

Date of Hearing: July 13, 2021

ASSEMBLY COMMITTEE ON JUDICIARY
Mark Stone, Chair
SB 44 (Allen) – As Amended June 28, 2021

As Proposed to be Amended

SENATE VOTE: 37-0

SUBJECT: CALIFORNIA ENVIRONMENTAL QUALITY ACT: STREAMLINED
JUDICIAL REVIEW: ENVIRONMENTAL LEADERSHIP TRANSIT PROJECTS

KEY ISSUE: SHOULD SEVEN “ENVIRONMENTAL LEADERSHIP TRANSIT PROJECTS” IN LOS ANGELES COUNTY BE PERMITTED TO OBTAIN EXPEDITED ADMINISTRATIVE AND JUDICIAL REVIEW FOR LITIGATION ARISING UNDER THE CALIFORNIA ENVIRONMENTAL QUALITY ACT.

SYNOPSIS

Over the past decade California has adopted several measures to permit cases involving the California Environmental Quality Act to obtain preferred, fast-track treatment in the courts. Although only four projects have availed themselves of this preferential treatment in the last ten years, and evidence suggested that streamlined judicial review does not guarantee a project’s legal or financial success, the Legislature continues to pass measures granting expedited judicial review of projects. Not only do these bills perpetuate the belief that the California Environmental Quality Act is a major deterrence to development, as opposed to land use policies and construction costs, the bills also place significant logistical burdens on California courts and prioritize litigating development projects over the legal needs of everyday Californians. Accordingly, this Committee has long viewed such bills with a high degree of skepticism.

Nonetheless, as proposed to be amended, this bill confers expedited judicial review on seven environmental leadership transit projects in Los Angeles County. Evidence suggests that these projects will reduce vehicle miles traveled in the county by hundreds of millions of miles each year, provide millions of Angelino’s access to high-quality mass transit, and the construction of these projects will generate thousands of well-paid construction jobs. Thusly, these projects appear to merit special consideration with regards to potential lawsuits arising under the California Environmental Quality Act. Further, in order to lessen the strain on the court, this bill provides that the cases are to be heard within 365 days, as opposed to the typical 270 days provided for expedited California Environmental Quality Act legal reviews, and provides that the court may consider the impacts of expedited review on the existing civil calendar backlog that is plaguing the California court system.

This bill is supported by a coalition of transit, labor, and business advocates. The supporters highlight the economic and environmental benefits of these projects. This bill is opposed by the Judicial Council of California and the California Judges Association who argue that streamlining of California Environmental Quality Act litigation places significant burdens on the courts. Although amendments seek to remedy some of these concerns, they do not appear to fully address the issues raised by the judicial branch. This bill is also opposed by several “right to work” organizations who oppose the labor and wage requirements of this bill. This bill was

previously heard and approved by the Assembly Committee on Natural Resources by a vote of nine to one.

SUMMARY: Permits seven environmental leadership transit projects in Los Angeles County to obtain expedited administrative and judicial review under the California Environmental Quality Act. Specifically, **this bill:**

- 1) 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) If the project is more than two miles in length, the project reduces emissions by no less than 400,000 metric tons of greenhouse gases directly in the corridor of the project defined in the applicable environmental document over the useful life of the project, without using offsets and if the project is less than two miles in length the project reduces emissions by no less than 50,000 metric tons of greenhouse gases directly in the corridor of the project defined in the applicable environmental document over the useful life of the project, without using offsets;
 - c) The project reduces no less than 30,000,000 vehicle miles traveled in the corridor of the project defined in the applicable environmental document over the useful life of the project;
 - d) The project is consistent with the applicable sustainable communities strategy or alternative planning strategy;
 - e) The project is consistent with the applicable regional transportation plan;
 - f) The project applicant demonstrates how it has incorporated sustainable infrastructure practices to achieve sustainability, resiliency, and climate change mitigation and adaptation goals in the project, as specified; and
 - g) The project is located wholly within the County of Los Angeles or connects to an existing project wholly located in the County of Los Angeles.
- 2) Defines “fixed guideway” to mean a public transportation facility that qualifies as one of the following:
 - a) Uses and occupies a separate right-of-way for the exclusive use of public transportation;
 - b) Uses rail;
 - c) Uses a fixed catenary system;
 - d) Is a passenger ferry system; or
 - e) Is a bus rapid transit system.
- 3) Defines “project applicant” as a public or private entity or its affiliates that proposes an environmental leadership transit project and its successors, heirs, and assignees.

- 4) Provides that a “project labor agreement” is to have the same definition as provided in the Public Contract Code.
- 5) Provides that a “skilled and trained workforce” is a workforce meeting the standards set for in the Public Contract Code.
- 6) Provides that the expedited procedures described in 10) applies to an environmental leadership transit project if the project applicant does all of the following:
 - a) Demonstrates compliance with state solid and organic waste recycling and disposal laws;
 - b) Enters into a binding and enforceable agreement that all mitigation measures required by law 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. In the case of environmental mitigation measures, the project applicant agrees, as an ongoing obligation, that those measures will be monitored and enforced by the lead agency for the life of the obligation unless the applicant is a public agency and is also the lead agency, then the public agency conditions the approval of the environmental leadership transit project on, and performs, all mitigation measures required by law;
 - c) Agrees 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 an environmental leadership transit 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; and
 - d) Agrees to bear the costs of preparing the record of proceedings for the project concurrent with review and consideration of the project under this division, in a form and manner specified by the lead agency for the project.
- 7) Provides that if the project applicant is a public agency, the project applicant of an environmental leadership transit project must obtain an enforceable commitment that any bidder, contractor, or other entity undertaking the project will use a skilled and trained workforce to complete the project.
- 8) Provides that the provisions of 7) do not apply if the following conditions are met:
 - a) The project applicant has entered into a project labor agreement that will bind all contractors and subcontractors performing work on the project to use a skilled and trained workforce; and
 - b) The bidder, contractor, or other entity has entered into a project labor agreement that will bind all contractors and subcontractors at every tier performing work on the project to use a skilled and trained workforce.
- 9) Provides that if the project applicant is a private entity, the project applicant of an environmental leadership transit project must do both of the following:
 - a) Certify to the lead agency that either the entirety of the project is a public work, as specified, or the project is not in its entirety a public work and the project applicant is not required to pay prevailing wages to all construction workers, as specified.

- b) Certify to the lead agency that a skilled and trained workforce will be used to perform all construction work on the project, as specified.
- 10) Requires, on or before January 1, 2023, the Judicial Council of California to adopt rules of court that apply to any action or proceeding brought to attack, review, set aside, void, or annul the certification of an environmental impact report for an environmental leadership transit project or the granting of any project approval that requires the action or proceeding, including any potential appeals to the court of appeal or the Supreme Court, to be resolved, to the extent feasible and to the extent prioritizing the action will not exacerbate any existing civil case backlogs, within 365 calendar days of the filing of the certified record of proceedings with the court.
- 11) Requires the draft and final environmental impact report for an environmental leadership transit project to include a notice in not less than 12-point type stating the following:
- a) THIS ENVIRONMENTAL IMPACT REPORT IS SUBJECT TO SECTION 21168.6.9 OF THE PUBLIC RESOURCES CODE, WHICH PROVIDES, AMONG OTHER THINGS, THAT THE LEAD AGENCY NEED NOT CONSIDER CERTAIN COMMENTS FILED AFTER THE CLOSE OF THE PUBLIC COMMENT PERIOD, IF ANY, FOR THE DRAFT ENVIRONMENTAL IMPACT REPORT. ANY JUDICIAL ACTION CHALLENGING THE CERTIFICATION OR ADOPTION OF THE ENVIRONMENTAL IMPACT REPORT OR THE APPROVAL OF THE PROJECT DESCRIBED IN SECTION 21168.6.9 OF THE PUBLIC RESOURCES CODE IS SUBJECT TO THE PROCEDURES SET FORTH IN THAT SECTION. A COPY OF SECTION 21168.6.9 OF THE PUBLIC RESOURCES CODE IS INCLUDED IN THE APPENDIX TO THIS ENVIRONMENTAL IMPACT REPORT.
- 12) Requires a draft environmental impact report and final environmental impact report to contain, as an appendix, the full text of this bill.
- 13) Requires within 10 calendar days after the release of the draft environmental impact report, the lead agency to conduct an informational workshop to inform the public of the key analyses and conclusions of that document.
- 14) Requires within 10 calendar days before the close of the public comment period, the lead agency to hold a public hearing to receive testimony on the draft environmental impact report and that a transcript of the hearing must be included as an appendix to the final environmental impact report.
- 15) Provides that within five calendar days following the close of the public comment period, a commenter on the draft environmental impact report may submit to the lead agency a written request for nonbinding mediation and that the lead agency must participate in nonbinding mediation with all commenters who submitted timely comments on the draft environmental impact report and who requested the mediation, and that any mediations end no later than 35 calendar days after the close of the public comment period.
- 16) Provides that any request for mediation pursuant to 15) must identify all areas of dispute raised in the comment submitted by the commenter that are to be mediated.

- 17) Provides that upon receiving a request for mediation the lead agency must select one or more mediators who are retired judges or recognized experts with at least five years' experience in land use and environmental law or science, or mediation, and that the lead agency must bear all costs associated with mediation.
- 18) Requires a lead agency to adopt as a condition of approval, any measures agreed upon by the lead agency and any commenter who requested mediation, and that the commenter cannot subsequently raise the issue addressed by that measure as a basis for an action or proceeding challenging the lead agency's decision to certify the environmental impact report or to grant project approval.
- 19) Provides that a lead agency need not consider written comments submitted after the close of the public comment period, unless those comments address any of the following:
 - a) New issues raised in the response to comments by the lead agency;
 - b) New information released by the lead agency subsequent to the release of the draft environmental impact report, such as new information set forth or embodied in a staff report, proposed permit, proposed resolution, ordinance, or similar documents;
 - c) Changes made to the project after the close of the public comment period;
 - d) Proposed conditions for approval, mitigation measures, or proposed findings, as specified, if the lead agency releases those documents subsequent to the release of the draft environmental impact report; and
 - e) New information that was not reasonably known and could not have been reasonably known during the public comment period.
- 20) Requires the lead agency to prepare and certify the record of proceedings in 21) through 28) and Rule 3.1365 of the California Rules of Court.
- 21) Requires that no later than three business days following the date of the release of the draft environmental impact report, the lead agency must make available to the public in a readily accessible electronic format the draft environmental impact report and all other documents relied on by the lead agency in the preparation of the draft environmental impact report, and that a document prepared by the lead agency after the date of the release of the draft environmental impact report that is a part of the record of proceedings must be made available to the public in a readily accessible electronic format within five business days after the document is prepared by the lead agency.
- 22) Requires, notwithstanding 21), documents relied on by the lead agency that were not prepared specifically for the project and are copyright protected are not required to be made readily accessible in an electronic format. For those copyright protected documents, the lead agency must make an index of the documents available in an electronic format no later than the date of the release of the draft environmental impact report, or within five business days if the document is received or relied on by the lead agency after the release of the draft environmental impact report, and that the index must specify the libraries or lead agency offices in which hardcopies of the copyrighted materials are available for public review.

- 23) Requires a lead agency to encourage written comments on the project to be submitted in a readily accessible electronic format, and shall make any such comments available to the public in a readily accessible electronic format within five calendar days of their receipt.
- 24) Requires, within seven business days after the receipt of any comment that is not in an electronic format, the lead agency to convert that comment into a readily accessible electronic format and make it available to the public in that format.
- 25) Requires the lead agency to indicate in the record of proceedings comments received that were not considered by the lead agency.
- 26) Requires, within five days of filing notice of determination the lead agency must certify the record of proceedings for the approval or determination and provide an electronic copy of the record of proceedings to a party that has submitted a written request for a copy.
- 27) Requires, within 10 calendar days after being served with a complaint or a petition for a writ of mandate, the lead agency to lodge a copy of the certified record of proceedings with the superior court.
- 28) Provides that any dispute over the content of the record of proceedings must be resolved by the superior court.
- 29) Provides that this bill only applies to an environmental leadership transit project that is approved by the lead agency on or before January 1, 2024.
- 30) Provides that this bill only applies to the first seven projects obtaining a certified environmental impact report and meeting the requirements of this bill.

EXISTING LAW:

- 1) Establishes the California Environmental Quality Act that, generally, requires a public agency to prepare, or cause to be prepared, and to certify the completion of, an environmental impact report on a project that it proposes to carry out or approve that may have a significant effect on the environment or to adopt a negative declaration if it finds that the project will not have significant effects. (Public Resources Code Section 21100 *et seq.*)
- 2) Defines a “project” for the purpose of the California Environmental Quality Act ” as an activity that may cause either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment, and includes any of the following:
 - a) An activity directly undertaken by any public agency;
 - b) An activity undertaken by a person which is supported, in whole or in part, through contracts, grants, subsidies, loans, or other forms of assistance from one or more public agencies; or
 - c) An activity that involves the issuance to a person of a lease, permit, license, certificate, or other entitlement for use by one or more public agencies. (Public Resources Code Section 21065.)

- 3) Provides that an action or proceeding to attack, review, set aside, void, or annul the acts or decisions of a public agency on the grounds of noncompliance with the California Environmental Quality Act may be commenced when it is alleged that:
 - a) A public agency is carrying out or has approved a project that may have a significant effect on the environment without having determined whether the project may have a significant effect on the environment;
 - b) A public agency has improperly determined whether a project may have a significant effect on the environment;
 - c) An environmental impact report prepared by, or caused to be prepared by, a public agency does not comply with the California Environmental Quality Act;
 - d) A public agency has improperly determined that a project is not subject to the California Environmental Quality Act; or
 - e) Any other act or omission of a public agency does not comply with the California Environmental Quality Act. (Public Resources Code Section 21167.)
- 4) Requires the superior court and court of appeal to provide lawsuits related to the California Environmental Quality Act preference over all other civil actions therein, in the matter of setting the same for hearing or trial, and in hearing the same, to the end that the action or proceeding shall be quickly heard and determined. (Public Resources Code Section 21167.1 (a).)
- 5) Requires counties with a population of over 200,000 to designate one or more judges to develop expertise concerning the California Environmental Quality Act and related land-use and environmental matters, and then assign such matters to that judge or those judges. (Public Resources Code Section 21167.1 (b).)
- 6) Provides for categorical exemptions to the California Environmental Quality Act for actions that include the following:
 - a) Ministerial projects proposed to be carried out or approved by public agencies;
 - b) Emergency repairs to public service facilities necessary to maintain service;
 - c) Projects undertaken, carried out, or approved by a public agency to maintain, repair, restore, demolish, or replace property or facilities damaged or destroyed as a result of a disaster in a disaster-stricken area in which a state of emergency has been proclaimed by the Governor;
 - d) Specified actions necessary to prevent or mitigate an emergency;
 - e) Actions undertaken by a public agency relating to any thermal power plant site or facility, as specified;
 - f) Activities or approvals necessary to the bidding for, hosting or staging of, and funding or carrying out of, an Olympic games under the authority of the International Olympic Committee, except for the construction of facilities necessary for the Olympic games;

- g) The establishment, modification, structuring, restructuring, or approval of rates, tolls, fares, or other charges by public agencies, as specified;
 - h) A project for the institution or increase of passenger or commuter services on rail or highway rights-of-way already in use, including modernization of existing stations and parking facilities;
 - i) A project for the institution or increase of passenger or commuter service on high-occupancy vehicle lanes already in use, including the modernization of existing stations and parking facilities; and
 - j) A project for the development of a regional transportation improvement program, the state transportation improvement program, or a congestion management program. (Public Resources Code Section 21080 (b).)
- 7) Provides that the California Environmental Quality Act does not apply to urban infill projects, as specified. (Public Resources Code Section 15332.)
- 8) Provides that if a project is certified by the Governor as an environmental leadership development project by January 1, 2024, that any actions or proceedings, including any potential appeals to the court of appeal or the Supreme Court, be resolved, to the extent feasible, within 270 days of the filing of the certified record of proceedings with the court. (Public Resources Code Section 21185.)
- 9) Provides that a public entity may use, enter into, or require contractors to enter into, a project labor agreement for a construction project only if the agreement includes all of the following taxpayer protection provisions:
- a) The agreement prohibits discrimination based on race, national origin, religion, sex, sexual orientation, political affiliation, or membership in a labor organization in hiring and dispatching workers for the project;
 - b) The agreement permits all qualified contractors and subcontractors to bid for and be awarded work on the project without regard to whether they are otherwise parties to collective bargaining agreements;
 - c) The agreement contains an agreed-upon protocol concerning drug testing for workers who will be employed on the project;
 - d) The agreement contains guarantees against work stoppages, strikes, lockouts, and similar disruptions of the project; and
 - e) The agreement provides that disputes arising from the agreement shall be resolved by a neutral arbitrator. (Public Contract Code Section 2500.)
- 10) Establishes the criteria for deeming a party to have a “skilled and trained workforce.” (Public Contract Code Section 2600 *et seq.*)

FISCAL EFFECT: As currently in print this bill is keyed fiscal.

COMMENTS: Seeking to expedite the judicial review of California Environmental Quality Act (CEQA) challenges to several transit projects critical to assisting the County of Los Angeles to host the 2028 Olympic Games, this bill provides for expedited review for up to seven projects that qualify as an “environmental leadership transit project.” In support of this bill the author states:

SB 44 makes environmentally beneficial, zero-emission mass transit projects eligible for expedited Environmental Quality Act (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.

SB 44 provides expedited CEQA judicial review for mass transit projects only if they meet certain conditions, including:

- consistency with a region’s sustainable communities strategy and transportation plan;
- zero-emission operation of the transit project itself;
- direct reduction of greenhouse gases emissions, without using offsets; AND
- reduction through the project of vehicle miles traveled in the corridor in which it operates.

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.

The CEQA process and potential court challenges. At its core, CEQA seeks to ensure that public agencies do not approve projects without considering the negative impacts a project may inflict on the environment. Although CEQA is too often, and incorrectly, viewed as a tool to skew outcomes in a manner that favors environmentalists and deters development, in reality, “CEQA operates, not by dictating proenvironmental outcomes, but rather by mandating that ‘decision makers and the public’ study the likely environmental effects of contemplated government actions and thus make fully informed decisions regarding those actions.” (*Citizens Coalition Los Angeles v. City of Los Angeles* (2018) 26 Cal. App. 5th 561, 577.) Thus, the primary objective of the environmental review required by CEQA is to steer agency decision makers into *approving* projects in a manner that utilizes feasible alternatives and mitigation measures to lessen the project’s impact on the environment. The consideration of the impacts of a project is to be analyzed in the agency’s environmental impact report. The failure to properly consider a project’s impacts is what typically results in litigation.

The process of finalizing an environmental impact report requires several steps. First the local lead agency must determine if a project qualifies for one of the many exemptions to CEQA provided in statute and the Office of Planning and Research’s regulations, more commonly known as the CEQA Guidelines. If no exemption exists, the lead agency must then begin to initially study the project in order to determine the scope of the project and associated environmental review. At this point if the agency believes no environmental impacts exist they may opt to file a negative declaration stating as much and proceed to approve the project. Once the scope of the project and review is properly determined, the environmental review is conducted and a draft environmental impact report is submitted for public comment. A lead agency must respond to all written comments on the environmental impact report received

during the public comment period, and revise the environmental impact report as necessary. The responses to comments should explain why the comments are rejected or if the comment resulted in the adoption of a mitigation measure. Once the public review is completed the agency can certify the final environmental impact report.

Once a final environmental impact report is certified, and a project is subsequently approved, any litigation over the environmental review of the project can begin. Courts require an environmental impact report to make a good faith effort at fully disclosing the impacts of the project, provide a detailed set of information about project impacts and serve as the foundation for agency review. The court must review the environmental impact report in two ways. First a court must determine if the environmental impact report was prepared in a procedurally sufficient manner, as described above, and contains the proper content as required by law. Secondly, the court must determine the substantive aspect of its review and determine whether the conclusions and decisions made by the lead agency are based on substantial evidence in the record. (*Vineyard Area Citizens v. City of Rancho Cordova* (2007) 40 Cal.4th 412.)

Acceding to the myth that CEQA slows development, several litigation streamlining measures have been enacted over the past decade. The Legislature's first foray into expediting the review of CEQA cases was the passage of AB 900 (Buchanan) Chap. 354, Stats. 2011. That measure provided that "environmental leadership" projects, projects meeting specified environmental and labor requirements, would be granted immediate appellate-level review within 175 days of a case being filed. Those provisions were ultimately struck down as unconstitutional. (*Planning and Conservation League v. State of California* (2012) RG12626904 (Alameda Sup. Ct.)) Moving away from the strict timeline and original appellate jurisdiction provisions, the Legislature began adopting project-specific CEQA streamlining bills that adopted a 270-day hearing timeline at the superior courts if such a timeline was "feasible." (See, e.g. SB 743 (Steinberg) Chap. 386, Stats. 2013.) In addition to the project-specific CEQA exemptions, the Legislature has repeatedly reenacted provisions of AB 900 adopting the "if feasible" 270-day timeline approach. Indeed, an extension of the AB 900 framework was just adopted with the passage of SB 7 (Atkins) Chap. 19, Stats. 2021.

When examining both "environmental leadership" bills and those for specific projects, since 2011, at least a dozen CEQA litigation streamlining bills have been adopted by the Legislature, with dozens more having been introduced for favored projects. These bills simply boost the idea that CEQA, and related litigation stifles development. However, research suggests that actual litigation is exceedingly rare. Between 2002 and 2015 no single year saw more than 250 CEQA-related cases filed statewide. (BAE Urban Economics, *CEQA in the 21st Century* (Aug. 2016), p. 19, available at <https://rosefdn.org/wp-content/uploads/2016/08/CEQA-in-the-21st-Century.pdf>.) Additionally, a 2012 study by the Attorney General's office suggests that the actual rate of litigation over matters related to CEQA may be as low as 0.3 percent of all projects approved in California. (Office of the Attorney General, *Quantifying the Rate of Litigation Under the California Environmental Quality Act: A Case Study* (2012).) Given the low rate at which projects subject to CEQA are actually litigated, it appears that the real deterrence to large-scale development in California is more likely local zoning laws, land use policies, construction costs, and the general lack of open space in this state's largest cities.

Despite their purported benefits, in reality expedited CEQA review procedures are rarely utilized and do not always prevent a project from being terminated. As noted above less than one percent of all projects reviewed pursuant to CEQA result in litigation. Similarly, data

suggests projects that have been given CEQA-streamlining by the Legislature, much like projects overall, rarely are litigated in court. Based on data provided by the Judicial Council, of the 19 projects that have qualified for expedited CEQA review since 2011, only four projects have needed expedited legal review to defend against a lawsuit. Of those four cases, three were high-profile stadium projects that, in some cases, utilized taxpayer money to build a private facility. Notably, in addition to the relatively low-rate of litigation, of those 19 projects that qualified for expedited review another four were either terminated or withdrawn, and thus never built, due to financial or other business considerations and not environmentally-related legal exposure. (California Senate Office of Research, *Review of Environmental Leadership Projects*, (Apr. 2019) at p. 5.) Accordingly, despite the Legislature's use of CEQA-streamlining, an equal number of qualified projects benefited from these laws as those that failed under the weight of their own financial difficulties.

Voters in Los Angeles County have heavily invested in transit in recent years. In 2016, seeking to alleviate the region's notorious traffic problems, 71.15 percent of Los Angeles County voters approved a tax measure, Measure M, which increased sales taxes to fund transit projects. (LA Metro, *Measure M Final Guidelines* (2017), available at <https://theplan.metro.net/>.) As a result of the sale tax measure, Los Angeles County is generating approximately \$860 million per year to fund transit improvements. One of the first projects being funded by Measure M is a long-anticipated rail link to the Los Angeles International Airport that broke ground in June of 2021.

Upon being awarded the 2028 Olympics, the Mayor of Los Angeles worked with the LA Metro board to utilize Measure M funding to develop the "Twenty-Eight by '28 initiative" which seeks to finish construction of 28 high-priority transit projects in the county prior to the start of the Olympics. (<https://www.metro.net/projects/resources/28-by-2028/>.) Several of these projects are large-scale rail line extensions and improvements including the extension of the Metro Gold Line, the Metro Green Line extension to Torrance, the construction of a West Santa Ana to downtown light rail line, and the Sepulveda corridor transit project designed to build a rail link from the San Fernando Valley to the Los Angeles International Airport. Additionally, the initiative seeks to construct a gondola rail link between Union Station in downtown Los Angeles and Dodger Stadium, thus reducing congestion around the city's most iconic sports venue. These projects alone are estimated to reduce vehicle miles traveled in the County by over 600 million miles annually.

This bill. Recognizing that several of the "Twenty-Eight by '28 initiative" do provide tangible environmental benefits, as proposed to be amended, this bill provides for expedited CEQA judicial review for a limited number of projects. As proposed to be amended, this bill permits seven environmental leadership transit projects located in Los Angeles County to receive an expedited CEQA review. The bill provides that, to the extent feasible and to the extent that expedited review will not exacerbate existing court backlogs, that the court should hear the CEQA cases within 365 days. This bill also provides the criteria for determining if a project can qualify as an environmental leadership transit project, including that the project provides no less than a reduction of 30,000,000 vehicle miles traveled, adheres to strict labor and wage standards, and is consistent with regional transit plans. Finally, this bill provides that any project seeking the streamlining provided by this bill must have an approved environmental impact report by January 1, 2024.

Can the Legislature dictate to the judicial branch how to manage its internal affairs? Article III, Section 3 of the California Constitution explicitly provides for a clear separation of powers

between the executive, legislative, and judicial branches. Notwithstanding the Constitution, the Legislature provides significant statutory guidance to the operation of both branches and can condition budgetary appropriations on the branches carrying out the Legislature's edicts. Nonetheless, the courts have limited certain legislative encroachment into the judicial branch noting the separation of powers "prohibits the legislative branch from abrogating to itself core functions of the executive or judicial branch." (*Carmel Valley Fire Protection Dist. v. State of California* (2001) 25 Cal.4th 287, 298.) However, the California Court of Appeal has concluded that a similar expedited judicial review provisions under CEQA did not amount to such an invasion. (*Saltonstall v. City of Sacramento* (2014) 231 Cal.App.4th 837, 855-856.)

To ensure that courts are not completely hamstrung, like several of its predecessors, this bill provides that the court must comply with the expedited timeline "if feasible." It should be noted that due to the increased caseload this bill may produce and the lack of any accompanying budget appropriation, it is unclear if the 365-day timeline is feasible.

Expedited CEQA review places extreme burdens on California courts and may worsen the existing pandemic-related backlog of civil cases. Existing law already requires California courts to prioritize CEQA cases. As currently in print, this bill would explicitly require litigation surrounding qualifying projects to be placed on a 270 day fast-track. In order to ensure that the courts can meet this timeline, the Judicial Council of California notes that this bill would require significant court resources. CEQA cases can be highly complex, and in order to facilitate proper review of the cases staff assets may be pulled from other judicial departments. Given that this bill provides no additional resources to the courts, there is little chance that these staffers can be backfilled.

Existing law places preferences on several types of critical civil cases. For example, existing law prioritizes cases involving a party that is at least 70 years old and in ill health, a party in a personal injury or wrongful death matter is under the age of 14, or a party that is unlikely to survive beyond another six months. (Code of Civil Procedure Section 36.) This bill bumps CEQA challenges above all of these parties. Additionally, certain actions receive calendar preference, including appeals in probate proceedings, contested election cases, and actions for libel or slander by a person who holds any elective public office or a candidate for any such office alleged to have occurred during the course of an election campaign. (Code of Civil Procedure Section 44.) Thus, it appears that this bill prioritizes CEQA cases over significant public concerns including the outcome of elections.

The impact of CEQA prioritization on court calendars has only been made worse by the COVID-19 pandemic and the significant curtailment of court operations that resulted from the statewide stay-at-home orders. In February 2021, this Committee held a joint hearing with the Senate Committee on Judiciary to better understand the scale of the backlog. Information provided to the Committee by the Judicial Council noted that in 2020 total case dispositions dropped by nearly 1.5 million cases when compared to case dispositions in 2019. (Joint Informational Hearing of Assembly and Senate Committees on Judiciary, *COVID and the Courts: Assessing the Impact on Access to Justice, Identifying Best Practices, and Plotting the Path Forward* (Feb. 23, 2021) Background Paper, available at <https://ajud.assembly.ca.gov/reports>.) In addition to delaying disposition of cases, courts noted moderate to severe impact on telephone wait times, the time to set hearings, trial settings, and case dispositions. (*Ibid.*) Although the courts are beginning to recover from the backlog, significant delays are likely to linger for several years, including into the timeframe this bill contemplates for hearing expedited CEQA reviews.

Proposed amendments seek to relieve strain on the courts. Recognizing the strain that expedited CEQA reviews place on the court, and the backlog related to COVID-19, the author has worked with this Committee on several amendments to the traditional 270-day CEQA review timeline to ease the burden on the courts. Accordingly, the author is proposing that any project reviewed by this bill be completed in 365 days, as opposed to 270 days. Additionally, proposed amendments provide that in adopting rules of court to implement this bill, the court also consider the impacts that the rules would have on the civil case backlog. Thus, as proposed to be amended, subdivision (d) of the proposed Public Resources Code Section 21168.6.9 will now read:

(d) On or before January 1, 2023, the Judicial Council shall adopt rules of court that apply to any action or proceeding brought to attack, review, set aside, void, or annul the certification of an environmental impact report for an environmental leadership transit project or the granting of any project approval that require the action or proceeding, including any potential appeals to the court of appeal or the Supreme Court, to be resolved, to the extent feasible ***and to the extent prioritizing the action will not exacerbate any existing civil case backlogs,*** within ~~365~~ 270-calendar days of the filing of the certified record of proceedings with the court.

Proposed amendments focus this bill on projects critical to Los Angeles County. As noted above Los Angeles County has been a leader in proactively asking residents to fund transit projects. It does not appear that other counties have projects that will meet the criteria of this bill and finish environmental approvals prior to January 1, 2024, the date upon which such approvals must be obtained to qualify for expedited review under this bill. Accordingly, this Committee has only been able to evaluate the merits of the projects in Los Angeles. Thus, to ensure that projects that do not merit expedited review in the same manner as the “Twenty-Eight by ‘28 initiative” projects do not receive CEQA streamlining, proposed amendments limit this bill to projects occurring in Los Angeles County only. Accordingly, a new paragraph is being added to the definition of environmental leadership transit project to read:

(G) The project is located wholly within the County of Los Angeles or connects to an existing project wholly located in the County of Los Angeles.

Similarly, given that Los Angeles County only has a limited number of transit projects that will meet the criteria of this bill, in order to relieve the pressure on the courts, proposed amendments are limiting the number of projects eligible for expedited review. Thus a new subdivision (h) is being added to this bill to read:

(h) This section shall only apply to the first seven projects obtaining a certified environmental impact report and meeting the requirements of this section.

Finally, proposed amendments adopt generic findings on the need for county-specific legislation and make several technical and conforming changes to account for the above described amendments.

ARGUMENTS IN SUPPORT: This bill is supported by a coalition of labor, transit, and business organizations. Representative of the supporters, the Los Angeles County Business Federations writes:

This shortened judicial process was first established by AB 900 (Buchanan & Gordon) in 2011 but has not yet been applied to transit projects. Metro understands that ensuring equity,

improving air quality and providing environmental mitigations and robust public outreach are essential tools to successful transit project delivery. Unfortunately, costly litigation delays project environmental review and approval – delaying project delivery, stalling regional air quality improvements and increasing project cost.

These transit projects would all produce significant environmental benefits to Los Angeles County and the region, including congestion reduction, reduction in vehicle miles traveled, and greenhouse gas emissions reduction. Los Angeles County communities served by these core transit projects are one of the state's most impacted regions as designated by the Cal-Enviro screen. Any efforts to expedite these projects, including through SB 44 (Allen), would bring the region closer to these anticipated benefits and will also help the state to achieve its aggressive clean-air goals established in the region's Sustainable Communities Strategy.

ARGUMENTS IN OPPOSITION: This bill is opposed by the California Judges Association and opposed unless amended by the Judicial Council of California, both objecting to this bill's impact on the courts. The Judicial Council writes:

The requirement in SB 44 that all CEQA lawsuits challenging any of the proposed projects that could be covered by the bill, including any appeals therefrom, be resolved within set days is problematic as CEQA actions are already entitled under current law to calendar preference "over all other civil actions" pursuant to section 21167.1(a) of the Public Resources Code in both the superior courts and the Courts of Appeal. Imposing a 270-day timeline for the review of potentially a large number of "environmental leadership transit projects," on top of existing CEQA calendar preferences, even with language that references "to the extent feasible," is an arbitrary and unrealistically short timeframe for California's trial courts to address all of the issues each CEQA case is likely to present.

This bill is also opposed by the National Right to Work Committee and the Western Electrical Contractors Association who object to the pro-worker, project labor requirements of the bill. The Western Electrical Contractors Association writes:

Historically, project labor agreements include discriminatory hiring requirements that give preference to certain construction contractors and force employer contributions to trust funds. The covered employee may never vest – resulting in "wage theft" from these workers. Also, numerous studies have shown that PLAs increase construction costs by as much as 20%.

REGISTERED SUPPORT / OPPOSITION:

Support

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
Sacramento Area Council of Governments
Silicon Valley Leadership Group
Western States Council Sheet Metal, Air, Rail and Transportation

Opposition

California Judges Association
National Right to Work Committee
Western Electrical Contractors Association

Oppose Unless Amended

Judicial Council of California

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