

Metropolitan Transportation Commission

MTC Legislation Committee

July 10, 2020

Agenda Item 4e

Senate Bill 288 (Wiener): Sustainable Transportation Acceleration

Subject: California Environmental Quality Act (CEQA) streamlining for sustainable transportation projects.

Overview: SB 288 (Wiener) seeks to accelerate the delivery of various sustainable transportation projects, including pedestrian and bicycle facilities, public transit stations, light rail, passenger rail, commuter rail, bus rapid transit, local bridge repairs, and conversion of existing highway lanes to high-occupancy vehicle or high-occupancy toll lanes by statutorily exempting them from CEQA. Projects that add lane mileage for automobile capacity are ineligible. For projects to qualify for an exemption, they must be located in an urbanized area or connect two or more urbanized areas. In addition, the lead agency would be required to file a notice of exemption with any county in which the project is located and hold at least one noticed public meeting to hear and respond to public comments.

The bill also has more stringent requirements for larger projects. Specifically, for projects with a construction cost greater than \$10 million, the bill would limit eligibility for the CEQA exemption to projects for which the contractor commits to using a “skilled and trained” workforce, unless the lead agency has entered into a project labor agreement.¹

For projects with a construction cost greater than \$100 million, the bill would limit eligibility for the CEQA exemption to projects that are already incorporated into a regional transportation plan, general plan or other plan that has complied with CEQA at the programmatic level within 10 years of approval of the project. In addition, the lead agency or project sponsor would be required to have completed an independent peer review of the project, including cost and benefit estimates, equity analysis, planning, engineering, design, financing plan, and project management/project risk controls. The bill authorizes the Office of Planning and Research to develop guidelines for this peer review or to delegate that authority to a metropolitan planning organization.

The bill also extends the CEQA exemption for bicycle transportation plans from January 1, 2021 to January 1, 2030.

Background: CEQA requires that public agencies that are responsible for approving a project in a discretionary action conduct an environmental review of the project unless the project is *statutorily* exempt, as set forth in the law, or *categorically* exempt as provided for in the CEQA Guidelines adopted by the Secretary of the California Resources Agency. Statutory exemptions are much more straightforward because they are absolute, so a project that is statutorily exempt from CEQA requires no further environmental review or consideration. See Attachment A for a chart comparing the statutory exemptions in current law with what is proposed by SB 288.

¹ Under the [Public Contract Code 2601](#), skilled and trained is defined as requiring that projects constructed after January 1, 2020 be constructed by a workforce at least 60 percent of whom are graduates of apprenticeship programs for the applicable occupation, with some exceptions.

Categorical exemptions, by contrast, are subject to various exceptions which would require that the project undergo environmental review, including, but not limited to:

- If there is a reasonable possibility of a significant effect on the environment due to unusual circumstances
- If the project site is environmentally sensitive
- If the project may negatively impact an historical resource
- The project and successive projects of the same type in the same place will result in cumulative impacts.

If a project sponsor is claiming a project is categorically exempt but there is any legally adequate evidence in the record of a possible adverse impact, then more substantive environmental review may be required. Of note, a number of transportation projects that SB 288 would explicitly make statutorily exempt from CEQA are already considered *categorically* exempt, but given that pursuit of a categorical exemption can be easily challenged, in many instances, project sponsors do not pursue them.

Discussion:


SB 288 seeks to help California's economy recovery from the shock of the COVID-19 pandemic while also jumpstarting the state's sustainable transportation projects. Transportation emissions are the state's primary source of greenhouse gas emissions due to the vast majority of trips being made by solo drivers. While more consumers are switching to electric vehicles, they still comprise a fraction of the fleet and it is widely acknowledged that significant reductions in GHG emission from transportation will require a significant movement away from the single-occupant vehicle. While the shelter-in-place orders and concern about health risks aboard transit have caused transit ridership and carpooling to drop dramatically over the last four months, accelerating improvements that will cause more Bay Area residents to choose transit, carpooling, walking or biking for more trips is critical to keeping us on track to achieve our climate and social equity goals over the long-term.

SB 288 is consistent with our 2020 Advocacy Program which supports CEQA streamlining for transportation and housing projects that are consistent with local and regional plans without diminishing environmental safeguards. Given SB 288's focus on sustainable transportation projects, which form the vast majority of Plan Bay Area's investments and the important role that transportation improvements can play in assisting with job creation and economic recovery in the wake of COVID-19, staff recommends a support position on SB 288.

Recommendation: Support

Bill Positions: See attached

Attachments: Attachment A: SB 288 vs. Current Law Comparison Chart
Attachment B: Bill Positions


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SB 288 (Wiener) Proposed CEQA Exemptions vs. Current Law June 29, 2020			
Category	Current Law	SB 288 (Wiener): Print Version as of June 03, 2020	SB 288 (Wiener): Revised as of June 23, 2020 (not yet in print)
Operation and Maintenance	Categorical exemption for operation, repair, maintenance, permitting, leasing, licensing, or minor alteration of existing public or private structures, facilities, mechanical equipment, or topographical features, involving negligible or no expansion of existing or former use	Repair and rehabilitation of certain bridges becomes exempt by statute.	Same as SB 288, as published
Replacement and Reconstruction	Categorical exemption for replacement or reconstruction of existing structures and facilities where the new structure will be located on the same site as the structure replaced and will have substantially the same purpose and capacity as the structure replaced	No change	Same as SB 288, as published
Facilities and Structures	Categorical exemption for cnstruction and location of limited numbers of new, small facilities or structures; installation of small new equipment and facilities in small structures; and the conversion of existing small structures from one use to another where only minor modifications are made in the exterior of the structure.	Rail, light rail, and bus maintenance, repair, storage and administrative facilities become exempt by statute.	Revert to current law.
Land, Water and Vegetation Alterations	Categorical exemption for minor public or private alterations in the condition of land, water, and/or vegetation which do not involve removal of healthy, mature, scenic trees except for forestry and agricultural purposes.	No change	Same as SB 288, as published
Emergency Repairs	Statutory exemption for emergency repairs to public service facilities necessary to maintain service.	No change	Same as SB 288, as published
Disaster Response	Statutory exemption for projects undertaken, carried out, or approved by a public agency to maintain, repair, restore, demolish, or replace property or facilities damaged or destroyed as a result of a disaster in a disaster-stricken area in which a state of emergency has been proclaimed by the Governor	No change	Same as SB 288, as published
Pricing	Statutory exemption for the establishment, modification, structuring, restructuring, or approval of rates, tolls, fares, or other charges by public agencies	No change	Same as SB 288, as published
Transit Extensions	Statutory exemption for facility extensions not to exceed four miles in length which are required for the transfer of passengers from or to exclusive public mass transit guideway or busway public transit services.	No change	Expand the facility extension exemption from 4 miles to 6 miles.
Transit Enhancement	Statutory exemption for a project for the institution or increase of passenger or commuter services on rail or highway rights-of-way already in use, including modernization of existing stations and parking facilities. For purposes of this paragraph, “highway” shall have the same meaning as defined in Section 360 of the Vehicle Code.	SB 288 adds clarification to some of the existing eligible uses: “A project for the institution or increase of public mass transit, including bus, bus rapid transit, light rail, and passenger rail, or commuter services on existing rail or highway rights of way, whether or not the right of way is presently used for public mass transit, including all of the following: Clarifies elements are eligible under this section. Important components are bolded below: - modernization of existing stations, “including, but not limited to, improvements to station function, safety, circulation, capacity, sustainability, appearance, or customer experience.” - Transit prioritization projects and facilities that improve reliability and reduce delay and improve customer information, including, but not limited to, signal priority, train control systems, and customer information and wayfinding systems. -The construction of new bus rapid transit, bus, or light rail stations or ferry stops located on existing public rights of way, existing highway rights of way, or public marinas, whether or not the right of way or marina is presently used for public mass transit or ferry service. -It no longer includes parking facilities as eligible	Same as SB 288, as published
High Occupancy Vehicle Lanes	Statutory exemption for a project for the institution or increase of passenger or commuter service on high-occupancy vehicle lanes already in use, including the modernization of existing stations and parking facilities.	SB 288 adds clarification to some of the existing eligible uses as follows: (C) Designation and conversion of general purpose lanes to exclusive lanes for high-occupancy vehicle lanes or high occupancy toll lanes. (D) Designation and conversion of general purpose lanes to bus-only lanes within existing public rights of way either during peak congestion hours or all day.	
Bicycle Plans	Statutory exemption for bicycle plans; sunsets January 1, 2021	Extend statutory exception of bicycle plans to January 1, 2030	Same as SB 288, as published
Bicycle and Pedestrian Projects	No exemption	Exempts new bicycle facilities and pedestrian facilities.	Same as SB 288, as published

Category	Current Law	SB 288 (Wiener): Print Version as of June 03, 2020	SB 288 (Wiener): Revised as of June 23, 2020 (not yet in print)
Zero Emission Vehicle and Electric Vehicle Charging Infrastructure	May be categorically exempt as an accessory structure.	Exempts publicly accessible zero-emission fueling stations and chargers in an urbanized area.	Exempts publicly accessible Zero Emission Fueling Stations and Chargers that do not require the use of methane onsite and that are in an urbanized area at a publicly accessible location such as a retail outlet, shopping enter, hotel, restaurant, or parking facility, accessible to members of the public and where access to the location is not limited to customers or visitors.
Transit Priority Projects	No exemption	Transit prioritization projects and facilities that improve reliability and reduce delay and improve customer information, including, but not limited to, signal priority, train control systems, and customer information and wayfinding systems.	Same as SB 288, as published
Customer Information and Wayfinding	No exemption	Exempts projects that improve customer information and wayfinding for transit riders, bicyclists, or pedestrians.	Same as SB 288, as published

Source

[Excerpts from SPUR SB 288 \(Wiener\) Cpmparison Chart. SPUR is a co-sponsor of SB 288, along with the Bay Area Council.](#)

Notes

There are some other statutory exemptions (also found in Section 21080) that are unrelated to transit or sustainable transportation, which are not shown above. This includes the Olympic games, for instance.

There are several other classes of categorical exemptions that are unrelated to transit or sustainable transportation, which are also not shown above.

All statutory exemptions added under SB288 must be in an urbanized area, on an existing public right of way, and not result in additional auto capacity. All projects must be sponsored by a public agency, except for zero emission/ elecric vehicle charging infrastructure.

**Senate Bill 288 (Wiener) Bill Positions
(as of June 19, 2020)**

Support:

Bay Area Council (co-sponsor)
California Bicycle Coalition
California YIMBY
Circulate San Diego
Livermore Amador Valley Transit Authority
SPUR (co-sponsor)
Silicon Valley Leadership Group (co-sponsor)
The R.E.A.L. Coalition
San Joaquin Regional Rail Commission
San Diego Regional Chamber of Commerce
San Francisco Bay Ferry / WETA
Tri-Valley – San Joaquin Valley Regional Rail Authority

Oppose: None on file