
UNFINISHED BUSINESS

Bill No: SB 886
Author: Wiener (D), et al.
Amended: 8/18/22
Vote: 21

SENATE ENVIRONMENTAL QUALITY COMMITTEE: 6-0, 4/27/22
AYES: Allen, Dahle, Gonzalez, Skinner, Stern, Wieckowski
NO VOTE RECORDED: Bates

SENATE APPROPRIATIONS COMMITTEE: 5-0, 5/19/22
AYES: Portantino, Jones, Kamlager, Laird, Wieckowski
NO VOTE RECORDED: Bates, Bradford

SENATE FLOOR: 33-1, 5/24/22
AYES: Allen, Atkins, Becker, Borgeas, Bradford, Cortese, Dahle, Dodd, Durazo, Eggman, Glazer, Gonzalez, Grove, Hueso, Hurtado, Jones, Kamlager, Leyva, McGuire, Melendez, Min, Newman, Nielsen, Pan, Portantino, Roth, Rubio, Skinner, Stern, Umberg, Wieckowski, Wiener, Wilk
NOES: Laird
NO VOTE RECORDED: Archuleta, Bates, Caballero, Hertzberg, Limón, Ochoa Bogh

ASSEMBLY FLOOR: 70-2, 8/22/22 - See last page for vote

SUBJECT: California Environmental Quality Act: exemption: public universities: university housing development projects

SOURCE: California Faculty Association
California YIMBY
State Building and Construction Trade Council of California
Student Housing Coalition
Student Senate for California Community Colleges
UC Student Association

DIGEST: This bill exempts, until January 1, 2030, faculty and staff housing projects and student housing projects meeting specified requirements from the California Environmental Quality Act (CEQA).

Assembly Amendments require the project be consistent with the most recent long range development plan (LRDP) or master plan environmental impact report (EIR) and any applicable tiered environmental analysis, as specified; require an independent third-party to evaluate if the project results in net additional emission of greenhouse gases, instead of the California Air Resources Board; prohibit a certificate of occupancy be issued unless the lead agency receives certification of LEED (Leadership in Energy and Environmental Design) platinum and determines that the construction impacts have been fully mitigated; and limit the exemption to projects with 2,000 units or less or 4,000 beds or less.

ANALYSIS:

Existing law:

- 1) Requires, under CEQA, requires lead agencies with the principal responsibility for carrying out or approving a proposed discretionary project to prepare a negative declaration (ND), mitigated negative declaration (MND), or EIR for this action, unless the project is exempt from CEQA (CEQA includes various statutory exemptions, as well as categorical exemptions in the CEQA guidelines). (Public Resources Code §21000 et seq.).
- 2) Subjects the selection of a location for a particular campus and the approval of an LRDP to CEQA and requires the preparation of an EIR. (PRC §21080.09(b))
 - a) Defines “LRDP” as a physical development and land use plan to meet the academic and institutional objectives for a particular campus or medical center of public higher education. (PRC §21080.09)
 - b) Defines “public higher education” as (a) the California Community Colleges, (b) the California State University, and each campus, branch, and function thereof, and (c) each campus, branch, and function of the University of California. (PRC §21080.09)
- 3) Subjects the approval of a project on a particular campus or medical center of public higher education to CEQA but allows the approval in a tiered environmental analysis based on a LRDP EIR. (PRC §21080.09(c))

This bill:

- 1) Exempts from CEQA, until January 1, 2030, university housing projects, as defined by this bill, carried out by a public university on real property owned by the public university if all of the following are met:
 - a) The project is consistent with the most recent LRDP EIR or master plan EIR and any applicable tiered environmental analysis, as specified.
 - b) Each building of the project is certified as LEED platinum or better.
 - c) No more than one-third of the project square footage is used for nonresidential purposes.
 - d) The project is either within one-half mile of a major transit stop, one-half mile of the campus boundary, or has 15 percent lower per capita vehicle miles traveled.
 - e) The project has a transportation demand management program.
 - f) The project's construction impacts are fully mitigated.
 - g) The project does not result in any net additional emission of greenhouse gases.
 - h) All contractors and subcontractors pay prevailing wages. An entity cannot be prequalified or shortlisted or awarded a contract to perform work on the project unless the entity provides an enforceable commitment to the public university that the entity and its contractors and subcontractors, at every tier, will use a skilled and trained workforce to perform all work on the project that falls within an apprenticeable occupation in the building and construction trades, except as specified.
 - i) All cleaning, maintenance, groundskeeping, food service, or other work traditionally performed by persons with University of California Service Unit job classifications is performed only by employees of the University of California at any facility, building, property, or space that is part of the project, except as specified.
 - j) The public university holds at least one noticed public hearing in the project area to hear and respond to public comments before determining that the project is exempt.
 - k) The public university files an NOE with OPR.
- 2) Prohibits a certificate of occupancy for a building within the project from being issued unless the lead agency receives certification of LEED platinum and the lead agency determines that the construction impacts have been fully mitigated.
- 3) Does not apply this CEQA exemption to a university housing project that:
 - a) Requires the demolition of certain types of housing or historic structures.

- b) Is located on a site that was previously used for housing that was occupied by tenants and was demolished within 10 years before the public university submits an application pursuant to this exemption.
- c) Is located on a site that contains housing units that are occupied by tenants and the housing units are offered for sale, were subsequently offered for sale, to the general public by a subdivider or subsequent owner of the site.
- d) Consists of more than 2,000 units or 4,000 beds.

Background

- 1) *Planning for long-term development by institutions of higher education.* In California, public universities prepare planning documents that help guide the university in its physical development as well as the growth of student enrollment.

University of California (UC). Each campus and medical center of the UC periodically develops an LRDP that guides its physical development – based on academic goals and projected student enrollment levels – for an established time horizon. Each plan identifies how a campus will accommodate the anticipated enrollment along with the faculty and staff needed to support that enrollment. Thus, an LRDP outlines a campus’s priorities and guides future development. CEQA requires an EIR be prepared for the LRDP and requires the UC Board of Regents, as the lead agency, to certify the EIR before approving the LRDP.

UC is constitutionally exempt from local land use control. In other words, the local government’s planning commission does not have the jurisdiction to deny or oppose an LRDP or a specific project within the LRDP.

California State University (CSU). Each of the 23 CSU campuses develop a master plan that guides the future development of campus facilities based on its academic priorities and student enrollment projections. The physical plan is not subject to local land use regulations and usually covers a period of 10 years. As with UC, CEQA requires CSU campuses to complete an EIR for each master plan. The CSU Board of Trustees serves as the lead agency in the EIR process and has the responsibility of approving both the master plan and the EIR.

California Community College. Each community college district maintains a district-wide master plan, as well as a separate master plan for each college located in the district. The master plan serves as a comprehensive planning document encompassing all functions of the college or district for a period of 10 years. The master plan also includes a facilities component that evaluates

existing land, infrastructure, and facility needs, and specifies the projects necessary to meet those needs. The various districts are exempt from local land use regulations. The district prepares an EIR that is subsequently reviewed and approved with the master plan by the district's board of trustees.

- 2) *What happened in Berkeley?* In April 2018, Save Berkeley's Neighborhoods (SBN) filed suit against the UC Regents and the UC Berkeley campus for enrolling more than 6,600 students that were provided for in the 2020 LRDP and EIR, both which were adopted in 2005. The Court of Appeal found that UC must mitigate the environmental impacts of their growth and development. That decision was appealed to the California Supreme Court, which was denied review in September 2020.

In June 2019, in a separate case, SBN, along with the City of Berkeley, filed a suit against the UC Regents and the UC Berkeley campus challenging the UC's adoption of the Upper Hearst Supplemental EIR (SEIR), a project which proposed to provide housing for faculty and graduate students. The SEIR was based on the 2020 LRDP EIR that the Court of Appeal found needed to be updated to evaluate and mitigate the effects of increased enrollment. The city settled in return for greater financial support from the university for impacts on public services from students.

In September 2021, the Alameda Superior court held that the university failed to analyze significant environmental impacts related to enrollment increases and, as part of a remedy, ordered the UC to freeze their enrollment levels at 2020-21 enrollment levels until the SEIR was revised to address the increased enrollment. According to the judgement filed for *Save Berkeley's Neighborhoods v. The Regents of the University of California*, the 2020 LRDP EIR, in 2005, had projected that student enrollment at UC Berkeley would stabilize at around 33,450 students. Instead, enrollment exceeded those projections, with student enrollment in the 2017-2018 school year reaching 40,955 students, exceeding the 2020 LRDP by about 7,500 students.

In March 2022, SB 118 (Committee on Budget and Fiscal Review, Chapter 10, Statutes of 2022), a budget trailer bill, removed the requirement that environmental effects relating to changes in enrollment levels be considered in the LRDP's EIR and provided that enrollment or changes in enrollment, by themselves, do not constitute a project for purposes of CEQA. Additionally, the bill authorized the court to only enjoin increases in campus populations under certain conditions, applying retroactively to the Alameda Superior Court order.

Comments

- 1) *Purpose of Bill.* According to the author, “Currently, California universities are facing a growing housing crisis as enrollment continues to grow, yet campus expansions and the available housing on and around campus fails to meet demand. To address this misalignment, SB 886 will provide a statutory exemption from the California Environmental Quality Act (CEQA) for student or faculty housing projects built on University of California (UC), California State University (CSU), and California Community College (CCC) campuses. Although CEQA is crucial for protecting our communities, each step of the CEQA process is subject to appeals and lawsuits that can increase project costs and create delays. It’s not unusual for it to take three to four years and millions of dollars to resolve a single lawsuit, while appeals regularly take six months to resolve. In one instance, a proposed development by UC Berkeley that would’ve added 130 housing units to their campus was delayed for over two years due to CEQA lawsuits. These delays have real-life consequences including increasing homelessness: currently, 5% of UC, 10% of CSU, and 19% of CCC students are homeless. Faculty and staff on these campuses are left in similar circumstances, with 25% of part-time college faculty on some form of public assistance, in part due to the high costs of housing near their job sites.

“For those students and faculty able to secure housing, many are pushed far from campus to find units they can afford, resulting in increased commutes and associated greenhouse gas emissions. Projects streamlined under this bill will have inherent environmental benefits by addressing this issue, building campus infill and allowing students and faculty to live where they work or go to school. Additionally, these projects will still be reviewed by the array of environmental regulations facing the university systems, including long-range development plans and master plans, both of which develop comprehensive environmental impact reports.

“Stifling university access, particularly due to decreased university housing guarantees and skyrocketing housing costs, will only restrict opportunities for middle and working class families who rely on higher education as a means of socioeconomic growth. SB 886 ensures that the UC, CSU, and CCC systems remain one of California’s greatest assets – not just for those who can afford to live in the communities that house these universities, but for all who want to further their education.”

- 2) *Look before you leap.* Often groups will seek a CEQA exemption to expedite construction of a particular type of project and reduce costs. Providing an

exemption, however, can overlook the benefits of environmental review: to inform decisionmakers and the public about project impacts, identify ways to avoid or significantly reduce environmental damage, disclose to the public reasons why an agency approved a project if significant environmental impacts are identified, and increase public participation in the environmental review and planning processes.

CEQA is a process. It does not dictate the outcome of a project but rather is a disclosure mechanism that guarantees public involvement and transparency in the project approval process. A CEQA exemption can take away that guarantee. Absent CEQA, a project could be assumed to be “fine as is,” potentially without consideration of community concerns or the potential for improvement through public input. Absent CEQA, public participation can vary jurisdiction to jurisdiction and project to project, or sometimes, not be included at all. How can decisionmakers and the public be aware of impacts, mitigation measures, and alternatives of an exempt action? In the context of a university housing development project, which would be exempt from local control, how does a local jurisdiction ensure that the underlying community infrastructure can properly support the increase in population? CEQA is the messenger that helps provide responsible, informed planning.

To help incorporate community involvement, SB 886 requires the public university to hold at least one noticed public hearing to hear and respond to public comments.

- 3) *Two percent of CEQA projects are litigated.* The only tool for enforcing CEQA is civil litigation and a CEQA exemption takes away the ability to enforce the law. The volume of CEQA litigation is low considering the thousands of projects subject to CEQA each year as well as the overall volume of civil litigation statewide. In its 2021 report, *CEQA: California’s Living Environmental Law*, The Housing Workshop found that about 2% of projects were subject to litigation between 2013-2019.

Some cite CEQA litigation as a problem but do not indicate the result of that litigation. For example, were significant impacts that were not initially evaluated ultimately addressed? What would have been the result if those impacts had not been mitigated (e.g. exposure of people to hazards, congestion, or inadequate public services)? Did the project improve as a result of the CEQA process? CEQA has helped protect communities from being disproportionately impacted by unmitigated, avoidable, significant environmental impacts such as air pollution. CEQA has helped local

jurisdictions ensure that a project takes into consideration the project's potential impacts on the community's underlying public infrastructure.

4) *Could an already existing exemption apply?* CEQA contains various housing exemptions, some of which may apply to a university housing development project depending on the scope, size, and other characteristics of the project.

These include:

- Residential development projects consistent with a specific plan. (GOV. C. §65457(a))
- Transit priority projects. (PRC §21155.1)
- Residential projects, employment center projects, and mixed-use development projects within a transit priority area. (PRC §21155.4)
- Residential infill development. (PRC §21159.24)
- Multifamily residential or mixed use projects in urbanized county areas. (PRC §21159.25)
- Negligible expansions of existing public and private structures, facilities, mechanical equipment, or topographical features. (CEQA Guidelines §15301)
- Infill development projects. (CEQA Guidelines §15332)

5) *Couldn't administrative streamlining apply?* Existing law provides various streamlining processes to help expedite projects without sacrificing environmental review, including programmatic EIRs. A public university may utilize their LRDP or master plan EIR as a programmatic EIR, after which CEQA only requires the project-level EIR to cover environmental impacts not covered by the programmatic EIR. Instead, SB 886 would exempt a university housing project that is consistent with the LRDP EIR or master plan EIR, eliminating project-specific environmental review.

(NOTE: See the Senate Environmental Quality Committee analysis for detailed background of this bill.)

FISCAL EFFECT: Appropriation: No Fiscal Com.: Yes Local: Yes

According to the Assembly Appropriations Committee:

- 1) Costs, likely in the millions of dollars (General Fund), for ARB to certify that projects do not result in any net additional GHG emissions. [provision has been amended, no longer applicable]
- 2) Costs of an unknown amount, likely in the low hundreds of thousands of dollars per project, for public universities to meet the requirements of this bill.

These costs could be offset by savings resulting from projects being exempt from other requirements under CEQA.

SUPPORT: (Verified 8/22/22)

California Faculty Association (co-source)
California YIMBY (co-source)
State Building and Construction Trade Council of California (co-source)
Student Housing Coalition (co-source)
Student Senate for California Community Colleges (co-source)
UC Student Association (co-source)
21st Century Alliance
Abundant Housing LA
AFSCME Local 3299
Bay Area Council
Bridge Housing Corporation
Cal State Student Association
California Apartment Association
California Chamber of Commerce
California Community Builders
California Forward Action Fund
California School Employees Association
California State Council of Laborers
California Young Democrats
City Council Member Zach Hilton, City of Gilroy
District Council of Iron Workers of The State of California and Vicinity
East Bay for Everyone
East Bay YIMBY
Fremont for Everyone
GENup
Greenbelt Alliance
Grow the Richmond
Housing Action Coalition
International Union of Operating Engineers, Cal-Nevada Conference
Los Angeles Business Council
Los Angeles Community College District
Mayor Darrell Steinberg, City of Sacramento
Meta
Mountain View YIMBY
Northern Neighbors SF
People for Housing Orange County

Progress Noe Valley
Rancho Santiago Community College District
Sacramento Regional Builders Exchange
San Francisco Bay Area Planning & Urban Research Association
San Francisco YIMBY
San Luis Obispo YIMBY
Santa Cruz YIMBY
South Bay YIMBY
Sunrise Silicon Valley
Sustainable Growth Yolo
SV@home Action Fund
The Two Hundred
University of California Student Association
Urban Environmentalists
YIMBY Action

OPPOSITION: (Verified 8/22/22)

California Environmental Justice Alliance
City of Goleta
City of Santa Cruz
Communities for A Better Environment
Leadership Counsel for Justice and Accountability
Santa Cruz County Board of Supervisors
Sea and Sage Audubon Society
Sustainable University Now

ARGUMENTS IN SUPPORT: According to California YIMBY, “There is an extreme student and faculty housing shortage on UC, CSU, and CC campuses. UCs only have beds for 35% of their enrolled students, and CSUs only have beds for 14% of their students. Only 11 out of 116 community colleges in California provide housing. Students who do not receive housing end up on waitlists and must compete for housing in the surrounding communities. As many of California's biggest universities are in very high-cost housing markets, students often end up in substandard living conditions or far away from campus – or worse, homeless.

“On average, 5% of UC students and 11% of CSU students experienced homelessness during their past year at school. With over 280,000 students currently enrolled in UCs and 485,000 in CSUs, this translates to over 66,000 students at four-year universities in California being currently homeless.

“The housing crisis at California’s public universities is an eminent threat to the success of the next generation of Californians. However, the cost of housing not only makes a college education infeasible for many students, but it also makes it harder for college faculty and staff to support our world-renowned public education system. High housing costs push university employees further away from campus, leading to longer commutes, displacement, and making it harder for the individuals to do their jobs.”

ARGUMENTS IN OPPOSITION: According to the City of Santa Cruz, “Student housing developments are necessary and desirable, but their potentially significant environmental impacts need to be analyzed and mitigated to the extent feasible. Given such, SB 886 could potentially have environmental consequences on both the University of California at Santa Cruz (UCSC) campus and the greater Santa Cruz community. Without CEQA, there is no avenue to take into account the full scope of implications and possible impacts of projects. Jurisdictions impacted by UC development, like the City of Santa Cruz, would also lose much of their opportunity to mitigate student housing impacts as determined by an [EIR]. Without a CEQA process, a forum for community feedback related to impacts would be significantly reduced. UCSC has many neighbors, and a system of accepting and responding to feedback from the community, students, faculty, and staff should remain part of the development process.”

ASSEMBLY FLOOR: 70-2, 8/22/22

AYES: Aguiar-Curry, Alvarez, Arambula, Bennett, Berman, Bloom, Mia Bonta, Bryan, Calderon, Carrillo, Cervantes, Chen, Choi, Cooley, Cooper, Cunningham, Megan Dahle, Daly, Flora, Mike Fong, Fong, Friedman, Gabriel, Gallagher, Eduardo Garcia, Gipson, Gray, Grayson, Haney, Holden, Irwin, Jones-Sawyer, Kalra, Kiley, Lackey, Lee, Low, Maienschein, Mathis, Mayes, McCarty, McKinnor, Medina, Mullin, Muratsuchi, Nazarian, Patterson, Petrie-Norris, Quirk, Quirk-Silva, Ramos, Reyes, Luz Rivas, Robert Rivas, Rodriguez, Blanca Rubio, Salas, Santiago, Smith, Ting, Valladares, Villapudua, Voepel, Waldron, Ward, Akilah Weber, Wicks, Wilson, Wood, Rendon

NOES: Bauer-Kahan, Stone

NO VOTE RECORDED: Bigelow, Boerner Horvath, Davies, Cristina Garcia, Levine, Nguyen, O'Donnell, Seyarto

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8/22/22 19:59:06

**** END ****