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

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| **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."

**-- END --**

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

| | | | |
|---|---|---|---|
| **Bill No:** | SB 384 | | |
| **Author:** | Morrell | | |
| **Version:** | 3/25/2019 | **Hearing Date:** | 4/10/2019 |
| **Urgency:** | No | **Fiscal:** | Yes |
| **Consultant:** | Genevieve M. Wong | | |

**SUBJECT:** Housing.

**DIGEST:** Establishes expedited administrative and judicial review of environmental review and approvals granted for housing development projects with 50 or more residential units. Prohibits courts from staying or enjoining challenged projects with two narrow exceptions.

**ANALYSIS:**

Existing state law:

1) The California Environmental Quality Act (CEQA):

   a) 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)).

   b) 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.

2) The Personal Income Tax Law:

   a) Provides for the manner in which taxable gains are to be recognized upon

the disposition of property, including real property that is the principal residence of the taxpayer.

b) Allows an individual to exclude from that individual's gross income up to $250,000 or $500,000, as specified, of gain realized on the sale or exchange of the individual's residence if the taxpayer owned and occupied the residence as a principal residence for an aggregate period of at least 2 of the 5 years prior to the sale or exchange (Revenue and Tax Code §17144.5).

3) Authorizes an action brought in superior court relating to certain subjects (e.g., CEQA, general plan and zoning, redevelopment plans) to be subject to mediation in accordance with the Law. The court may invite parties to consider resolving their dispute by selecting a mutually acceptable person, organization, or agency to serve as mediator, and certain time limits are specified. (Government Code §66031).

This bill:

1) Establishes expedited administrative and judicial review of environmental review and approvals granted for a housing development project with 50 or more residential units.

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) Provides specified mediation procedures to apply to these projects and prohibits persons who agree to a measure pursuant to the mediation from raising the issue as a basis for an action or proceeding challenging the environmental impact report or project approval.

d) Does not require the lead agency to consider 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.

e) Requires the lead agency to provide all draft environmental review documents and comments in an electronic format, certify the record within 5 days after the filing of the notice of approval or determination, and provide the record to a party upon written request.

3) Requires the lead agency to file notice of approval or determination with the Office of Planning and Research (OPR) within 5 days after the last initial project approval, instead of 5 days after the approval becomes final as currently required by law.

4) Requires the Judicial Council, by September 1, 2020, to adopt a rule of court that applies 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, requiring lawsuits and any appeals to be resolved, to the extent feasible, within 270 days of the filing of the certified record of proceedings.

5) 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.

6) Revises the personal income tax exclusion to provide that if the buyer is a first-time homeowner subject to the income tax imposed by California, the amount of the exclusion is increased to $300,000 or $600,000, as specified.

**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) *California's housing shortage.* California is in the midst of a serious housing crisis. California is home to 21 of the 30 most expensive rental housing markets in the country, which has had a disproportionate impact on the middle class and the working poor. Housing units affordable to low-income earners, if available, are often in serious states of disrepair. A person earing minimum wage must work three jobs on average to pay the rent for a two-bedroom unit. The Department of Housing and Community Development (HCD) estimates that approximately 2.7 million lower-income households are rent-burdened (meaning they spend at least 30 percent of their income rent), 1.7 million of which are severely rent-burdened (spending at least 50% of their income on rent). Not a single county in the state has an adequate supply of affordable homes. According to a 2015 study by the California Housing Partnership Corporation, California has a shortfall of 1.5 million affordable homes and 13 of the 14 least affordable metropolitan areas in the country.

   A major factor in this crisis is the state's housing shortage. From 1954-1989, California constructed an average of more than 200,000 new homes annually, with multifamily housing accounting for the largest share of housing production. Since then, however, construction has dropped significantly. HCD estimates that approximately 1.8 million new housing units – 180,000 new homes per year, are needed to meet the state's projected population and housing growth by 2025. Even when housing production rose in the mid-2000's, it never reached the 180,000 mark, and over the last 10 years, construction averaged just 80,000 new homes per year.

3) *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. There are numerous categories of housing 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; and
- 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 EIR's 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 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;
- If feasible, the Court of Appeal must hear a CEQA appeal within one year of filing; and
- If feasible, a 270-day judicial review period for environmental leadership projects, as well as for specified stadium projects.

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.

4) *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 an ELDP, the project must meet specified objective environmental standards. The Legislature has also applied similar expedited frameworks to sports stadiums that meet certain objective environmental standards.

5) *CEQA and housing 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 infill housing is the top target of CEQA lawsuits.

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.

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 found that cities and counties were not fully utilizing the affordable housing exemption, often opting for a full EIR for projects that were eligible for the exemption. 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 384 proposes the comprehensive reform California's housing market needs to reduce the affordability crisis. It

   will ensure equal treatment under the law for CEQA waivers on housing developments with 50 or more units, and offer greater incentives to sellers who sell to first-time home buyers in order to promote market mobility for all Californians."

2) *What is a "housing development project"?* SB 384 defines a "housing development project" as a housing development project with 50 or more residential units. However, can a housing project be a mixed-use project or is it purely residential? Would the housing development project have to be consistent with any application specific plan, general plan, or zoning ordinance? Exactly what type of project would the Legislature give this expedited judicial review to?

   Is a "housing development project" the same as a "residential project"? What is the difference between the two? Under existing law, a residential development project that is consistent with a specific plan for which an EIR has been certified is exempt from CEQA. Why wouldn't a housing development project qualify for this already-available exemption?

3) *Market rate versus affordable.* Market-rate housing is housing that does not meet the definition of affordable housing, as defined in statute. Much of the conversation around California's housing crisis has revolved around either affordable housing (housing that is affordable for lower income communities) or housing for all (housing that is affordable for people who are not considered lower income yet are still do not make enough to be able to afford housing in their area). This bill does not do anything to encourage the development of these types of housing. Instead, the expedited judicial review provided under this bill would be applicable to all types of housing, including housing that people will not be able to afford, doing little to help the state meet its housing needs.

4) *Is CEQA a major hindrance to building houses?* The Construction Industry Research Board (CIRB) Report is a research service provided by the California Homebuilding Foundation and produces current and historical statewide building permit statistics.

The following data is from the CIRB chart, *Housing Production In California 2003-2017*, and reflects the total number of housing units built annually for the past 15 years (including projected numbers for 2017):

| Year | Single-Family | Multi-Family | Total |
|---|---|---|---|
| 2003 | 138,762 | 56,920 | 195,682 |
| 2004 | 151,417 | 61,543 | 212,960 |
| 2005 | 155,322 | 53,650 | 208,972 |
| 2006 | 108,021 | 56,259 | 164,280 |
| 2007 | 68,409 | 44,625 | 113,034 |
| 2008 | 33,050 | 31,912 | 64,962 |
| 2009 | 25,454 | 10,967 | 36,421 |
| 2010 | 25,526 | 19,236 | 44,762 |
| 2011 | 21,641 | 25,702 | 47,343 |
| 2012 | 27,560 | 31,665 | 59,225 |
| 2013 | 36,991 | 48,481 | 85,472 |
| 2014 | 37,089 | 48,775 | 85,844 |
| 2015 | 44,896 | 53,337 | 98,233 |
| 2016 | 49,208 | 51,753 | 100,961 |
| 2017 (Projected) | 52,705 | 51,407 | 104,112 |

According to the U.S. National Bureau of Economic Research, the Great Recession began in December 2007 and ended in mid-2009. The economy began to recover in June 2009 and has averaged 2.1% annual growth since then. Similarly, the table above shows that in 2007, total housing production was at 113,034 units; hit its low in 2009 with a total of 36,421 units; and has steadily increased since 2009. The number of housing units built each year seems to follow a similar trajectory as that of the economy. Meanwhile, CEQA has been a constant, as well as for decades prior. *A question arises as to whether CEQA actually hinders the number of housing units built in the state or whether other factors, such as the economy, have a much greater influence.*

5) *Many options already available.* As discussed above, CEQA already provides several streamlining provisions and exemptions, especially in the context of housing. Does the Legislature need to enact another streamlining process

specifically for housing development projects? Since these projects could be purely residential or mixed-use development, affordable or market-rate, could these housing projects already be exempt from the provisions of CEQA?

6) *Expanding the AB 900/sports stadium model.* Some have argued that if the expedited judicial review can be given to certified ELDPs and billionaires for their sports stadiums, it can also be done for all Californians. It should be noted that the procedures in AB 900 and for the sports stadiums required the projects to meet certain environmental standards including, among others, to be certified Leadership in Energy and Environmental Design (LEED) Gold, as well as minimize traffic and air quality impacts through project design or mitigation measures including reducing to at least zero the net greenhouse gas (GHG) emissions from private automobile trips to the sports stadiums, and achieve a 15% reduction in vehicle-miles traveled per attendee.

   This bill applies similar expedited judicial review procedures to housing development projects but **does not include any mitigation measures**. The bill would apply to an unknown number of future housing development projects with unknown impacts. Since the projects are undefined, it's difficult to evaluate their merits, much less whether those merits justify preferential treatment. If the Legislature considers granting preferential treatment to certain types of projects, perhaps those projects ought to directly address the state's housing crisis and provide for superior environmental standards.

7) *Tying the hands of the courts*. SB 384 limits the courts' ability to stay or enjoin the construction or operation of a housing development, 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.

8) *Not a solution.* As discussed above, CEQA already provides for several streamlining provisions and exemptions, especially in the context of housing. Additionally, multiple studies have shown that CEQA is not the primary barrier to development and that other factors play a greater role in impeding development. The Committee may wish to consider **whether it would be prudent to enact another streamlining provision for the broad category of housing development projects that will likely do little to address the state's housing crisis.**

**Related/Prior Legislation**

SB 25 (Caballero, Glazer) establishes expedited administrative and judicial review of environmental review and approvals granted for projects that are funded, in whole or in part, by specific public 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. SB 25 is set to be heard in this committee on April 10, 2019.

SB 621 (Glazer, Caballero) establishes expedited judicial review for projects that contain at least 30% affordable housing, defined to mean 80% of the area median income; and prohibits courts from staying or enjoining challenged projects with two narrow exceptions. SB 621 is set to be heard in this committee on April 10, 2019.

SB 744 (Caballero) requires that permanent supportive housing be a use by right in zones were multifamily and mixed uses are permitted if specified criteria are met, including that the development is financed by the No Place Like Home program and applies expedited judicial review to certain No Place Like Home projects. SB 744 was triple-referred to Senate Housing Committee, Senate Governance and Finance Committee, and this committee. The bill is currently in Senate Governance and Finance and will be heard in this committee on April 24, 2019, pending receipt.

AB 2162 (Chiu, Chapter 753, Statutes of 2018) exempts from CEQA supportive housing in zones where multifamily and mixed uses are permitted if the proposed housing development meets specified criteria.

**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 Rules Committee.

**SOURCE:** Author

**SUPPORT:**

None received

**OPPOSITION:**

California League of Conservation Voters
Center for Biological Diversity
Judicial Council
Planning and Conservation League
Sierra Club California

**-- END --**

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

| | | | |
|---|---|---|---|
| **Bill No:** | SB 450 | | |
| **Author:** | Umberg | | |
| **Version:** | 2/21/2019 | **Hearing Date:** | 4/10/2019 |
| **Urgency:** | No | **Fiscal:** | Yes |
| **Consultant:** | Genevieve M. Wong | | |

**SUBJECT:** California Environmental Quality Act exemption: supportive and transitional housing: motel conversion

**DIGEST:** Exempts interim motel housing projects from the requirements of the California Environmental Quality Act.

**ANALYSIS:**

Existing law, the California Environmental Quality Act:

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 (PRC) §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) Exempts "interim motel housing projects" from the requirements of CEQA.

   a) Defines "interim motel housing project" as the conversion of a structure with a certificate of occupancy as a motel, hotel, apartment hotel, transient occupancy residential structure, or hostel to supportive housing or transitional housing, and the conversion does not increase the number of dwelling units or guest rooms or substantially reduce the number of parking spaces.

b) Defines "supportive housing" as housing with no limit on length of stay for persons with low incomes who have a disability and the housing is linked to supportive services.

c) Defines "transitional housing" as temporary housing linked to supportive services that are offered, usually for a period of up to 24 months, to facilitate movement to permanent housing.

d) Defines "supportive services" as services that are provided on a voluntary basis to residents of supportive housing or transitional housing, which is temporary housing linked to supportive services that is offered to facilitate movement to permanent housing.

2) Makes findings and declarations that an interim motel housing projects makes only minor interior alterations to add cooking facilities of a specified size, counter space of a specified size, and the provision of a hotplate or microwave in individual units.

**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 ND. 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. An interim motel housing project may already fit within the following already-existing exemptions:

- Projects consistent with applicable zoning and planning;
- Negligible expansions of existing public and private structures, facilities, mechanical equipment, or topgraphical features;
- Urban residential or mixed-use housing projects in unincorporated counties;
- Infill housing;
- Residential, employment center, or mixed-use development project in a transit priority-area; and
- 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 EIR's 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.

## Comments

1) *Purpose of Bill.* According to the author, "SB 450 seeks to exempt from the California Environmental Quality Act (CEQA) projects related to the conversion of a motel into supportive or transitional housing that is linked to supportive services. Cities who decide to participate will be able to streamline motel conversions, which will help to alleviate public safety concerns caused by identified nuisance motels while simultaneously providing supportive housing units to address the state's housing and homeless crisis.

"Currently many families experiencing homelessness are already temporarily living in motels through motel voucher programs. Meanwhile, local governments receive disproportionate calls for service and crime incident reports from identified motels. The community has identified these motels as hubs for illegal activities, including human trafficking, crime, and blight on surrounding neighborhoods. While many of these motels are ideal opportunity sites for affordable housing, the CEQA process currently leads to costs ranging from $100,000 to $1,000,000 per project as well as potential administrative and litigation delays.

"SB 450 addresses both the need for supportive housing and the externalities created by the nuisance motels. It seeks to provide a CEQA exemption for conversion of a motel into supportive or transitional housing."

2) *What is covered by the bill?* SB 450 would exempt from CEQA any motel, hotel, apartment hotel, transient occupancy residential structures, or hostel that is converting to supportive housing or transitional housing if the conversion does not increase the number of dwelling units or substantially reduce the number of parking spaces. An apartment hotel is not currently used or defined in statute. A transient occupancy residential structure, although not defined in statute, is commonly known in city codes as "extended stay hotels" that provided rooms with kitchens, unlike hotels or motels.

*As the bill moves through the legislative process, the author will need define the terms "transient occupancy residential structure" and "apartment hotel."*

3) *Already existing exemptions*. There are two exemptions that may already be applicable to the projects covered by SB 450.

   a) *A "Use By Right" statutory exemption.* Government Code §65651 requires that supportive housing to be a use by right in zones where multifamily and mixed uses are permitted if the proposed housing development satisfies certain conditions. When a certain type of project is determined to be a "use by right," the approval of the project is ministerial and local governments do not have discretion regarding approval of the permit as long as the application is complete. If a local government does not have discretionary review of a project, the provisions of CEQA do not apply. Therefore, a "use by right" is an exemption from CEQA.

   SB 450 proposes to exempt from CEQA interim motel housing projects, which the bill would define as the conversion of certain structures to supportive or transitional housing. Thus, in addition to the use by right exemption already provided for certain supportive housing, SB 450 would provide for a broader exemption to be applied to supportive housing.

*To avoid potential confusion of the public, the author may wish to consider reconciling the two exemptions or clarifying how these two exemptions apply in context of each other as the bill moves through the legislative process.*

b) *An existing categorical exemption.* CEQA Guidelines Sec. 15301 already provides an exemption of negligible expansions of existing public and private structures, facilities, mechanical equipment, or topgraphical features. The applicability of this exemption depends on the size of the expansion. The more work that is being done, the more likely the project does not qualify for the exemption.

If the conversion of these projects is truly limited to minor interior alterations, it could be argued that that these projects already qualify for the CEQA exemption. However, according to the sponsor, the projects are still being litigated. It is not clear under what circumstances actions are being brought, i.e. the conversion projects are not minor in nature or if the change in use justifies the need for a new environmental review tailored to the new uses.

***The committee may wish to amend the bill to specify that the project is limited to minor interior alterations such as those listed in the findings and declarations.***

4) *Maybe a Negative Declaration or Mitigated Negative Declaration Applies.* If a categorical exemption does not apply, then it should be noted that not all projects subject to CEQA are required to do an EIR. In fact, based on the number of documents submitted to the State Clearinghouse, data shows that most projects do not trigger an EIR.

If the initial study shows that there would not be a significant effect on the environment, then the lead agency must prepare an ND. If the initial study shows potentially significant impacts but the applicant revises the project plan, which would avoid or mitigate those impacts, before the proposed ND and initial study are released for public review, then the lead agency must prepare a MND. These types of environmental reviews tend to be less expensive and time-consuming than an EIR. Perhaps, such a project as described in SB 450 would qualify for an ND/MND.

5) *What do we lose with a CEQA exemption?* It is not unusual for certain interests to assert that CEQA impedes on a project coming to fruition or that a particular exemption will expedite construction of a particular type of project

and reduce costs. This, however, frequently overlooks the benefits of environmental review: to inform decisionmakers and the public about project impacts, identify ways to avoid or significantly reduce environmental damage, prevent environmental damage by requiring feasible alternatives or mitigation measures, disclose to the public reasons why an agency approved a project if significant environmental effects are involved, involve public agencies in the process, and increase public participation in the environmental review and the planning processes.

If a project is exempt from CEQA, certain issues may not get addressed. For example:

- How can decisionmakers and the public be aware of impacts, mitigation measures, and alternatives of an exempt action?

- Is it appropriate for the public to live with the consequences of exempt projects where impacts are not mitigated and alternatives are not considered regarding certain matters, such as air quality, water quality, noise, cumulative impacts, and growth inducing impacts?

A lot of changes can happen in a community and environment over time. The short-term, long-term, and/or permanent consequences of a project should be known by the decisionmakers, the project proponent, and the public *before* a project is approved, and mitigated or avoided if possible before it is too late – *CEQA specifically provides for that informed and responsible decisionmaking.* Does the short-term benefit of expediency justify potentially long-term, permanent consequences/damages to the community?

6) *Different projects, different environmental impacts.* The logic behind the exemption proposed by SB 450 is that a full environmental review was already done for the pre-existing motel, hotel, apartment hotel, transient occupancy residential structure, or hostel, and converting the structure to interim motel housing would not have different environmental considerations. While this may be the case for apartment hotels, transient occupancy residential structures, or hostels, the same logic may not apply to motels and hotels.

For example, adding kitchen amenities could affect the generation of waste that was associated with its prior use, as well as put additional stress on water, electric, and related utilities. Also, the average length of stay for a hotel or motel is about 1 week whereas the length of stay in interim motel housing can be up to 24 months for transitional housing, or, in the context of supportive housing, has no limit. Does this have a significant impact on the environment?

Because of the new use of the structures, will there be an increase in traffic? Overall, how would the environmental review of an interim motel housing project differ from its prior use?

7) E*nvironmental safeguards.* Because SB 450 would exempt the interim motel housing projects from CEQA, *no environmental review under the act* would be required. A conversion project such as the ones contemplated under SB 450 will have permanent effects on the environment surrounding it. Would it be prudent for the Legislature to exempt such a project without taking into consideration the state's policy goal of maintaining a quality environment for people of the state now and in the future? Are there certain environmental safeguards that can be built into an interim motel housing project to ensure these goals?

However, the projects that would be covered by SB 450 are intended to convert otherwise nuisance motels into temporary housing that would provide supportive services to the residents of the supportive or transitional housing. A nuisance motel is a motel that has been deemed to be a public nuisance due to the fact that the motel's operations endanger the health or safety of the public and are usually a magnet for illegal activity.

***The committee may wish to require the author to commit to continue to work with the committee to build in additional practical environmental safeguards, to the extent feasible, to ensure the continued protection of the environment including, but not limited to, that the project would not result in any significant effects relating to traffic, noise, air quality, or water quality.***

8) *Legislative oversight.* CEQA provides many exemptions for various projects and streamlining provisions for both administrative review and judicial review. However, the Legislature does not have access to accurate data on how often, if at all, these exemptions are being used. Existing law authorizes, but does not require, a lead agency to file a notice of exemption (NOE). Some studies indicate that the exemptions are being underutilized; whether it be because they are no longer needed or because the exemptions are too restrictive.

***To help give the Legislature accurate data on whether the exemption is being utilized, the committee may wish to amend the bill to require the local agency to file the notice of exemption with the Office of Planning and Research and, to provide the Legislature a future opportunity to re-examine the exemption and whether it needs to be modified, the committee may wish to amend the bill's provisions to sunset after 5 years.***

9) *Governor's Budget Trailer Bill.* The Governor has proposed budget trailer bill language that would apply an expedited judicial review process to the site,

construction, or operation of an emergency shelter or navigation center and to the site or construction of supportive housing units. If the Legislature decides to act on this proposal, and both SB 450 and the Budget Trailer Bill language is enacted, there will be some overlap. It is presumed that, for projects that are exempt under this bill and if the exemption is challenged, the action or proceeding will be subject to the expedited judicial review process.

**Related/Prior Legislation**

AB 1500 (Maienschein, 2015) exempted "priority housing projects," which included emergency shelters, transitional housing, or supportive housing, from the requirements of CEQA. AB 1500 was later amended and chaptered as a bill relating to state highways.

**SOURCE:** City of Long Beach

**SUPPORT:**

Big City Mayors
- Mayor, City of Anaheim
- Mayor, City of Bakersfield
- Mayor, City of Fresno
- Mayor, City of Long Beach
- Mayor, City of Los Angeles
- Mayor, City of Oakland
- Mayor, City of Riverside
- Mayor, City of Sacramento
- Mayor, City of San Diego
- Mayor, City of San Jose
- Mayor, City of Santa Ana
- Mayor, City of Stockton

City of Long Beach (sponsor)
Rural County Representatives of California

**OPPOSITION:**

None received

**-- END --**

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

| | | | |
|---|---|---|---|
| **Bill No:** | SB 621 | | |
| **Author:** | Glazer and Caballero | | |
| **Version:** | 3/28/2019 | **Hearing Date:** | 4/10/2019 |
| **Urgency:** | No | **Fiscal:** | Yes |
| **Consultant:** | Genevieve M. Wong | | |

**SUBJECT:** California Environmental Quality Act: court actions or proceedings: affordable housing projects

**DIGEST:** Establishes expedited judicial review of environmental review and approvals granted for an "affordable housing project," as defined by the bill, and prohibits courts from staying or enjoining challenged projects with two narrow exceptions.

**ANALYSIS:**

Existing law, the California Environmental Quality Act:

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 (PRC) §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.

3) Requires courts to give CEQA-related actions or proceedings preference over all other civil actions so that the action or proceeding is quickly heard and determined. (PRC §21167.1).

4) Exempts development projects that consist of the construction, conversion, or use of residential housing consisting of 100 or fewer units that are affordable to low-income householders if certain criteria is met (PRC §21159.23).

This bill:

1) Establishes expedited judicial review of environmental review and approvals granted for an "affordable housing project."

   a) Defines "affordable housing project" as a housing project with at least 30% of the housing units of the project affordable to individuals or households with an income level that is at or below 80% of the area median income level.

2) Requires Judicial Council, by September 1, 2020, to adopt a rule of court applying to an action or proceeding brought to attack, review, set aside, void, or annul the certification of an EIR for an affordable housing project or the granting of any project approvals that requires the action or proceeding to be resolved, to the extent feasible, within 270 days of the filing of the certified record of proceedings.

3) Prohibits, generally, a court, in granting relief, from staying or enjoining the construction or operation of an affordable housing 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.

4) Declares the intent of the Legislature to enact subsequent legislation that would provide additional funding to courts to enable courts to adjudicate, in an expeditious manner, actions of proceedings filed pursuant to CEQA.

**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. There are numerous categories of housing 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 and
- Transit-priority and residential projects

Streamlined Judicial Review

Several provisions which streamline judicial review of challenges to projects under CEQA, including housing projects, 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;

- Both the Superior Court and the Court of Appeal must give CEQA lawsuits preference over all other civil actions;
- If feasible, the Court of Appeal must hear a CEQA appeal within one year of filing; and
- If feasible, a 270-day judicial review period for environmental leadership projects, as well as for specified stadium projects.

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 an ELDP, the project must meet specified objective environmental standards. The Legislature has also applied similar expedited frameworks for specific sports stadiums that include mitigation measures and 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) *California's housing shortage.* California is in the midst of a serious housing crisis. California is home to 21 of the 30 most expensive rental housing markets in the country, which has had a disproportionate impact on the middle

class and the working poor, Housing units affordable to low-income earners, if available, are often in serious states of disrepair. A person earing minimum wage must work three jobs on average to pay the rent for a two-bedroom unit. The Department of Housing and Community Development (HCD) estimates that approximately 2.7 million lower-income households are rent-burdened (meaning they spend at least 30 percent of their income rent), 1.7 million of which are severely rent-burdened (spending at least 50% of their income on rent). Not a single county in the state has an adequate supply of affordable homes. According to a 2015 study by the California Housing Partnership Corporation, California has a shortfall of 1.5 million affordable homes and 13 of the 14 least affordable metropolitan areas in the country.

A major factor in this crisis is the state's housing shortage. From 1954-1989, California constructed an average of more than 200,000 new homes annually, with multifamily housing accounting for the largest share of housing production. Since then, however, construction has dropped significantly. HCD estimates that approximately 1.8 million new housing units – 180,000 new homes per year, are needed to meet the state's projected population and housing growth by 2025. Even when housing production rose in the mid-2000's, it never reached the 180,000 mark, and over the last 10 years, construction averaged just 80,000 new homes per year.

5) *CEQA and housing 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, and that infill housing is a top target of CEQA lawsuits.

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.

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 found that cities and counties were not fully utilizing the affordable housing exemption, often opting for a full EIR for projects that were eligible for the exemption. 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, "After nearly a decade since the passage of AB 900 (Buchanan), which granted expedited judicial review of developments that invested at least $100 million into a project, the Legislature has passed numerous pieces of legislation granting expedited judicial review to billionaires and their projects. During the State of the State Address, Governor Newsom said, 'In recent years, we've expedited judicial review on CEQA for

professional sports. It's time we do the same thing for housing.' SB 621 (Glazer) finally provides affordable this same streamlining process. By establishing a process that requires CEQA challenges to affordable housing to be adjudicated within 270 days, SB 621 (Glazer) allows affordable housing to be built at a more rapid rate, without undermining the environmental review process. SB 621 (Glazer) advances California's housing goals, while making sure California remains a state that is affordable for everyone to live in."

2) *Tying the hands of the courts*. SB 621 limits the courts' ability to stay or enjoin the construction or operation of a housing development, 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.***

3) *The affordable housing exemption*. As discussed above, CEQA already provides for several streamlining provisions and exemptions, especially in the context of housing. Further, an exemption already exists for affordable housing projects. Under that exemption, CEQA does not apply to projects that consist of the construction, conversion, or use of residential housing consisting of 100 or fewer units that are affordable to low-income households if the project meets certain criteria. This exemption would require that 100% of the development's residential housing is affordable to low-income households. However, according to the AEP study discussed above, the affordable housing exemption is underutilized.

4) *Expanding the AB 900/sports stadium model.* Some have argued that if the expedited judicial review can be given to certified ELDPs and billionaires' sports stadiums, it can also be done for Californians. It should be noted that the procedures in AB 900 and for the sports stadiums required the projects to meet certain environmental standards including, among others, to be certified LEED Gold, as well as minimize traffic and air quality impacts through project design or mitigation measures including reducing to at least zero the net greenhouse gas (GHG) emissions from private automobile trips to the sports stadiums, and achieve a 15% reduction in vehicle-miles traveled per attendee.

   This bill applies similar expedited judicial review procedures to projects, including mixed-use developments, that contain at least 30% affordable housing but does not include any mitigation measures. The bill would apply to an unknown number of future mixed-use and residential projects with unknown impacts. Since the projects are undefined, it's difficult to evaluate their merits, much less whether those merits justify preferential treatment. If the Legislature considers granting preferential treatment to certain types of projects, perhaps those projects ought to directly address the state's housing crisis and provide for superior environmental standards.

   *The committee may wish to amend the bill to make the expedited judicial review process available, until January 1, 2025, to purely residential projects that are LEED Gold certified, have no more than 200 residential units, 30% of which are affordable housing and include certain environmental standards such as the project site being no more than 5 acres, located in an infill site, and in proximity to a major transit stop. Additionally, the developer of the project shall commit to ensuring continued availability of affordable housing units for at least 30 years.*

## Related/Prior Legislation

SB 25 (Caballero and Glazer) establishes expedited administrative and judicial review of environmental review and approvals granted for projects that are funded, in whole or in part, by specific public 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. SB 25 is set to be heard in this committee on April 10, 2019.

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. Prohibits courts from staying or enjoining

challenged projects with two narrow exceptions. SB 384 is set to be heard in this committee on April 10, 2019.

**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:** Author

**SUPPORT:**

California Association of Realtors
California Council for Affordable Housing (CCAH)
Habitat for Humanity California
Rural County Representatives of California

**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
Sierra Club California

**-- END --**

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

| | | | |
|---|---|---|---|
| **Bill No:** | SB 44 | | |
| **Author:** | Skinner | | |
| **Version:** | 3/21/2019 | **Hearing Date:** | 4/10/2019 |
| **Urgency:** | No | **Fiscal:** | Yes |
| **Consultant:** | David Ernest García | | |

**SUBJECT:** Medium-duty and heavy-duty vehicles: comprehensive strategy

**DIGEST:** This bill requires the Air Resources Board to develop a comprehensive strategy to reduce greenhouse gas and criteria pollutant emissions from medium- and heavy-duty vehicles, as specified, and attempts to require a future Legislature, in the annual budget act, to appropriate 10% of the annual proceeds of the Greenhouse Gas Reduction Fund for specified fiscal years and purposes.

**ANALYSIS:**

Existing federal law:

1) Sets, through the Federal Clean Air Act (FCAA) and its implementing regulations, National Ambient Air Quality Standards (NAAQS) for six criteria pollutants, designates air basins that do not achieve NAAQS as nonattainment, allows only California to set vehicular emissions standards stricter than the federal government, and allows other states to adopt either the federal or California vehicular emissions standards. (42 U.S.C. §7401 et seq.)

Existing law:

1) Establishes the Air Resources Board (ARB) as the air pollution control agency in California and requires the ARB, among other things, to control emissions from a wide array of mobile sources and implement the FCAA. (Health and Safety Code (HSC) §39500 et seq.)

2) Requires, under the California Global Warming Solutions Act of 2006 (also known as AB 32), ARB to (1) determine the 1990 statewide greenhouse gas (GHG) emissions level and approve a statewide GHG emissions limit that is equivalent to that level to be achieved by 2020; (2) ensure that statewide GHG emissions are reduced to at least 40% below the 1990 level by December 31, 2030 (i.e., SB 32); and (3) adopt regulations, until December 31, 2030, that utilize market-based compliance mechanisms to reduce GHG emissions (i.e.,

the cap-and-trade program). (HSC §38500 et seq.)

3) Establishes the Greenhouse Gas Reduction Fund (GGRF) in the State Treasury, requires all moneys, except for fines and penalties, collected pursuant to a market-based mechanism be deposited in the fund. (Government Code §16428.8)

4) Appropriates, continuously, 60% of annual GGRF revenues (with the remaining 40% reserved for annual appropriation by the Legislature) as follows: 10% for the Transit and Intercity Rail Capital Program, 5% for the Low Carbon Transit Operations Program, 20% for the Affordable Housing and Sustainable Communities Program, and 25% for the High-Speed Rail Authority. (HSC §39719)

This bill:

1) Makes findings and declarations.

2) Requires ARB, no later than January 1, 2021, to develop a comprehensive strategy for the deployment of medium-duty and heavy-duty vehicles in the state to meet the following:

   a) Bringing the state into compliance with federal ambient air quality standards.

   b) A reduction of motor vehicle GHG emissions by 40% by 2030.

   c) A reduction of motor vehicle GHG emissions by 80% by 2050.

3) Requires ARB, among other things, as a part of the comprehensive strategy, to seek to maximize the reduction of criteria air pollutants and identify policies that provide advantages to fleets that reduce GHG emissions early.

4) Requires ARB to establish a process to identify medium-duty and heavy-duty vehicle segments that can more quickly reduce motor vehicle emissions, consistent with ARB's three-year heavy-duty vehicle investment strategy required pursuant to the California Clean Truck, Bus, and Off-Road Vehicle and Equipment Technology Program, as specified.

5) Requires ARB to implement additional emissions reduction strategies and motor vehicle deployment goals, as specified.

6) Attempts to require a future Legislature, in the annual budget act, to appropriate 10% of the annual proceeds of GGRF, beginning in the 2019–20 fiscal year through the 2024–25 fiscal year, to ARB for programs established pursuant to the California Clean Truck, Bus, and Off-Road Vehicle and Equipment Technology Program to support the commercialization and deployment of medium-duty and heavy-duty vehicles that reduce GHG emissions.

**Background**

1) *Air quality standards*. The Federal Clean Air Act (FCAA) passed in 1963 and has been revised many times thereafter. The FCAA and its implementing regulations are intended to protect public health and environmental quality by limiting and reducing pollution from various sources. Under the FCAA, the United States Environmental Protection Agency (US EPA) establishes National Ambient Air Quality Standards (NAAQS) that apply to outdoor air throughout the country.

   In 1969 and 1971, ARB set the first air quality standards for ozone, Particulate Matter (PM), oxides of nitrogen (NOx), oxides of sulfur (SOx), and carbon monoxide due to their negative impacts on public health above specified concentrations.

   The federal government followed suit and set NAAQS for six "criteria pollutants." These included ground-level ozone, PM, NOx, SOx, and carbon monoxide, and added lead. Now, the US EPA reviews each NAAQS at five-year intervals to ensure that the standards are based on the most recent scientific information.

   Regions that do not meet the national standards for any one of the standards are designated "nonattainment areas." The FCAA sets deadlines for attainment based on the severity of nonattainment and requires states to develop comprehensive plans, known as the state implementation plan (SIP), to attain and maintain air-quality standards for each area designated nonattainment for NAAQS.

2) *State Implementation Plan (SIP)*. As noted above, the FCAA requires areas with unhealthy levels of ozone, PM, carbon monoxide, nitrogen dioxide, and sulfur dioxide to develop a SIP. SIPs are comprehensive plans that describe how an area will attain NAAQS. The 1990 amendments to the FCAA set deadlines for attainment based on the severity of an area's air pollution problem.

SIPs are not single documents. They are a compilation of new and previously submitted plans, programs (such as monitoring, modeling, permitting, etc.), district rules, state regulations, and federal controls. Many of California's SIPs rely on the same core set of control strategies, including emission standards for cars and heavy trucks, fuel regulations, and limits on emissions from consumer products. State law makes ARB the lead agency for all purposes related to the SIP. Local air districts and other agencies, such as the Bureau of Automotive Repair and the Department of Pesticide Regulation, prepare SIP elements and submit them to ARB for review and approval.

ARB forwards SIP revisions to the United States Environmental Protection Agency (USEPA) for approval and publication in the Federal Register. The Code of Federal Regulations Title 40, Chapter I, Part 52, Subpart F, Section 52.220 lists all of the items which are included in the California SIP. At any one time, several California submittals may be pending USEPA approval. Once a SIP is approved and published in the Code of Federal Regulations, it is federal law and cannot be changed without federal approval.

3) *Mobile Source Strategy.* Mobile sources—cars, trucks, and a myriad of off-road equipment—and the fossil fuels that power them are the largest contributors to the formation of ozone, PM2.5, diesel PM, and GHG emissions in California. They are responsible for approximately 80% of smog-forming NOx emissions, 90% of diesel PM emissions, and nearly 50% of GHG emissions. Given this contribution, significant cuts in pollution from these sources are needed in order for the state to achieve our air quality and climate change goals.

On May 16, 2016, ARB released an updated Mobile Source Strategy that demonstrates how California can simultaneously meet air quality standards, achieve GHG emission reduction targets, decrease health risk from transportation emissions, and reduce petroleum consumption over the next fifteen years. The Mobile Source Strategy was included in the SIP. According to ARB:

"For passenger vehicles, the strategy calls for increasing the penetration of plug-in hybrid electric vehicles (PHEV) and non-combustion zero-emission vehicles (ZEV) including battery-electric (BEV) and hydrogen fuel cell electric vehicles (FCEV) by over 50 percent compared to current programs. The electrical grid and hydrogen supply supporting these electric vehicles will need to represent 50 percent renewable energy generation. A large portion of the liquid fuels for combustion engine vehicles will also need to be sourced from

renewable feedstock.

"For heavy-duty vehicles, California is laying the groundwork for reducing emissions from the heavy-duty truck sector on multiple fronts: cleaner internal combustion engines, renewable fuels, and zero-emission technology. The strategy calls for internal combustion engine technology that is effectively 90 percent cleaner than today's current standards, with clean, renewable fuels comprising half the fuels burned. Cleaner engine standards will be especially important for interstate trucks given the status of technology development and infrastructure requirements. These efforts will be complemented by introduction of zero-emission technologies in heavy-duty applications that are suited to early adoption of ZEV technologies. Applications such as last mile delivery, transit and shuttle buses, and other small vocational trucks offer the potential for increasing use of ZEV technologies. Actions to promote ZEVs in these heavy-duty applications are underway and are important to further reduce regional and near-source toxics exposure as well as foster the development of these technologies so they become suitable for broader use in the future. Off-road equipment will need to reflect this same type of transformation to a mix of zero and near-zero technologies operating on renewable fuels."

4) *Implementing AB 32: The California Global Warming Solutions Act of 2006.* In 2006, AB 32 (Núñez and Pavley, Chapter 488, Statutes of 2006) was signed into law, which requires ARB to determine the 1990 statewide GHG emission level and achieve a reduction in GHG emissions to that level by 2020. In addition to calling on ARB to inventory GHGs in California (including carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride) and approve the aforementioned statewide GHG emissions limit.

   AB 32 also requires ARB to (1) implement regulations that achieve the maximum technologically feasible and cost-effective reduction of GHG emissions, (2) identify and adopt regulations for discrete early-action measures, and (3) prepare and approve a scoping plan, to be updated at least once every five years, to achieve the maximum technologically feasible and cost-effective reduction of GHG emissions. Due to a variety of factors, most importantly being the great recession that started in 2008, California will achieve the goals of AB 32 in advance of the 2020 deadline.

   In 2016, the Legislature approved, and the Governor signed, SB 32 (Pavley, Chapter 249, Statutes of 2016), which requires ARB to ensure that statewide GHG emissions are reduced to at least 40% below the 1990 level by December 31, 2030. This new goal is known as the SB 32 target.

The following year, AB 398 (E. Garcia, Chapter 135, Statutes of 2017) was enacted to extend the authority of ARB to implement a cap-and-trade program to reduce GHG emissions throughout the state. AB 398 specified a variety of requirements for the post-2020 cap-and-trade program, most notable are (1) requiring the banking of allowances from the current cap-and-trade program into the post-2020 program, (2) requiring ARB to evaluate and address concerns related to overallocation of available allowances in the program for years 2021 to 2030, and (3) the adoption of a price ceiling in the program, at which point an unlimited number of allowances must be made available for purchase.

5) *Cap-and-Trade.* The original cap-and-trade program was recommended by ARB as a central approach to flexibly and iteratively reduce emissions over time. Pursuant to legal authority under AB 32, ARB adopted cap-and-trade regulations and those regulations were approved on December 13, 2011.

   Beginning on January 1, 2013, the cap-and-trade regulation sets a firm, declining cap on total GHG emissions from sources that make up approximately 80% of all statewide GHG emissions. Sources included under the cap are termed "covered entities." The cap is enforced by requiring each covered entity to surrender one "compliance instrument" for every emissions unit (i.e., metric ton of carbon dioxide equivalent or $MTCO_2e$) that it emits at the end of a compliance period.

   Two forms of compliance instruments are used: allowances and offsets. Allowances are generated by the state in an amount equal to the cap and may be "banked" (i.e., allowing current allowances to be used for future compliance). An offset is a credit for a real, verified, permanent, and enforceable emission reduction project from a source outside a capped sector (e.g., a certified carbon-storing forestry project). Some fraction of allowances are allocated freely to covered entities, a small portion are set aside as part of an allowance price-containment reserve (a cost-containment mechanism that releases additional allowances into the market to slow price increases), and the rest are auctioned off quarterly.

   Since November 2012, ARB has conducted eight California-only, 13 joint California-Québec, two joint California-Québec-Ontario, and then another three joint California-Québec cap-and-trade auctions (Ontario withdrew from the joint cap-and-trade program after a change in their political leadership). To date, approximately $10.3 billion has been generated by the cap-and-trade

auctions and deposited into the GGRF.

6) *Use of Cap-and-Trade Auction Revenue.* State law specifies that the auction revenues must be used to facilitate the achievement of measurable GHG emissions reductions and outlines various categories of allowable expenditures. Statute further requires the Department of Finance, in consultation with ARB and any other relevant state agency, to develop a three-year investment plan for the auction proceeds, which are deposited in the GGRF. ARB is required to develop guidance for administering agencies on reporting and quantifying methodologies for programs and projects funded through the GGRF to ensure the investments further the regulatory purposes of AB 32.

   Several bills have provided legislative direction for the expenditure of cap-and-trade auction proceeds to help California achieve its climate goals and provide benefits to disadvantaged communities (see Related/Prior Legislation).

7) *Legal Consideration of Cap-and-Trade Auction Revenues.* Policy committees in both the Senate and Assembly have written about the legal constraints of spending GGRF moneys for various purposes; those constraints include Proposition 13 (1978), Proposition 26 (2010), and the Third District Court of Appeal decision in *California Chamber of Commerce v. State Air Resources Bd.*, the latter of which is the current controlling determination.

   The Third District Court of Appeal opinion held "that the auction sales do not equate to a tax" explaining that "the hallmarks of a tax are: 1) that it is compulsory; and 2) that the payor receives nothing of particular value for payment of the tax, that is, the payor receives nothing of specific value for the tax itself. Contrary to plaintiffs' view, the purchase of allowances is a voluntary decision driven by business judgments as to whether it is more beneficial to the company to make the purchase than to reduce emissions …these twin aspects of the auction system, voluntary participation and purchase of a specific thing of value, preclude a finding that the auction system has the hallmarks of a tax."

   The appellate court also found that "the purchase of emissions allowances, whether directly from the Board at auction or on the secondary market, is a business driven decision, not a governmentally compelled decision [and] unlike any other tax … the purchase of an emissions allowance conveys a valuable property interest—the privilege to pollute California's air—that may be freely sold or traded on the secondary market."

   As a result, the appellate court found that "the Sinclair Paint test is not

applicable [to the cap-and-trade program], because the auction system is unlike other governmental charges that may raise the "tax or fee" question resolved thereby. The system is the voluntary purchase of a valuable commodity and not a tax under any test."

8) *Legislative Counsel Opinions.* In a written opinion on March 20, 2018, Legislative Counsel opined on the lawful appropriation of GGRF moneys in light of the recently approved AB 398 (E. Garcia, Chapter 135, Statutes of 2017). Legislative Counsel determined that AB 398 satisfied two parts of the three part "benefit or privilege exemption" test to determine whether a charge is a fee or a tax (a fee requires a lower vote threshold to pass and puts a special trust on the money, which then cannot be used for general fund purposes). In determining that AB 398 passed the first two parts of the test, Legislative Counsel wrote, "because the payment of the cost to purchase an emissions allowance confers a valuable property interest that consists of the privilege to pollute air, we conclude that the cap-and-trade charge is imposed for the granting of a privilege and therefore satisfies," part one of the test and part two is satisfied because, "under the cap-and-trade program, the privilege of being a large emitter of GHGs 'is not provided to those not charged.'"

   As for whether the requirement that a charge not exceed the reasonable costs to the State of granting the privilege to the payer, Legislative Counsel wrote, "in determining whether a charge was imposed for revenue purposes, courts generally look to the authorized uses of those funds. In particular, the generation of general fund revenue signals that a charge was imposed for revenue purposes and is therefore a tax … we note that a portion of the revenue from the auction of emission allowances [under AB 398] is required to be transferred from [GGRF] to the General Fund on an annual basis … in addition, the transfers from the GGRF to the General Fund must be made in amounts identical to the amount of revenue loss to the state attributable to the tax exemptions provided or extended by AB 398, some of which do not bear a reasonable relationship to reducing GHG … accordingly, it is our opinion that AB 398 imposed a tax pursuant to article XIIIA, section 3."

   As for the nature of cap-and-trade auction revenues, Legislative counsel wrote, "In the context of AB 398, it is our view that the Legislature changed the character of the cap-and-trade charge from a fee to a tax by granting new authority for the cap-and-trade charge and changing the purposes for which the revenue from the charge may be appropriated to incorporate General Fund expenditures. Moreover, because the bill received a two-thirds vote in each house of the Legislature, it is a validly enacted tax.

As for when the conversion from special fund to general fund moneys occurs, Legislative Counsel wrote, "by granting new authority for the charge for the period of January 1, 2021, through December 31, 2030 ... [and] because this new authority does not commence until January 1, 2021 ... it is our opinion that the operative date of the tax imposed by AB 398 is January 1, 2021, when the regulations that make programmatic changes to the cap-and-trade program become operative."

With regard to revenues raised prior to January 1, 2021, Legislative Counsel determined, "that the revenue generated by the cap-and-trade charge before January 1, 2021, is special fund revenue that may be expended only for purposes that reasonably relate to the reduction of GHG emissions. On and after January 1, 2021, **the revenue generated by the cap-and-trade charge constitutes General Fund revenue that may be appropriated for any lawful purpose.**" (Emphasis added.)

Finally, a follow-up opinion from Legislative Counsel written on October 11, 2018 explained that "Proposition 98 was a constitutional and statuary initiative adopted at the November 8, 1988, statewide general election ... to establish a minimum level of state funding for school districts and community colleges [that] provides the formulas for determining the minimum amount of school funding for public education required to be appropriated each fiscal year." Additionally, commonly referred to as the Gann Limit, Legislative Counsel explained, "related constitutional provisions require the allocation of 50 percent of state revenues in excess of the state appropriations limit ... to elementary, high school, and community college districts." Legislative Counsel concluded, "**that revenue generated by the cap-and-trade charge on and after January 1, 2021, would be included within the calculation of the state's minimum school funding obligation pursuant to Proposition 98**" and "**that nonexempt appropriations of revenue generated by the cap-and-trade charge on and after January 1, 2021, would be subject to the [Gann Limit]**." (Emphasis added.)

## Comments

1) *Purpose of Bill.* According to the author, "Decades after California passed the Clean Air Act, diesel trucks continue to spew toxic air pollution into California's communities. Fossil diesel-fueled trucks are responsible for 33 percent of statewide oxides of nitrogen (NOx) emissions annually, 20 percent of statewide GHG emissions, and emit more particulate matter than all of the state's power plants combined.

"Since 1998, the California Air Resources Board (CARB) has recognized particulate matter as a toxic air contaminant based on the relationship between diesel exhaust and lung cancer. California's air is particularly plagued with these pollutants – the state has 7 of the 10 geographic areas with the worst particulate matter pollution, according to the American Lung Association. Children are at particular risk, because they breathe faster than adults and therefore suffer from increased exposure to toxic air pollutants.

"For these reasons, it is imperative that California work to dramatically cut reliance on fossil diesel fuel. That will require planning for how the medium- and heavy-duty vehicle sectors can transition away from this fuel over time, and providing stable market incentives to help the industry shift away from dirty technology with minimal economic burden."

2) *Lawful use of GGRF moneys.* As noted in the background, Legislative Counsel has opined that until January 1, 2021, it is unlawful for the Legislature to use GGRF moneys for purposes that are not reasonably related to the reduction of GHG emissions. Because the requirements of SB 44 are directly related to the reduction of GHG emissions, this is a lawful use of GGRF moneys. After January 1, 2021, GGRF moneys may be spent for any lawful purpose without the requirement that the expenditure be reasonably related to the reduction of GHG emissions.

3) *Tying the hands of a future Legislature.* There is a legal principle that a current Legislature may not tie the hands of a future Legislature. In 1941, as a result of *United Milk Producers v. Cecil* (47 Cal. App. 2d 758, 764-765), a California appellate court determined:

"The legislature cannot bind a future legislature ... It cannot declare in advance the intent of subsequent legislatures or the effect of subsequent legislation upon existing statutes."

SB 44 currently attempts to declare in advance that future Legislatures will appropriate 10% of GGRF through fiscal year 2024-25 as a part of their annual budget act. Under the principle in *United Milk Producers v. Cecil* , the only way to accomplish that goal lawfully would be to amend HSC §39719 where the continuous appropriations of GGRF moneys are made. Were that provision to be included in SB 44, however, Legislative Counsel would key the bill as requiring a two-thirds vote since GGRF is General Fund money starting January 1, 2021 and bills that make appropriations from the General Fund require a two-thirds vote of both houses of the Legislature.

***As such, the Committee may wish to amend section 3 of the bill to read:***

Upon appropriation by the Legislature, moneys, including, but not limited to, moneys from the Greenhouse Gas Reduction Fund created pursuant to Section 16428.8 of the Government Code, shall be available to the state board for programs established pursuant to the California Clean Truck, Bus, and Off-Road Vehicle and Equipment Technology Program established pursuant to Section 39719.2 of the Health and Safety Code.

***Additionally, technical and clarifying amendments are needed.***

4) *Cost effectiveness considerations.* As noted in the background, ARB already has a Mobile Source Strategy that contains plans for reducing the air pollution and climate change impacts from all vehicles in the state, including medium- and heavy-duty vehicles. Rather than require ARB to create an entirely new strategy, perhaps a more cost-effective approach would be for ARB to make the changes SB 44 calls for to their existing Mobile Source Strategy.

*As this bill moves forward, the author should work with ARB to incorporate the provisions of this bill into ARB's existing efforts on mobile sources, rather than create an unnecessarily costly and duplicative strategy.*

**Related/Prior Legislation**

SB 535 (de León, Chapter 830, Statutes of 2012) requires that 25% of auction revenue be used to benefit disadvantaged communities and requires that 10% of auction revenue be invested in disadvantaged communities.

AB 1532 (J. Pérez, Chapter 807, Statutes of 2012) directs the Department of Finance to develop and periodically update a three-year investment plan that identifies feasible and cost-effective GHG emission reduction investments to be funded with cap-and-trade auction revenues and specifies that reduction of GHG emissions through strategic planning and development of sustainable infrastructure projects, are eligible investments of GGRF.

SB 1018 (Committee on Budget and Fiscal Review, Chapter 39, Statutes of 2012) created the GGRF, into which all auction revenue is to be deposited. The legislation requires that before departments can spend moneys from the GGRF, they must prepare a record specifying: (1) how the expenditures will be used, (2) how the expenditures will further the purposes of AB 32 (Núñez and Pavley, Chapter 488, Statutes of 2006), (3) how the expenditures will achieve GHG emission reductions, (4) how the department considered other non-GHG-related

objectives, and (5) how the department will document the results of the expenditures.

SB 862 (Committee on Budget and Fiscal Review, Chapter 36, Statutes of 2014) established a long-term cap-and-trade expenditure plan by continuously appropriating portions of the funds for designated programs or purposes. The legislation appropriates 25% for the state's high-speed rail project, 20% for affordable housing and sustainable communities grants, 10% to the Transit and Intercity Rail Capital Program, and 5% for low-carbon transit operations. The remaining 40% is available for annual appropriation by the Legislature.

AB 1550 (Gomez, Chapter 369, Statutes of 2016) requires a minimum of 25% of GGRF moneys be spent on projects located within and benefiting disadvantaged communities and an additional minimum of 10% of GGRF moneys be spent on projects that benefit low-income households or are within, and benefit low-income communities.

**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 Committee on Transportation.

**SOURCE:** Author

**SUPPORT:**

350 Bay Area
American Lung Association
Biodico
Bioenergy Association of California
CR&R Environmental Services
California League of Conservation Voters
California Natural Gas Vehicle Coalition
CALSTART
Center for Climate Change and Health
Central Valley Air Quality (CVAQ) Coalition
Clean Energy
Coalition for Clean Air
Environment California
Fossil Free California
Friends Committee on Legislation of California
Move LA
NextGen California

Oberon Fuels
Pacific Ethanol
Regional Asthma Management and Prevention (RAMP)
Sierra Club California
Union of Concerned Scientists
Western Propane Gas Association

**OPPOSITION:**

California Chamber of Commerce

**-- END --**

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

| | | | |
|---|---|---|---|
| **Bill No:** | SB 669 | | |
| **Author:** | Caballero | | |
| **Version:** | 2/22/2019 | **Hearing Date:** | 4/10/2019 |
| **Urgency:** | No | **Fiscal:** | Yes |
| **Consultant:** | Gabrielle Meindl | | |

**SUBJECT:** Water quality: Safe Drinking Water Fund

**DIGEST:** Establishes the Safe Drinking Water Fund to assist community water systems in disadvantaged communities that are chronically noncompliant. Creates the Safe Drinking Water Trust Fund to receive funding from the state and provide the fund source to the Safe Drinking Water Fund.

**ANALYSIS:**

Existing law:

1) Establishes the California Safe Drinking Water Act and requires the State Water Board to maintain a drinking water program.

2) Requires the State Water Board to submit to the Legislature a comprehensive Safe Drinking Water Plan for California every five years.

3) Authorizes the State Water Board, where a public water system or a state small water system serving a disadvantaged community consistently fails to provide an adequate supply of safe drinking water, to order a physical or operational consolidation with a receiving water system.

4) Authorizes the State Water Board, in order to provide affordable, safe drinking water to disadvantaged communities and to prevent fraud, waste, and abuse, to:

    a) Contract with an administrator to provide administrative and managerial services to a designated public water system to assist the designated public water system with the provision of an adequate and affordable supply of safe drinking water; and,

    b) Order the designated public water system to accept administrative and managerial services, including full management and control, from an administrator selected by the State Water Board.

5) Establishes as the policy of the state that every human being has the right to safe, clean, affordable, and accessible water adequate for human consumption, cooking, and sanitary purposes.
6) Requires a trustee to administer a trust with reasonable care, skill, and caution, as specified.

7) Requires, under the Uniform Prudent Investor Act, a trustee to invest and manage trust assets as a prudent investor would, by considering the purposes, terms, distribution requirements, and other circumstances of the trust.

This bill:

1) Establishes the Safe Drinking Water Fund in the State Treasury and provides that moneys in the fund are continuously appropriated to the SWRCB.

2) Requires SWRCB to administer the fund to assist community water systems in disadvantaged communities that are chronically noncompliant relative to the federal and state drinking water standards and do not have the financial capacity to pay for operation and maintenance costs to comply with those standards, as specified.

3) Authorizes SWRCB to provide for the deposit into the fund of federal contributions, voluntary contributions, gifts, grants, and bequests, transfers by the Legislature from the General Fund and the Greenhouse Gas Reduction Fund, funding from authorized general obligation bond acts, and net revenue from the Safe Drinking Water Trust.

4) Requires SWRCB to expend moneys in the fund for grants, loans, contracts, or services to assist eligible applicants.

5) Defines "eligible applicants" as a public agency, a local education agency, a non-profit organization, a public utility, a federally recognized Indian tribe, a state Indian tribe listed on the Native American Heritage Commission's California Tribal Consultation List, a mutual water company, and an administrator.

6) Authorizes SWRCB to expend no more than 5% of the annual revenue from the fund for reasonable costs associated with the administration of the fund.

7) Requires, by July 1, 2021, and each year thereafter, SWRCB to adopt, working with a multistakeholder advisory group, after a public workshop and hearing,

an annual fund implementation plan.

8) Requires SWRCB to annually prepare and make publicly available a report of expenditures of the fund and to adopt annually, after a public hearing, an annual update to a specified needs analysis.

9) Requires SWRCB, at least every five years, in consultation with the Legislative Analyst's Office, to conduct a public review and assessment of the fund, as specified.

10) Creates the Safe Drinking Water Trust Fund in the State Treasury to hold the trust property of the Safe Drinking Water Trust.

11) Creates the Safe Drinking Water Trust Commission, consisting of 3 members, to serve as the trustee of the trust and would require the trustee to abide by the act and have all of the fiduciary duties, responsibilities, and obligations consistent with serving as a trustee of a trust.

12) Requires the trustee to transfer the net income from the trust fund to the Safe Drinking Water Fund for expenditure, as prescribed.

13) Authorizes funding of the trust principal, subject to transfer by the Legislature.

14) Requires the trustee to accept donations that shall be deemed trust property and increase the principal of the trust.

15) Requires the trustee to meet, not less than quarterly, to review the investment of the trust principal and administer the trust.

16) Requires the trustee to provide SWRCB annually with an accounting of the investments and forecast of the projected income to be distributed from the funds in future fiscal years.

17) Requires the trust to be deemed a charitable trust subject to supervision of the Attorney General.

18) Makes various finding and declarations.

**Background**

1) The Legislative Analyst's Office provides a succinct background on the general topic of Safe and Affordable Drinking Water in their Analysis of the

2018-19 Governor's Budget, as follows:

*"Federal, State, and Local Entities Regulate Drinking Water.* The federal Safe and Affordable Drinking Water Act (SDWA) was enacted in 1974 to protect public health by regulating drinking water. California has enacted its own safe drinking water act to implement the federal law and establish state standards. The U.S. EPA enforces the federal SDWA at the national level. However, most states, including California, have been granted "primacy" by the U.S. EPA, giving them authority to implement and enforce the federal SDWA at the state level.

"Maximum contaminant levels (MCLs) are health-based drinking water standards that public water systems are required to meet. MCLs take into account the health risk, detectability, treatability, and costs of treatment associated with a pollutant. Agencies responsible for regulating water quality enforce these standards.

"The California State Water Resources Control Board's (State Water Board) Division of Drinking Water (DDW) regulates public water systems that provide water for human consumption and have 15 or more service connections, or regularly serve at least 25 individuals daily at least 60 days out of the year. (A "service connection" is usually the point of access between a water system's service pipe and a user's piping.) The state does not regulate water systems with less than 15 connections; county health officers oversee them. At the local level, 30 of the 58 county environmental health departments in California have been delegated primacy—known as Local Primacy Agencies (LPAs)—by the State Water Board to regulate systems with between 15 and 200 connections within their jurisdiction. For investor-owned water utilities under the jurisdiction of California Public Utilities Commission (CPUC), the DDW or LPAs share water quality regulatory authority with CPUC.

"The DDW regulates approximately 7,500 water systems. About one-third of these systems have between 15 and 200 service connections. The number of smaller systems—specifically, those with 14 or fewer connections— is unknown but estimated to be in the thousands.

*"Multiple Causes of Unsafe Drinking Water.* The causes of unsafe drinking water can generally be separated into two categories (1) contamination caused by human action and (2) naturally occurring contaminants. In some areas, there are both human caused and natural contaminants in the drinking water.

"Three of the most commonly detected pollutants in contaminated water are

arsenic, perchlorate, and nitrates. While arsenic is naturally occurring, perchlorate contamination is generally a result of military and industrial uses. High concentrations of nitrate in groundwater are primarily caused by human activities, including fertilizer application (synthetic and manure), animal operations, industrial sources (wastewater treatment and food processing facilities), and septic systems. Agricultural fertilizers and animal wastes applied to cropland are by far the largest regional sources of nitrate in groundwater, although other sources can be important in certain areas.

*"Unsafe Drinking Water a Statewide Problem.* The State Water Board has identified a total of 331 water systems that it or LPAs regulate that are in violation of water quality standards. These water systems serve an estimated 500,000 people throughout the state. The number of water systems with 14 or fewer connections that are currently in violation of water quality standards is unknown, but estimated to be in the thousands by the State Water Board. Of the 331 systems identified by the State Water Board, 68 have violations associated with nitrates (and in some cases, additional contaminants). In some of these water systems, unsafe contamination levels persist over time because the local agency cannot generate sufficient revenue from its customer base to implement, operate, or maintain the improvements necessary to address the problem. The challenge in these systems is often a product of a combination of factors, including the high costs of the investments required, low income of the customers, and the small number of customers across whom the costs would need to be spread."

2) *Sources of financial assistance*: Capital infrastructure improvement costs can largely be addressed through existing federal funding (i.e., the State Drinking Water State Revolving Fund) and state water bond sources (e.g., Proposition 1 from 2014 included $520 million for safe and clean water prioritized for disadvantaged communities and Proposition 68 from June of 2018 included $250 million for safe and clean water prioritized for disadvantaged communities). Operations and maintenance (O&M) costs generally cannot be financed with the existing federal and state funding sources. Sufficient O&M funding is essential as it covers the costs required to operate and maintain drinking water treatment facilities and is a prerequisite to qualify for the capital improvement funding. Disadvantaged communities often lack the rate base to pay for O&M costs, meaning that they are effectively prohibited from accessing capital improvement funding.

3) *Consolidation of Public Water Systems.* SB 88 (Budget Committee, Chapter 27 Statutes of 2015) authorizes SWRCB to require water systems that are serving disadvantaged communities with unreliable and unsafe drinking water

to consolidate with or receive service from public water systems with safe, reliable, and adequate drinking water. SB 552 (Wolk, Chapter 773, Statutes of 2016) authorizes the SWRCB to identify public water systems that are consistently unable to provide an adequate and affordable supply of safe drinking water and, once funding is available, to then contract with a competent administrator to provide managerial and technical expertise to that system.

Consolidating public water systems and extending service from existing public water systems to communities and areas, which currently rely on under-performing or failing small water systems, as well as private wells, reduces costs and improves reliability. Consolidating or extending service from a public water system to a community otherwise served by unreliable systems or unregulated private wells advances the goal of a reliable, accessible supply of safe drinking water for all California residents.

The SWRCB currently posts information on its website about ordered consolidations. It also tracks and has information on voluntary consolidations. Currently, 60 consolidations are being funded by SWRCB. Fifteen mandatory consolidations are currently proceeding, although 5 of those have decided to pursue voluntary consolidation. Only one mandatory consolidation has been completed so far. In 2017-18, there were 90 voluntary physical consolidations and 6 voluntary managerial consolidations. Physical consolidations are for systems that are close enough to be connected by new pipelines. In managerial or operational consolidation, the systems remain physically separate, but are managed by the same entity.

## Comments

1) *Purpose of Bill.* According to the author, "In 2012, California declared that every human being has the right to safe, clean, affordable and accessible water. While the vast majority of Californians have access to safe drinking water, hundreds of thousands of Californians, including families in my district, live in disadvantaged communities with contaminated water supplies. This is unacceptable and is a public health risk.

"A key part of the solution is the creation of a sustainable funding source to assist these struggling public water systems. Existing funding sources like the federal Safe Drinking Water State Revolving Fund and general obligation bonds can pay for capital costs to build treatment and other facilities, but operations and maintenance (O&M) costs for water treatment generally cannot be financed with the existing federal and state safe drinking water funding

sources. A financial solution is needed for O&M and consolidation costs that can complement existing funding sources for capital infrastructure improvement costs.

"Senate Bill 669 would address the gap in funding at the state level by creating The Safe Drinking Water Trust. The Trust would be created in the State Treasury and be financed with General Fund dollars during one (or two or three) budget surplus years. The record state budget surplus this year makes it a perfect time to create and fund the Trust. The Trust's principal would be invested, and the net income would be transferred to a Safe Drinking Water Fund that the State Water Resources Control Board would use to fund solutions on the ground at the system level.

"Funding the Trust with General Fund dollars during a budget surplus year would tap into a progressive source of revenue (income tax), instead of creating a regressive drinking water tax on water users and adding to the cost of water. Senate Bill 669 would provide a durable, sustainable funding source while keeping water affordable for all Californians."

2) *Debate over estimated annual need*: While there is general consensus regarding the need for an ongoing, sustainable funding source to provide assistance to communities with contaminated drinking water, the amount of that annual need is a more complicated question. According to a March 26, 2019, Assembly Committee on Environmental Safety and Toxic Materials analysis, Blue Sky Consulting, a private consulting firm, recently estimated an annual need of approximately $140 million. However, this estimate was based upon methodologies that included the size of the water system, the number of violations and income of that water system, among other factors.

   Some argue that this estimate is too high, while others would argue this number is far too low. The SWRCB is currently required (SB 862, Budget Committee, Chapter 449, Statutes of 2018) to conduct a needs analysis of private wells and small drinking water systems; however, this will not be completed until the fall of 2020.

3) *Multiple safe and affordable drinking water proposals.* The Senate is currently evaluating several safe and affordable drinking water funding proposals, in both policy and budget committees. Among the various proposals, SB 669 and SB 200 (Monning) establish safe drinking water funds and implementation plans for use of moneys to address safe drinking water needs in disadvantaged communities. SB 200 (Monning) was heard and passed out of this Committee last month.

A notable difference between the two proposals is that SB 669 does not authorize funding be made available to private domestic wells and water systems with less than fifteen connections. The rationale for excluding these entities is that there currently is no state needs assessment for private wells and small systems with unsafe water because they are regulated at the county level. As noted above, the SWRCB does not regulate water systems with less than 15 connections. The number of smaller systems is unknown but estimated to be in the thousands.

Another difference is that SB 669, unlike SB 200, limits funding to disadvantaged communities. SB 200 takes a broader approach by prioritizing funding to assist disadvantaged communities served by public water systems *and* low-income households served by state small systems or domestic wells.

As these bills move forward, the authors and stakeholders will need to reconcile differences between the implementation plans and decide which vehicle to move forward.

4) *Funding source question: a matter for Budget Committee.* SB 669 also creates a new Safe Drinking Water Trust (Trust) to receive funding from the state, which would be invested, and the net income would be provided to the Safe Drinking Water Fund on an annual basis. The sponsors of the bill contend that an infusion of $1.3 billion into the Trust from the General Fund during a surplus year would generate $50 million per year, assuming a 3.8 percent rate of return on investment. This amount, they maintain, would cover more than the annual amount of needed funding for O&M costs based on SWRCB's 2017 needs assessment for systems that the state regulates and could also be used for consolidation, replacement water and system administration. The merits of the Trust mechanism proposed will be appropriately evaluated in the Senate Governmental Organization Committee should the bill pass out of this Committee.

The Senate Budget Committee is currently evaluating both the Governor's Budget proposal on safe and affordable drinking water, which puts forward new charges on water system ratepayers, fertilizer sales, and certain agricultural entities, and other potential ongoing revenue streams to assist to communities with contaminated drinking water throughout the state. A March 21, 2019, Senate Budget Subcommittee #2 agenda on the proposal noted that "the budget process is appropriate for determining the funding source and how it fits within the state budget overall."

*Should the Committee wish to advance this proposal, it should be acknowledged that the identification and amount of ongoing revenue source will appropriately be considered within the context of the state budget.*

**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 Governmental Organization Committee.

**Related/Prior Legislation**

SB 200 (Monning) would create the Safe and Affordable Drinking Water Fund, administered by SWRCB, to assist communities and individual domestic well users to address contaminants in drinking water that exceed safe drinking water standards. This bill passed the Senate Environmental Quality Committee on March 20, 2019 and has been referred to the Senate Committee on Natural Resources and Water.

SB 414 (Caballero) would create the Small System Water Authority Act of 2019 and state legislative findings and declarations relating to authorizing the creation of small system water authorities that will have powers to absorb, improve, and competently operate noncompliant public water systems. This bill is pending before the Senate Appropriations Committee.

SB 217 (Eduardo Garcia) would create the Safe Drinking Water for All Act, which establishes a Safe and Affordable Drinking Water Fund to provide a source of funding to secure access to safe drinking water for all Californians, while also ensuring long-term sustainability of drinking water systems. Imposes several fees on agricultural activities and creates a trust fund using investments from the state General Fund that together would provide the source of revenue to the Fund. This bill is currently pending before the Assembly Appropriations Committee.

Governor's 2019-20 Trailer Bill would establish the Safe and Affordable Drinking Water program to increase access to safe drinking water for Californians. The program would provide certain local water agencies with grants, loans, contracts, or services to help support their operations and maintenance costs. This funding would be supported by new charges proposed by the Governor on water system ratepayers, fertilizer sales, and certain agricultural entities. This bill is currently pending before the Senate Budget and Fiscal Review Committee.

AB 134 (Bloom) would require that the Governor's annual budget show

expenditures from Safe and Affordable Drinking Water Fund (Fund) and that the LAO review the effectiveness of expenditures from the Fund. This bill is currently pending before the Assembly Appropriations Committee.

SB 2050 (Caballero, 2018) would have created the Small System Water Authority Act of 2018, which authorizes the creation of a small system water authority (Authority) that will have powers to absorb, improve, and competently operate noncompliant public water systems. This bill was vetoed by the Governor.

SB 623 (Monning, 2017) would have created the Safe and Affordable Drinking Water Fund, administered by the SWRCB, to assist communities and individual domestic well users to address contaminants in drinking water that exceed safe drinking water standards. This bill was held in the Assembly Rules Committee.

SB 88 (Chapter 27, Statutes of 2015) allows the SWRCB to require certain water systems that consistently fail to provide safe drinking water to consolidate with, or receive an extension of service from, another public water system.

SB 685 (Eng, Chapter 524, Statutes of 2012) establishes in law a state policy that all residents of the state have a right to clean, affordable, and accessible water for human consumption, and directs relevant state agencies to implement the policy.

**SOURCE:** Assoc. of California Water Agencies (ACWA) (Sponsor)
California Municipal Utilities Assoc. (CMUA) (Sponsor)

**SUPPORT:**

Alpine Springs County Water District
Amador Water Agency
Antelope Valley East Kern County Water Agency
Bella Vista Water District
Big Bear City Community Services District
Bodega Bay Public Utilities District
California Special Districts Association (CSDA)
Calleguas Municipal Water District
Camrosa Water District
Central Basin Water Association (CBWA)
Citrus Heights Water District
City of Roseville
City of Shasta Lake
Cucamonga Valley Water District

Dublin San Ramon Services District
Eastern Municipal Water District
Elsinore Valley Municipal Water District
Fallbrook Public Utility District
Foothill Municipal Water District
Georgetown Divide Public Utility District
Golden Hills Community Service District
Hidden Valley Lake Community Services District
Humboldt Bay Municipal Water District
Indian Wells Valley Water District
Laguna Beach County Water District
Las Virgenes Municipal Water District
Malaga County Water District
Mammoth Community Water District
McKinleyville Community Services District
Mesa Water District
Metropolitan Water District of Southern California
Mojave Water Agency
Monterey Peninsula Water Management District
Municipal Water District of Orange County (MWDOC)
North Tahoe Public Utility District
Orange County Water District
Otay Water District
Palmdale Water District
Rowland Water District
Sacramento Suburban Water District
San Gabriel Valley Economic Partnership
San Gabriel Valley Municipal Water District
San Gabriel Valley Water Association
Scotts Valley Water District
South Tahoe Public Utility District
Squaw Valley Public Service District
Tahoe City Public Utility District
Truckee Donner Public Utility District
Twain Harte Community Services District
Valley Center Water District
Ventura County Economic Development Association
Walnut Valley Water District
Western Canal Water District
Yorba Linda Water District

**OPPOSITION:**

California Audubon
California League of Conservation Voters
California Rural Legal Assistance Foundation
Center for Community Action and Environmental Justice
Center for Race, Poverty, and the Environment
Central California Asthma Coalition
Central California Environmental Justice Alliance
Central Coast Alliance United for a Sustainable Economy
Ceres
Clean Water Action
Communities for a New California Education Fund
Community Water Center
Cultiva LaSalud
Environmental Defense Fund
Environmental Health Coalition
Faith in the Valley
Leadership Counsel for Justice and Accountability
PICO
Planning and Conservation League
PolicyLink
Pueblo Unido CDC
Western Center on Law and Poverty

**ARGUMENTS IN SUPPORT:** According to ACWA and CMUA, "The Safe Drinking Water Trust proposed in SB 669 would provide this sustainable funding source to provide financial assistance for replacement water as a short-term solution, system administration, consolidation and ongoing O&M costs.

"The Trust would be funded with an infusion of General Fund dollars during a budget surplus year. With the record budget surplus for the 2019-20 Fiscal Year, this is the perfect year to create and fund the Trust. The state would invest the Trust's principal, and the net income from the Trust would be transferred on an ongoing basis to a Safe Drinking Water Fund that would be administered by the State Water Resources Control Board to fund solutions for community water systems in disadvantaged communities.

"The Trust is a better approach than a statewide water tax. A tax on drinking water would be regressive and would work against the state's Human Right to Water

policy of keeping water affordable for all Californians. The associated implementation costs would skyrocket when the tax would be implemented by approximately 3,000 local water systems. The Trust would use a progressive funding source (the General Fund relies largely on income tax), would not drive up the cost of water, and would provide the funding needed to assist these systems in securing safe drinking water and long-term sustainability."

**-- END --**