

SENATE THIRD READING
SB 44 (Allen)
As Amended August 30, 2021
Majority vote

SUMMARY

Establishes expedited administrative and judicial review procedures under the California Environmental Quality Act (CEQA) for up to seven zero-emission, fixed guideway transit projects located in Los Angeles County, requiring the courts to resolve lawsuits within 365 days, to the extent feasible.

Major Provisions

- 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 365 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.
 - f) The project is located wholly within Los Angeles County or connects to an existing transit project wholly located in Los Angeles County.
- 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 January 1, 2023, 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 365 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.
- 7) Provides that the bill only applies to the first seven projects obtaining a certified environmental impact report and meeting the requirements of the bill.
- 8) Establishes related findings.

COMMENTS

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 (Buchanan), Chapter 354, Statutes of 2011, 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, privately-financed 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. Public transit and other publicly-financed projects are not eligible for expedited review under SB 7.

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. 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.

According to the Author

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.

Arguments in Support

According to the Los Angeles County Business Federation (BizFed), (the Metro transit projects eligible for SB 44) serve as clean-transit alternatives and connectors to regional mobility for commuters throughout Los Angeles County, the most congested region in the nation. 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. Any efforts to expedite these projects, including through SB 44, 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

According to Judicial Council, writing in opposition unless amended, SB 44's 365-day requirement is problematic as CEQA actions are already entitled under current law to calendar preference...Imposing a 365-day timeline for review...is an arbitrary and unrealistically short timeframe for the trial court to address all of the issues each CEQA case is likely to present.

FISCAL COMMENTS

According to the Assembly Appropriations Committee:

This bill may 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 this bill. It is possible, 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 for the courts to hear the cases within the required period.

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 seven projects the bill establishes as a limit to which its provisions apply, the council estimates this bill will have a fiscal impact of up to \$2.4 million in the form of expedited trial and appellate court workloads to adjudicate the seven projects in the time required by the bill.

The council notes the cost recovery provisions would likely address the workload costs created by this bill, however, the judicial branch would need additional expenditure and position authority for the additional staff that would be needed to address the increased workload resulting from the expedited judicial review.

VOTES

SENATE FLOOR: 37-0-3

YES: Allen, Archuleta, Atkins, Bates, Becker, Borgeas, Bradford, Caballero, Cortese, Dahle, Dodd, Durazo, Eggman, Glazer, Gonzalez, Grove, Hertzberg, Hueso, Hurtado, Kamlager, Laird, Leyva, McGuire, Min, Newman, Nielsen, Ochoa Bogh, Pan, Portantino, Roth, Rubio, Skinner, Stern, Umberg, Wieckowski, Wiener, Wilk

ABS, ABST OR NV: Jones, Limón, Melendez

ASM NATURAL RESOURCES: 9-1-1

YES: Luz Rivas, Flora, Chau, Friedman, Mathis, McCarty, Muratsuchi, Seyarto, Wood

NO: Stone

ABS, ABST OR NV: Cristina Garcia

ASM JUDICIARY: 10-0-1

YES: Stone, Chau, Chiu, Davies, Lorena Gonzalez, Holden, Kalra, Kiley, Maienschein, Reyes

ABS, ABST OR NV: Gallagher

ASM APPROPRIATIONS: 12-0-4

YES: Lorena Gonzalez, Bryan, Calderon, Carrillo, Chau, Gabriel, Eduardo Garcia, Levine, Quirk, Robert Rivas, Akilah Weber, Kalra

ABS, ABST OR NV: Bigelow, Megan Dahle, Davies, Fong

UPDATED

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