**OFFICE OF ASSEMBLYMEMBER**

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THIRTIETH ASSEMBLY DISTRICT

## ASSEMBLY BILL 3030 Opportunity Zones; CEQA

### SUMMARY

AB 3030 creates a fast path to new economic development and affordable housing development in California's poorest communities by creating a new section in the Public Resources code (PRC Section 21080.48) that exempts from the California Environmental Quality Act certain projects in defined Opportunity Zones.

### BACKGROUND

The recently enacted federal Tax Cuts and Jobs Act of 2017 creates Section 1400Z-1(b)(1) of the Internal Revenue Code, which provides that a State's chief executive officer may nominate a limited number of low-income community (contiguous) population census tracts for designation as qualified "Opportunity Zones". Investments made by individuals through special "Opportunity Zone Funds" would allow for the deference or elimination of federal taxes on capital gains. This concept was first introduced in the Investing in Opportunity Act of 2016, authored by U.S. Senators Cory Booker (D – N.J.) and Tim Scott (R – S.C.). As the nation's only two black Senators, they built on an idea from the Economic Innovation Group (funded by Facebook's Sean Parker), to specifically address the growing economic disparity between wealthy and poor communities nationwide.

Through the Department of Finance, Governor Brown's administration identified, and in a March 21, 2018 letter to Treasury Secretary Mnuchin, recommended for Opportunity Zone designation 879 tracts in California spread across 57 different counties. The identified tracts share common traits – they are the poorest tracts from each county and feature at least 30 business establishments. Nearly all of the identified tracts overlap with recently enacted AB 1550 (2017) designations and 64% have SB 535 (2012) designations, taking advantage of disadvantaged community and targeted low income designations for purposes of guaranteed funding through the Cap and Trade program.

### PROBLEM

Wealth & Poverty Gap Creates An Emergency

Since the Great Recession, economic recovery in California has been largely isolated to the coastal, urban, technology centers. The 2012 elimination of redevelopment agencies leave local economic developers with few tools to generate economic growth in poor communities. The result has been disastrous for the poorest communities in California, who have not benefited from the state's robust economic recovery.

In the 2016 U.S. Census, California's poverty rate was 14.6%, $16^{th}$ worst in the nation. However, this ranking considers a parent living with two children earning under \$19,300 per year to be in poverty, regardless of location (California and Mississippi, with massive differences in housing costs, are treated the same). More complete data includes supplemental factors like cost of housing, and not just income comparisons. That data indicates that over 20% (8 million Californians) cannot financially support themselves and their families. This ranks California as the state with the highest poverty level in the U.S., despite being the $6^{th}$

largest economy in the world with a GDP of greater than $2.4 trillion. California's high poverty rate is compounded by the challenge of having 22% of the nation's homeless population.

Poor Communities Lack Access to Private Capital

For our poorest communities, the best opportunity for economic growth comes from private capital investment. Unfortunately, the poor have little access to investment capital. Opportunity Zones create just that – an opportunity. There is no certainty that Opportunity Zones designated in California will actually capture investment capital. Every state's Governor will be designating tracts as qualified Opportunity Zones, and so there will be intense competition for investment capital placed into Opportunity Zone Funds.

Opportunity Zone Funds provide for greater capital gain tax relief the longer that an investor keeps their capital committed to the fund. The market is huge – unrealized personal and corporate capital gains in the U.S. total over $6.1 trillion today. All elections to defer capital gains into an Opportunity Zone Fund must be made by December 31, 2026.

AB 3030 recognizes that clearly, time is of the essence, and Opportunity Zones with shovel ready projects, able to produce project returns on investment the soonest, will capture the bulk of Opportunity Zone Fund investments. **Meanwhile, poor communities with designated Opportunity Zone tracts that face the task of finding projects, and bringing those projects through lengthy CEQA environmental impact review (and the associated costs of preparing the EIR, and potentially defending CEQA based lawsuits objecting to the EIR findings), will be at a competitive disadvantage to capture Opportunity Zone Fund capital investment compared to communities with projects located in Opportunity Zones in other states that will to stand up revenue generating projects, sooner**. Across the United States, projects in Opportunity Zones that can be completed quickly will produce the best economic results for Opportunity Zone Fund investors – and investors will drive private capital into communities that make it easiest to produce returns the soonest.

Poverty: Worthy of CEQA Exemptions

California's legislature has created statutory and categorical exemptions from CEQA. Emergency projects to property or facilities damaged or destroyed as a result of a disaster, in which a state of emergency has been proclaimed by the Governor pursuant to the California Emergency Services Act are statutorily exempt. The designation of Opportunity Zones to fight poverty is certainly synonymous. Specific commuter and passenger rail projects, regional and statewide transportation projects, family day care homes, and even projects related to hosting or staging the Olympic Games all have statutory CEQA exemptions.

Categorical exemptions include the repair and maintenance to existing facilities and properties, including but not limited to the restoration or deteriorated or damaged structures to meet current standards of public health and safety. Additionally, the replacement and reconstruction of existing structures where the new project will be substantially similar and on the same site location benefit from a CEQA exemption.

Skilled & Trained Workforce

Importantly, AB 3030 ensures that our poorest communities will benefit with projects delivered through developers that are committed to high quality and fair wages, by certifying that the project employs a skilled and trained workforce or is completed under a project labor agreement. This makes AB 3030 consistent with recent affordable housing legislation passed this session, such as SB 35 (2017).

## SOLUTION

Creating a statutory exemption from the California Environmental Quality Act (CEQA) for projects funded by Opportunity Zone Funds, within designated Opportunity Zone boundaries creates the greatest likelihood to drive private investment capital into California's poorest communities.

Opportunity Zone Fund investors will have choices across the nation to invest in poor communities, seeking projects that create wealth both through a return on the initial capital investment in the fund, and in the tax savings earned by placing the capital gain into the Opportunity Zone Fund. California's poorest communities will lose out on that new influx of capital if projects take years to be approved going through CEQA's EIR process, and the litigation that can ensue therefrom.

An emergency exists in California due to the number of citizens living in real world poverty, and California should be committed to respond with emergency measures to stem the growing poor population. Led by two black U.S. Senators, the Federal government developed a creative program to put to work trillions of dollars of unrealized capital gains, aimed directly at the nation's poorest communities. California can leverage that opportunity, by ensuring that Opportunity Zone Fund capital flows freely into California's designated Opportunity Zones. A CEQA exemption for those Opportunity Zone projects means that private investment capital may become accessible to California's poor at long last, and put to work sooner. AB3030 provides relief to those poor communities most impacted from widening economic and income inequality, by creating an attractive investing environment for rapidly developing affordable housing and economic development projects in designated California Opportunity Zones.

## SUPPORT

TBD

## STATUS

Introduced February 16, 2018

## CONTACT

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