

Date of Hearing: June 15, 2022

ASSEMBLY COMMITTEE ON LOCAL GOVERNMENT

Cecilia Aguiar-Curry, Chair

SB 932 (Portantino) – As Amended May 4, 2022

SENATE VOTE: 25-10

SUBJECT: General plans: circulation element: bicycle and pedestrian plans and traffic calming plans.

SUMMARY: Requires the circulation element of a general plan to include specified contents related to bicycle plans, pedestrian plans, and traffic calming plans, and provides that failure to implement the plans creates a cause of action for victims of traffic violence. Specifically, **this bill:**

- 1) Requires the legislative body of a city or county, upon the next substantive revision of the circulation element occurring on or after June 30, 2024, to develop or update the plan for a balanced, multimodal transportation network, as specified, and to ensure that the plan includes bicycle plans, pedestrian plans and traffic calming plans for any urbanized area, as defined, within the scope of the county or city general plan.
- 2) Requires a city or county to begin implementation of the plan within two years of the date of adoption of the modified circulation element that includes the bicycle, pedestrian and traffic calming plans.
- 3) Requires the modified circulation element to address or include all of the following:
 - a) Use evidence-based strategies intended to eliminate traffic fatalities, with an emphasis on fatalities of bicyclists, pedestrians, and users of any other form of human-powered transportation.
 - b) Identify safety corridors and any land or facility that generates high concentrations of bicyclists or pedestrians, as defined, and include safety measures specific to those areas.
 - c) Establish traffic calming measures around schools and parks, and within business activity districts, as defined.
- 4) Requires a city or county to complete implementation of the plan for a multimodal transportation network and the construction of any related infrastructure within 20 years of the date of adoption of the modified circulation element.
- 5) Provides that a city or county shall have an additional 10 years to complete implementation if the circulation element contains measures that decrease traffic fatalities by at least 20 percent within the first 5 years of its implementation period, and the city or county implements those measures within those 5 years.
- 6) Provides that a city or county shall not be required to comply with the requirements of the bill upon making a written finding based on substantial evidence that its failure to comply with the requirements of the bill are the result of unforeseen circumstances outside of the control of the city or county.

- 7) Provides that, from January 1, 2024 through January 1, 2028, the failure by a city or county to comply with the requirements of the bill creates a cause of action for bicyclists, pedestrians and users of any other form of human-powered transportation injured within the right of way in a collision with a motor vehicle in a high injury area in any of the following counties:
 - a) Alameda.
 - b) Contra Costa.
 - c) Los Angeles.
 - d) Orange.
 - e) Riverside.
 - f) Sacramento.
 - g) San Bernardino.
 - h) San Diego.
 - i) San Francisco.
 - j) Santa Clara.
- 8) Defines “high injury area” as either:
 - a) The 10 locations within a county or city that have the highest rate of incidents of injuries to bicyclists, pedestrians, and users of any other form of human-powered transportation.
 - b) If less than 10 locations, the locations within a county or city that, when combined, account for 50.1 percent or more of all incidents of injuries to bicyclists, pedestrians, and users of any other form of human-powered transportation.
- 9) States the intent of the Legislature to create an annual grant program to award funding to any city or county upon a showing of its implementation of timely and effective short-term efforts to mitigate bicycle, pedestrian, and other human-powered transportation injuries and fatalities. Further states the intent of the Legislature to fight climate change.
- 10) 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.

EXISTING LAW:

- 1) Requires every city and county to prepare and periodically update a comprehensive, long-range general plan to guide future planning decisions.

- 2) Requires the general plan to contain seven mandatory elements: land use, circulation, housing, conservation, open-space, noise, and safety.
- 3) Requires the general plan to include an eighth element on environmental justice, or incorporate environmental justice concerns throughout the other elements.
- 4) Requires the open space element to include an inventory of certain categories of open-space lands and an action plan that lays out how the city or county will implement the open-space plan through specific programs.

FISCAL EFFECT: According to the Senate Appropriations Committee:

- 1) Unknown significant local costs for cities and counties to update circulation elements and to develop and implement bicycle, pedestrian, and traffic calming plans for any urbanized areas within their jurisdiction. The bill includes “local fee disclaimer” language indicating that the bill’s costs are not state-reimbursable because local agencies have general authority to charge and adjust planning and permitting fees to cover their administrative expenses associated with new planning mandates. (local funds)
- 2) Unknown court cost pressures due to increased workload for the judicial branch to adjudicate court filings generated by the new cause of action created by this bill. (Trial Court Trust Fund, General Fund)
- 3) Unknown, major cost pressures to establish, administer, and fund a grant program to provide resources to cities and counties to offset their costs for updating circulation elements, as specified in the bill. (General Fund)

COMMENTS:

- 1) **Author’s Statement.** According to the author, “Despite decades of rhetoric on the need for safer streets, most California streets have grown more dangerous in recent years. California follows a nationwide trend; the National Highway Traffic Safety Administration saw a nearly 20 percent increase in traffic fatalities in the first six months of 2021 compared to 2020 or 2019. Some California cities lack data on how to address the epidemic of traffic violence, particularly regarding death and serious injuries to pedestrians, cyclists, and other human-powered-transit users. In certain cities where the most dangerous streets and corridors have been identified, no plan exists to remedy these deadly situations. Even in cities that have developed plans, like Los Angeles’ Vision Zero and Mobility Plan 2035, meaningful changes that would save lives have yet to be implemented. SB 932 requires a county or city to include in its General Plan, a map of the high injury network within its boundaries and would further require a county or city to identify and prioritize safety improvements. Thus saving countless lives.”
- 2) **General Plans.** Each city and county must prepare and periodically update a comprehensive, long-range general plan to guide future planning decisions. Seven mandatory elements comprise the general plan: land use, circulation, housing, conservation, open-space, noise, and safety. General plans must also either include an eighth element on environmental justice, or incorporate environmental justice concerns throughout the other elements. Cities and counties may adopt optional elements that address issues of their choosing, and once adopted, those elements have the same legal force as the mandatory elements. The general

plan must be “internally consistent,” which means the various elements cannot contain conflicting information or assumptions.

Although state law spells out the plans’ minimum contents, it also specifies that local officials can address these topics to the extent to which they exist in their cities and counties, and with a level of detail that reflects local circumstances. Similarly, state law does not require cities and counties to regularly revise their general plans (except for the housing element, which must generally be revised every eight years).

- 3) **Circulation Element.** The circulation element must show the general location and extent of major roads, transportation routes, terminals, military airports and ports, and local public utilities and facilities, and it must correlate these features with the land use element.

The California Complete Streets Act of 2008, created via AB 1358 (Leno) Chapter 657, Statutes of 2008, required cities and counties to modify their circulation element to plan for a balanced, multimodal transportation network that meets the needs of all users of streets, roads, and highways for safe and convenient travel in a manner that is suitable to the rural, suburban, or urban context of the general plan. For the purposes of this requirement, “users” means bicyclists, children, persons with disabilities, motorists, movers of commercial goods, pedestrians, users of public transportation, and seniors. This modification must occur upon any substantive revision of the circulation element.

- 4) **Government Claims Act.** California law generally provides public entities, including cities and counties, with broad immunity that insulates them from civil liability for “torts”—acts, or failures to act, that result in harm to another. The Government Claims Act provides that “a public entity is not liable for an injury, whether such injury arises out of an act or omission of the public entity or a public employee or any other person” unless otherwise provided by statute.

The Government Claims Act further includes various provisions waiving or granting immunity from liability. For example, public entities can be held liable for injury caused by a “dangerous condition” of its property if the following conditions are met: (1) the property was in a dangerous condition at the time of the injury; (2) the injury was proximately caused by the dangerous condition; and (3) the dangerous condition created a reasonably foreseeable risk of the kind of injury which was incurred. In addition, either: (1) a negligent or wrongful act or omission of an employee of the public entity within the scope of his employment must have created the dangerous condition; or (2) the public entity must have had notice of the dangerous condition a sufficient time prior to the injury to have taken measures to protect against it.

However, state law grants public entities so-called “design immunity,” whereby a public entity cannot be held liable for an injury caused by the plan or design of a construction of, or an improvement to, public property. To qualify for design immunity, a public entity must show all of the following: (1) a causal relationship between a plan or design and the accident; (2) discretionary approval of the plan or design prior to construction; and (3) substantial evidence supporting the reasonableness of the plan or design.

- 5) **Active Transportation On The Rise.** Over the last few years, both public and legislative interest in the active transportation movement has been on the rise. Approved in February of 2021, the latest update of the California Transportation Plan, CTP 2050, states that in the

months following the outbreak of COVID-19, more Americans embraced active travel. California cities that typically have low bicycle ridership, such as Riverside and Oxnard, experienced a 90 percent to 125 percent increase in bicycle miles traveled. Stockton, Bakersfield, Fresno, Sacramento, and San Diego also experienced increases of more than 50 percent. Recreational biking and walking have also skyrocketed. The Rails-to-Trails Conservancy observed a 110 percent increase in trail use compared to the same period in 2019. Looking to the future, the CTP 2050 estimates that bicycle and pedestrian travel could increase by 45 percent by 2050.

However, with active transportation on the rise, the state must ensure bicyclists and pedestrians are safe on and around the roadways. The California Office of Traffic Safety (OTS) reports that California has the highest pedestrian death rate in the nation, nearly 25 percent higher than the national average. The Federal Highway Administration (FHWA) reports that 75 percent of pedestrian fatalities occur at non-intersection locations. The California Highway Patrol (CHP) notes that in 2019 there were 1,021 pedestrians killed by vehicles statewide, similar but slightly higher than prior years, of which 667 were the result of the pedestrian crossing against traffic controls or safety laws.

- 6) **Bill Summary.** This bill requires cities and counties to add or include specified contents related to bicycle plans, pedestrian plans, and traffic calming plans upon any substantive revision of the circulation element occurring after June 30, 2024, and to implement those plans within certain timeframes. The bill creates legal liability for the following counties that fail to implement the plans required by the bill upon updating their circulation element:
- a) Alameda.
 - b) Contra Costa.
 - c) Los Angeles.
 - d) Orange.
 - e) Riverside.
 - f) Sacramento.
 - g) San Bernardino.
 - h) San Diego.
 - i) San Francisco.
 - j) Santa Clara.

Specifically, for the identified agencies the bill creates a cause of action for bicyclists, pedestrian or other user of human-powered transportation that are injured by a motor vehicle within “high injury areas,” as defined, within jurisdiction.

This bill is author sponsored.

7) **Policy Considerations.** The Committee may wish to consider the following.

- a) **Plan Updates and Penalties.** This bill adds a new layer of detail and a set of requirements that local agencies must incorporate in their circulation element upon the next revision of that element occurring after June 30, 2024. This bill also creates a private cause of action for victims of traffic violence within a high injury area if the local jurisdiction has failed to comply with provisions of the bill. The bill defines high injury areas to be the 10 locations within a county or city that have the highest rate of incidents of traffic violence, or, if fewer than 10 locations, the locations within a county or city that, when combined, account for 50.1 percent or more of all incidents of traffic violence. The private cause of action only applies to the counties of Alameda, Contra Costa, Los Angeles, Orange, Riverside, Sacramento, San Bernardino, San Diego, San Francisco, and Santa Clara and cities located within those counties.

There is nothing in this bill or in existing law that requires local agencies to update their circulation elements by a certain date. The private cause of action only applies to a local agency that updates its circulation element, and then fails to implement the plans by the timelines established by this bill. While the private cause of action is intended to ensure that local agencies implement the plans they adopt, it may actually encourage local agencies to delay updating their circulation elements to avoid potentially costly litigation. *The Committee may wish to consider* replacing the private cause of action with a requirement that local agencies update their circulation element by a specified date.

- b) **Aligning Plans and Penalties.** The bill requires cities and counties to identify safety corridors and land or facilities that generate high concentrations of bicyclists or pedestrians and to develop safety measures specific to those areas. Separately the bill creates legal liability for cities and counties if certain traffic injuries occur in “high injury areas.” The bill does not require cities and counties to identify, plan, or implement any specific measures in “high injury areas.” *The Committee may wish to consider* aligning the legal liability created by the bill with the areas the cities and counties must address in their updated plans.
- c) **“Commencing Implementation.”** The bill requires that implementation of the bicycle, pedestrian and traffic calming plans shall commence no less than two years from the date the circulation element is modified. Failure to commence implementation as required will subject certain local agencies to a private cause of action for injuries that occur in specified locations in their jurisdiction. It is unclear what actions a local agency can take that constitute “commencing implementation.” The author expressed a desire to narrow the scope of when a city or county may be subject to a private cause of action to local agencies that fail to take specified actions related to their plans. *The Committee may wish to* continuing to work with the author to better define actions that would satisfy the requirement to “commence implementation” of a plan, and therefore limit the potential legal liability of local agencies.

8) **Committee Amendments.** To address some of the items noted above, as well as several technical issues, the Committee may wish to consider the following amendments:

- a) Amend the intent language in 65300.5(b) to delete “and community planning and zoning development” from the list of negative impacts of climate change.

- b) Amend 65302(b)(2)(B) to change the operative date from June 30, 2024, to January 1, 2025.
 - c) Remove definitions from the active text of the bill and create a new clause that lists all of the definitions used in the bill in a single location.
 - d) Amend the second sentence in 65302(b)(2)(B)(i) to read as follows: “The bicycle plans, pedestrian plans and traffic calming plans ~~modified circulation element~~ shall address all of the following...”
 - e) Replace “human-powered transportation” with “micromobility device.”
 - f) Flip the order of 65302(b)(2)(B)(i)(I) and (II) to read as follows:
 - “(I) Identify safety corridors and any land or facility that generates high concentrations of bicyclists or pedestrians, ~~and include safety measures specific to those areas.~~
 - “(II) Use evidence-based strategies to develop safety measures specific to those areas that are intended to eliminate traffic fatalities, with an emphasis on fatalities of bicyclists, pedestrians, and users of any other form of micromobility devices in the areas identified in (I).
 - g) Delete redundant text requiring cities and counties to commence implementation or their plans within two years of adoption of a modified circulation element.
 - h) Delete the term “high injury areas” and align the private cause of action to apply to injuries that occur within the right-of-way of the areas the bill requires local agencies to identify in the bicycle plans, pedestrian plans and traffic calming plans.
 - i) Delay the effective date of the private cause of action to January 1, 2025.
 - j) Increase from 20 years to 25 years the amount of time local agencies have to complete the upgrades identified in their plans.
- 9) **Related Legislation.** SB 1425 (Stern) requires a city or county to review and update its local open-space plan by January 1, 2026. SB 1425 is pending in this Committee.
- 10) **Arguments in Support.** The California Bicycle Coalition writes in support, “Some California cities lack data on how to address the epidemic of traffic violence, particularly regarding death and serious injuries to pedestrians, cyclists, and other human-powered-transit users. In certain cities where the most dangerous streets and corridors have been identified, no plan exists to remedy these deadly situations. Even in cities that have developed plans, like Los Angeles’ Vision Zero and Mobility Plan 2035, meaningful changes that would save lives have yet to be implemented. SB 932 will make meaningful changes to California law that will align cities across the State to begin the critical work to not only save lives, but make our streets more equitable and fight climate change.”
- 11) **Arguments in Opposition.** The League of California Cities is opposed unless amended and writes, “SB 932 creates significant new legal liability for local jurisdictions that fail to meet the bill’s arbitrary implementation timeframes. The new private right of action created by SB 932 will be counter-productive to making progress on improving our local streets. Simply

put, every additional dollar that goes toward defending against litigation is one fewer dollar available for improving our local streets and roads. Section 65302(b)(2)(B)(iii) must be removed from the bill for our groups to remove opposition to SB 932.”

12) **Double-Referral.** This bill is double-referred to the Transportation Committee.

REGISTERED SUPPORT / OPPOSITION:

Support

Active San Gabriel Valley
 California Bicycle Coalition
 Climate Resolve
 Consumer Attorneys of California
 Culver City Democratic Club
 League of Women Voters of California
 Motional
 Oakland; City of
 Streets are For Everyone
 Streets for All

Opposition

Transportation Agency for Monterey County

Oppose Unless Amended

American Planning Association California Chapter
 California Association of Joint Powers Authorities
 California State Association of Counties
 City of Buena Park
 City of Colton
 City of Downey
 City of Fortuna
 City of La Mirada
 City of Lake Forest
 City of Lakeport
 City of Los Alamitos
 City of Menifee
 City of Orinda
 City of Pico Rivera
 City of Rocklin
 City of San Marcos
 City of Thousand Oaks
 City of Torrance
 City of Vista
 City of Yreka
 County of Santa Barbara
 League of California Cities
 Rural County Representatives of California

Town of Apple Valley
Urban Counties of California

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