

Date of Hearing: June 23, 2021

ASSEMBLY COMMITTEE ON NATURAL RESOURCES

Luz Rivas, Chair

SB 44 (Allen) – As Amended April 27, 2021

SENATE VOTE: 37-0

SUBJECT: California Environmental Quality Act: streamlined judicial review: environmental leadership transit projects

SUMMARY: Establishes expedited administrative and judicial review procedures under the California Environmental Quality Act (CEQA) for zero-emission, fixed guideway transit projects, requiring the courts to resolve lawsuits within 270 days, to the extent feasible.

EXISTING LAW:

- 1) CEQA requires lead agencies with the principal responsibility for carrying out or approving a proposed 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).
- 2) Authorizes judicial review of CEQA actions taken by public agencies, following the agency's decision to carry out or approve the project. Challenges alleging improper determination that a project may have a significant effect on the environment, or alleging an EIR doesn't comply with CEQA, must be filed in the Superior Court within 30 days of filing of the notice of approval. The courts are required to give CEQA actions preference over all other civil actions.
- 3) Pursuant to AB 900 (Buchanan), Chapter 354, Statutes of 2011, as reenacted by SB 7 (Atkins), Chapter 19, Statutes of 2021, establishes procedures for expedited judicial review (i.e., requiring the courts to resolve lawsuits within 270 days, to the extent feasible) for “environmental leadership development projects” certified by the Governor and meeting specified conditions, including Leadership in Energy and Environmental Design (LEED) Gold-certified infill site projects achieving transportation efficiency 15% greater than comparable projects and zero net additional greenhouse gas (GHG) emissions, clean renewable energy projects, and clean energy manufacturing projects. SB 7 sunsets these provisions on January 1, 2026.

THIS BILL:

- 1) Establishes expedited administrative and judicial review procedures under CEQA for an “environmental leadership transit project”, as defined, limiting public comments, requiring preparation of the record concurrently with the administrative process, and requiring the courts to resolve lawsuits challenging CEQA or other approvals within 270 calendar days from the date the certified record is filed with the court, to the extent feasible.
- 2) Defines “environmental leadership transit project” as a project to construct a fixed guideway and related fixed facilities that meets all of the following conditions:

- a) The fixed guideway operates at zero-emissions.
 - b) The project reduces greenhouse gases directly, without using offsets.
 - i) Requires projects more than two miles in length to reduce greenhouse gas (GHG) emissions by no less than 400,000 metric tons.
 - ii) Requires projects no more than two miles in length to reduce GHG emissions by no less than 50,000 metric tons.
 - c) The project reduces vehicle miles traveled (VMT) no less than 30 million miles.
 - d) The project is consistent with an applicable sustainable communities strategy or alternative planning strategy and applicable regional transportation plan.
 - e) The project applicant incorporates sustainable infrastructure practices as specified.
- 3) Requires contractors and subcontractors to pay to all construction workers employed in the execution of the project at least the general prevailing rate of per diem wages. Provides that this obligation may be enforced by the Labor Commissioner through the issuance of a civil wage and penalty assessment pursuant to relevant provisions of the Labor Code, unless all contractors and subcontractors performing work on the project are subject to a project labor agreement that requires the payment of prevailing wages and provides for enforcement through an arbitration procedure.
 - 4) Requires eligible projects to use a skilled and trained workforce, as defined, to perform all construction work on the project.
 - 5) Requires Judicial Council, on or before April 1, 2022, to adopt Rules of Court that require challenges to eligible projects, including any potential appeals to the court of appeal or the 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.
 - 6) Specifies procedures and deadlines for the administrative process and for concurrent preparation of the administrative record by the lead agency.

FISCAL EFFECT: According to the Senate Appropriations Committee, 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.

COMMENTS:

- 1) **Background.** CEQA provides a process for evaluating the environmental effects of applicable projects undertaken or approved by public agencies. If a project is not exempt from CEQA, an initial study is prepared to determine whether the 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. If the initial study shows that the project may have a significant effect on the environment, the lead agency must prepare an EIR.

Generally, an EIR must accurately describe the proposed project, identify and analyze each significant environmental impact expected to result from the proposed project, identify mitigation measures to reduce those impacts to the extent feasible, and evaluate a range of reasonable alternatives to the proposed project. If mitigation measures are required or incorporated into a project, the agency must adopt a reporting or monitoring program to ensure compliance with those measures.

CEQA actions taken by public agencies can be challenged in superior court once the agency approves or determines to carry out the project. CEQA appeals are subject to unusually short statutes of limitations. Under current law, court challenges of CEQA decisions generally must be filed within 30 to 35 days, depending on the type of decision. The courts are required to give CEQA actions preference over all other civil actions. The petitioner must request a hearing within 90 days of filing the petition and, generally, briefing must be completed within 90 days of the request for hearing. However, CEQA imposes no deadline for the court to render a decision.

In 2011, AB 900 and SB 292 (Padilla), Chapter 353, Statutes of 2011, established expedited CEQA judicial review procedures for a limited number of projects. For AB 900, it was large-scale projects meeting extraordinary environmental standards and providing significant jobs and investment. For SB 292, it was a proposed downtown Los Angeles football stadium and convention center project achieving specified traffic and air quality mitigations. For these eligible projects, the bills provided for original jurisdiction by the Court of Appeal and a compressed schedule requiring the court to render a decision on any lawsuit within 175 days. This promised to reduce the existing judicial review timeline by 100 days or more, while creating new burdens for the courts and litigants to meet the compressed schedule. AB 900's provision granting original jurisdiction to the Court of Appeal was invalidated in 2013 by a decision in Alameda Superior Court in *Planning and Conservation League v. State of California*. AB 900 was subsequently revised to restore jurisdiction to superior courts and require resolution of lawsuits within 270 days, to the extent feasible. AB 900 sunset January 1, 2021.

In May, the Governor signed SB 7, an urgency measure to reenact and revise AB 900, with a Governor certification deadline of January 1, 2024, a lead agency approval deadline of January 1, 2025, and a sunset of January 1, 2026.

2) **Author's statement:**

SB 44 makes environmentally beneficial, zero-emission mass transit projects throughout California eligible for expedited CEQA review by the Superior Court. The sooner such transformative projects undergo CEQA, are built and begin operating, the faster they will significantly displace less efficient and more pollution-intensive regional trips taken by single passengers in private vehicles...An identified goal of environmental leadership projects has been to achieve a 15% or greater standard for transportation efficiency. It is vexingly incongruous that the law so far has not and still does not explicitly permit transit projects—which are designed to convey passengers from one place to another in a fast, efficient manner—to be eligible for certification. The 17 projects designated under prior law for expedited judicial treatment so far—although impressive—cannot deliver the magnitude of environmental benefits to Californians as is possible with a zero-emission transit project. Quick resolution of legal challenges to transit projects could speed up

construction by years...Each additional day roads are congested, and drivers take trips alone in their vehicles, massive quantities of carbon dioxide, NOx and diesel particulates are emitted throughout our state, often in some of the most polluted air basins in the country. There is exceptional merit in stipulating that large-scale, transformative regional transit projects be awarded a more certain, truncated timeline to undergo review by California's Superior Court.

- 3) **The LA Metro projects behind the bill.** In 2016, Los Angeles Mayor and Metro Board Chair Eric Garcetti announced a "Twenty-Eight by '28 Initiative" to highlight and accelerate construction projects for completion in advance of the 2028 Olympic and Paralympic Games. The 2028 Summer Olympics are currently scheduled to take place from July 21 to August 6, 2028 throughout the greater Los Angeles region.

According to Metro, "(t)he pillar projects must begin construction no later than calendar year 2023 to have a chance of completion and revenue operations by 2028. Staff continues to pursue a 2023 construction start; however, given the estimated completion date for the environmental process of several pillar projects, there continues to be risk that construction may begin at a later date."

According to the Los Angeles Olympics Organizing Committee, "the LA 2028 plan does not require building any new transit infrastructure." In fact, the city's bid to the International Olympic Committee explicitly provided that the region could accommodate the Olympic Games even if no future transportation projects were completed.

Four of the 28 projects—each identified as a high-priority, "pillar" project by Metro—would build new or extended fixed rail transit lines:

- a) Gold Line Eastside Extension Phase 2 – Metro's Gold Line light rail currently links East Los Angeles to Union Station before heading northward into the San Gabriel Valley. Metro plans to build a significant eastward extension of the line which currently terminates at Atlantic Station through a number of Eastern Los Angeles County communities all the way to Montclair, in Southwest San Bernardino County. Phase 2 of this extension would follow one of two alignments currently being studied—one of which would follow State Route 60 to South El Monte, and another which heads south into the City of Commerce and tracks Washington Boulevard into the City of Whittier.
- b) Green Line Extension to Torrance – The Green Line connects the City of Norwalk to Redondo Beach along a route which runs mostly in the median of Interstate 105. Metro is slated to extend the line southward from its current terminus at the Redondo Beach Marine Station to a regional transit center station in the City of Torrance. Two primary alignments are under consideration—one following the Metro-owned Harbor subdivision right-of-way, and another which would align the route further east with Hawthorne Boulevard and include a stop at the South Bay Galleria.
- c) Sepulveda Transit Corridor – The natural barrier created by the Santa Monica Mountains means that most passengers traveling between the San Fernando Valley, the Westside and Los Angeles International Airport (LAX) are funneled primarily through the Sepulveda Pass on Interstate 405, ranked as one of the most traveled urban highways in the nation. The Valley to Westside portion of Metro's ambitious Sepulveda Transit Corridor Project

has been identified as a candidate for potentially accelerated completion by the 2028 Olympic and Paralympic Games. (Though the author indicates this project will be a rail line, Metro has not determined that yet.)

- d) West Santa Ana Branch to Downtown L.A. – The West Santa Ana Branch Transit Corridor project is a new, 20-mile light rail transit line that would connect downtown Los Angeles to southeast Los Angeles County, serving the communities of Vernon, Huntington Park, Bell, Cudahy, South Gate, Downey, Paramount, Bellflower, and Cerritos. The vast majority of the alignment has been settled upon, however two different routes through downtown Los Angeles are still under consideration—one which terminates the line at Union Station, and another which travels through the downtown “core” and ends the line at the 7th Street/Metro Center Station.

In addition, the “fixed guideway” definition in this bill is intended to include a proposed privately-financed gondola from Union Station to Dodgers Stadium.

- 4) **Prior legislation.** This bill is similar to the final version of SB 757 (Allen), which was vetoed by the Governor last year because it was contingent on SB 995 (Atkins), which was not passed by the Senate before sine die adjournment of the 2019-2020 session.

When SB 757 was heard by this committee last August, the bill applied only to the four LA Metro rail projects listed above. The bill was amended in committee, then again on the floor, to apply more broadly to fixed guideway projects meeting specified conditions, including alternative GHG reduction standards for projects of two miles or less. The intent of these amendments was to permit the Dodgers Stadium gondola project to be eligible.

- 5) **Lost in translation?** While the scope of projects eligible under SB 44 is consistent with SB 757, SB 44 lacks several key conditions included in SB 757. These discrepancies may be attributable to the different drafting structure – SB 757 was drafted within the AB 900 chapter, and therefore included relevant conditions of AB 900, while this bill adds a new section that stands alone.

To make SB 44 consistent with SB 757, *the author and the committee may wish to consider* adding the following conditions:

- a) Require project approval by the lead agency by January 1, 2024.
- b) Sunset the section added by the bill on January 1, 2025.
- c) Require the applicant to demonstrate compliance with specified commercial recycling requirements.
- d) Require the applicant to enter into a binding and enforceable agreement that all mitigation measures required to certify the project shall be conditions of approval of the project, and those conditions will be fully enforceable by the lead agency or another agency designated by the lead agency. Require the applicant to agree, as an ongoing obligation, that environmental mitigation measures will be monitored and enforced by the lead agency for the life of the obligation.

- e) Require the applicant to agree to pay the costs of the trial court and the court of appeal in hearing and deciding any case challenging a lead agency's action on a project, including payment of the costs for the appointment of a special master if deemed appropriate by the court, in a form and manner specified by the Judicial Council.
- f) Require the applicant to agree to pay the costs of preparing the record of proceedings for the project concurrent with review and consideration of the project under CEQA, in a form and manner specified by the lead agency for the project.

In addition, to provide Judicial Council a more reasonable time to adopt the rules of court required to implement the bill, and to make the adoption of those rules more consistent with the expected final approval of eligible projects and commencement of any litigation, *the author and the committee may wish to consider* extending the deadline for Judicial Council from April 1, 2022 to January 1, 2023.

6) **Double referral.** This bill has been double referred to the Assembly Judiciary Committee.

REGISTERED SUPPORT / OPPOSITION:

Support

California Association of Councils of Governments
 California State Association of Electrical Workers
 California State Pipe Trades Council
 California Transit Association
 City of Inglewood
 Los Angeles County Business Federation (BIZFED)
 Monterey-Salinas Transit
 Silicon Valley Leadership Group
 State Building and Construction Trades Council of California
 Western States Council Sheet Metal, Air, Rail and Transportation

Opposition

California Judges Association
 Judicial Council of California (unless amended)
 National Right to Work Committee
 Western Electrical Contractors Association

Analysis Prepared by: Lawrence Lingbloom / NAT. RES. /