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**SENATE COMMITTEE ON ENVIRONMENTAL QUALITY**

**Senator Allen, Chair**

**2021 - 2022 Regular**

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**Bill No:** AB 950  
**Author:** Ward  
**Version:** 5/27/2021  
**Urgency:** No  
**Consultant:** Genevieve M. Wong  
**Hearing Date:** 7/12/2021  
**Fiscal:** Yes

**SUBJECT:** Department of Transportation: sales of excess real property: affordable housing, emergency shelters, and feeding programs

**DIGEST:** Authorizes the Department of Transportation (Caltrans) to sell excess real property to the city, county, or city and county, where the real property is located if the city, county, or city and county agrees to use the real property solely for implementing affordable housing, an emergency shelter, or a feeding program. Exempts the sale of property under these provisions from CEQA.

**ANALYSIS:**

Existing law:

- 1) Authorizes Caltrans to sell real property that was acquired for state highway purposes but that Caltrans has determined is no longer necessary for those purposes. Such sales are not restricted in terms of future use or price, except as specified. (Streets and Highways Code (SHC) §118)
- 2) Establishes rules and procedures for disposal of Caltrans' excess real property (SHC §118.6), including:
  - a) Defining "excess real property" to mean "all land and improvements situated outside of calculated highway right-of-way lines not needed or used for highway or other public purposes";
  - b) Requiring Caltrans, to the greatest extent possible, to offer to sell or exchange excess real property within one year from the date that they determined it to be excess;
  - c) Requiring Caltrans to establish rules and regulations to determine which real property outside of calculated right-of-way lines is no longer needed or used for highway or other public purposes, and which is available for sale or exchange; and

- d) Allows the department to authorize the lease of all real property not presently needed or used for highway purposes pending the sale or exchange of such property.
- 3) Establishes rules and procedures for disposal of the state's surplus residential property, which is defined to mean "land and structures that, at the time of purchase by the state, the state had intended to remove the residences thereon and to use the land for state purposes." (The Roberti Act, Government Code §§54235 - 54238.9)
- 4) Under the California Environmental Quality Act (CEQA), requires lead agencies with the principal responsibility for carrying out or approving a proposed discretionary project to prepare a negative declaration, mitigated negative declaration, or environmental impact report (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.). If there is substantial evidence, in light of the whole record before a lead agency, that a project may have a significant effect on the environment, the lead agency must prepare a draft EIR. (CEQA Guidelines §15064(a)(1), (f)(1))

This bill:

- 1) Authorizes Caltrans to sell excess real property to the city, county, or city and county where the property is located, if the local jurisdiction agrees to use the property solely for affordable housing (housing that is affordable to households whose gross income does not exceed 120 percent of the area median income (AMI)), an emergency shelter, or a feeding program.
- 2) Requires the sales price be the original acquisition price paid by Caltrans, without adjustment for inflation.
- 3) Requires Caltrans to identify the property eligible for sale pursuant to these provisions and notify the relevant city, county, or city and county of the property's eligibility for sale.
- 4) Requires the city, county, or city and county where the property is located to:
  - a) Notify Caltrans of its interest in accepting or declining the sale of property within 60 days of receiving notice of eligibility for sale;

- b) Ensure the real property is used for the specified purposes for a term of at least 55 years, subject to a recorded covenant, and that any new units added to the property are used only for those purposes; and
  - c) Ensure that, at all times, uses of the property remain compatible and do not interfere with the maintenance, operations, and safe use of remaining adjacent or nearby Caltrans real property and any transportation facilities.
- 5) Exempts the sale of property from the CEQA.
  - 6) Declares that all properties sold pursuant to this section are sold “as is” and that Caltrans has no further obligation or liability whatsoever for conditions existing at the time of the sale, and that CEQA, site remediation, and rezoning are the sole responsibility of the purchaser, as specified.
  - 7) Exempts this bill from applying to real property sales of surplus residential property governed by the Roberti Act.
  - 8) States that it is the intent to promote the use of skilled and trained labor for the potential affordable housing projects resulting from this bill.

## Background

- 1) *Overview of CEQA Process.* CEQA provides a process for evaluating the environmental effects of a project, and includes statutory exemptions, as well as categorical exemptions in the CEQA guidelines. If a project is not exempt from CEQA, an initial study is prepared to determine whether a project may have a significant effect on the environment. If the initial study shows that there would not be a significant effect on the environment, the lead agency must prepare a negative declaration (ND). If the initial study shows that the project may have a significant effect on the environment, the lead agency must prepare an EIR.
- 2) *California’s housing challenges.* California faces a severe housing shortage. In its most recent statewide housing assessment, the California Department of Housing and Community Development (HCD) estimates that California needs to build an additional 100,000 units per year over recent averages of 80,000 units per year to meet the projected need for housing in the state. Prior to the onset of COVID-19, California was building approximately 100,000 to 115,000 units a year in recent years.

A variety of causes has contributed to the state's lack of adequate housing production. Some point to local approval processes as a major factor, arguing that local governments control most of the decisions about where, when, and how to build new housing. Some in the development community point to CEQA review, while housing advocates note a lack of a dedicated source of funds for affordable housing. Additionally, others note a lack of available labor to construct the amount of housing needed and an increased price of materials.

## Comments

- 1) *Purpose of Bill.* According to the author, "At a time when the state is facing a severe housing shortage, this bill will authorize Caltrans to sell excess land to cities and counties at a lower cost to promote the development of affordable housing. As cities and counties struggle to meet their housing needs, this bill will help lower costs and make affordable housing projects more feasible. This will provide our communities another tool to address California's housing crisis and better serve those Californians in greatest need—those without a home."
- 2) *What do we lose when we remove the environment review of CEQA?* 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 and identify ways to avoid or significantly reduce environmental damage. Environmental review includes more than just looking at the impact a project may have on a wetland or a threatened species; it looks at things such as air quality, impacts to neighboring facilities such as hospitals and schools, pressure on underlying infrastructure, and so much more, and analyzes those impacts in the context of one another.

Even projects that are considered environmentally beneficial may, nonetheless, have significant impacts on the environment. Without CEQA, potentially significant impacts will be unknown, unanalyzed, and unmitigated.

"CEQA operates, not by dictating pro-environmental outcomes, but rather by mandating that 'decision makers and the public' study the likely environmental effects of contemplated government actions and thus make fully informed decisions regarding those actions. ... In other words, CEQA does not care what decision is made as long as it is an informed one." (Citizens Coalition Los Angeles v. City of Los Angeles (2018) 26 Cal. App. 5th 561, 577.)

- 3) *CEQA review for selling state-owned property?* A discretionary activity approved or carried out by a public agency is not exempt from CEQA simply because it will not have an immediate or direct effect on the environment. CEQA applies if the project may cause either a direct physical change in the environment, or a *reasonably foreseeable indirect physical change* in the environment (PRC §21065). The sale of property from Caltrans to a local jurisdiction may not have an immediate effect on the environment, but because the property will be for purposes of developing affordable housing, an emergency shelter, or a feeding program, these *changes in use* will result in a reasonably foreseeable indirect physical change in the environment. (Some transfers of property, not covered by the scope of this bill, may result in immediate and direct change to the physical environment.)

Removing CEQA in this instance means that Caltrans is not required to consider the *overall* environmental effect that could result from a property being utilized for affordable housing, emergency shelter, or feeding program purposes instead of transportation purposes.

- 4) *CEQA review for specific projects.* Generally, if the transfer of property is exempt from CEQA, the project that subsequently develops that property will still be subject to CEQA. However, if a CEQA exemption exists for that particular type of project, the project itself may not be subject to environmental review either.

For example, PRC §21159.23 exempts from CEQA affordable housing projects that meet certain criteria. Planning and Zoning Law, Government Code §65583), requires cities and counties, in the housing element of their general plans, to identify zones where emergency shelters are permitted by right (aka exempt from CEQA). AB 1197 (Santiago, Chapter 340, Statutes of 2019) exempts from CEQA any activity approved or carried out by the City of Los Angeles in furtherance of providing emergency shelters and supportive housing in the city until 2025. To the extent a separate CEQA exemption exists that could apply to the subsequent affordable housing project, emergency shelter, or a feeding program, those projects would not be subject to environmental review on the project-level.

When combined with an AB 950 exemption, this could result in instances of no environmental review on both the macro- and project-level and significant environmental impacts. Things such as air quality or interference with an adopted emergency response plan may not be considered and mitigated or avoided.

- 5) *Committee amendments. Should the Committee wish to advance this proposal, it may wish to amend the bill to require Caltrans, when selling property pursuant to these provisions, to file a notice of exemption with both the Office of Planning and Research and the county clerk of the county in which the property is located.*
- 6) *Pending author amendments.* According to the author, should the bill pass out of this committee, the author is contemplating additional amendments which would:
- Address the labor intent language;
  - Further define the types of homeless services, taking into consideration best practices for interim housing as a basis; and
  - Allow for Caltrans to sell or transfer the land at original acquisition cost to the Department of General Services (DGS) so that, consistent with Governor Newsom's Executive Order N-06-19, DGS may offer low-cost, long-term ground leases for the development of affordable housing.

**DOUBLE REFERRAL:**

This measure was heard in Senate Transportation Committee on June 29, 2021, and passed out of committee with a vote of 13-4.

**SOURCE:** CalTrans

**SUPPORT:**

None received

**OPPOSITION:**

California Coalition for Rural Housing  
California Council for Affordable Housing  
California Housing Consortium  
California Housing Partnership  
Housing California  
Non Profit Housing Association of Northern California  
Southern California Association of Nonprofit Housing