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UNFINISHED BUSINESS

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Bill No: SB 44  
Author: Allen (D), et al.  
Amended: 8/30/21  
Vote: 21

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SENATE ENVIRONMENTAL QUALITY COMMITTEE: 7-0, 3/15/21  
AYES: Allen, Bates, Dahle, Gonzalez, Skinner, Stern, Wieckowski

SENATE JUDICIARY COMMITTEE: 9-0, 4/13/21  
AYES: Umberg, Borgeas, Caballero, Durazo, Gonzalez, Hertzberg, Laird,  
Wieckowski, Wiener  
NO VOTE RECORDED: Jones, Stern

SENATE APPROPRIATIONS COMMITTEE: 6-0, 5/20/21  
AYES: Portantino, Bates, Bradford, Kamlager, Laird, Wieckowski  
NO VOTE RECORDED: Jones

SENATE FLOOR: 37-0, 5/26/21  
AYES: 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  
NO VOTE RECORDED: Jones, Limón, Melendez

ASSEMBLY FLOOR: 76-0, 9/2/21 - See last page for vote

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

**SOURCE:** Author

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**DIGEST:** This bill establishes, until January 1, 2025, expedited administrative  
and judicial review of environmental review and approvals granted for

“environmental leadership transit projects” (ELTPs) located within the County of Los Angeles that meet specified requirements.

*Assembly Amendments* limit the bill to apply to ELTPs that are located wholly within the County of Los Angeles or connect to an existing project wholly within the county and to the first seven projects, as specified; extend the judicial review period to 365 calendar days; apply the bill’s provisions only to ELTPs that are approved by the lead agency on or before January 1, 2024; and impose additional requirements on the project applicant including agreeing to pay for certain trial-related costs and bearing the costs of preparing the record of proceedings.

## **ANALYSIS:**

Existing law:

- 1) Requires lead agencies with the principal responsibility for carrying out or approving a proposed discretionary project to prepare a negative declaration, mitigated 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). (Public Resources Code (PRC) §21000 et seq.)
- 2) Sets requirements relating to the preparation, review, comment, approval and certification of environmental documents, as well as procedures relating to an action or proceeding to attack, review, set aside, void, or annul various actions of a public agency on the grounds of noncompliance with CEQA. (PRC §§21165 et seq.)

This bill, until January 1, 2025:

- 1) Defines an ELTP as a project to construct a fixed guideway and related fixed facilities that meets all of the following:
  - a) The fixed guideway operates at zero emissions.
  - b) The project meets certain greenhouse gas emission reduction requirements, depending on the length of the project, without using offsets, as specified.
  - c) The project reduces no less than 30,000 vehicle miles traveled in the corridor of the project, as specified.
  - d) The project is consistent with the applicable regional transportation plan and sustainable communities strategy or alternative planning strategy.

- e) The project applicant demonstrates how the applicant has incorporated sustainable infrastructure practices to achieve sustainability, resiliency, and climate change mitigation and adaptation goals in the project.
  - f) 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) Requires Judicial Council, on or before January 1, 2023, to adopt rules of court that would apply to an action or proceeding brought to attack, review, set aside, void, or annul the certification of an EIR for an ELTP, as defined by this bill, or the granting of any project approvals, requiring lawsuits and any appeals to be resolved, to the extent feasible, within 365 calendar days of filing the certified record of proceedings.
- 3) Establishes special procedures for public participation in CEQA review of the ELTP that would:
- a) Require the EIR to include a specified notice.
  - b) Require the lead agency to conduct an informational workshop within 10 calendar days of release of the Draft EIR and hold a public hearing within 10 calendar days before close of the public comment period.
  - c) Require the lead agency and applicant to participate in nonbinding mediation with any party who submitted comments on the Draft EIR and requested mediation within five calendar days of the close of the public comment period. Requires mediation to end within 35 calendar days of the close of the public comment period.
  - d) Permit the lead agency to ignore written comments on the Draft EIR submitted after the close of the public comment period, with specified exceptions for materials addressing new information released after the close of the public comment period.
  - e) Require the lead agency to file a notice of determination within five days after the last initial project approval.
- 4) Establishes special procedures for the preparation and certification of the record of proceedings for the ELTP:
- a) Requires the lead agency to make publicly available in electronic format (with the exception of certain copyright-protected documents) the draft EIR and documents relied on by the lead agency within three business days of

releasing the draft EIR, certify the record within five calendar days of filing the notice of determination, provide the record to a party upon written request, and provide the record to the superior court within 10 calendar days of the filing of a petition for review.

- b) Requires a document prepared by the lead agency after the release of the draft EIR that is a part of the record of proceedings to be made available to the public within five business days.
  - c) Requires the lead agency to encourage written comments be submitted in a readily accessible electronic format, and requires the lead agency to make any comment available to the public within five calendar days.
  - d) Provides that 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.
  - e) Requires the lead agency to certify the final record of proceedings within five calendar days after filing the notice that the agency has approved or has determined to carry out the project.
  - f) Requires any dispute arising from the record of proceedings be resolved by the superior court. Requires a party disputing the content of the record of proceedings to file a motion to augment the record of proceedings at the time it files its initial brief.
- 5) Subjects the project applicant to specified labor requirements.
- 6) Applies these provisions to an ELTP if the project applicant does all of the following:
- a) Demonstrates compliance with specified recycling of solid and organic waste requirements;
  - b) Enters into a binding and enforceable agreement that all mitigation measures are conditions of approval, and those conditions are fully enforceable;
  - 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 ELTP; and
  - d) Agrees to bear the costs of preparing the record of proceedings concurrently with review and consideration of the project, as specified.

- 7) Applies these provisions to ELTPs approved by a lead agency on or before January 1, 2024.
- 8) Applies these provisions to only apply to the first seven projects obtaining a certified EIR and meeting the requirements of these provisions.
- 9) Finds and declares that it is the intent of the Legislature that only seven ELTPs be subject to expedited resolution pursuant to CEQA and that any existing backlog of civil cases in the Superior Court of California, County of Los Angeles, will not be unduly impacted by prioritizing the resolution of these actions.

## Background

*CEQA Survey of State Agencies.* In October 2017, the Senate Environmental Quality Committee conducted a survey of state agencies regarding CEQA in order to gain a better understanding of CEQA compliance and litigation. The survey covered a period of five years, Fiscal Years 2011/12 to 2015/16. State agencies were asked to provide the following

- The number of projects the agency was the lead agency over the five-year time period, and of these, the number that were:
  - Exempt from CEQA through either a categorical or statutory exemption.
  - Subject to a ND or mitigated ND.
  - Subject to an EIR.
- Of the projects for which an EIR was prepared, how many were also subject to the National Environmental Policy Act (NEPA).
- The number of CEQA lawsuits filed against them. *Please note that multiple lawsuits could have been filed for a single project.*

The Department of Transportation (DOT) reported 3,279 projects, 62 of which required an EIR (about 1.9%). Also within that five year period, DOT reported 29 CEQA lawsuits being filed. As stated above, it is noted that multiple lawsuits could have been filed for a single project. Additionally, DOT reported that 2,890 projects (88%) were exempt pursuant to a categorical exemption, 44 projects (1.3%) were exempt due to a statutory exemption, and 263 projects (8%) were subject to an ND or NMD.

(NOTE: For additional background information, see the Senate Environmental Quality Committee analysis.)

## Comments

- 1) *Many transit projects are already subject to a CEQA exemption.* According to the CEQA survey, DOT reported that 1.9% of its projects required an EIR be completed and that almost 90% of its projects qualified for either a categorical or statutory exemption. Further, only 29 lawsuits were filed against projects (multiple lawsuits can be filed against a single project, so the number of projects challenged may actually be lower). Additionally, SB 288 (Wiener, Chapter 200, Statutes of 2020) created various exemptions for transportation-related projects. Given the high percentage of transit projects that are subject to an exemption and the low rate of litigation of transit projects, one may question whether expedited review is necessary.

However, categorical exemptions are not absolute and can be subject to CEQA if it falls within “an exception to the exemption.” Exceptions to the exemptions include considerations of location, cumulative impact, or significant effect of the project. Additionally, categorical exemptions cannot be used on projects that may result in damage to scenic resources, projects that are located on certain hazardous waste sites, and projects that may cause a substantial adverse change to the significance of a historical resource. Thus, this bill will capture and apply expedited review to those projects that are eligible for a categorical exemption but fall within the “exception to the exemptions” and those projects that required an EIR.

- 2) *Guaranteed time frames.* Current law requires the courts to give CEQA-related cases preference over “all other civil actions... so that the action or proceeding shall be quickly heard and determined” (PRC §21167.1). In addition to this existing mandate, the expedited process under this bill provides that the courts, to the extent feasible, must complete the judicial review process in a given time frame for certain CEQA-related actions or proceedings. As a consequence, such mandates on a court delay access for other, unknown cases such as medical malpractice suits, wrongful death suits, or contract disputes, as well as potentially exacerbating a court’s backlog on civil documents such as filing a new civil complaint, processing answers and cross complaints, or processing a demurrer or summary judgement. Calendar preferences and guaranteed time frames create additional demands and burdens on our courts that have very limited resources and a never-ending supply of cases to hear.

- 3) *Guaranteed time frames .....are not always guaranteed: AB 900 lawsuits.* Expedited judicial review does not guarantee that a challenge to a project will be resolved within 270 days, as demonstrated by: (a) the Sacramento Kings Arena (*Adriana Gianturco Saltonstall et al. v. City of Sacramento*); (b) the Golden State Warriors Arena (*Mission Bay Alliance et al. v. Office of Community Investment and Infrastructure* and a separate non-CEQA lawsuit); and (c) 8150 Sunset Boulevard Mixed Use Development which had four CEQA challenges to the project (*Los Angeles Conservancy v. City of Los Angeles*; *Fix the City, Inc. v. City of Los Angeles*; *JDR Crescent v. City of Los Angeles*; and *Manners v. City of Los Angeles*). These cases demonstrated that cases can take longer to resolve due to, among other reasons, (a) ambiguity if the 270 days applies to business days or calendar days and if it includes appeals to the Supreme Court, (b) non-CEQA related actions which are not subject to the 270-day timeframe that are filed in addition to CEQA actions, or (c) consolidation of many, and sometimes complicated, actions.
- 4) *Can the expedited judicial review be applied to non-CEQA challenges?* It has been suggested that the phrase “or the granting of any approval” in expedited judicial review bills could be read to include challenges to land-use approvals that are not related to CEQA. Consequently, it has been argued that such language applies the expedited review provisions to non-CEQA claims against eligible projects when paired with a CEQA claim. This interpretation, however, is not consistent with the principles of statutory construction, and ignores the statutory context in which the provision is situated. Such an interpretation would also imply that provisions outside of CEQA have been indirectly amended, which is at tension with another rule of statutory construction: that interpretations that imply an amendment to other sections are to be avoided. Finally, according to the Judicial Council, the court in the 8150 Sunset project under AB 900 separated CEQA claims and non-CEQA claims, resolving the latter on a normal timeline. This indicates that the court did not view the expedited review provision as applying to non-CEQA related land use approvals.

**FISCAL EFFECT:** Appropriation: No Fiscal Com.: Yes Local: Yes

According to the Assembly Appropriations Committee, this bill will 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 this bill, based on the seven projects this 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 this 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.

**SUPPORT:** (Verified 9/2/21)

Bay Area Council  
California Association of Councils of Governments  
California State Association of Electrical Workers  
California State Pipe Trades Council  
California Transit Association  
Los Angeles County Business Federation  
Los Angeles County Metropolitan Transportation Authority  
Peninsula Corridor Joint Powers Board  
San Mateo County Transit District  
Silicon Valley Leadership Group  
Solano Transportation Authority  
Southern California Association of Governments  
Southern California Regional Rail Authority  
SPUR  
Western States Council Sheet Metal, Air, Rail and Transportation

**OPPOSITION:** (Verified 9/2/21)

California Judges Association  
Judicial Council of California  
Western Electrical Contractors Association



ASSEMBLY FLOOR: 76-0, 9/2/21

AYES: Aguiar-Curry, Arambula, Bauer-Kahan, Bennett, Berman, Bigelow, Bloom, Boerner Horvath, Bryan, Burke, Calderon, Carrillo, Cervantes, Chau, Chen, Chiu, Choi, Cooley, Cooper, Cunningham, Megan Dahle, Daly, Davies, Flora, Fong, Frazier, Friedman, Gabriel, Cristina Garcia, Eduardo Garcia, Gipson, Lorena Gonzalez, Gray, Grayson, Holden, Irwin, Jones-Sawyer, Kalra, Kiley, Lackey, Lee, Levine, Low, Maienschein, Mathis, Mayes, McCarty, Medina, Mullin, Muratsuchi, Nazarian, O'Donnell, Patterson, Petrie-Norris, Quirk, Quirk-Silva, Ramos, Reyes, Luz Rivas, Robert Rivas, Rodriguez, Blanca Rubio, Salas, Santiago, Seyarto, Smith, Stone, Ting, Valladares, Villapudua, Voepel, Waldron, Ward, Akilah Weber, Wicks, Wood

NO VOTE RECORDED: Gallagher, Nguyen, Rendon

Prepared by: Genevieve M. Wong / E.Q. / (916) 651-4108  
9/2/21 18:49:39

\*\*\*\* **END** \*\*\*\*