

BILL: AB 2535 (Bonta, D-Oakland)
Amended April 9, 2024
Introduced February 13, 2024

SUBJECT: AB 2535 would prohibit the California Transportation Commission from allocating Trade Corridor Enhancement Program funding to a project that adds a general-purpose lane to a highway or expands highway capacity in certain communities.

STATUS: Pending in Assembly Committee on Transportation and Assembly Committee on Natural Resources

SUMMARY AS OF APRIL 10, 2024:

AB 2535 (Bonta, D-Oakland) would prohibit the California Transportation Commission (CTC) from allocating Trade Corridor Enhancement Program (TCEP) funding to a project that expands the physical footprint of a highway in a community that ranks in the highest quintile in CalEnviroScreen for diesel particulate matter. CalEnviroScreen is a mapping tool that identifies communities that are most affected by various sources of pollution, particularly as it pertains to disadvantaged communities. For those areas with levels of diesel particulate matter in the highest quintile in CalEnviroScreen in 2024, if those emissions do not decrease by 50 percent below 2024 levels by 2030, then only projects that result in a net decrease in such emissions can be programmed for TCEP funding after January 1, 2030. AB 2535 would also only allow TCEP to be programmed for design, right-of-way and construction capital costs if the applicant has completed its environmental review of the project within six months of the CTC adopting the program of projects.

In addition to the above restrictions on use of TCEP funds, AB 2535 also requires the CTC to establish a target to ensure that 15 percent of TCEP funds for each year are allocated to investments in zero-emission freight infrastructure, such as heavy-duty electric vehicle charging and fueling infrastructure and electric locomotive technology. The CTC would then be required to increase this target each year with the goal of 50 percent of all TCEP funding to be for this purpose by 2030.

EFFECTS ON ORANGE COUNTY:

TCEP is a competitive funding program that was established through SB 1 (Chapter 5, Statutes of 2017). The program was intended to fund projects designed to move freight more efficiently on corridors with high volumes of freight movement and supports the goals of the National Highway Freight Program, the California Freight Mobility Plan, and the guiding principles in the California Sustainable Freight Action Plan. AB 2535 makes changes to TCEP in such a way that is inconsistent with the intent of SB 1 and undermines voter intent when they voted to reject measures to repeal SB 1.

The Orange County Transportation Authority (OCTA) has been awarded TCEP funds for projects such as the State Route 55 (SR-55) Improvement Project, which will improve

freight access and throughput for the traveling public. If AB 2535 were in law today, this project would likely have not received funds through this program because the project would be deemed to increase the highway footprint. The legislation does not take into account that the project could also be addressing safety and rehabilitation needs throughout the corridor, like the SR-55 Improvement Project will do. At the same time, other freeway projects could increase the footprint of the highway so they can incorporate pricing strategies to reduce congestion. These projects create revenue for transit and active transportation, aiding the State in meeting its goals to reduce greenhouse gas emissions and vehicle miles traveled. Additionally, since AB 2535 also requires as much as 50 percent of TCEP funding to go toward zero-emission freight infrastructure, including electric locomotive technology, there is already a significant piece of funding taken off the table for other modal projects. And given that this is limited to freight infrastructure, it is unclear how transportation agencies could remain competitive for funding for these technologies.

The wording within the legislation is amorphous in many ways. To start, AB 2535 does not define “expanded highway footprint.” Therefore, it is difficult to know what kinds of projects would be impacted. This could include the addition of managed lanes, lanes for transit, and truck climbing lanes to name a few. It may also include even minor improvements to the highway for general maintenance or safety purposes. AB 2535 also references CalEnviroScreen as the threshold for identifying certain communities. Many agencies still find difficulty in using this tool as it often portrays a level of subjectivity. This tool is continuing to evolve which could also create uncertainty in way where a project could meet the criteria in one version, but perhaps the updated version would then make that project deemed prohibited under this program. Funding uncertainty is a significant concern to agencies delivering these types of programs. Creating such priority structures outlined in the bill could cause significant consequences to planned and existing transportation projects and funding programs.

The bill’s restriction to only funding diesel emission reducing projects in those communities in the highest quintile for diesel particulate emissions, if emissions aren’t reduced by 2030, also will significantly impact what projects could be competitive for TCEP in future years. Transportation agencies have limited authority to control such emissions and would be dependent on the success of other regulatory agencies in reducing these emissions. This would impact not only highway projects, but also other types of TCEP projects, including rail, port improvements, etc, if these emissions are not reduced. Rather than simply preclude projects that are unable to reduce one type of emissions, a more comprehensive analysis should take place to understand the full scope of the potential harms and benefits to surrounding communities and goods movement.

It should also be noted that both the state and federal governments have already outlined equity priorities through the Climate Action Plan for Transportation Infrastructure and the Justice40 Initiative, respectively. There should be an opportunity to implement existing policies prior to adding more complicated layers to transportation planning and funding. If this legislation were enacted, it would be difficult for agencies to determine the prioritization of one policy over another when planning projects and associated funding

possibilities. Additionally, this legislation would undermine the current requirements related to disadvantaged communities. Specifically, the TCEP program already has certain distribution requirements that account for disadvantaged community populations. Even further, for projects related to zero-emission infrastructure, there is a workforce development component that encourages hiring and training of individuals from disadvantaged communities. When creating policy, space needs to be left to fully vet and implement existing policy before adding more complexities which only delay critical transportation projects from creating these community benefits. Further, flexibility is needed for the CTC to be able to adjust program guidelines to quickly respond to project issues. Rather than mandate specific timelines related to environmental analysis in statute, it would make more sense for this to be part of the guideline development process as not to disadvantage beneficial projects from seeking funding that are in the early stages of project development.

The Riverside County Transportation Commission and the Contra Costa Transportation Authority have oppose positions on this legislation. AB 2535 is sponsored by the Greenlining Institute with the Coalition for Clean Air, the Natural Resources Defense Council, and Environment California listed as co-sponsors. An OPPOSE position is consistent with OCTA's 2023-24 State Legislative Platform principle to "Oppose policies that change existing formula funding structures to redistribute funds in a way that would inhibit a local agency from delivering critical transportation projects and programs."

OCTA POSITION:

Staff recommends: OPPOSE

AMENDED IN ASSEMBLY APRIL 9, 2024

CALIFORNIA LEGISLATURE—2023–24 REGULAR SESSION

ASSEMBLY BILL

No. 2535

Introduced by Assembly Member Bonta

February 13, 2024

An act to amend Section 2192 of the Streets and Highways Code, relating to transportation.

LEGISLATIVE COUNSEL’S DIGEST

AB 2535, as amended, Bonta. Trade Corridor Enhancement Program.

Existing law requires the California Transportation Commission, under a program commonly known as the Trade Corridor Enhancement Program, to allocate, upon appropriation by the Legislature, revenues from a specified portion of the state excise tax on diesel fuel and certain federal funds ~~for~~ *to* infrastructure projects located on or along specified transportation corridors. Under existing law, eligible projects under the program include, among others, highway improvements to more efficiently accommodate the movement of freight and environmental and community mitigation or efforts to reduce environmental impacts of freight movement.

This bill would prohibit the commission from ~~allocating programming~~ funding under the program to a project that ~~adds a general purpose lane to a highway or expands the physical footprint of a highway capacity~~ in a community that meets certain criteria relating to pollution impacts. ~~The bill would also prohibit the commission from allocating funding under the program to a project that expands a highway’s footprint unless the project meets certain criteria relating to environmental review and the operation of the project.~~ *experiences disproportionate burdens from diesel particulate matter, as specified.*

Under the Trade Corridor Enhancement Program, existing law requires the commission to adopt a program of projects from projects nominated by the Department of Transportation and local agencies. In adopting the program of projects, existing law requires the commission to evaluate the total potential economic and noneconomic benefits of the program of projects to California's economy, environment, and public health, and to specifically assess localized impacts in disadvantaged communities. ~~Existing law also requires the commission to adopt guidelines to implement the program that includes a transparent process to evaluate projects and allocate program funding to infrastructure improvements in a manner that, among other things, includes disadvantaged communities measures, as specified.~~

This bill would require the applicant agency, as a condition of commission funding for design, right-of-way, and capital construction costs, to complete the applicable requirements of the California Environmental Quality Act and the federal National Environmental Policy Act of 1969 within 6 months of the Commission adopting the program of projects. The bill would limit the commission, when programming projects in specified communities that both experienced disproportionate burdens from diesel particulate matter in 2024 and did not experience a 50 percent decline in absolute levels of diesel particulate matter by 2030, to programming only projects that result in a net decrease in diesel particulate emissions in those communities on or after January 1, 2030. The bill would also require the commission to ensure that at least 50% of the establish percentage targets for funds allocated under the program in any fiscal year are to be allocated to investments in zero-emission freight infrastructure. In adopting the program of projects, the bill would require the commission, for zero-emission freight infrastructure projects, to prioritize those projects located in communities that meet certain criteria relating to pollution impacts. The bill would also require the process included in the guidelines to evaluate projects and allocate funding to infrastructure improvements in a manner that emphasizes community input and the unique needs of those most impacted by the goods movement system. infrastructure, with a goal of 50% of program funds awarded in 2030 being awarded to investments in zero-emission freight infrastructure, as provided.

~~The bill would require each agency that nominates a project that is included in the program of projects to comply with a maintenance of effort requirement by annually certifying to the commission that it will~~

~~maintain levels of funding from other sources pledged towards certain transportation projects, as specified. If the commission determines that an agency did not comply with the maintenance of effort requirement, the bill would require the commission to reduce the amount of funding allocated to any project nominated by the agency by $\frac{1}{3}$, as specified.~~

Vote: majority. Appropriation: no. Fiscal committee: yes.

State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 2192 of the Streets and Highways Code
2 is amended to read:

3 2192. (a) The following revenues shall be allocated for
4 infrastructure projects pursuant to this section:

5 (1) The revenues deposited in the Trade Corridors Enhancement
6 Account pursuant to Section 2192.4, except for those revenues in
7 the account that were appropriated by Senate Bill 132 of the
8 2017–18 Regular Session (Chapter 7 of the Statutes of 2017).

9 (2) An amount of federal funds equal to the amount of revenue
10 apportioned to the state under Section 167 of Title 23 of the United
11 States Code from the national highway freight programs, pursuant
12 to the federal Fixing America’s Surface Transportation Act (“FAST
13 Act,” Public Law 114-94).

14 (b) The funding described in subdivision (a) shall be available
15 upon appropriation for allocation by the California Transportation
16 Commission for infrastructure improvements in this state on
17 federally designated Trade Corridors of National and Regional
18 Significance, on the Primary Freight Network, and along other
19 corridors that have a high volume of freight movement, as
20 determined by the commission and as identified in the state freight
21 plan developed pursuant to Section 13978.8 of the Government
22 Code. Projects eligible for funding shall be included in an adopted
23 regional transportation plan. Projects within the boundaries of a
24 metropolitan planning organization shall be included in an adopted
25 regional transportation plan that includes a sustainable communities
26 strategy determined by the State Air Resources Board to achieve
27 the region’s greenhouse gas emissions reduction targets. In
28 developing guidelines for implementing this section, the
29 commission shall do both of the following:

1 (1) Apply the guiding principles, to the maximum extent
2 practicable, in the California Sustainable Freight Action Plan
3 released in July 2016 pursuant to Executive Order No. B-32-15.

4 (2) Consult the state freight plan and the applicable port master
5 plan.

6 (c) Eligible projects for these funds include, but are not limited
7 to, all of the following:

8 (1) Highway improvements to more efficiently accommodate
9 the movement of freight, particularly for ingress and egress to and
10 from the state's land ports of entry, rail terminals, and seaports,
11 including navigable inland waterways used to transport freight
12 between seaports, land ports of entry, and airports, and to relieve
13 truck congestion along ~~limited~~ access major trade or goods
14 movement corridors.

15 (2) Freight rail system improvements to enhance the ability to
16 move goods from seaports, land ports of entry, and airports to
17 warehousing and distribution centers throughout California,
18 including projects that separate rail lines from highway or local
19 road traffic, improve freight rail mobility, and other projects that
20 improve the safety, efficiency, and capacity of the rail freight
21 system.

22 (3) Projects to enhance the capacity and efficiency of ports,
23 except that funds available under this section shall not be allocated
24 to a project that includes the purchase of fully automated cargo
25 handling equipment. For purposes of this paragraph, "fully
26 automated" means equipment that is remotely operated or remotely
27 monitored, with or without the exercise of human intervention or
28 control. This paragraph shall not prohibit the use of funds made
29 available pursuant to this section for a project that includes the
30 purchase of human-operated zero-emission equipment,
31 human-operated near-zero-emission equipment, and infrastructure
32 supporting that human-operated equipment. This section shall not
33 prohibit the purchase of devices that support that human-operated
34 equipment, including equipment to evaluate the usage and
35 environmental benefits of that human-operated equipment.

36 (4) Truck corridor improvements, including dedicated truck
37 facilities or truck toll facilities, including the mitigation of the
38 emissions from trucks or these facilities.

(5) Border access improvements that enhance goods movement between California and Mexico and that maximize the state's ability to access funds made available to the state by federal law.

(6) Surface transportation, local road, and connector road improvements to effectively facilitate the movement of goods, particularly for ingress and egress to and from the state's land ports of entry, airports, and seaports, to relieve truck congestion along ~~limited access~~ major trade or goods movement corridors.

(7) Projects that employ advanced and innovative technology to improve the flow of freight, such as intelligent transportation systems, public infrastructure, excluding vehicles, that enables zero-emission or near-zero emission goods movement, real time information systems, weigh-in-motion devices, electronic screening and credentialing systems, traffic signal optimization, work zone management and information systems, ramp metering, and electronic cargo and border security technologies.

(8) Environmental and community mitigation or efforts to reduce environmental impacts of freight movement, such as projects that reduce noise, overnight truck idling, or truck queues, and advanced traveler information systems such as freight advanced traveler information systems that optimize operations to reduce empty-load trips.

(d) (1) Projects funded with revenues identified in paragraph (1) of subdivision (a) shall be consistent with Article XIX of the California Constitution.

(2) The commission shall not ~~allocate~~ *program* any funding pursuant to this section to a project that ~~does either of the following:~~

~~(A) Adds a general purpose lane to a highway.~~

~~(B) Expands expands the physical footprint of a highway capacity in a community that ranks in the highest quintile in CalEnviroScreen for disproportionate burdens from multiple sources of pollution and with population characteristics that makes the community more sensitive to pollution: diesel particulate matter.~~

~~(3) The commission may allocate funding pursuant to this section to a project that expands a highway's footprint only if the project meets all of the following requirements:~~

~~(A) The project completed a project-level environmental review in accordance with the California Environmental Quality Act~~

~~(Division 13 (commencing with Section 21000) of the Public Resource Code), and fully analyzed, disclosed, and mitigated all environmental impacts through an environmental impact report, including any impacts to vehicle miles traveled, induced vehicle miles traveled, greenhouse gas emissions, pollution from criteria air pollutants, energy use, noise, and other impacts that would be caused by induced vehicle miles traveled, including truck vehicle miles traveled.~~

~~(B) The project completed a project-level environmental review in accordance with the California Environmental Quality Act that analyzed project alternatives featuring only zero-emission infrastructure or vehicle miles traveled-reducing alternatives in the analysis of alternatives.~~

~~(C) The project will ensure smooth and free-flowing truck traffic on limited-access rights-of-way using demand management strategies, which may include, but are not limited to, tolls or other forms of road pricing.~~

~~(D) The project will deploy zero-emission freight technology.~~

~~(E) The project completed an analysis of cumulative pollution burdens and potential adverse cumulative impacts caused by the proposed project, and has a proposed mitigation plan developed in consultation with the communities subject to those cumulative impacts.~~

(3) Funding for design, right-of-way, and construction capital costs shall only be programmed to a project if the applicant agency completes the applicable requirements of the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code) and the federal National Environmental Policy Act of 1969 (42 U.S.C. Sec. 4321 et seq.) within six months of the commission adopting the program of projects pursuant to subdivision (e).

(e) (1) In adopting the program of projects to be funded with funds described in subdivision (a), the commission shall evaluate the total potential economic and noneconomic benefits of the program of projects to California's economy, environment, and public health. The evaluation shall specifically assess localized impacts in disadvantaged communities. The commission shall consult with the agencies identified in Executive Order No. B-32-15 and metropolitan planning organizations in order to use the appropriate models, techniques, and methods to develop the

parameters for evaluating the program of projects. The commission shall allocate the funding from subdivision (a) for trade infrastructure improvements as follows:

(A) Sixty percent of the funds shall be available for projects nominated by regional transportation agencies and other public agencies, including counties, cities, and port authorities, in consultation with the department. The commission shall provide reasonable geographic targets for funding allocations without constraining what an agency may propose or what the commission may approve.

(B) Forty percent of the funds shall be available for projects nominated by the department, in consultation with regional transportation agencies.

(2) (A) In adopting a program of projects pursuant to paragraph (1), the commission shall prioritize projects jointly nominated and jointly funded by the state and local agencies. In considering geographic balance for the overall program, the commission may adjust the corridor-based targets in subparagraph (A) of paragraph (1) to account for projects programmed pursuant to subparagraph (B) of paragraph (1).

~~(B) In adopting a program of projects pursuant to paragraph (1), for projects meeting the criteria specified in paragraph (3), the commission shall prioritize projects located in communities that rank in the highest quintile in CalEnviroScreen for disproportionate burdens from multiple sources of pollution and with population characteristics that makes the community more sensitive to pollution.~~

(B) If absolute levels of diesel particulate matter in a community that ranks in the highest quintile in CalEnviroScreen for disproportionate burdens from diesel particulate matter in 2024 do not decline by 50 percent below 2024 levels by 2030, as determined by the Office of Environmental Health Hazard Assessment, then the commission shall, when programming projects in that community, only program projects that result in a net decrease in diesel particulate emissions in that community on or after January 1, 2030.

~~(3) The commission shall ensure that at least 50 establish a target to program 15 percent of the funds allocated pursuant to this section in any fiscal year are allocated the next programming cycle that begins on or after January 1, 2025, to investments in~~

1 zero-emission freight—infrastructure. ~~Zero-emission freight~~
2 ~~infrastructure may include, but is not limited to, heavy-duty electric~~
3 ~~vehicle charging and fueling infrastructure and electric locomotive~~
4 ~~technology. infrastructure that are well-qualified for funding based~~
5 ~~on the goals of the program. The commission shall increase the~~
6 ~~targets in each cycle, with a goal of 50 percent of the funds~~
7 ~~programmed in 2030 being awarded to investments in~~
8 ~~zero-emission freight infrastructure that are well-qualified for~~
9 ~~funding based on the goals of the program.~~

10 (f) ~~(1) Each agency, including the department and any local~~
11 ~~agency, that nominates a project that is included in the program~~
12 ~~of projects shall comply with the following maintenance-of effort~~
13 ~~requirement:~~

14 (A) ~~No later than 30 days after the beginning of each fiscal year,~~
15 ~~the agency shall certify to the commission that it will, during the~~
16 ~~period of time when any project nominated by the agency remains~~
17 ~~in the program of projects, maintain its levels of funding from all~~
18 ~~other sources pledged to transportation infrastructure projects that~~
19 ~~reduce vehicle miles traveled or support investments in~~
20 ~~zero-emission vehicle infrastructure, or both.~~

21 (B) ~~As part of the certification process, the agency shall submit~~
22 ~~a statement indicating the amount of funds pledged for those~~
23 ~~purposes in the preceding fiscal year and the amount of funds~~
24 ~~expended for those purposes in the preceding fiscal year.~~

25 (2) ~~If the commission determines that an agency did not comply~~
26 ~~with the maintenance-of effort requirement described in paragraph~~
27 ~~(1), the commission shall reduce the amount of funding allocated~~
28 ~~pursuant to this section to any project nominated by the agency~~
29 ~~by one-third.~~

30 (3) ~~If the commission determines that an agency that failed to~~
31 ~~meet its maintenance-of effort requirement comes into compliance~~
32 ~~in a subsequent fiscal year, the commission shall restore the amount~~
33 ~~of funding that was previously allocated to the project.~~

34 (g) (1) (A) The commission shall adopt guidelines, including
35 a transparent process to evaluate projects and to allocate the
36 funding described in subdivision (a) for trade infrastructure
37 improvements in a manner that does all of the following:

38 (i) Addresses the state's most urgent needs.

39 (ii) Balances the demands of various land ports of entry,
40 seaports, and airports.

1 (iii) Places emphasis on projects that improve trade corridor
2 mobility and safety while reducing emissions of diesel particulates,
3 greenhouse gases, and other pollutants and reducing other negative
4 community impacts, especially in disadvantaged communities.

5 (iv) Makes a significant contribution to the state's economy.

6 (v) Recognizes the key role of the state in project identification.

7 (vi) Supports integrating statewide goods movement priorities
8 in a corridor approach.

9 (vii) Includes disadvantaged communities measures, as
10 established by the California Environmental Protection Agency
11 pursuant to Section 39711 of the Health and Safety Code, and
12 other tools the commission determines, for evaluating benefits or
13 costs for disadvantaged communities and low-income communities.

14 ~~(viii) Emphasizes community input and the unique needs of~~
15 ~~those most impacted by the goods movement system.~~

16 (B) Project nominations shall include either a quantitative or
17 qualitative assessment of the benefits the project is expected to
18 achieve relative to the evaluation criteria.

19 (2) The guidelines adopted pursuant to paragraph (1) may
20 include streamlining of project delivery by authorizing regional
21 transportation agencies and other public agencies to seek
22 commission approval of a letter of no prejudice that allows the
23 agency to expend its own funds for a project programmed in a
24 future year of the adopted program of projects, in advance of
25 allocation of funds to the project by the commission, and to be
26 reimbursed at a later time for eligible expenditures. A letter of no
27 prejudice shall only be available to local or regional transportation
28 agencies for moneys that have been identified for future allocation
29 to the applicant agency. Moneys designated for the program shall
30 only be reimbursed when there is funding available in an amount
31 sufficient to make the reimbursement.

32 (h) In addition, the commission shall also consider the following
33 factors when allocating these funds:

34 (1) "Velocity," which means the speed by which large cargo
35 would travel from the land port of entry or seaport through the
36 distribution system.

37 (2) "Throughput," which means the volume of cargo that would
38 move from the land port of entry or seaport through the distribution
39 system.

1 (3) “Reliability,” which means a reasonably consistent and
2 predictable amount of time for cargo to travel from one point to
3 another on any given day or at any given time in California.

4 (4) “Congestion reduction,” which means the reduction in
5 recurrent daily hours of delay to be ~~achieved after accounting for,~~
6 ~~and mitigating, vehicle miles traveled.~~ *achieved.*

7 (i) For purposes of this section, the following terms have the
8 following meanings:

9 (1) “Disadvantaged communities” are those communities
10 identified by the California Environmental Protection Agency
11 pursuant to Section 39711 of the Health and Safety Code.

12 (2) “Low-income communities” are census tracts with median
13 household incomes at or below 80 percent of the statewide median
14 income or with median household incomes at or below the
15 threshold designated as low income by the Department of Housing
16 and Community Development’s list of state income limits adopted
17 pursuant to Section 50093 of the Health and Safety Code.

18 (j) It is the intent of the Legislature for the commission to adopt
19 an initial program of projects using the state and federal funds
20 described in subdivision (a) for eligible projects as soon as
21 practicable and no later than May 17, 2018.