

Proposed Trailer Bill Legislation

CEQA Judicial Streamlining

FACT SHEET

Summary:

The proposed trailer bill language would provide for expedited judicial review of challenges to certain water, transportation, clean energy, and semiconductor or microelectronic projects under the California Environmental Quality Act.

Background:

The California Environmental Quality Act (or CEQA) requires public agencies to study the potential adverse environmental impacts of proposed projects, and, if those project impacts may be significant, to adopt project alternatives or mitigation measures that would reduce those impacts to the extent feasible. CEQA further requires that any environmental studies be made available for public review and comment. Public agency obligations under CEQA are enforceable by courts, often in lawsuits brought by the public. While CEQA lawsuits are given scheduling preference, it is not uncommon for lawsuits and appeals to take several years to resolve.

In recent years, the Legislature has created an expedited judicial process for certain projects that it finds are in the public's interest to be resolved quickly. Most recently, the Legislature adopted Senate Bill 7 (Atkins, 2021), also known as the Jobs and Economic Improvement Through Environmental Leadership Act of 2021, which extended a prior, similar streamlining provision for certain large projects with specified environmental attributes.

This CEQA judicial streamlining proposal for water, transportation, clean energy, and certain semiconductor or microelectronics projects has been modeled on SB 7 and is designed to provide similarly swift resolution to CEQA challenges to critical infrastructure projects.

Justification:

California expects to make historic investments in infrastructure as a result of funding made available by the federal Infrastructure Investment and Jobs Act, Inflation Reduction Act, and CHIPS and Science Act, as well as separate investments reflected in this Administration's proposed budget. These investments will lead to the development of numerous transportation, clean-energy, and water-related facilities across the state that would further California's commitments to reducing greenhouse gas emissions and protecting its people from the worst extremes of climate change. These projects will be publicly financed in whole or in part and will result in substantial public benefits, including generation of full-time jobs during construction and additional jobs once the projects are constructed and operating. Given the substantial public benefits expected from these infrastructure investments, it is imperative that the environmental review and planning processes proceed as efficiently as possible, without sacrificing the public's ability to participate fully in those processes and while preserving all appropriate environmental protections.

To that end, this proposal would not alter CEQA's requirements for public engagement (including tribal consultation where appropriate), environmental study, consideration of alternatives or imposition of mitigation measures. Instead, this proposal would promote finality and efficiency at the back end of the process, by requiring that any judicial challenges and appeals be completed, to the extent feasible, within 270 days. The specific provisions of this proposal, including project eligibility, are described below.

Proposed Language:

The CEQA judicial streamlining proposal includes these elements:

- Only certain types of infrastructure projects would be eligible for judicial streamlining, specifically water, clean transportation, clean energy, and semiconductor or microelectronic research and development facilities.
- Clean energy projects that advance California's ability to build a clean future. Specifically, this proposal identifies the following as eligible projects:
 - Solar or wind electrical generating powerplants
 - Energy storage systems
 - Projects for the manufacturing, production, or assembly of energy storage, wind, or solar energy systems
 - Electric transmission projects
- Projects that support California's Water Supply Strategy would be eligible. Specifically, this proposal identifies the following as eligible projects:
 - The Delta Conveyance Project
 - Water Storage Projects funded by the California Water Commission pursuant to the Water Storage Investment Program created by Proposition 1 (Water Code Sections 79750 et seq.)
 - Water recycling projects
 - Desalination projects
 - Canal or other conveyance maintenance and repair
- Up to 20 projects—10 state projects and 10 local projects—that support the California State Transportation Agency's Climate Action Plan for Transportation Infrastructure Framework may also be eligible, provided they are certified by the State Transportation Agency as an eligible project. This would accelerate critical state and local infrastructure projects that advance safety, rehabilitate the state's aging transportation infrastructure, or address the impacts of climate change.
- Semiconductor or microelectronic research and development facilities satisfying the federal requirements related to investments in new or expanded facilities awarded funds under the CHIPS and Science Act.

- Agencies using this streamlined judicial process must prepare the administrative record concurrently with the administrative approval process.
- Any litigation, including appeals, would need to be resolved, to the extent feasible, within 270 days.