
SENATE COMMITTEE ON APPROPRIATIONS

Senator Anthony Portantino, Chair
2021 - 2022 Regular Session

SB 44 (Allen) - California Environmental Quality Act: streamlined judicial review: environmental leadership transit projects

Version: April 27, 2021

Urgency: No

Hearing Date: May 3, 2021

Policy Vote: E.Q. 7 - 0, JUD. 9 - 0

Mandate: Yes

Consultant: Ashley Ames

Bill Summary: This bill would make certain transit projects eligible for expedited administrative and judicial review under the California Environmental Quality Act (CEQA).

Fiscal Impact:

- Potential unknown cost pressure (General Fund) to the state-funded court system to process and hear challenges to the project's environmental review within the timeframes prescribed by the bill. (See staff comments.)

Background: For a handful of major projects that meet certain environmental standards, existing law provides for accelerated CEQA review and requires courts, to the extent feasible, to resolve judicial challenges arising from that process within 270 days of the filing of the administrative record. These provisions are intended to expedite beneficial development but entail potential tradeoffs with respect to the sufficiency of environmental review, the burden on courts, and access to justice for other litigants, a concern magnified by the judicial backlog arising from the COVID-19 pandemic.

Unlike other environmental laws specific to air resources, water resources, or the control of toxic substances, there is no statewide bureaucracy charged with enforcement of CEQA. Rather, it is enforced through citizen participation and litigation if necessary. Arguably, this makes the implementation of CEQA more efficient and expeditious than if a state agency were created to administer the law. Thus, CEQA litigation—which occurs at very low rates—could more appropriately be characterized as mere enforcement.

Several bills have provided for a 270-day judicial review period for environmental leadership projects, as well as for specified stadium projects, and a San Diego transit and transportation facilities project. The principal framework associated with these provisions is AB 900 (§ 21178 et seq.), which establishes procedures for 270-day expedited judicial review for “environmental leadership” projects with a minimum investment of \$100,000,000 that are certified by the Governor and meet specified conditions. Such projects include clean renewable energy projects, clean energy manufacturing projects, and LEED Gold-certified infill site projects with transportation efficiency 15 percent greater than comparable projects and zero net additional GHG emissions. To date, 19 projects have been certified under this process. AB 900 sunset January 1, 2021, but is currently proposed to be renewed under SB 7 (Atkins, 2021) to include housing development projects with a minimum investment of \$15,000,000.

Proposed Law: This bill would:

1. For CEQA-based challenges to an EIR or approval for “environmental leadership transit projects” (ELTP), require that the Judicial Council adopt rules of court that require the challenge, including any potential appeals to the Court of Appeal or Supreme Court, to be resolved, to the extent feasible, within 270 calendar days of the filing of the certified record of proceedings with the court.
2. Define an ELTP as a project to construct a guideway and related fixed facilities that meets specified design parameters, environmental standards, local planning requirements, and uses a skilled and trained workforce, except as provided.
3. Define “project applicant” as a public or private entity or its affiliates that proposes an ELTP and its successors, heirs, and assignees.
4. Establish requirements and timeframes for the preparation of an EIR, submission of public comment, the public hearing on the EIR, nonbinding mediation between the lead agency and the commenters, and preparation, certification, and submission to a court in a CEQA lawsuit, of the record of administrative proceedings.

Related Legislation:

SB 7 (Atkins) reenacts the Jobs and Economic Improvement Through Environmental Leadership Act and expands eligibility of the Act to include smaller housing projects. This bill is currently in the Assembly pending referral.

SB 288 (Chapter 200, Statutes of 2020, Wiener) exempted from CEQA, until 2023, various transit and transit-related projects.

SB 757 (Allen, 2020) would have expanded project eligibility for the Jobs and Economic Improvement Through Environmental Leadership Act to include transit projects that meet specified requirements. SB 757 was vetoed by the Governor.

SB 995 (Atkins, 2020) would have extended for four years the expedited California Environmental Quality Act (CEQA) administrative and judicial review procedures established by the Jobs and Economic Improvement Through Environmental Leadership Act [AB 900 (Buchanan), Chapter 354, Statutes of 2011] for “environmental leadership development projects” (ELDPs), and expanded AB 900 eligibility to include smaller housing projects. SB 995 died on the Senate Floor on concurrence.

SB 1 (Beall, Chapter 5, Statutes of 2017) increased several taxes and fees to raise the equivalent of roughly \$52.4 billion over ten years in new transportation revenues and makes adjustments for inflation every year; directed the funding to be used towards deferred maintenance on the state highways and local streets and roads, and to improve the state's trade corridors, transit, and active transportation facilities.

Staff Comments: This bill would result in potential cost pressure of an unknown amount to the state-funded court system to process and hear challenges to a project's environmental review within the timeframes prescribed by the bill. It is possible that,

absent this bill, the state would face similar costs resulting from challenges to a project that would occur over a period longer than timeframes prescribed by this bill. However, the acceleration of some cases due to this bill could result in the need for extra personnel and resources in order for the courts to hear them within the required period.

The Judicial Council has studied the workload costs created by expedited CEQA judicial review requirements and determined that trial and appellate courts expend a combined average of \$340,000 in workload costs on each case eligible for expedited judicial review. While no specific projects are listed in the bill, based on the four transit projects that the Los Angeles Metropolitan Transportation Authority, the bill's sponsor, has identified as priority projects for which expedited judicial review would apply, Judicial Council estimates that the fiscal impact of the bill could be approximately \$1.4 million. This estimate would vary based on the number of eligible cases, and could potentially be higher. Cost pressure for the courts due to increased workload could result in delays of court services, prioritization of court cases, and may impact access to justice.

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