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## UC Berkeley Student Enrollment Crisis Inspires Legislative Push to Change CEQA Requirements

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On February 15, California's preeminent institution of higher education, UC Berkeley ("UCB"), began emailing student applicants that UCB may be forced to withdraw admissions offers as a result of a recent California Court of Appeal decision. Both the Court of Appeal and the California Supreme Court, declined to stay an Alameda County Superior Court ruling, which required UCB to freeze student enrollment at 2020-21 levels—resulting in approximately 5,100 fewer admissions offers for the 2022-23 academic year.

The lawsuit, *Save Berkeley's Neighborhoods v. University of California* (Case No. RG19022887), challenged the environmental impact report ("EIR") prepared for UCB's 2021 Long Range Development Plan ("LRDP"), among other UCB projects. In particular, Save Berkeley's Neighborhoods ("SBN") claimed that the EIR did not comply with the California Environmental Quality Act ("CEQA") because the EIR did not adequately examine the proposed increase in student population. Siding with Save Berkeley's Neighborhoods, the Superior Court concluded that the EIR failed to analyze the impacts of the increased student population on housing, population growth, displacement, and other public services. This was an ironic argument for Save Berkeley's Neighborhoods to make, especially since SBN has been one of several neighborhood organizations suing to stop a number of UCB's efforts to build housing for both students and the City of Berkeley's unhoused population.

Condemnation of the judicial decision restricting UCB student enrollment was swift, with the Governor's Office filing an amicus brief in UCB's appeal and with the California Legislature proposing multiple bills to address the applicability of CEQA to student enrollment at public colleges and universities.

One bill, Senate Bill 118, added Section 21080.09 to the Public Resources Code, providing that "enrollment or changes in enrollment, by themselves, do not constitute a project" for the purposes of CEQA. The bill also gives public colleges and universities 18 months to certify a new EIR if a court finds that increases in campus populations in excess of LRDP projections would result in significant environmental effects. (Pub. Res. Code, § 21080.09(e)(1).) A court is precluded from enjoining a campus population increase for that 18 month period. (*Id.*) Finally,

the bill applied retroactively and, because it was enacted as a budget trailer bill, became effective immediately. (*Id.*, § 21080.09(e)(3).) SB 118 received unanimous approval in both the Senate and Assembly on March 14, 2022 and was signed into law by Governor Gavin Newsom hours later, effectively nullifying the prior court decisions restricting student enrollment at UCB.

Senator Scott Wiener (D-San Francisco) also introduced SB 886, which would exempt certain qualifying student housing projects from CEQA. Eligible projects would not be located in certain environmental hazard zones, would not result in the demolition of housing or historic structures, and would be required to adhere to specified labor workforce requirements. Unlike SB 118, SB 886 is not retroactive, so it likely would not apply to the student housing projects planned by UCB and already subject to lawsuits by Save Berkeley's Neighborhoods. The bill is still working its way through the legislative process, however, and could change over time.

While UCB is now free to increase its student population, the enrollment crisis at the university underscored the challenges CEQA poses to both public and private housing development projects in California. The law subjects many projects to a complex environmental review process and provides standing for almost any irritated neighbor to challenge project approvals, resulting in increased costs and lengthy timelines before a project can begin to break ground. In light of the persistent housing crisis in California, the Legislature has taken steps to exempt some housing projects from CEQA review (e.g. transit priority projects (SB 1018 (2012)), affordable housing projects (SB 35 (2017)), and duplexes and fourplexes (SB 9 (2021))). Some members of the Legislature continue to express urgency for exempting even more housing projects from CEQA's purview, but it is yet unclear how much this push will translate into new legislation.



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