SENATE COMMITTEE ON ENVIRONMENTAL QUALITY
Senator Allen, Chair
2019 - 2020 Regular

Bill No:	SB 25		
Author:	Caballero and Glazer		
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Urgency:	No	**Fiscal:**	Yes
Consultant:	Genevieve M. Wong		

SUBJECT: California Environmental Quality Act: projects funded by qualified opportunity zone funds or other public funds.

DIGEST: Establishes expedited administrative and judicial review of environmental review and approvals granted for projects that are funded, in whole or in part, by opportunity zone funds or public agencies and that meet certain labor standards and use a skilled and trained workforce. Prohibits courts from staying or enjoining challenged projects with two narrow exceptions.

ANALYSIS:

Existing federal law:

Pursuant to H.R.1, which enacted fundamental changes to the federal income tax, among other things, allows state governors to designate certain census tracts as Opportunity Zones in their states. Investments made by individuals through special funds, known as Opportunity Zone funds, in these zones can defer or eliminate federal taxes on capital gains. The Governor can designate up to 25 percent of census tracts that either have poverty rates of at least 20 percent or median family incomes of no more than 80 percent of statewide or metropolitan area family income.

Existing state law, the California Environmental Quality Act (CEQA):

1) Requires lead agencies with the principal responsibility for carrying out or approving a proposed discretionary project to prepare a negative declaration (ND), mitigated negative declaration (MND), 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 §21000 et seq.). If there is substantial evidence, in light of the whole record before a lead agency, that a project may have a significant effect on the environment, the lead agency must prepare a draft EIR. (CEQA Guidelines §15064(a)(1), (f)(1)).

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.

This bill:

1) Establishes expedited administrative and judicial review procedures for environmental review documents and approvals granted for a "qualified project," which is a project that is financed, in whole or in part, by specified funds or public agencies.

    a) Requires a proponent of a project to:
        i) Certify that either the entirety of the project is a public work or that all construction workers employed will be paid the prevailing rate of per diem wages, as specified; and
        ii) Certify that a skilled and trained workforce will be used to complete the project.

    b) Gives the lead agency discretion to not conduct an analysis of vehicle miles traveled or emissions of greenhouse gases in the environmental review document for projects financed by Greenhouse Gas Reduction Fund (GGRF) and allocated by the Strategic Growth Council (SGC).

2) Establishes special procedures for public participation in CEQA review of the project including, among others:
    a) The project environmental review document includes a specified notice that the document is subject to the provisions of this bill.

    b) The lead agency conducts an informational workshop within 10 days of release of the draft environmental review document and holds a public hearing within 10 days before close of the public comment period.

    c) Prohibits the lead agency from considering written comments 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.

    d) Requires the lead agency to provide the draft environmental review document in an electronic format, certify the record within 45 days after the filing of the notice of intent to file an action or proceeding, and provide the record to a party upon written request.

3) Establishes special procedures applicable to an action or proceeding brought to attack, review, set aside, void, or annul the certification or adaptation of an environmental review document for a qualified project or the granting of any project approvals, including requiring the Judicial Council to amend the Rules of Court, by September 1, 2020, requiring lawsuits and any appeals to be resolved, to the extent feasible, within 270 days of the filing of the certified record of proceedings.
   a) Defines "environmental review document" as a ND, a MND, an EIR, or a determination that a project is exempt from CEQA.
   b) Requires a party bringing an action or proceeding to, within 10 days of the lead agency filing a notice of determination (NOD), provide notice of its intent to file the action or proceeding.

4) Prohibits, generally, a court, in granting relief, from staying or enjoining the construction or operation of a qualified project and provides that a court may only enjoin those specific activities associated with the qualified project that present an imminent threat to public health and safety or that materially, permanently, and adversely affect unforeseen important Native American artifacts or unforeseen important historical, archaeological, or ecological values.

Background

1) Background on CEQA.

   a) *Overview of CEQA Process.* CEQA provides a process for evaluating the environmental effects of a project, and includes statutory exemptions, as well as categorical exemptions in the CEQA guidelines. If a project is not exempt from CEQA, an initial study is prepared to determine whether a 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.

      Generally, 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. Prior to approving any project that has received environmental review, an agency must make certain findings. 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.

b) *What is analyzed in an environmental review?* An environmental review analyzes the significant direct and indirect environmental impacts of a proposed project and may include water quality, surface and subsurface hydrology, land use and agricultural resources, transportation and circulation, air quality and greenhouse gas emissions, terrestrial and aquatic biological resources, aesthetics, geology and soils, recreation, public services and utilities such as water supply and wastewater disposal, and cultural resources. The analysis must also evaluate the cumulative impacts of any past, present, and reasonably foreseeable projects/activities within study areas that are applicable to the resources being evaluated. A study area for a proposed project must not be limited to the footprint of the project because many environmental impacts of a development extend beyond the identified project boundary. Also, CEQA stipulates that the environmental impacts must be measured against existing physical conditions within the project area, not future, allowable conditions.

c) *CEQA provides hub for multi-disciplinary regulatory process.* An environmental review provides a forum for all the described issue areas to be considered together rather than siloed from one another. It provides a comprehensive review of the project, considering all applicable environmental laws and how those laws interact with one another. For example, it would be prudent for a lead agency to know that a proposal to mitigate a significant impact (i.e. alleviate temporary traffic congestion, due to construction of a development project, by detouring traffic to an alternative route) may trigger a new significant impact (i.e. the detour may redirect the impact onto a sensitive resource, such as a habitat of an endangered species). The environmental impact caused by the proposed mitigation measure should be evaluated as well. CEQA provides the opportunity to analyze a broad spectrum of a project's potential environmental impacts and how each impact may intertwine with one another.

2) *CEQA streamlining provisions*. CEQA has been amended over the years to provide several tools to expedite the review of, or altogether exempt from CEQA, various types of projects.

Projects Eligible for Exemptions

Numerous types of projects may be eligible for an exemption from CEQA review pursuant to either a statutory exemption or a "categorical" exemption in the CEQA Guidelines. Categorical exemptions are projects determined by the Secretary of the Natural Resources Agency to not have a significant effect on the environment. In general, if a project meets certain specified criteria, it is not subject to CEQA review. Some common exemptions include:

- Ministerial actions
- Repairs to damaged facilities
- Mitigation of an emergency
- Existing facilities, replacement, or reconstruction
- Small development and construction projects
- Protection of natural resources

Additionally, there are numerous categories of infill projects that, subject to specified criteria and exceptions, are eligible for exemptions:

- Residential projects
- Projects in housing sustainability districts
- Agricultural housing projects
- Affordable housing projects
- Urban residential projects
- Urban residential or mixed-use housing projects in unincorporated counties
- Urban infill projects
- Residential, employment center, or mixed-use development project in a transit-priority area
- Transit-priority and residential projects

Streamlined Administrative Review

CEQA provides for streamlined processes for preparing EIRs and other CEQA documents that enable public agencies to use various special types of EIRs to simplify preparation and avoid duplication. These various documents include "program" EIRs for a series of related actions that can be collectively characterized as a single project, "staged" EIRs for sequential projects, and "master" EIRs for community-level projects. Additionally, CEQA Guidelines section 15183(a) provide that CEQA mandates that projects which are consistent with the development density established by existing zoning, community plan, or general plan policies for which an EIR was certified shall not require additional environmental review, except as might be necessary to

examine whether there are project-specific significant effects which are peculiar to the project or its site. This streamlines the review of such projects and reduces the need to prepare repetitive studies.
CEQA also provides for "tiering"—the process of analyzing general projects in a broad EIR, followed by focused review of subsequent environmental projects that are narrower in scope, thereby allowing an agency to defer analysis of certain details of later phases of long-term linked or complex projects until those phases are up for approval. Finally, CEQA specifically provides for limited-scope environmental review for certain residential, infill, transit-priority projects, and approvals consistent with community-scale environmental planning documents.

Streamlined Judicial Review

Several provisions streamline judicial review of challenges to projects under CEQA, including:

- Amendments to provisions governing litigation and mediation;
- Discovery is generally not allowed, as CEQA cases are generally restricted to review of the record;
- Concurrent preparation of the record of proceedings to enable judicial review to occur sooner;
- Counties with a population of over 200,000 must designate one or more judges to develop expertise on CEQA and hear CEQA cases;
- Both the Superior Court and the Court of Appeal must give CEQA lawsuits preference over all other civil actions; and
- If feasible, the Court of Appeal must hear a CEQA appeal within one year of filing.

Many of these changes have created efficiencies in the environmental review process overall and have expedited the process for the types of projects encouraged by the state.

3) *AB 900 projects.* Existing law provides a framework for expediting CEQA review of major projects. AB 900 (Buchanan, Ch. 354, Stats. 2011), the Jobs and Economic Improvement Through Environmental Leadership Act of 2011, established specified administrative and judicial review procedures for the review of the environmental review documents and public agency approvals granted for designated residential, retail, commercial, sports, cultural, entertainment, or recreational use projects, known as Environmental Leadership Development Projects (ELDP). To qualify as a ELDP, the project

must meet specified objective environmental standards. The Legislature has also applied similar expedited frameworks for specific sports stadiums that meet certain objective environmental standards.

a) LEED Certification. Leadership in Energy and Environmental Design (LEED) is a widely-used green building rating system that is available for building, community, and home project types. LEED certification is available for six general categories: building design and construction; interior design and construction; building operations and maintenance; neighborhood development; homes; and cities and communities. Projects pursuing LEED certification earn points across several categories such as location and transportation, sustainable sites, water efficiency, energy & atmosphere, materials & resources, indoor environmental quality, and innovation. Based on the number of points achieved, a project can earn one of four LEED rating levels: certified, silver, gold, and platinum. LEED gold certification has been the rating level that has been required of ELDPs and the sports stadiums.

4) *Opportunity Zones.* The federal tax bill passed at the end of December 2017 allows the Governor to designate certain census tracts as Opportunity Zones. Investments made by individuals through special funds, known as qualified opportunity zone funds, in these zones would be allowed to defer or eliminate federal taxes on capital gains. The Governor can designate up to 25 percent of census tracts that either have poverty rates of at least 20 percent or median family incomes of no more than 80 percent of statewide or metropolitan area family income. There are 3,516 census tracts in 54 California counties that would qualify under one or both of the mandatory criteria, allowing the Governor to designate up to 879 tracts.

5) *CEQA and development*. A pair of studies from the firm Holland & Knight reviewed CEQA lawsuits filed between 2010-2012 and 2013-2015, respectively. The studies conclude that CEQA litigation is disproportionately directed towards the types of projects that the state encourages, such as infill.

However, overall litigation rates regarding CEQA are low. In 2016, BAE Urban Economics did a quantitative analysis of the effects of CEQA on California's economy generally, including the specific effects on housing development. The report found "no evidence" to support the argument that CEQA represents a major barrier to development. To the contrary, the report found that only 0.7 percent of all CEQA projects undergoing environmental review were involved in litigation. To help put this in perspective, the total number of CEQA cases filed make up approximately 0.02% of 1,100,000 civil

cases filed annually in California. The report indicated that California's affordable housing production ranked 9th among the 50 states. In fact, the report concluded that the CEQA process also helped ensure that affordable housing is developed in a way that does not compromise the health and safety of an already vulnerable population.

In October 2017, this committee published the results of a survey it had conducted of state agencies regarding CEQA to gain a better understanding of CEQA compliance and litigation. The survey, covering Fiscal Years 2011/12 to 2015/16, showed over 90% of projects lead by state agencies were exempt from CEQA; and only 1% required an EIR. Further, out of a total of 15,783 projects, only 207 CEQA cases were brought against state agencies within those 5 years. With multiple cases brought against some of the same projects, it is estimated that less than 1% of projects were litigated. The survey results suggest that CEQA litigation is not a significant burden on projects where the state is the lead agency.

Two recent studies conducted by faculty at UC Berkley illustrate how aspects of the approval process that are independent of CEQA drive project approval timelines. CEQA requires project applicants to secure all applicable permits and approvals necessary to carry out the project, as well as to comply with any other environmental review required under applicable federal, state, local laws, regulations, or policies. These requirements apply independently of CEQA, but are also incorporated into the CEQA process. The results of the first study, done in residential development projects in five Bay Area cities, led to the conclusion that, among other facts "what drives whether and how environmental review occurs for residential projects is local land-use law." The second study, which focused on the building permit process in four Los Angeles area cities, found that different cities chose to apply CEQA differently with regard to residential development and that overall relatively few projects within the study area required a full EIR.

Finally, the Association of Environmental Professionals recently surveyed 46 cities and counties throughout the state to determine CEQA's impact on housing production. The survey found that under 6% of the housing projects in those jurisdictions were required to undergo a full EIR, which took 15 months on average to complete. Instead, the survey found that cities and counties are successfully using alternatives to EIRs that expedite housing projects: 35.9% of projects were reviewed by MNDs, which took just 8 months to complete, while 42.3% were reviewed under streamlining provisions or exemptions for affordable housing, infill, and transit-priority projects, which took just 6

months to complete. Another 9.3% were determined to be eligible for other exemptions. The survey respondents also indicated that, among the barriers to increased housing production in California, CEQA is not a major cause. The costs of building, lack of available sites, and lack of financing for affordable housing were all cited as primary barriers for housing production.

Comments

1) *Purpose of Bill.* According to the author,

"SB 25 will help end abuse of CEQA by NIMBY litigants that use the courtroom as a strategy to delay or kill housing development. Crucially, SB 25 focuses on a funding source to define a qualified project, and provides relief from lengthy CEQA litigation solely for projects receiving certain public funds or an investment through a qualified Opportunity Zone Fund. This means that SB 25 is not applicable to private development without a nexus to the public good; it is not a CEQA exemption, nor a blanket negative declaration freeing a project from an environmental impact report. Under SB 25, projects will still have to produce an EIR, and that EIR can face a challenge in court. In fact, SB 25 not one environmental risk will be absorbed by a project that uses SB 25 streamlining. Simply, costly litigation strategies are redressed while keeping all environmental protections afforded to all projects in place.

"With public funded projects, the Legislature should ensure that CEQA litigation challenging an EIR is streamlined, so that the public's interest is served over that of a single, often anonymous, litigant. In the case of Opportunity Zones, the state is participating in a federal program that will potentially drive private investment into our most capital-starved communities, if investors see that their investments will produce a return, instead of wasted away on litigation expenses.

"A quarter of the nation's homeless are on California's streets. The Governor wants to build 3.5 million housing units in the next 5 years. The Governor is right about the need to reform CEQA in order to meet the mark. If the Legislature can deliver CEQA litigation streamlining for billionaire sports team owners, then we can do it for all Californians.

2) *A very long reach.* SB 25 provides expedited administrative and judicial review based on how the project is financed, giving the bill an expansive reach. SB 25 is broad in three ways (1) the term "financed" is vague and could mean a number of options including grants or loans; (2) the project only needs to be financed *in whole or in part* by the specified funding sources, making the bar

for a project to qualify low; and (3) the wide range of the qualifying funding sources.

Most of the financing sources that would qualify a project for expedited judicial and administrative review, with the exception of programs funded by GGRF moneys and allocated by the SGC, do very little, if anything, to set baseline environmental standards, yet have the capacity to fund thousands of projects on an annual basis. For example, as a general matter, the Department of Housing and Community Development (HCD) administers programs that provide grants and loans to create rental and homeownership opportunities for Californians. During the 2016-17 fiscal year the Department of Housing and Community Development (HCD) awarded 238 grants and loans, totaling more than $460 million.

The California Infrastructure and Economic Development Bank (iBank), another example, is the state's general-purpose financing authority; financing public infrastructure and private development. As of July 31, 2018, iBank has financed over $40 billion in infrastructure and private development projects, including $650 million in Infrastructure State Revolving Fund loans to state and local governments for infrastructure and economic expansion and $37 million in bonds for public agencies, nonprofits, and *manufacturing facilities*. While iBank does have 2 programs aimed at helping the state meet its environmental goals, all projects subject to CEQA that receive funding from any of its programs, such as manufacturing companies that receive industrial development bonds for the construction of facilities, financing for private airline improvements at publicly-owned airports, port facilities, or highways, would fall under the scope of SB 25 and would receive expedited administrative and judicial review.

Opportunity zone funds are special funds created by investors for the benefit of a qualified opportunity zone. In order for investors to take advantage of certain tax benefits, 90% of the funds must be invested in projects located in the opportunity zone. Those projects can vary but will most likely be real estate investments and include all different types of development.

A final example of the types of projects that would fall within the expedited administrative and judicial review provisions of SB 25 are enhanced infrastructure financing districts (EFID), which finance the construction or rehabilitation of public infrastructure and private facilities using a property tax increment of its member entities. Allowable infrastructure financed through EIFD is wide-ranging and can include acquisition, construction, and repair of industrial structures for private use, flood control levees and dams, and facilities for the transfer and disposal of solid waste.

As mentioned above, SB 25 has a very broad sweep and encompasses many different types of projects.

The committee may wish to amend the bill to limit its application to:

1) ***Projects that are financed by a qualified opportunity fund and housing projects financed by the specified public agencies.***
2) ***For housing projects, including those funded by a qualified opportunity fund, no more than 25% of the total building square footage of the project shall be for commercial or retail uses; of the total number of residential units available, a minimum of 40% shall be for lower-income families, as defined by Health and Safety Code §50079.5; and the project proponent shall commit to ensuring those residential units remain available to lower-income families for a minimum of 30 years.***

3) *Further than the sports stadiums.* The author's statement points out that "[i]f the Legislature can deliver CEQA litigation streamlining for billionaire sports team owners, then we can do it for all Californians." Many of the recently-enacted sports stadium legislation language stems from SB 743 (Steinberg, Chapter 386, Statutes of 2013), which laid out special procedures for expedited judicial and administrative review of an *environmental impact report* for the Sacramento Kings arena. SB 25 goes further, also applying the expedited judicial review procedures to challenges to NDs and MNDs and to a determination that the project is exempt from CEQA.

   For projects that are already exempt from CEQA and that fall under the scope of this bill, the expedited judicial review would apply to any proceeding or action challenging the lead agency's determination that the project is exempt. Currently, the lead agency is authorized, but not required, to file the notice of exemption (NOE) with the Office of Planning and Research (OPR) or the county clerk of the county in which the project is located, depending on if the lead agency is a state agency or a local agency.

   To help give the Legislature an accurate idea of how often each exemption is being utilized and its effectiveness, the committee may wish to amend the bill to require the lead agency that determines the project is exempt to file that NOE with OPR.

4) *Limiting public participation.*

   a) *More restrictive than SB 743.* SB 743 (Steinberg, Chapter 386, Statutes of 2013) and prior stadium bills laid out special procedures for expedited judicial and administrative review. However, SB 25 makes a number of modifications to the language that is typically found in the stadium bills.

i) Limiting availability of information to the public. SB 743 required the lead agency to electronically make publicly-available the draft EIR and other documents including *all other documents submitted to or relied on by the lead agency in preparation* of the document, and comments submitted. In contrast, SB 25 only requires the draft environmental review document be made available and does not require availability of the other documents or comments.

According to the author, NIMBYs use the electronic availability of documents to drive up costs of a project applicant, some of which may have limited resources that don't cover being able to scan pages of the documents. This change was done to help keep costs down for project applicants.

However, without the availability of this information, how is the public able to meaningfully participate in the enforcement of CEQA? Does denying public access to this information affect the public's ability to evaluate whether the underlying environmental review document is adequate and in compliance with CEQA?

ii) Limiting consideration of certain comments. SB 743 authorized the lead agency to not consider certain written comments that were submitted after the close of the public comment period except materials addressing new information released after the close of the public comment period. SB 25 would instead prohibit the lead agency from considering these "late comments."

Sometimes late comments are a part of a delay tactic. *However, does automatically excluding some comments based on the timing of their submission affect the lead agency's ability to adequately determine whether an underlying EIR is sufficient and complies with CEQA?*

iii) No SB 743 mediation options. SB 743 included certain mediation provisions, including allowing commenters of the draft environmental review document to request nonbinding mediation with the lead agency and requiring the lead agency to adopt, as a condition of approval, any measures agreed upon by the lead agency, the applicant, and commenters. SB 25 does not contain these mediation provisions, thus default mediation provisions that are generally applicable to civil actions would apply.

Mediation, according to the author, is another delay tactic used by opponents of the project once a lawsuit has commenced. However,

mediation is also often used so that parties may avoid having to go to court. *How does the mediation that was provided for under SB 743, but not included in SB 25, differ from generally applicable mediation provisions? What did the public lose when these provisions were removed from SB 25? How does it affect the public's ability to enforce CEQA?*

The committee may wish to amend the bill to include the electronic availability of documents, including documents submitted to or relied on by the lead agency, the authorization of the lead agency to consider comments submitted after the public comment period, and mediation provisions in SB 25 to remain consistent with prior expedited administrative review legislation.

b) Limiting a party's ability to file an action. Existing law sets out specific timeframes in which a party must challenge a lead agency's acts or decisions on grounds of noncompliance with CEQA. Generally, the timeframe is 30 days from the date the lead agency files the NOD for allegations such as the EIR does not comply with CEQA, the lead agency improperly determined that a project does not have a significant effect on the environment, or the application of an exemption is improper *if* the lead agency filed a NOE. In instances where the lead agency does not file a NOE, the action or proceeding must be commenced within 180 days from the project's commencement date.

SB 25 would add an additional requirement on a party who wishes to challenge a lead agency's determination by requiring the party to provide notice of its intent to file within 10 days of the lead agency filing the NOD. If a party does not do so within 10 days, the court is prohibited from accepting or filing an action or proceeding from the party. *Would a court clerk have access to this type of information to be able to accurately determine if the party is within the authorized window? Is this enough time for a party to know if a project's significant impacts to the environment have been adequately evaluated or if CEQA has been complied with? Further, how does this additional requirement apply in the context of projects that have been determined to be exempt from CEQA, as are many of the projects covered by this bill, where a NOE is not required (See Comment #3)?*

c) Confusing terminology. It should also be noted that under existing law, the lead agency is required to file the NOD with either OPR or the county clerk, as applicable, within 5 days after the approval or determination becomes final. SB 25 would instead require the lead agency to file the NOD within 5 days after the last initial project approval. It is unclear how this change affects existing law and needs clarification.

The committee may wish to amend the bill to remain consistent with terminology under existing law.

5) *Tying the hands of the courts*. SB 25 limits the courts' ability to stay or enjoin the construction or operation of a qualified project, with 2 exceptions: (1) where the continued construction or operation of the project presents an imminent threat to the public health and safety, and (2) the project site contains unforeseen important Native American artifacts or unforeseen important historical, archaeological, or ecological values that would be materially, permanently, and adversely affected by the continued construction or operation. Even if the court finds that one of these circumstances exists, the court would only be able to enjoin those specific activities associated with the project that present an imminent threat to the public health or safety or that materially, permanently, or adversely affect unforeseen important Native American artifacts or unforeseen important historical, archaeological, or ecological values.

The ability to grant injunctive relief is fundamental to the equitable nature of these court proceedings. Generally, injunctive relief is granted by a court to preserve the status quo until a determination of the merits of the CEQA challenge can be made. The ability to stay or enjoin a qualified project, whatever that project may be, during the pendency of CEQA actions or proceedings is often necessary to prevent prospective damage as well as to contain ongoing damage.

The committee may wish to amend the bill to remove this provisions that would limit injunctive relief.

6) *Affecting equal access to justice*? Current law requires the courts to give CEQA-related cases preferences over all other civil actions so that the action or proceeding shall be quickly heard and determined. In addition to this existing mandate, SB 25 provides that courts must complete the judicial review process in a given timeframe for certain CEQA-related actions of proceedings when specified criteria are met. As a consequence, such mandates on a court delay access for other 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. This bill requires a court to make room on its calendar, potentially pushing other cases aside, to ensure that specified timeframes are met for SB 25's wide range of qualified projects. The large number of projects that would qualify for the accelerated timeframe could place considerable burden on the courts and create unequal access to justice for others.

7) *What about the environment?* Every project covered by SB 25 will have 3 components: (1) use of a skilled and trained workforce for all contracts that are a part of the project; (2) at least partially funded by public moneys or public entities, and (3) meets certain labor standards. Previous projects that have been granted similar expedited judicial review have been subject to similar requirements, but those projects were also required to meet certain objective environmental standards such as being certified LEED Gold, minimizing traffic and air quality impacts through project design or mitigation measures including reducing to at least zero the net GHG emissions from private automobile trips, and complying with already existing state recycling and organic waste requirements.

   SB 25 asks for the same treatment as prior ELDPs and sports stadiums without providing any of the environmental protections. The bill would apply to an unknown number of future projects with unknown impacts. Since the projects are undefined, it is difficult to evaluate their merits. *Is maintaining a quality environment in California not as important as these considerations?* And while SB 25 only affects the litigation and administrative review portion of CEQA, and a project proponent must still complete an environmental review, it should be noted that *litigation is the only tool for enforcing CEQA*. If that is shortened, especially without imposing *any* objective environmental standards, we affect the ability of parties to ensure the environmental review was done properly and to enforce the law.

   The committee may wish to amend the bill to require projects to be LEED Gold certified, have net zero GHGs, and zero-net energy, and, for projects funded by GGRF and allocated by SGC, to remove the authorization for the lead agency to not conduct an analysis of vehicle miles traveled or emissions of GHGs.

8) *A test run.* Given the wide range of projects that could potentially be subject to this bill, the impacts on the courts, and the discrepancy as to whether CEQA really is the issue, ***the committee may wish to amend the bill to be operative until January 1, 2025.***

9) *Additional amendments*. Given the relationship between housing and transportation, the committee may wish to consider the following amendments:

   Apply SB 25's expedited judicial and administrative review to transit projects that are financed by specified transportation agencies and are planned transit projects contained in a sustainable communities strategy that, upon the project's completion, will result in a reduction in vehicle miles traveled and greenhouse gas emissions.

Related/Prior Legislation

SB 384 (Morrell) establishes expedited administrative and judicial review of environmental review and approvals granted for housing development projects with 50 or more residential units and prohibits courts from staying or enjoining challenged projects with two narrow exceptions. SB 384 is in Senate Environmental Quality Committee and is set to be heard on April 10, 2019.

AB 3030 (Caballero, 2018) exempted from CEQA residential and mixed-use projects that provide 50% affordable housing, is financed by a "qualified opportunity fund", meets numerous specified requirements, including that it is consistent with local land use plans, ensures the payment of prevailing wage, and does not have any significant impacts that have not been publicly disclosed, analyzed, and mitigated. AB 3030 was held in Senate Appropriations Committee.

SB 1340 (Glazer, 2018) applied similar expedited judicial review requirements to housing projects and similar prohibitions on the courts from staying or enjoining challenged projects with the two narrow exceptions. SB 1340 did not pass the Senate Judiciary Committee.

DOUBLE REFERRAL:

If this measure is approved by the Senate Environmental Quality Committee, the do pass motion must include the action to re-refer the bill to the Senate Judiciary Committee.

SOURCE: Habitat for Humanity California

SUPPORT:

BizFed
California Council for Affordable Housing
Habitat for Humanity California (sponsor)

OPPOSITION:

California Environmental Justice Alliance
California League of Conservation Voters
Center for Biological Diversity
Center for Community Action and Environmental Justice
Center on Race, Poverty, and the Environment
Judicial Council of California
Physicians for Social Responsibility- Los Angeles
Planning and Conservation League
Sierra Club California

ARGUMENTS IN SUPPORT: According to Habitat for Humanity California, the bill's sponsor,

"In recent years, CEQA has become a tool for nimbyism and frivolous lawsuits have prevailed in delaying or halting many housing projects, including one of Habitat for Humanity's projects in Redwood City, California. That project became the subject of a years-long lawsuit, which ultimately ended in a settlement that reduced the number of planned affordable units. We support the essence of SB 25, which will help decipher between legitimate environmental challenges and concerns and those formed by NIMBY neighbors and their creative legal advisors.

"SB 25 would establish streamlined procedures under CEQA for administrative and judicial review, and approvals granted to projects funded in whole or in part by certain public monies or through a private Opportunity Zone fund. It is important to note that SB 25 will not exempt these projects from completing an Environmental Impact Report; instead it is focused on the process of administrative and judicial review, which will allow these projects to reach the marketplace in a timely manner."

ARGUMENTS IN OPPOSITION: According to the Judicial Council,

"SB 621's requirement that any CEQA lawsuit challenging the multitude of projects that could be covered by the bill, including any appeals therefrom, be resolved within 270 days is problematic for a number of reasons. First, CEQA actions are already entitled under current law to calendar preference in both the superior courts and the Courts of Appeal. Imposing a 270-day timeline on top of the existing preference is arbitrary and likely to be unworkable in practice.

"Second, the expedited judicial review for all of the projects covered by SB 25 will likely have an adverse impact on other cases. Like other types of calendar

preferences, which the Judicial Council has historically opposed, setting an extremely tight timeline for deciding this particular type of case has the practical effect of pushing other cases on the courts' dockets to the back of the line. This means that other cases, including cases that have statutorily mandated calendar preferences, such as juvenile cases, criminal cases, and civil cases in which a party is at risk of dying, will take longer to decide.

"Third, providing expedited judicial review for all of the projects covered by SB 25 while other cases proceed under the usual civil procedure rules and timelines undermines equal access to justice. The courts are charged with dispensing equal access to justice for each and every case on their dockets. Singling out this particular type of case for such preferential treatment is fundamentally at odds with how our justice system has historically functioned.

"Finally, the provision of SB 25 that significantly limits the forms of injunctive relief that the court may use in any action challenging the housing projects covered by this bill interferes with the inherent authority of a judicial officer and raises a serious separation of powers question."

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