Date of Hearing: June 29, 2023

ASSEMBLY COMMITTEE ON NATURAL RESOURCES
Luz Rivas, Chair
SB 149 (Caballero) – As Amended June 28, 2023

SENATE VOTE: 29-8 (not relevant)

SUBJECT: California Environmental Quality Act: administrative and judicial procedures: record of proceedings: judicial streamlining. (Urgency)

SUMMARY: Revises procedures regarding the California Environmental Quality Act (CEQA) administrative record to make preparation and certification of the record more efficient, without compromising the content of the record. Extends existing expedited administrative and judicial review procedures (i.e., requiring the courts to resolve CEQA litigation within 270 days, to the extent feasible) for environmental leadership development projects (ELDPs) for eight years, permitting ELDP certification by the governor until January 1, 2032. Establishes new expedited (270 days, if feasible) judicial review procedures for four categories of public and private "infrastructure" projects, subject to eligible projects being certified by the governor, approved by the lead agency on or before January 1, 2033, and meeting specified environmental and labor requirements.

EXISTING LAW:

CEQA administrative record and judical review:

1) CEQA requires lead agencies with the principal responsibility for carrying out or approving a proposed project to prepare a negative declaration, mitigated negative declaration, or environmental impact report (EIR) for this action, unless the project is exempt from CEQA (CEQA includes various statutory exemptions, as well as categorical exemptions in the CEQA guidelines). (Public Resources Code (PRC) 21000 et seq.)

2) Prohibits a lead agency from approving a project for which an EIR has been certified which identifies one or more significant effects on the environment unless both of the following occur:

    a) The agency makes one or more of the following findings with respect to each significant effect:

        i) Changes or alterations have been required in, or incorporated into, the project which mitigate or avoid the significant effects on the environment.

        ii) Those changes or alterations are within the responsibility and jurisdiction of another public agency and have been, or can and should be, adopted by that other agency.

    b) Specific economic, legal, social, technological, or other considerations, including considerations for the provision of employment opportunities for highly trained workers, make infeasible the mitigation measures or alternatives identified in the EIR, and the agency finds that specific overriding economic, legal, social, technological, or other benefits of the project outweigh the significant effects on the environment.

(PRC 21081)

3) Defines "feasible" for purposes of CEQA, including this bill, as "capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, social, and technological factors." (PRC 21061.1)

4) Authorizes judicial review of CEQA actions taken by public agencies, following the agency's decision to carry out or approve the project. Challenges alleging improper determination that a project may have a significant effect on the environment, or alleging an EIR does not comply with CEQA, must be filed in the superior court within 30 days of filing of the notice of approval. The courts are required to give CEQA actions preference over all other civil actions. Requires the court to regulate the briefing schedule so that, to the extent feasible, hearings commence within one year of the filing of the appeal. Requires the plaintiff to request a hearing within 90 days of filing the petition. Requires the court to establish a briefing schedule and a hearing date, requires briefing to be completed within 90 days of the plaintiff's request for hearing, and requires the hearing, to the extent feasible, to be held within 30 days thereafter. (PRC 21167, et seq.)

5) Establishes a procedure for the preparation, certification, and lodging of the record of proceedings, which includes, *but is not limited to*, all application materials, staff reports, transcripts or minutes of public proceedings, notices, written comments, and written correspondence prepared by or submitted to the public agency regarding the proposed project. Specifically:

   a) Requires the plaintiff to file a request that the respondent public agency prepare the record of proceedings, and serve this request, together with the complaint or petition, personally upon the public agency within 10 days of the date the action or proceeding was filed.

   b) Requires the respondent public agency to prepare and certify the record of proceedings not later than 60 days from the date that plaintiff served the request; lodge a copy of the certified record with the court; and serve on the parties a notice that the record of proceedings has been certified and lodged with the court.

   c) Authorizes the plaintiff to elect to prepare the record subject to certification by the respondent public agency, or the parties may agree to an alternative method of preparing the record of proceedings, within the time limits specified in the law.

   d) Requires the parties to pay any reasonable costs or fees imposed for the preparation of the record of proceedings in conformance with any law or rule of court.

   e) Authorizes the plaintiff to move the court for sanctions, and the court to grant the plaintiff's motion for sanctions, if the public agency fails to prepare and certify the record within the time limits specified in the law.
   (PRC 21167.6)

6) Establishes an alternative, optional procedure for concurrent preparation and certification of the record in electronic form, as follows:

a) Requires the lead agency, upon written request by a project applicant and with consent of the lead agency, to concurrently prepare the record of proceedings with the administrative process.

b) Requires all documents and other materials placed in the record of proceedings to be posted on a Web site maintained by the lead agency.

c) Requires the lead agency to make publicly available, in electronic format, the draft environmental document, and associated documents, for the project.

d) Requires the lead agency to make any comment publicly available electronically within five days of its receipt.

e) Requires the lead agency to certify the record of proceedings within 30 days after filing notice of determination or approval.

f) Requires certain environmental review documents to include a notice, as specified, stating that the document is subject to this section.

g) Requires the applicant to pay for the lead agency's cost of concurrently preparing and certifying the record of proceedings.
(PRC 21167.6.2)

7) Requires a court, upon finding a public agency's actions are not in compliance with CEQA, to order one or more of the following:

a) A mandate that the determination, finding, or decision be voided by the public agency, in whole or in part;

b) If the court finds that a specific project activity or activities will prejudice the consideration or implementation of particular mitigation measures or alternatives to the project, a mandate that the public agency and any real parties in interest suspend any or all specific project activity or activities, pursuant to the determination, finding, or decision, that could result in an adverse change or alteration to the physical environment, until the public agency has taken any actions that may be necessary to bring the determination, finding, or decision into compliance with this division; and

c) A mandate that the public agency take specific action as may be necessary to bring the determination, finding, or decision into compliance with CEQA.

Any order shall include only those mandates which are necessary to achieve compliance with CEQA and only those specific project activities in noncompliance with CEQA. (PRC 21168.9)

8) Authorizes a court, upon motion, to award attorneys' fees to a prevailing party in any action that has resulted in the enforcement of an important right affecting the public interest, if the following conditions are met: (1) a significant benefit, whether pecuniary or nonpecuniary, has been conferred on the general public or a large class of persons; (2) the necessity and financial burden of private enforcement, or of enforcement by one public entity against

another public entity, are such as to make the award appropriate; and (3) those fees should not in the interest of justice be paid out of the recovery, if any. (Code of Civil Procedure 1021.5)

ELDP requirements and procedures for expedited administrative and judicial review (originally enacted by AB 900 (Buchanan), Chapter 354, Statutes of 2011 and most recently revised and reenacted by SB 7 (Atkins), Chapter 19, Statutes of 2021):

1) Establishes procedures for expedited administrative and judicial review (i.e., limiting public comments, requiring preparation of the record concurrently with the administrative process, and requiring the courts to resolve lawsuits challenging CEQA or other approvals within 270 days from the date the certified record is filed with the court, to the extent feasible) for ELDPs certified by the governor and meeting specified conditions, including Leadership in Energy and Environmental Design (LEED) gold-certified infill site projects, clean renewable energy projects, clean energy manufacturing projects, and infill housing projects, as specified.

    a) Defines ELDP as a project that is one of the following:

        i) A residential, retail, commercial, sports, cultural, entertainment, or recreational use project that is certified as LEED gold or better by the United States Green Building Council and, where applicable, that achieves a 15% greater standard for transportation efficiency than for comparable projects.

            (1) Requires that these projects be located on an infill site.

            (2) Requires a project that is within a metropolitan planning organization for which a sustainable communities strategy (SCS) or alternative planning strategy (APS) is in effect, to be consistent with specified policies in either the SCS or APS.

        ii) A clean renewable energy project that generates electricity exclusively through wind or solar, but not including waste incineration or conversion.

        iii) A clean energy manufacturing project that manufactures products, equipment, or components used for renewable energy generation, energy efficiency, or for the production of clean alternative fuel vehicles.

        iv) A housing project on an infill site that will result in a minimum investment of $15 million, but less than $100 million, provided at least 15% of the project is affordable to lower income households and the project is not used as a short-term rental.

    b) Authorizes a person proposing to construct an ELDP to apply to the governor for certification that the ELDP is eligible for streamlining. Requires the person to supply evidence and materials that the governor deems necessary to make a decision on the application. Requires any evidence or materials be made available to the public at least 15 days before the governor certifies a project.

    c) Authorizes the governor to certify an ELDP if the governor finds the project meets all of the following conditions:

i) The project will result in a minimum investment of $100 million in California upon completion of construction.

ii) Requires ELDP projects to use a "skilled and trained" workforce for all construction work.

iii) 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.

iv) 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.

v) The project does not result in any net additional greenhouse gas (GHG) emissions, including emissions from employee transportation. Specifies procedures for the quantification and mitigation of GHG emissions for eligible projects, except for housing projects from $15-100 million. Requires the baseline for GHG emissions be established based upon the physical conditions at the project site at the time the application is submitted. Prioritizes on-site and local direct GHG emissions reductions over offsets.

vi) A multifamily residential project provides unbundled parking, such that private vehicle parking spaces are priced and rented or purchased separately from dwelling units, except for units subject to affordability restrictions in law that prescribe rent or sale prices, where the cost of parking spaces cannot be unbundled from the cost of dwelling units.

vii) The project applicant has entered into a binding and enforceable agreement that all mitigation measures required under CEQA shall be conditions of approval of the project, and those conditions will be fully enforceable by the lead agency or another agency designated by the lead agency. In the case of environmental mitigation measures, the applicant agrees, as an ongoing obligation, that those measures will be monitored and enforced by the lead agency for the life of the obligation.

viii) The project applicant agrees to pay the costs of the trial court and the Court of Appeal in hearing and deciding any case, 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.

ix) The project applicant agrees to pay the costs of preparing the administrative record for the project concurrent with review and consideration of the project pursuant to CEQA, in a form and manner specified by the lead agency for the project.

d) Requires the governor, prior to certifying a project, to make a determination that each of the conditions specified above has been met. Provides that these findings are not subject to judicial review.

e) Requires the governor to submit the ELDP eligibility determination, and any supporting information, to the Joint Legislative Budget Committee (JLBC) for review and concurrence or non-concurrence.

f) Requires the JLBC to concur or non-concur in writing within 30 days of receiving the governor's determination.

g) Deems the ELDP certified if the JLBC fails to concur or non-concur on a determination by the governor within 30 days of the submittal.

h) Authorizes the governor to issue guidelines regarding application and certification of projects, which are not subject to the rulemaking provisions of the Administrative Procedure Act (APA).

i) Authorizes the Office of Planning and Research (OPR) to charge an applicant fee.

j) Requires the Judicial Council to adopt a rule of court to establish procedures that require resolution, to the extent feasible, within 270 days, including any appeals, of a lawsuit challenging the certification of the EIR or any project approvals for a certified ELDP.

k) Prohibits ELDP procedures from applying if the applicant fails to notify a lead agency prior to the release of the draft EIR for public comment.

l) Requires the draft and final EIR to include a specified notice in no less than 12-point type regarding the draft and final EIR being subject to ELDP procedures.

m) Provides that the provisions of the ELDP chapter are severable.

n) Provides that nothing in the ELDP chapter affects the duty of any party to comply with CEQA, except as otherwise provided in the ELDP chapter.

o) Prohibits ELDP procedures from applying to a project if the governor does not certify the project prior to January 1, 2024.

p) Provides that certification of the ELDP expires and is no longer valid if the lead agency fails to approve the project prior to January 1, 2025.

q) Sunsets the ELDP chapter January 1, 2026.

(PRC 21178, et seq.)

THIS BILL:

Administrative record (Section 1):

1) Requires the agency-certified administrative record lodged with the court to be in *electronic* form.

2) Requires the court to schedule a case management conference within 30 days to review the scope, timing, and cost of the record, and permits the parties to stipulate to a partial record, subject to approval by the court.

3) Authorizes the agency to deny the request of the plaintiff to prepare the record, within five days of the plaintiff's request, in which case the agency or real party in interest (i.e., project applicant) must pay for preparation of the record and those costs are not recoverable from the plaintiff.

4) Revises materials required to be included in the record to exclude "communications that are of a logistical nature, such as meeting invitations and scheduling communications, except that any material that is subject to privileges contained in the Evidence Code, or exemptions contained in the California Public Records Act shall not be included in the record of proceedings under this paragraph, consistent with existing law."

8-year ELDP extension (Sections 2-5):

1) Extends the deadline for governor certification from 2024 to 2032, the deadline for lead agency approval of a certified project from 2025 to 2033, and the sunset from 2026 to 2034.

2) Prohibits recovery of the costs incurred by the project applicant to prepare the record from the plaintiff before, during, or after any litigation.

Expedited judicial review for infrastructure projects (Section 6):

1) Establishes procedures for expedited administrative review (i.e., concurrent preparation) and judicial review (i.e., requiring the courts to resolve lawsuits within 270 days, to the extent feasible) for the following four categories of public and private "infrastructure" projects:

    a) **Energy infrastructure project**: Renewable energy generation eligible under the Renewables Portfolio Standard (excluding resources that utilize biomass fuels); new energy storage systems of 20 megawatts or more (excluding specified pumped hydro facilities); manufacture, production, or assembly of specified energy storage and renewable energy components; electric transmission facilities (with projects in the Coastal Zone subject to regulation by the Coastal Commission). Explicitly excludes projects utilizing hydrogen as a fuel. Applies the labor requirements enacted by AB 205 (Budget Committee), Chapter 61, Statutes of 2022, including skilled and trained, to most eligible energy projects.

    b) **Semiconductor or microelectronic project**: A project that meets the requirements related to investment in new or expanded facilities and is awarded funds under the federal Creating Helpful Incentives to Produce Semiconductors (CHIPS) Act of 2022, and SB 7's labor requirements, including skilled and trained.

    c) **Transportation-related project**: A project that advances one or more of, and does not conflict with, the following goals related to the Climate Action Plan for Transportation Infrastructure (CAPTI) adopted by the Transportation Agency:

        i) Build toward an integrated, statewide rail and transit network.

        ii) Invest in networks of safe and accessible bicycle and pedestrian infrastructure.

        iii) Include investments in light-, medium-, and heavy-duty zero-emission vehicle infrastructure.

iv) Develop a zero-emission freight transportation system.

v) Reduce public health and economic harms and maximize community benefits.

vi) Make safety improvements to reduce fatalities and severe injuries of all users towards zero.

vii) Assess and integrate assessments of physical climate risk.

viii) Promote projects that do not significantly increase passenger vehicle travel.

ix) Promote compact infill development while protecting residents and businesses from displacement.

x) Protect natural and working lands.

Transportation-related projects are public works for the purposes of Labor Code 1720, which means they are required to pay prevailing wage, but not required to employ a skilled and trained workforce.

d) **Water-related project**:

i) A project that is approved to implement a groundwater sustainability plan that the Department of Water Resources (DWR) has determined is in compliance with specified provisions of the Sustainable Groundwater Management Act (SGMA). This may include a wide range of projects including, groundwater recharge, land fallowing, agricultural water use efficiency (e.g., drip irrigation), canals or pipelines to convey water, and water trades or transfers.

ii) A water storage project funded by the California Water Commission pursuant to Proposition 1, provided the applicant demonstrates that the project will minimize the intake or diversion of water except during times of surplus water and prioritizes the discharge of water for ecological benefits or to mitigate an emergency, including, but not limited to, dam repair, levee repair, wetland restoration, marshland restoration, or habitat preservation, or other public benefits described in Water Code 79753. Projects funded by Proposition 1 include:

(1) Chino Basin Conjunctive Use Environmental Water Storage/Exchange Program

(2) Harvest Water Program (water recycling program in Sacramento County)

(3) Kern Fan Groundwater Storage Project

(4) Los Vaqueros Reservoir Expansion Project (surface storage expansion)

(5) Pacheco Reservoir Expansion Project (surface storage expansion)

(6) Sites Project (new surface storage)

(7) Willow Springs Water Bank Conjunctive Use Project

iii) Projects for the development of recycled water, defined as "water which, as a result of treatment of waste, is suitable for a direct beneficial use or a controlled use that would not otherwise occur and is therefor considered a valuable resource."

iv) Contaminant and salt removal projects, including groundwater desalination and associated treatment, storage, conveyance, and distribution facilities (excluding seawater desalination).

v) Projects exclusively for canal or other conveyance maintenance and repair.

Water-related projects are public works for the purposes of Labor Code 1720, which means they are required to pay prevailing wage, but not required to employ a skilled and trained workforce.

"Water-related project" does not include the design or construction of through-Delta conveyance facilities of the Sacramento-San Joaquin Delta. This exclusion captures the Delta Conveyance Project proposed by the DWR, and described elsewhere in statute as "facilities that convey water directly from the Sacramento River to the State Water Project or the federal Central Valley Project pumping facilities in the south Delta" (i.e., Water Code 79702). It also excludes design or construction of other, non-tunnel facilities that would facilitate conveyance of water through the Delta.

2) Authorizes the governor to certify each of the four project types, provided the applicant 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 a certified project (except for transportation-related projects, for which there is no requirement to pay court costs).

3) For a water-related project, requires the governor to find that GHG emissions resulting from the project will be mitigated to the extent feasible.

4) Requires the following additional GHG mitigation for energy infrastructure, semiconductor/microelectronic, and transportation-related projects:

a) For energy infrastructure and semiconductor/microelectronic projects, the project does not result in any net additional GHG emissions, *including* employee transportation. A project is deemed to meet the requirements of this section if the applicant demonstrates to the satisfaction of the governor that the applicant has a binding commitment that it will mitigate impacts resulting from the emission of greenhouse gases, if any, in accordance with PRC 21183.6 (i.e., the GHG mitigation requirements of SB 7).

b) For transportation-related projects, the project does not result in any net additional GHG emissions, *excluding* employee transportation. A project is deemed to meet the requirements of this section if the applicant demonstrates to the satisfaction of the governor that the applicant has a binding commitment that it will mitigate impacts resulting from GHG emissions, if any, preferably through direct emissions reductions where feasible, but where not feasible, then through the use of offsets that are real, permanent, verifiable, and enforceable, and that provide a specific, quantifiable, and direct environmental and public health benefit to the same air pollution control district or

air quality management district in which the project is located, but if all of the project impacts cannot be feasibly and fully mitigated in the same air pollution control district or air quality management district, then remaining unmitigated impacts shall be mitigated through the use of offsets that provide a specific, quantifiable, and direct environmental and public health benefit to the region in which the project is located.

5) Requires the applicant to pay the costs of preparing an analysis of the GHG emissions resulting from the project.

6) Requires an applicant for certification of an infrastructure project to do all of the following:

   a) Avoid or minimize significant environmental impacts in any disadvantaged community, as defined.

   b) If measures are required pursuant to CEQA to mitigate significant environmental impacts in a disadvantaged community, mitigate those impacts consistent with CEQA. Requires mitigation measures to be undertaken in, and directly benefit, the affected community.

   c) Enter into a binding and enforceable agreement to comply with these community mitigation requirements in its application to the Governor and to the lead agency prior to the agency's certification of the EIR for the project.

7) Authorizes OPR to issue guidelines regarding applications for and the certification of infrastructure projects, which are not subject to the rulemaking provisions of the APA.

8) Requires OPR to make evidence and materials submitted for the certification of a project available to the public on its internet website at least 15 days before the certification of the project.

9) Authorizes OPR to charge a fee to an applicant seeking certification for the costs incurred.

10) Provides that the governor's decision to certify a project shall not be subject to judicial review.

11) Requires the governor to submit the proposed certification, and any supporting information, to the JLBC for review and concurrence or non-concurrence. Requires the JLBC to concur or non-concur in writing within 30 days, or the project is deemed to be certified.

12) Requires an action or proceeding brought to attack, review, set aside, void, or annul the certification of an EIR for a certified infrastructure project, or the granting of any project approvals, including any potential appeals to the court of appeal or the Supreme Court, to be resolved, to the extent feasible, within 270 days of the filing of the certified record of proceedings with the court.

13) Requires the Judicial Council to adopt a rule of court to implement this requirement on or before December 31, 2023.

14) Requires all infrastructure projects to follow specified procedures for the administrative record, with the lead agency preparing the record concurrently with the administrative

process, posting all record documents online (with exceptions for copyright-protected materials), certifying the final record within five days of its approval of the project, and requiring the applicant to pay the costs of preparing the record, which costs are not recoverable from the plaintiff or petitioner before, during, or after any litigation.

15) Provides that certification of an infrastructure project expires and is no longer valid if the lead agency fails to approve the project prior to January 1, 2033.

16) Sunsets the infrastructure project chapter January 1, 2034.

17) Establishes related findings and definitions.

Other provisions:

18) Appropriates $1 million from the General Fund to the Judicial Council for judicial officer training for implementation of the bill, available for expenditure through June 30, 2025.

19) Is an urgency statute.

FISCAL EFFECT: Unknown

COMMENTS:

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

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

   Generally, 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 30-35 days, depending on the type of decision. The courts are required to give CEQA actions preference over all other civil actions. However, the schedules for briefing, hearing, and decision are less definite. 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. There is no deadline specified for the court to render a decision.

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

As part of their expedited judicial review procedures, these bills required the lead agency to prepare and certify the record of proceedings concurrently with the administrative process and required the applicant to pay for it. It was commonly agreed that this would expedite preparation of the record for trial. Since 2011, several additional bills have provided similar project-specific concurrent preparation procedures. In addition, SB 122 (Jackson), Chapter 476, Statutes of 2016, established an optional concurrent preparation procedure for any CEQA project, subject to the lead agency agreeing, and the applicant paying the agency's costs.

To date, approximately 30 projects have been eligible for expedited review under AB 900 and the several project-specific bills enacted since 2011. Many of these projects have not proceeded to final approval and construction, and only four projects have been challenged in court. Of those four cases, two were high-profile arena projects, one was a luxury condominium tower, and one is the reconstruction of the Capitol Annex. A review by the Senate Office of Research indicates the following timelines for final resolution of three of the cases:

a) Golden1 Center (Sacramento Kings arena): 243 business days/352 calendar days.

b) Chase Center (Golden State Warriors arena): 257 business days/376 calendar days.

c) 8150 Sunset Boulevard (Hollywood condo tower): 395 business days/578 calendar days.

Whether calendar days or business days, "to the extent feasible," as well as the inherent authority of the independent judicial branch, provides a court discretion, and no direct consequence, if it is unable to meet the 270-day deadline.

2) **Authors' statement**:

3) **Supersizing expedited judicial review**. This bill proposes to offer expedited judicial review to a broad range, and unlimited number, of infrastructure projects falling into four categories – energy, transportation, water, and semiconductor/microelectronic.

In light of the staff and cost pressures the 270-day timeline creates on the judicial branch, project applicants are required to pay the costs of the trial court and court of appeal related to the courts hearing and adjudicating any expedited CEQA lawsuit (except, inexplicably, transportation project applicants are not required to pay court costs).

CEQA litigation already enjoys significant preferences and protections for project proponents and lead agencies. For example, affordable housing projects challenged under CEQA can seek the imposition of financial assurances from plaintiffs to ensure the project is not harmed by frivolous litigation. Additionally, the existing civil litigation calendaring preferences means that CEQA litigation takes priority over all other civil cases, including those involving elderly or terminally-ill plaintiffs, eviction and other housing related matters, labor and back wage disputes, and cases in which person's civil rights and liberties are at stake. Unlike many of the above described cases that directly impact the lives of ordinary Californians, CEQA litigation frequently involves private developers or large government agencies.

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. This bill may dramatically expand the number of cases that seek judicial streamlining. While the courts successfully managed the few cases that have been fast-tracked since 2011, should this bill result in an influx of streamlined cases, the courts may become overwhelmed. If the trial courts are presented with multiple cases, the feasibility of resolving each case in time may diminish, as will the benefit of the bill for the project applicant.

In the event CEQA cases overwhelm civil departments, significant impacts may occur. First, most courts maintain only a handful of departments with specialized CEQA experience. Should those departments become inundated with streamlined CEQA cases, other CEQA cases may be diverted to civil departments lacking the requisite knowledge of the intricacies of CEQA to properly evaluate a case. This may then result, despite the best effort of judicial officers and court staff, in inconsistent or otherwise substandard decisions as a result of the lack of specialized knowledge in CEQA. Even more problematic would be the diversion of court resources away from other civil matters. Prioritizing and expediting CEQA cases will deny justice to everyday Californians as their cases are put on hold while CEQA cases proceed. Furthermore, should CEQA cases overburden limited court resources, the quality of decisions in other civil matters may suffer due to the over extension of court resources. While this measure requires most project proponents to pay for court costs, the inconsistency of such funding would likely preclude the courts from being able to adequately anticipate ongoing revenues and augment staffing levels.

4) **Shotgun approach**. While the bill is part of a package advertised as advancing clean energy and climate goals, some eligible project types are likely to increase GHG emissions in construction, operation, or both, as well as have a range of other significant environmental impacts. Reducing GHG emissions, or consistency with climate or other environmental policies, does not appear to be the primary criteria by which project types were selected for this bill. Mitigation of GHG emissions is required for all projects, but to varying degrees, and in some cases (i.e., water projects) apparently no more than CEQA already requires. There is no requirement that any eligible project results in GHG emissions benefits.

   Likewise, the bill includes project types that are not commonly understood to be "infrastructure." While the bill does not define "infrastructure," the term has a well-

established common meaning, e.g., basic physical and organizational structures and facilities needed for the operation of a society or enterprise.

Private manufacturing of products that are largely exported may be good for investors and the California economy, but it isn't infrastructure that is accessible to, or otherwise provides a general public benefit for, California residents. For example, a private semiconductor manufacturing plant, which is a large consumer of electricity and water, does not seem to be an infrastructure project needed to meet climate goals.

Real-world CEQA review and litigation burdens also does not seem to be a factor in selection of project types. In fact, many of the project types eligible under this bill are eligible for other CEQA streamlining, protected from litigation, or outright exempt from CEQA. For example, wind, solar, and clean energy manufacturing projects are eligible for ELDP certification under current law. Renewable generation, energy storage, transmission lines, and renewable energy manufacturing projects are eligible for CEQA review and permitting by the California Energy Commission under AB 205, which includes 270-day review. Public Utilities Commission (PUC) jurisdictional transmission projects have a very low litigation rate, as they are effectively protected from litigation due to the practical and legal limitations on judicial review of the PUC decisions. Finally, many transportation project types are eligible for existing categorical and/or statutory exemptions.

5) **Does this bill establish the right incentive for climate-friendly transportation infrastructure**? Transportation represents the largest sector, and biggest challenge, in achieving California's climate goals. Public transportation infrastructure is both the problem and the solution in terms of efforts to reduce vehicle GHG emissions.

   This bill defines a transportation-related project as a project that meets, and does not conflict with, any of the goals outlined in CAPTI. Regarding highway projects, the 2021 CAPTI Final Report recommends, "(promote) projects that do not significantly increase passenger vehicle travel, particularly in congested urbanized settings where other mobility options can be provided and where projects are shown to induce significant auto travel. These projects should generally aim to reduce vehicle miles traveled (VMT) and not induce significant VMT growth. When addressing congestion, consider alternatives to highway capacity expansion, such as providing multimodal options in the corridor, employing pricing strategies, and using technology to optimize operations."

   CAPTI does not exclude highway expansions, and so the bill may facilitate a streamlined judicial review of highway expansion projects across the state. However, an eligible project may not conflict with the CAPTI goal "do not significantly increase passenger vehicle travel." This appears to exclude projects that induce increased VMT.

   Though the CAPTI goals listed in the bill sound good, because some project types are already exempt from CEQA, certification is more likely to be sought for the larger, more controversial projects with significant environmental impacts. The bill does require all transportation projects to achieve net-zero GHG emissions, though the quality of mitigation required falls short of the SB 7 standard approved by the Legislature in 2021. And, considering the likely continued progression of GHG mitigation practice and requirements, these GHG mitigation requirements may be outdated in the later stages of this bill's life.

In addition, transportation projects may exclude GHG emissions from employee transportation, so the GHG emissions from the project's employees in both the construction and operation phase will not be accounted for in the certification process. However, this bill does not relieve the applicant from complying with CEQA, so all GHG emissions attributable to a project's construction and operation would have to be accounted for in the lead agency's CEQA review.

6) **Inconsistent requirements regarding GHG mitigation, construction labor, and court costs**. As noted above, this bill applies inconsistent requirements for GHG mitigation, construction labor, and payment of court costs to different project types. No justification has been offered for these inconsistencies.

REGISTERED SUPPORT / OPPOSITION:

Support

California Municipal Utilities Association

Opposition

None on file

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