

Date of Hearing: April 20, 2022

ASSEMBLY COMMITTEE ON LOCAL GOVERNMENT

Cecilia Aguiar-Curry, Chair

AB 2798 (Fong) – As Introduced February 18, 2022

**SUBJECT:** Freight: development projects.

**SUMMARY:** Applies aspects of the Housing Crisis Act (HCA) to the development of freight transportation projects and the underlying zoning for these projects, streamlines the approval of these projects, and requires concurrent approval of temporary freight use projects and freight development projects on land zoned for industrial and agricultural development. Specifically, **this bill:**

- 1) Makes findings and declarations related to the impacts of the global supply chain crisis on California exporters and employers and specifies legislative intent to work with local governments to suspend certain restrictions on the development of new freight transportation infrastructure and to expedite the permitting of freight transportation infrastructure, as specified.
- 2) Mirrors provisions of the HCA that apply to the review and approval of housing development projects and applies those provisions to the review and approval of freight transportation projects. Specifically:
  - a) Requires a local agency to conduct no more than five hearings in connection with the approval of freight transportation projects, as specified.
  - b) Requires local agencies to determine whether the site of a freight transportation project is a historic site at the time an application is deemed complete pursuant to the Permit Streamlining Act (PSA), as specified.
  - c) Requires local agencies to create a preliminary application process for freight transportation projects, as specified.
  - d) Generally prohibits local agencies from taking action to reduce the development potential for freight transportation projects on industrial or agricultural land. Specifically:
    - i) Prohibits local agencies from adopting new standards that reduce the development capacity of freight transportation projects on industrial or agriculturally-zoned land, as specified.
    - ii) Prohibits local agencies from imposing moratoria or limits on the approval of development of freight transportation projects, as specified.
    - iii) Prohibits local agencies from applying new standards to freight transportation projects that are not objective standards, as specified.
    - iv) Includes exceptions from these prohibitions related to the protection of residential units or projects that pose an imminent threat to health and safety, and compliance with other statutes including the California Environmental Quality Act (CEQA) and the California Coastal Act, as specified.

- v) Specifies that local agencies may change development standards and policies applicable to freight transportation infrastructure projects for specific projects provided that the local agency concurrently adopts policies that ensure there is no net loss in freight transportation capacity, as specified.
- e) Sunsets these provisions on January 1, 2025
- 3) Requires local agencies to allow, as a use by right, a short-term freight transportation use immediately upon receipt of an application for a development project that is associated with the short-term freight transportation use, until development project application is approved or denied. Specifically:
  - a) Prohibits local agencies from imposing permitting requirements, abatements, fines, penalties, or additional fees for the short-term freight transportation use by right period granted during the pendency of the development project application, as specified.
  - b) Limits the use by right authority to land zoned for industrial or agricultural uses.
  - c) Specifies that the use by right provisions do not require or authorize actions, ministerial or discretionary, other than those permitting requirements imposed by other applicable law.
  - d) Specifies that the use by right authority does not supersede any other local, state, and federal laws applicable to short-term freight transportation uses except as specifically provided.
  - e) Requires applicants to mail and post notices associated with short-term freight transportation uses in a manner consistent with the local agency's noticing requirements, as specified.
  - f) Sunsets these provisions on January 1, 2024.
- 4) Extends certain provisions of the streamlined ministerial approval process created by SB 35 (Weiner, Chapter 366, Statutes of 2017) that apply to housing development projects to freight transportation infrastructure developments, as specified, and sunsets this provision on January 1, 2026.
- 5) Incorporates terms and definitions relevant to project review and approval used in the HCA, as specified, and defines the following terms:
  - a) "Freight transportation infrastructure" means any physical improvements to property which facilitate the use of freight transportation, including, but not limited to, the parking, storage, interchange, or inspection of any trucks or intermodal equipment, including chassis or containers, and any improvements specifically related to the support of that same activity.
  - b) "Freight transportation project" means any project to develop freight transportation infrastructure on an industrial or agricultural zoned parcel. Freight transportation project includes, but is not limited to, projects that involve nondiscretionary approvals and projects that involve both discretionary and nondiscretionary approvals.

- c) “Short-term freight transportation use” means all freight-related transportation uses, including, but not limited to, the parking, storage, interchange, or inspection of any intermodal equipment, including chassis, containers, and trucks related to freight transportation activity.
  - d) “Use by right” means that a local agency shall not require a conditional use permit or other discretionary local government review or approval that would constitute a “project” for purposes of Division 13 (commencing with Section 21000) of the Public Resources Code.
- 6) Provides that provisions of the bill are severable. If any provision of this bill or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.
  - 7) Finds and declares that adequate freight transportation infrastructure, in light of the severe impacts of the supply chain crisis resulting from the COVID-19 pandemic on all sectors of the economy of this state, is a matter of statewide concern and is not a municipal affair, and therefore this bill applies to all cities, including charter cities.
  - 8) Provides that no reimbursement is required by this bill, pursuant to Section 6 of Article XIII B of the California Constitution, because a local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this bill.
  - 9) Contains an urgency clause and requires a 2/3 vote of each house

**EXISTING LAW:**

- 1) Allows a city or a county 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.
- 2) Requires, pursuant to Planning and Zoning Law, every city and county to adopt a general plan that sets out planned uses for all of the area covered by the plan, and requires the general plan to include seven mandatory elements, including a land use element.
- 3) Requires major land use decisions by cities and counties, such as development permitting and subdivisions of land, to be consistent with their adopted general plans.
- 4) The Housing Crisis Act (HCA) of 2019 codified by SB 330 (Skinner) Chapter 654, Statutes of 2019, places restrictions on certain types of development standards, amends the Housing Accountability Act (HAA), and makes changes to local approval processes and the Permit Streamlining Act.
- 5) SB 35 (Weiner), Chapter 366, Statutes of 2017, establishes until 2026 a streamlined, ministerial review process for housing development projects that meet strict objective standards.

- 6) SB 9 (Atkins), Chapter 162, Statutes of 2021, requires ministerial approval of housing developments with two units (duplexes) and subdivision maps that meet certain conditions, and increased the length of time that cities and counties can extend the validity of existing subdivision maps.
- 7) AB 168 (Aguiar-Curry) Chapter 166, Statutes of 2020, requires a pre-consultation process with California Native Americans tribe prior to the submission of an SB 35 (Wiener), permit, which entitles a developer to a streamlined housing approval process, in order to identify and protect tribal cultural resources.
- 8) The California Environmental Quality Act (CEQA) requires lead agencies with the principal responsibility for carrying out or approving a proposed project to prepare a negative declaration, mitigated negative declaration, or an environmental impact report (EIR) unless the project is exempt from CEQA.

**FISCAL EFFECT:** This bill is keyed fiscal and contains a state-mandated local program.

**COMMENTS:**

- 1) **Author's Statement.** According to the author, "Assembly Bill 2798 is an immediate solution to remove congestion at the ports and improve California's freight transportation infrastructure. The supply chain crisis caused an unforeseeable disruption of our economy, and this bill will establish short-term permit and planning streamlining which will expand California's capacity to get our supply chain back on track."
- 2) **Bill Summary.** This bill seeks to extend several provisions of state housing law that streamline or expedite the review and approval of housing development projects to freight transportation projects such as warehouse developments. Specifically, this bill:
  - a) Limits local agencies to conducting no more than five hearings before approving a freight transportation project (mirrors HCA).
  - b) Requires local agencies to create a preliminary application process for freight transportation projects (mirrors HCA).
  - c) Requires local agencies to approve freight transportation infrastructure projects that meet specified zoning, environmental setting, and workforce criteria ministerially (mirrors SB 35 and SB 9).
  - d) Prohibits local agencies from taking action to reduce the land use intensity of land zoned for freight transportation infrastructure (Mirrors HCA).

This bill also requires local agencies to approve short-term freight transportation use activities on industrial and agricultural lands upon receipt of a development proposal to construct a permanent freight transportation project associated with the short-term freight transportation use on that land.

- 3) **Supply Chain Crisis.** The events of the COVID-19 pandemic provided the perfect storm to create a backlog in the freight supply chain. First, the COVID-19 lockdown, combined with government stimulus checks, raised household disposable income from an 8% in 2019 to

16% in 2020, reaching up to 34% in April 2020, according to a study at the Giannini Foundation of Agricultural Economics at UC Davis. This extra savings led to increased consumer spending. Because this demand was partially met with imported goods from Asia, an imbalance of traded goods between China and the US developed by about 15% in the nine months of 2021, as compared with the same period of time in 2020.

Most goods from Asia arrive via containers. Before COVID-19, California handled around 40% of US containerized imports. However, California ports became quickly overwhelmed with growth in imports. California ports moved about 0.7 million additional loaded import containers (up to 16%) during May 2021-September 2021. In comparison, US ports outside of California handled more than 1.4 million additional loaded import containers in May – September 2021 (up to 23% compared to the average for the same five-month period from 2017-2019).

Increases in imports resulted in an increase in backed up ports, as warehouses attempted to hire enough people to keep up with the demand, according to an article in CalMatters. Containers full of new goods were left at the ports, creating traffic jams. At the same time, there was an increased demand for empty shipping containers in Asia, and freight rates from Asia to the US rose steeply, such that many more containers were shipped back to Asia empty, instead of carrying US export products.

- 4) **Governor’s Budget Proposal on Supply Chain Issues.** According to the Legislative Analyst's Office (LAO), the current supply chain disruptions are the result of both short-term issues, such as greater consumer demand, and long-term issues, such as the capacity and resilience of the goods movement system. To address the supply chain issues, the Governor proposed a \$1.4 billion spending package for supply chain and port infrastructure in his 2022-2023 fiscal year budget proposal. Specifically, the package consists of:
- a) \$1.2 billion for the California State Transportation Agency to fund port, freight, and goods movement infrastructure.
  - b) \$110 million for the California Workforce Development Board to establish a goods movement workforce training campus.
  - c) \$40 million for the Department of Motor Vehicles to increase capacity to issue commercial driver's licenses (CDLs).
  - d) \$30 million for the Governor's Office of Business and Economic Development (GO-Biz) to fund operational and process improvements at the ports.

In analyzing the Governor's package, the LAO points out that the Governor's proposals mainly address long-term capacity issues. This bill is aimed at addressing immediate term capacity issues. This bill seeks to do this by mirroring housing streamlining laws and applying those laws to the shipping industry.

- 5) **Housing Crisis Act of 2019.** In response to the state’s ongoing housing crisis, the Legislature enacted SB 330, which contained several main components, including but not limited to the following:

- a) Maintaining the amount of development capacity in the state, by prohibiting certain local actions that would reduce housing capacity, as specified.
- b) Increasing certainty for developers, by temporarily prohibiting a local agency from applying new rules or standards to a project after a preliminary application containing specified information is submitted.
- c) Facilitating a timely approval process, by establishing a cap of five hearings that can be conducted on a project that complies with objective local standards in place at the time a development application is deemed complete.
- d) Prohibiting certain cities from imposing a moratorium or similar restrictions or limitations on housing development on land where housing is an allowed use, as specified.

In response to the supply chain crisis, this bill seeks to apply these provisions to freight transportation project applications and to land zoned for freight transportation projects, as applicable.

- 6) **CEQA and Ministerial Review.** 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. Ministerial approvals remove a project from all discretionary decisions of a local government, including an environmental review under CEQA. Thus, establishing processes to approve certain types of projects ministerially also creates exemptions from CEQA.

A CEQA exemption can provide a tremendous benefit to property owners, developers, local governments and other parties involved in the approval of a project as it allows for the project to be completed in an expedited fashion. In light of the state's ongoing housing crisis, the Legislature has created several exemptions to CEQA that are designed to increase the production of housing. The protection of resources afforded by CEQA is not exempted lightly. The Legislature balances the risk of allowing projects to proceed without a full environmental review by limiting exemptions to projects that comply with scores of objective standards and criteria. These standards and criteria are an expression of the state's values and ensure that exempt projects do not result in harm to public health and safety and the environment.

In response to the supply chain crisis, this bill seeks to create a CEQA-exempt ministerial approval process for freight transportation projects. To address the fact that the SB 35 projects are exempt from CEQA, the Legislature mitigated the potential for collateral damage on environmentally and culturally sensitive sites by simply excluding those sites from eligibility. SB 9, which created a CEQA exemption for duplex developments, largely replicated the SB 35 list of environmental criteria. This bill borrows roughly half of the environmental setting criteria that limit ministerial approval for housing developments. Noted below are the exclusive environmental setting criteria that exclude a project from streamlining allowed under SB 35 and SB 9 and whether the criteria is included in this bill.

**Environmental Setting Criteria Prohibiting Ministerial Approval**

<b>Environmental Setting Criteria</b>	<b>SB 35 Affordable Housing Development Projects</b>	<b>SB 9 Duplexes and Parcel Maps</b>	<b>Freight Transportation Projects Proposed in this Bill</b>
Coastal Zones	Not Allowed	Streamlining Allowed	Streamlining Allowed
Prime farmland	Not Allowed	Not Allowed	Streamlining Allowed
Wetlands	Not Allowed	Not Allowed	Not Allowed
Very High Fire Hazard Severity Zones (unless state building standards are met)	Not Allowed	Not Allowed	Not Allowed
Hazardous Waste Sites (except if cleared by state regulators)	Not Allowed	Not Allowed	Streamlining Allowed
Earthquake fault zones (unless state building standards are met)	Not Allowed	Not Allowed	Streamlining Allowed
Special Flood Hazard areas, (unless cleared by federal regulators)	Not Allowed	Not Allowed	Streamlining Allowed
Regulatory floodway (unless cleared by federal regulators)	Not Allowed	Not Allowed	Streamlining Allowed
Lands identified for conservation.	Not Allowed	Not Allowed	Not Allowed
Habitat for protected species	Not Allowed	Not Allowed	Not Allowed
Lands under a conservation easement	Not Allowed	Not Allowed	Not Allowed

SB 35, as amended by AB 168, also requires a pre-consultation process with a California Native American tribe prior to the submission of a development permit, which entitles a developer to a streamlined housing approval process, in order to identify and protect tribal cultural resources. Tribal cultural resources are sites, features, places, cultural landscapes, sacred places, and objects with cultural value to a California Native American tribe. Tribal cultural resources are sometimes referred to as “sacred sites” more generally. Sacred sites may be burial grounds, important archaeological areas, or religious objects. They are often sites of special ceremonies and healing.

Tribal cultural resources are of central importance to Native American nations because Native religion and culture is essential to the survival of Native American/American Indian nations as a distinctive cultural and political group. Many Native Americans have land-based religions, meaning they practice their religion within specific geographic locations; their faith renders that land is itself a sacred, living being.

The environmental impacts associated with warehouse development projects are fundamentally different and not comparable to the environmental impacts associated with a housing development project. For example, traffic impacts, and therefore emissions associated with the projects, are dramatically different. Further, this bill waives environmental criteria designed to protect residents that could also protect workers at new freight transportation projects. Finally, the streamlining provided in this bill fails to provide any process for identifying tribal cultural resources before CEQA-exempt development is allowed to proceed.

- 7) **Concurrent Permit Review.** According to the sponsors, in certain jurisdictions, the permitting entity will not allow a use permit to move forward on a site where a building permit is pending. The sponsors would like to specify that a local agency must consider a temporary freight use permit on land zoned for permanent freight transportation infrastructure if the applicant submits a permanent freight development proposal associated with the temporary freight use permit. For example, if a developer is seeking to develop a paved two-acre site into a permanent warehouse, the developer would also be able to apply for a temporary use permit allowing use of the site for freight parking and storage while the permanent development proposal is pending. As drafted, the legislation would allow a temporary use to commence immediately upon submittal of a permit for a permanent freight transportation use. It is unclear if the local agency could prohibit the temporary use even if it is patently incompatible with the planned use of the land.
- 8) **Policy Considerations.** The Committee may wish to consider the following:
  - a) **Extension of HCA provisions.** Some provisions of the HCA may be appropriate to extend to freight transportation development projects. However, other aspects of the HCA are not. *The committee may wish to consider if it is appropriate to extend the following provisions of the HCA to freight projects:*
    - i) **Downzoning Prohibitions.** The prohibition on downzoning in the HCA is linked to Regional Housing Needs Allocation (RHNA) targets, which allows compliance to be measured against a numeric benchmark overseen by the California Department of Housing and Community Development (HCD). There are no comparable benchmarks for zoned warehouse capacity or applicable oversight entities to monitor compliance. While zoned housing capacity is a static number, it is unclear how a local agency would determine whether or not new zoning policies increase or decrease freight transportation development capacity.
    - ii) **Preliminary Applications.** This bill mirrors provisions in the HCA by requiring a local agency to prepare a preliminary application process for freight transportation developments. However, under the HCA, preliminary applications lock in certain development standards for housing developments. This bill does not include such vesting privileges. Mandating this type of application process will create costs and



- increase workload for local agencies, but it is unclear what benefit this would create for developers.
- b) **CEQA Streamlining.** This bill creates a streamlined ministerial review process for freight transportation infrastructure projects. The CEQA-exempt process created by this bill does not include several of the environmental criteria or a process for consultation to determine if the project may impact tribal cultural resources. *The Committee may wish to consider if a CEQA exemption for freight transportation projects is appropriate.*
  - c) **Concurrent Permit Review.** This bill creates a process for developers to immediately commence certain temporary freight-related operations on land they have are proposing to develop into a permanent freight transportation project. It is reasonable to allow conforming uses to commence while a larger development proposal is pending review. However, as drafted this bill could be interpreted to allow a temporary use to begin without any local review. *The Committee may wish to clarify this provision.*
- 9) **Committee Amendments.** To address the issues raised above the Committee may wish to consider the following amendments:
- a) Make technical changes to language in Section 3 of the bill related to the five-hearing cap to more closely align with language in the HCA.
  - b) Delete section 6 as written and recast this section to prohibit local agencies from denying a use permit for a short-term freight transportation use solely due to the developer submitting a concurrent development application for a permanent freight transportation project. Due to other amendments, incorporate relevant definitions from Section 8 of the bill into this section.
  - c) Delete the following Sections from the bill:
    - i) **Section 2.** Legislative findings related to Section 8.
    - ii) **Section 5.** Preliminary application process.
    - iii) **Section 7.** Streamlined ministerial approval process.
    - iv) **Section 8.** Prohibition on downzoning, imposing development moratoria and other policies.
- 10) **Urgency Clause.** This bill contains an urgency clause and requires a 2/3 vote of each house.
- 11) **Related Legislation.** AB 1679 (V. Fong) establishes the position of the Supply Chain Senior Advisor within the California Business Investment Services Program at the Governor's Office of Business and Economic Development. This bill is pending in the Transportation Committee.

AB 2227 (O'Donnell) Establishes a tax credit, for 10 taxable years, under the Personal Income Tax (PIT) Law and the Corporation Tax (CT) Law equal to 6% of the amount paid or incurred during the taxable year by a qualified taxpayer for qualified tangible personal property (TPP), which includes machinery and equipment of qualified businesses engaged in

the manufacturing of intermodal equipment. This bill is pending in the Assembly Committee on Revenue and Taxation.

AB 2840 (Reyes) prohibits the development of qualifying logistics use projects within 1,000 feet of a sensitive receptor, and requires public agencies to require all other logistics use projects to employ a skilled and trained work force and to dedicate a set percentage of jobs created by the project to local residents. This bill is pending in This Committee.

SB 1104 (Gonzalez) creates an “Office of Freight” within the Governor’s Office of Economic and Workforce Development. This bill is pending in the Senate Transportation Committee.

- 12) **Previous Legislation.** AB 1547 (Reyes) of 2021, among other provisions, would have prohibited public agencies from siting warehouse developments within 3,000 yards of a sensitive land use. This bill died in the Assembly Natural Resources Committee.
- 13) **Arguments in Support.** The Pacific Merchant Shipping Association writes in support, “AB 2798 would enact much needed streamlining to help allow the approval of freight development projects to help ease congestion in our supply chain, but not compromise local governments’ permitting or planning authority. For instance, while the bill allows for simultaneous use of land for freight-related transportation uses during permit application review, it is limited in scope and time as the local government can still reject or impose conditions as it would normally upon permit approval or disapproval and the allowable use under AB 2798 will only occur until that time. It is limited only to permits pulled for already industrial and agricultural zoned properties, and this provision would sunset in 2024, hopefully once we get through the current supply chain crisis.”
- 14) **Arguments in Opposition.** None on file.

#### **REGISTERED SUPPORT / OPPOSITION:**

##### **Support**

Pacific Merchant Shipping Association

##### **Opposition**

None on file.

**Analysis Prepared by:** Hank Brady / L. GOV. / (916) 319-3958