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Senate Bill No. 288

CHAPTER 200

An act to amend Section 21080.20 of, and to add and repeal Section 21080.25 of, the Public Resources Code, relating to environmental quality.

[Approved by Governor September 28, 2020. Filed with Secretary of State September 28, 2020.]

LEGISLATIVE COUNSEL'S DIGEST

SB 288, Wiener. California Environmental Quality Act: exemptions: transportation-related projects.

(1) The California Environmental Quality Act (CEQA) requires a lead agency, as defined, to prepare, or cause to be prepared, and certify the completion of an environmental impact report on a project that it proposes to carry out or approve that may have a significant effect on the environment or to adopt a negative declaration if it finds that the project will not have that effect. CEQA also requires a lead agency to prepare a mitigated negative declaration for a project that may have a significant effect on the environment if revisions in the project would avoid or mitigate that effect and there is no substantial evidence that the project, as revised, would have a significant effect on the environment.

CEQA includes exemptions from its environmental review requirements for numerous categories of projects, including, among others, projects for the institution or increase of passenger or commuter services on rail or highway rights-of-way already in use and projects for the institution or increase of passenger or commuter service on high-occupancy vehicle lanes already in use, as specified.

This bill would further exempt from the requirements of CEQA certain projects, including projects for the institution or increase of new bus rapid transit, bus, or light rail services on public rail or highway rights-of-way, as specified, whether or not the right-of-way is in use for public mass transit, as specified, and projects for the designation and conversion of general purpose lanes, high-occupancy toll lanes, high-occupancy vehicle lanes, or highway shoulders, as specified. The bill would additionally exempt transit prioritization projects, projects that improve customer information and wayfinding for transit riders, bicyclists, or pedestrians, projects by a public transit agency to construct or maintain infrastructure to charge or refuel zero-emission transit buses, projects carried out by a city or county to reduce minimum parking requirements, and projects for pedestrian and bicycle facilities. The bill would, except as provided, require those exempt projects to meet additional specified criteria, including that a public agency is carrying out the project and is the lead agency for the project. The bill would, except as provided, require the lead agency to certify that those projects will be carried out by a skilled and trained workforce, except as provided. For those exempted projects exceeding $100,000,000 in 2020 United States dollars, the bill, except as provided, would require the lead agency to complete and consider the results of a project business case and a racial equity analysis, as prescribed, would require the lead agency, before exempting a project from CEQA, to hold at least 3 noticed public meetings in the project area to hear and respond to public comments, would require the lead agency, in at least one of those public meetings, to review the project business case and the racial equity analysis, and would require the lead agency to conduct at least 2 noticed public meetings annually during project construction for the public to provide comments. If the lead agency determines to carry out a project exempt under the above provisions, the bill would require 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. The bill would repeal the above-described exemptions on January 1, 2023.

(2) CEQA, until January 1, 2021, exempts from its requirements 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, including the requirement that the lead agency, before determining that a project is exempt, prepare an assessment of any traffic and safety impacts of the project and include measures in the bicycle transportation plan to mitigate potential vehicular traffic impacts and bicycle and pedestrian safety impacts.

This bill would extend the above exemption until January 1, 2030. The bill also would, among other things, remove the above requirement related to traffic and safety impacts and measures.

Vote Required: MAJORITY Appropriation: NO Fiscal Committee: YES Local Program: NO Immediate Effect NO Urgency: NO Tax Levy: NO Election: NO Usual Current Expenses: NO Budget Bill: NO Prop 25 Trailer Bill: NO

The people of the State of California do enact as follows:

SECTION 1. (a) The Legislature finds and declares all of the following:

(1) The novel coronavirus (COVID-19) pandemic that has killed tens of thousands of Americans has also left 4.5 million Californians or 23 percent of the workforce unemployed, and that number is growing. We are now anticipating a period of extreme and prolonged economic strain.

(2) There are approximately 1.6 million transportation workers statewide. These jobs are also increasingly at risk as the COVID-19 pandemic has left transit and transportation agencies, cities, and the state with shrunken budgets. For the foreseeable future, transit and transportation agencies and cities will need to do more with less.

(3) Investments in building public transit, complete streets, and bicycle lanes are proven job generators and can help California avoid an extreme and prolonged recession by growing and protecting jobs. Studies have shown that complete streets projects create an average of 10 jobs per one million dollars. Investments in public transportation result in an average of 13 jobs per one million dollars spent and have a 5 to 1 economic return.

(4) California's road to recovery cannot be crowded with cars. As other cities around the world are reopening their economies, they are experiencing a surge in driving. California will fail to meet its ambitious goals to reduce greenhouse gas emissions and curb pollution if auto traffic surges.

(5) If California fails to prevent the surge in driving as the state reopens, it will continue to disadvantage the state's most vulnerable populations. African American and Hispanic populations already shoulder a disproportionate burden of the state's air pollution and have higher rates of the underlying conditions that make COVID-19 especially dangerous.

(6) The way to prevent this surge in driving and put people to work quickly in high-quality jobs is by building out a transportation network that gets people where they need to go safely, reliably, and affordably. High-quality public transit, bicycle, and pedestrian projects create a more equitable California by improving access to jobs, services, and medical care; saving lives by reducing collisions; improving transportation choices; reducing air pollution; and increasing household disposable income.

(7) Now is an ideal time to make investments in transit and sustainable transportation. This is the time when construction will have the least disruption to riders, drivers, and local businesses.

(8) The California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code)(CEQA) is the state's foremost law for safeguarding the state's remarkable biodiversity and for ensuring community involvement in discretionary project approvals made by state, local, and regional agencies.

(9) The Legislature understands the value of CEQA and also understands the value of transit and sustainable transportation to our communities. Transit and sustainable transportation can help preserve and create jobs, grow local and regional economies, reduce emissions, connect communities, and create safe, affordable, and reliable mobility choices for all. When projects are delayed by litigation, often lasting three to five years, so too are the economic, environmental, and social benefits.

(10) The amendments to CEQA made by this act address only sustainable transportation projects that can accelerate progress towards California's environmental goals and improve the public health of Californians.

(b) It is the intent of the Legislature to reduce the time and cost associated with delivering transit and sustainable transportation projects in the state, based on the need to rapidly create, attract, and protect jobs; increase access to safe and affordable transportation; decarbonize our transportation system; improve the productivity and reliability of transit; and improve mobility and connectivity throughout California. The Legislature intends to establish additional statutory exemptions from CEQA for public transit, bicycle, and pedestrian enhancement projects that significantly enhance service quality, enhance access to transit, reduce pollution, and improve the safety of our streets.

(c) The Legislature further finds and declares the projects described in Section 3 of this act do not have a significant impact on the

environment and are declared to be statutorily exempt from the requirements of CEQA to prepare environmental documents.

SEC. 2. Section 21080.20 of the Public Resources Code is amended to read:

21080.20. (a) This division does not apply to a bicycle transportation plan for an urbanized area for the restriping of streets and highways, bicycle parking and storage, signal timing to improve street and highway intersection operations, and the related signage for bicycles, pedestrians, and vehicles.

(b) Before determining that a project is exempt pursuant to this section, the lead agency shall hold noticed public hearings in areas affected by the bicycle transportation plan to hear and respond to public comments. Publication of the notice shall be no fewer times than required by Section 6061 of the Government Code by the public agency in a newspaper of general circulation in the area affected by the proposed project. If more than one area will be affected, the notice shall be published in the newspaper of largest circulation from among the newspapers of general circulation in those areas.

(c) If a local agency determines that a project is not subject to this division pursuant to this section and it determines to approve or carry out that project, the notice shall be filed with the Office of Planning and Research and the county clerk in the county in which the project is located in the manner specified in subdivisions (b) and (c) of Section 21152.

(d) This section shall remain in effect only until January 1, 2030, and as of that date is repealed.

SEC. 3. Section 21080.25 is added to the Public Resources Code, to read:

21080.25. (a) For purposes of this section, the following definitions apply:

(1) "Affordable housing" means any of the following:

(A) Housing that is subject to a recorded covenant, ordinance, or law that restricts rents or sales prices to levels affordable, as defined in Section 50052.5 or 50053 of the Health and Safety Code, to persons and families of moderate, lower, or very low income, as defined in Section 50079.5, 50093, or 50105 of the Health and Safety Code, respectively.

(B) Housing that is subject to any form of rent or price control through a public entity's valid exercise of its police power.

(C) Housing that had been occupied by tenants within five years from the date of approval of the development agreement by a primary tenant who was low income and did not leave voluntarily.

(2) "Highway" means a way or place of whatever nature, publicly maintained and open to the use of the public for purposes of vehicular travel. "Highway" includes a street.

(3) "New automobile capacity" means any new lane mileage of any kind other than sidewalks or bike lanes.

(4) "Project labor agreement" has the same meaning as defined in paragraph (1) of subdivision (b) of Section 2500 of the Public Contract Code.

(5) "Skilled and trained workforce" has the same meaning as provided in Chapter 2.9 (commencing with Section 2600) of Part 1 of Division 2 of the Public Contract Code.

(6) "Transit lanes" means street design elements that delineate space within the roadbed as exclusive to transit use, either full or part time.

(7) "Transit prioritization projects" means any of the following transit project types on highways:

(A) Signal coordination.

(B) Signal timing modifications.

(C) Signal phasing modifications.

(D) The installation of wayside technology and onboard technology.

(E) The installation of ramp meters.

(F) The installation of dedicated transit or very high occupancy vehicle lanes, and shared turning lanes.

(8) "Very high occupancy vehicle" means a vehicle with six or more occupants.

(b) This division does not apply to any of the following projects:

(1) Pedestrian and bicycle facilities, including new facilities. For purposes of this paragraph, "bicycle facilities" include, but are not

limited to, bicycle parking, bicycle sharing facilities, and bikeways as defined in Section 890.4 of the Streets and Highways Code.

(2) Projects that improve customer information and wayfinding for transit riders, bicyclists, or pedestrians.

(3) Transit prioritization projects.

(4) 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.

(5) 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.

(6) A project to construct or maintain infrastructure to charge or refuel zero-emission transit buses, provided the project is carried out by a public transit agency that is subject to, and in compliance with, the State Air Resources Board's Innovative Clean Transit regulations (Article 4.3 (commencing with Section 2023) of Chapter 1 of Division 3 of Title 13 of the California Code of Regulations) and the project is located on property owned by the transit agency or within an existing public right-of-way.

(7) The maintenance, repair, relocation, replacement, or removal of any utility infrastructure associated with a project identified in paragraphs (1) to (6), inclusive.

(8) A project that consists exclusively of a combination of any of the components of a project identified in paragraphs (1) to (7), inclusive.

(9) A project carried out by a city or county to reduce minimum parking requirements.

(c) Except as provided in subdivision (e), a project exempt from this division under this section shall meet all of the following criteria:

(1) A public agency is carrying out the project and is the lead agency for the project.

(2) The project is located in an urbanized area.

(3) The project is located on or within an existing public right-of-way.

(4) The project shall not add physical infrastructure that increases new automobile capacity on existing rights-of-way except for minor modifications needed for the efficient and safe movement of transit vehicles, such as extended merging lanes. The project shall not include the addition of any auxiliary lanes.

(5) The construction of the project shall not require the demolition of affordable housing units.

(6) For a project exceeding one hundred million dollars ($100,000,000) in 2020 United States dollars, a project exempt from this division under this section shall also meet all of the following:

(A) The project is incorporated in a regional transportation plan, sustainable communities strategy, general plan, or other plan that has undergone a programmatic-level environmental review pursuant to this division within 10 years of the approval of the project.

(B) The project's construction impacts are fully mitigated consistent with applicable law.

(C) (i) The lead agency shall complete and consider the results of a project business case and a racial equity analysis. The Office of Planning and Research may set standards for the project business case and the racial equity analysis or delegate that authority to metropolitan planning organizations.

(ii) The project business case required under this subparagraph shall set forth the rationale for why the project should be implemented to solve a problem or address an opportunity, outline strategic goals and objectives of the project, evaluate other options to achieve the project's objectives, describe the economic costs and benefits of the project, describe the financial implications of the project, and establish what is required to deliver and operate the project.

(iii) The racial equity analysis required under this subparagraph shall identify the racial equity impacts of the project, identify who will benefit from and be burdened by the project, and, where significant or disproportionate impacts exist, suggest strategies, designs, or actions to mitigate those impacts.

(D) The lead agency shall hold noticed public meetings as follows:

(i) Before determining that a project is exempt pursuant to this section, the lead agency shall hold at least three noticed public meetings in the project area to hear and respond to public comments.

(ii) At least one of the three public meetings shall review the project business case and the racial equity analysis. The review of

these documents does not inhibit or preclude application of this section.

(iii) The lead agency shall conduct at least two noticed public meetings annually during project construction for the public to provide comments.

(iv) The public meetings held pursuant to clauses (i) to (iii), inclusive, shall be in the form of either a public community planning meeting held in the project area or in the form of a regularly scheduled meeting of the governing body of the lead agency.

(E) The lead agency shall give public notice of the meetings in subparagraph (D) to the last known name and address of all the organizations and individuals that have previously requested notice and shall also give the general public notice using at least one of the following procedures:

(i) Publication of the notice in a newspaper of general circulation in the area affected by the project. If more than one area will be affected, the notice shall be published in the newspaper of largest circulation from among the newspapers of general circulation in those areas.

(ii) Posting of the notice onsite and offsite in the area where the project is located.

(iii) Posting of the notice on the lead agency's internet website and social media accounts.

(d) (1) Except as provided in subdivision (e), in addition to the requirements of subdivision (c), before granting an exemption under this section, the lead agency shall certify that the project will be completed by a skilled and trained workforce.

(2) (A) Except as provided in subparagraph (B), for a project that is exempted under this section, the lead agency shall not enter into a construction contract with any entity unless the entity provides to the lead agency an enforceable commitment that the entity and its subcontractors at every tier will use a skilled and trained workforce to perform all work on the project or a contract that falls within an apprenticeship occupation in the building and construction trades in accordance with Chapter 2.9 (commencing with Section 2600) of Part 1 of Division 2 of the Public Contract Code.

(B) Subparagraph (A) does not apply if any of the following requirements are met:

(i) The lead agency has entered into a project labor agreement that will bind all contractors and subcontractors performing work on the project or the lead agency has contracted to use a skilled and trained workforce and the entity has agreed to be bound by that project labor agreement.

(ii) The project or contract is being performed under the extension or renewal of a project labor agreement that was entered into by the lead agency before January 1, 2021.

(iii) The lead agency has entered into a project labor agreement that will bind the lead agency and all its subcontractors at every tier performing the project or the lead agency has contracted to use a skilled and trained workforce.

(e) Subdivisions (c) and (d) do not apply to a project described in paragraph (9) of subdivision (b).

(f) If the lead agency determines that a project is not subject to this division pursuant to this section, and the lead agency determines to carry out that project, the lead agency shall 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 in the manner specified in subdivisions (b) and (c) of Section 21152.

(g) This section shall remain in effect only until January 1, 2023, and as of that date is repealed.

SEC. 4. (a) This act does not authorize a transportation authority, the Department of Transportation, a city, or any other lead agency to bypass or avoid compliance with other applicable safety, public health, environmental, or labor requirements.

(b) Nothing in this act shall preclude a lead agency from using any other statutory or categorical exemption if the applicable project also qualifies for any other statutory exemption or categorical exemption.

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