local governments, Legislative Counsel says that AB 2840 creates a new state-mandated local program. But this bill disclaims the state's responsibility for reimbursing local agencies for this new requirement because local agencies can charge fees to cover the cost of the new or increased service.

8. Charter city. The California Constitution allows cities that adopt charters to control their own "municipal affairs." In all other matters, charter cities must follow the general, statewide laws. Because the Constitution doesn't define "municipal affairs," the courts determine whether a topic is a municipal affair or whether it's an issue of statewide concern. AB 2840 says that its statutory provisions apply to charter cities. To support this assertion, the bill includes a legislative finding and declaration that its provisions address a matter of statewide concern.

9. Special legislation. The California Constitution prohibits special legislation when a general law can apply (Article IV, §16). AB 2840 contains findings and declarations explaining the need for legislation that applies only to the Counties of Riverside and San Bernardino, and the cities within those counties.

10. Related legislation. AB 2798 (V. Fong), which the Committee approved at its June 22nd hearing on a vote of 5-0, streamlines some aspects of development of freight transportation projects. AB 1547 (Reyes, 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.

Assembly Actions

Assembly Local Government Committee:	5-2
Assembly Appropriations:	12-4
Assembly Floor:	41-25

Support and Opposition (6/27/22)

Support: California Environmental Voters (formerly CLCV)

California Nurses Association
 Catholic Charities, Diocese of Stockton
 Center for Community Action & Environmental Justice
 Center for Community Action and Environmental Justice
 Central California Asthma Collaborative
 Central California Environmental Justice Network
 Coalition for Clean Air
 Disability Rights California
 Engage Ie
 Environmental Working Group
 Inland Empire United, a Project of Tides Advocacy
 Inland Equity Partnership
 Leadership Counsel for Justice & Accountability
 Riverside Neighbors Opposing Warehouses
 Sierra Club California
 South Fontana Concerned Citizens Coalition
 Trabajadores Unidos Workers United
 Union of Concerned Scientists
 United Food and Commercial Workers Local 1167
 United Food and Commercial Workers, Western States Council
 Western Center on Law & Poverty

Opposition:

Aerospace and Defense Alliance of California	California Family Beer Distributors
African American Farmers of California	California Farm Bureau
Agricultural Council of California	California Food Producers
Almond Alliance of California	California Fresh Fruit Association
American Chemistry Council	California Grain & Feed Association
Associated General Contractors of California	California Grocers Association
Association of California Egg Farmers	California League of Food Producers
Association of Western Employers	California Manufacturers & Technology Association
Banning; City of	California Railroads
Brea Chamber of Commerce	California Retailers Association
Building Industry Association of Southern California, INC.	California Seed Association
Building Owners and Managers Association of California	California Short Line Railroad Association
California Association for Local Economic Development (CALED)	California State Council of Laborers
California Beer and Beverage Distributors	California Trucking Association
California Builders Alliance	California Walnut Commission
California Building Industry Association (CBIA)	California Warehouse Association
California Business Properties Association	Carlsbad Chamber of Commerce
California Business Roundtable	Carson Dominguez Employer Alliance
California Chamber of Commerce	Chino Hills; City of
California Cotton Ginners & Growers Association	City of Banning
	City of Brea
	City of Chino
	City of Eastvale
	City of Fontana

City of Menifee	Oceanside Chamber of Commerce
City of Murrieta	Orange County Business Council
City of Ontario	Pacific Egg & Poultry Association
City of Rancho Cucamonga	Pacific Merchant Shipping Association
Corona Chamber of Commerce	Rancho Cordova Area Chamber of Commerce
El Dorado County Chamber of Commerce	Rocklin Area Chamber of Commerce
El Dorado Hills Chamber of Commerce	Roseville Area Chamber of Commerce
Elk Grove Chamber of Commerce	Sacramento Regional Builders Exchange (SRBX)
Ema Truck & Engine Manufacturers Association	San Bernardino; County of
Far West Equipment Dealers Association	San Diego Regional Chamber of Commerce
Folsom Chamber of Commerce	San Gabriel Valley Economic Partnership
Fontana Chamber of Commerce	San Manuel Band of Mission Indians
Fresno Chamber of Commerce	San Mateo Area Chamber of Commerce
Futureports	Santa Ana Chamber of Commerce
Glendora Chamber of Commerce	Santa Barbara South Coast Chamber of Commerce
Greater Coachella Valley Chamber of Commerce	Santa Clarita Valley Chamber of Commerce
Greater High Desert Chamber of Commerce	Southern California Contractors Association
Greater Riverside Chambers of Commerce	Southwest California Legislative Council
Grower-shipper Association of Central California	Southwest Regional Council of Carpenters
Inland Empire Chamber Legislative Alliance	Specialty Equipment Market Association (SEMA)
Inland Empire Economic Partnership	State Building & Construction Trades Council of California
Inland Empire Economic Partnership (IEEP)	The Toy Association
Innovating Commerce Serving Communities	Torrance Area Chamber of Commerce
International Union of Operating Engineers, Cal-nevada Conference	Tri County Chamber Alliance
LA Canada Flintridge Chamber of Commerce	Tulare Chamber of Commerce
Laguna Niguel Chamber of Commerce	United Chamber Advocacy Network
League of California Cities	United Contractors (UCON)
Lincoln Area Chamber of Commerce	Ventura Chamber of Commerce
Lodi Chamber of Commerce	West Ventura County Business Alliance
Long Beach Area Chamber of Commerce	Western Agricultural Processors Association
Los Angeles Area Chamber of Commerce	Western Growers Association
Los Angeles County Business Federation (BIZ-FED)	Western Independent Refiners Association
Murrieta Wildomar Chamber of Commerce	Western Plant Health Association
Naiop of California, the Commercial Real Estate Development Association	Western Propane Gas Association
Newport Beach Chamber of Commerce	Western States Petroleum Association
Nisei Farmers League	Western Wood Preservers Institute
	Yuba Sutter Chamber of Commerce

-- END --