

## SENATE THIRD READING

SB 808 (Caballero)

As Amended May 23, 2025

Majority vote

**SUMMARY**

Provides for the expedited judicial review of writs of mandate filed as a result of the denial of a permit or other entitlement for housing development projects or residential units at the trial and appellate level.

**Major Provisions**

- 1) Authorizes a project applicant, the Attorney General, or the Department of Housing and Community Development to bring an action, seeking a writ of mandate, following the denial of a permit or other entitlement for a housing development project or residential dwelling.
- 2) Requires a local agency prepare the record of its proceedings concurrently with the local agency's proceedings upon the request of the applicant, the Attorney General or Department of Housing and Community Development.
- 3) Requires the parties to a suit brought pursuant to 1) to meet and confer to certify the record of proceedings no later than 15 days after a petition for writ of mandate is served, and that any disputed items be subject to a separate motion to be specially noticed on or before the date of the hearing on the writ petition, and in accordance with any local court rules.
- 4) Requires the cost of preparation of the administrative record to be borne by the local agency, unless the petitioner elects to prepare the record.
- 5) Requires the record of the proceedings before the local agency to be lodged with the court as expeditiously as possible, as specified.
- 6) Requires a petitioner who elects to bring an action pursuant to this bill to file and serve the petition on the respondent no later than 90 days from the later of the following:
  - a) The effective date of a decision of the local agency imposing conditions on, disapproving, or any other final action on a housing development project;
  - b) The effective date of the denial of a permit for a housing development project; or
  - c) Any other action by which respondent disapproves the housing development project.
- 7) Requires the title page of the petition for an action brought pursuant to this bill to contain the following language in 18-point type:

"ATTENTION: THIS MATTER IS ENTITLED TO PRIORITY AND SUBJECT TO THE EXPEDITED HEARING AND REVIEW PROCEDURES CONTAINED IN SECTION 1094.9 OF THE CODE OF CIVIL PROCEDURE."
- 8) Requires, upon a filing of a petition brought pursuant to this bill, the clerk of the court to set a hearing for review of the petition for writ of mandate no later than 45 calendar days from the date the petition is filed.

- 9) Requires all moving, opposition, and reply papers associated with an action brought pursuant to this bill to be filed as provided in the California Rules of Court and that the petitioner must lodge the record of proceedings with the court no later than 15 calendar days before the hearing date.
- 10) Requires a court to render a decision in a case brought pursuant to this bill no later than 30 calendar days after the matter is submitted or 75 calendar days after the date the petition is filed.
- 11) Authorizes the presiding judge of the court in which the action is filed, if the presiding judge determines the court will be unable to meet any of the deadlines provided in 10), to request the temporary assignment of a judicial officer to hear the petition and render a decision within the time limits contained in the bill and as specified in the California Rules of Court.
- 12) Requires an appeal of a trial court decision rendered in an action authorized by this bill to be given scheduling preference in the courts of appeal and California Supreme Court.
- 13) Defines the following terms:
  - a) "Applicant" means a party that has submitted an application or requested a permit for a housing development project;
  - b) "Department" means the Department of Housing and Community Development;
  - c) "Disapproves the housing development project" has the same meaning as provided in the Housing Accountability Act and specified in 8) of Existing Law below;
  - d) "Housing development project" has the same meaning as provided in the Housing Accountability Act and specified in 9) of Existing Law below; and
  - e) "Local agency" means a city, county, city and county, district, or other local authority.

## COMMENTS

Seeking to address California's ongoing housing shortage, in recent years the Legislature has enacted a flurry of new laws aimed at compelling local agencies to follow through on their commitments to construct new housing as identified in the local agency's general plan. Some of the new statutes, most notably the "builders remedy" found in the Housing Accountability Act (AB 1893 (Wicks) Chap. 268, Stats. 2024), contains strong private enforcement provisions while other statutes largely defer enforcement to the Attorney General and Department of Housing and Community Development. Regardless of how new housing laws are to be enforced, the litigation process can be protracted and further delay the deployment of needed housing. Seeking to streamline some housing litigation, this bill would compel California courts to fast-track judicial review of writs of mandate filed as a result of the denial of a permit or other entitlement for housing development projects or residential units.

One means of enforcing state housing laws is to challenge a local agency's decision through a writ of mandate. A writ of mandate is designed to compel a government agency to take action in compliance with the law. This bill would require the California courts to significantly expedite the litigation process for evaluating the merits of these cases. This bill would require the clerk of

the court, upon the filing of a writ of mandate in accordance with this bill to set a hearing for review of the petition no later than 45 days from the date the petition is filed. The bill provides for expedited timelines for filing the moving and opposing papers, as well as submitting the record of the proceedings underlying the local agency's decision with the court. The bill would then require the judicial officer assigned to the matter to issue a decision within 30 calendar days after the matter were submitted, or 75 days after the petition were filed, whichever is earlier. The bill similarly mandates that all appeals to the court of appeal or the California Supreme Court must be granted scheduling preferences, although the language does not mandate compliance deadlines on the appellate courts. Seeking to relieve some of the burden of these expedited timelines on the judicial branch, the bill authorizes the presiding judge of a specific county superior court to authorize the temporary assignment of a judicial officer to hear a petition and render a decision on the petition within the time limits contained in the bill.

Unlike most civil litigation, the writ of mandate process is designed to move in a relatively expeditious manner. Because the writ is focused on the validity of a government agency's decision, most writ matters (typically known as traditional mandamus) do not involve the introduction of any evidence outside of the agency's formal record. Given the lack of discovery in these matters, the cases can proceed to the merits relatively quickly.

When evaluating a writ, the court looks to determine if the agency acted in a manner that abused its discretion, or acted in a manner contrary to the evidence in the administrative record. (See *Monterey Coastkeeper v. Central Coast Regional Water Board* (2022) 76 Cal.App.5th 1, 18.) Indeed, a court may only overturn the agency's decision if the court determines that the agency, "has not proceeded in the manner required by law, the order or decision is not supported by the findings, or the findings are not supported by the evidence." (*Citizens of Open Government v. City of Lodi* (2012) 205 Cal.App.4th 296, 310.) Similar to the limited discovery needed in these matters, the limited scope of review enables a court to rule relatively quickly on the merits of the case. Despite the relatively expeditious process for reviewing writ of mandates, the proponents of this bill rightly note that the process can still take months or even years to complete, especially if the trial court's decision is appealed by a local agency.

California's Constitution recognizes an explicit separation of powers between the three branches of government. Article III, section 3, of the California Constitution provides, "The powers of State government are legislative, executive, and judicial. Persons charged with the exercise of one power may not exercise either of the others except as permitted by this Constitution." While California courts have declined to adopt strict demarcations between the three branches of government, and as it relates to the interplay between the courts and the Legislature, the Supreme Court has generally upheld Legislative mandates to the court so long as those mandates do not "defeat" or "materially impair" the core constitutional functions of the courts. (*People v. Bunn* (2002) 27 Cal.4th 1, 16.)

Because this bill adopts very strict *deadlines* for the court to rule on the merits of a case, this bill potentially represents a significant legislative overstep into the core judicial functions: specifically, the ability to control judicial calendars. Although courts have held that statutes that provide the aspirational timelines for deciding cases are constitutional (see, *Saltonstall v. City of Sacramento* (2014) 231 Cal.App.4th 837, 855-856), the lack of clear case law regarding legislation imposing mandatory deadlines on courts means that such bills are on much shakier constitutional ground. This is why, for example, bills seeking to streamline judicial review of cases under the California Environmental Quality Act (CEQA) consistently add the phrase, "to

the extent feasible” to all court timelines. The feasibility language and timing flexibility offered in the CEQA streamlining bills began appearing after the courts struck down the Legislature’s first attempt at CEQA streamlining. (*Planning and Conservation League v. State of California* (2012) RG12626904 (Alameda Sup. Ct.)) Although the *Planning and Conservation League* decision largely rested on the Legislature’s impermissible bypassing of the trial courts for CEQA matters, the strict deadlines imposed by the original bill, AB 900 (Buchanan) Chap. 354, Stats. 2011, loomed over the case, leading to the inclusion of feasibility language in future CEQA streamlining measures.

### **According to the Author**

California faces a daunting housing affordability crisis and the state’s shortage of housing plays a central role. Over the past decade, the Legislature has taken action to encourage housing production through various means, including permit streamlining, increased densities, by right processes, and significant financial investments. As a body, the Legislature has passed over a dozen ministerial approval bills that require local governments to use quick, clear, and objective processes to evaluate housing proposals in accordance with their own local plans and state law.

Unfortunately, some local agencies still knowingly deny housing permits in violation of state law. When a local agency rejects a project on an impermissible basis it creates delays that don’t just harm developers and housing projects, but exacerbates our state’s affordability crisis and prevents desperate California families from finding a home.

SB 808 brings swift resolution to enforcement actions, allow projects to move forward quickly, and incentivize local governments to process applications in accordance with state law without altering the authority of local governments by creating an expedited judicial review process. Expediting judicial review in these instances, as we have in other ministerial processes, ensures a timely restoration and is an important step to avoid unnecessary delay and to tackle California’s housing shortage.

### **Arguments in Support**

This bill is sponsored by Attorney General Rob Bonta and is supported by a wide coalition of developers and affordable housing advocates. In support of this bill, the Attorney General states:

California is facing a housing shortage and affordability crisis of epic proportions. According to the California Department of Housing and Community Development (HCD), California will need an estimated 2.5 million new homes by 2030 in order to meet housing demand. At least one million of those homes must meet the needs of lower-income households. Yet, California is permitting, on average, only 110,000 new homes per year. Millions of Californians struggle to afford housing and one in three households in the state doesn’t earn enough money to meet their basic needs. The only way to solve this crisis is for every city and county to do their part to address it.

The Legislature has passed strong housing laws in recent years to help build new homes and make them more affordable and accessible to all Californians. These laws are designed to ensure that local governments are planning to meet their fair share of the regional and statewide housing needs, and use quick and clear processes to make decisions about housing proposals in accordance with those plans and state law.

Unfortunately, sometimes legal disputes arise, which can take years to resolve. In the meantime, homes that California families need go unbuilt, and lengthy delays can stop a project from moving forward altogether. Delay and uncertainty are especially harmful for small homebuilders, who cannot afford to absorb significant litigation costs or the expenses of lengthy project delays, and are thus effectively blocked from using the laws that the Legislature has passed to encourage home building.

When housing project applications are improperly denied under current law, the Attorney General, or the project applicant, can bring an enforcement action to compel the local government to comply with state law. SB 808 would expedite judicial review of these actions to enforce state housing laws, including the Housing Accountability Act (HAA), ministerial approval laws, and accessory-dwelling unit (ADU) laws. The expedited writ procedure in SB 808 preserves existing substantive law and would not alter the authority of local governments, but would bring swifter resolution to these disputes, which would resolve disputes more efficiently and allow more housing projects to move forward more quickly.

### **Arguments in Opposition**

The Judicial Council of California opposes this measure due to the potentially significant impacts the bill poses to court resources. In opposition, the Council states:

The Judicial Council opposes Senate Bill 808, which establishes an expedited judicial review process for a local agency's decision to deny a permit for a new housing development or residential unit, because it (1) establishes an unreasonable expedited judicial review process for a local agency's decision to deny a permit for a new housing development or residential unit, (2) requires the court to hear the matter and issue a decision within unrealistic timeframes, and (3) requires the temporary assignment of judicial officers, which the courts have no ability to adequately accommodate.

Our courts already have heavily impacted calendars which have only been compounded by a bevy of legislatively mandated accelerated calendaring requirements with no new funding for additional judges to handle more cases.

The bill will have significant calendaring impacts and create unnecessary workload pressure to ensure these specific actions might be scheduled within the set timeframe. In order to attempt to meet the timelines, the courts would need to rely on the Temporary Assigned Judges Program. This program has a set budget and a limited number of judges available in any given year. If this bill creates a high demand for temporary assigned judges, the program may not have the funding and judges available to be responsive to court need.

### **FISCAL COMMENTS**

According to the Assembly Appropriations Committee:

- 1) Cost pressures (Trial Court Trust Fund, General Fund) of an unknown but potentially significant amount to the courts to adjudicate affected petitions on an expedited basis. Judicial Council, which opposes this bill, anticipates "unknown, likely significant calendaring and workload impacts on the courts" to meet the bill's timelines. Judicial Council notes that the cases affected by the bill are often complex and lengthy; mandating expedited review of these cases will draw significant court time and resources away from

other cases pending before the courts. Although courts are not funded on the basis of workload, increased pressure on the Trial Court Trust Fund may create a demand for increased funding for courts from the General Fund. The fiscal year 2025-26 state budget provides \$82 million ongoing General Fund to the Trial Court Trust Fund for court operations.

- 2) Likely minor and absorbable costs, if any, to the Department of Justice (DOJ) and HCD to meet the bill's expedited procedural timelines. DOJ reports the department is already authorized to file the petitions affected by the bill and it will not incur additional workload costs to meet the bill's timelines. HCD anticipates no fiscal impact.
- 3) Non-reimbursable costs to local agencies to prepare administrative records and engage in litigation on the expedited timelines established by the bill.

## VOTES

### SENATE FLOOR: 38-0-2

**YES:** Allen, Alvarado-Gil, Archuleta, Arreguín, Ashby, Becker, Blakespear, Cabaldon, Caballero, Cervantes, Choi, Cortese, Dahle, Durazo, Gonzalez, Grayson, Grove, Hurtado, Jones, Laird, McGuire, McNerney, Menjivar, Niello, Ochoa Bogh, Padilla, Pérez, Richardson, Rubio, Seyarto, Smallwood-Cuevas, Stern, Strickland, Umberg, Valladares, Wahab, Weber Pierson, Wiener

**ABS, ABST OR NV:** Limón, Reyes

### ASM JUDICIARY: 10-0-2

**YES:** Kalra, Bauer-Kahan, Bryan, Connolly, Harabedian, Pacheco, Papan, Sanchez, Stefani, Zbur

**ABS, ABST OR NV:** Dixon, Macedo

### ASM APPROPRIATIONS: 14-0-1

**YES:** Wicks, Sanchez, Arambula, Calderon, Caloza, Elhawary, Fong, Mark González, Ahrens, Pacheco, Pellerin, Solache, Ta, Tangipa

**ABS, ABST OR NV:** Dixon

## UPDATED

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CONSULTANT: Nicholas Liedtke / JUD. / (916) 319-2334

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