



## JUDICIAL COUNCIL OF CALIFORNIA

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Telephone 916-323-3121 • Fax 916-323-4347 • TDD 415-865-4272

TANI G. CANTIL-SAKAUYE  
*Chief Justice of California*  
*Chair of the Judicial Council*

MARTIN HOSHINO  
*Administrative Director*

CORY T. JASPERSON  
*Director, Governmental Affairs*

September 9, 2021

Hon. Gavin Newsom  
Governor of California  
State Capitol, First Floor  
Sacramento, California 95814

Subject: Senate Bill 44 (Allen) – Request for Veto

Dear Governor Newsom:

The Judicial Council respectfully requests your veto on SB 44, which requires actions or proceedings related to the environmental leadership transit projects, as defined, seeking judicial review pursuant to CEQA or the granting of project approvals, including any appeals therefrom, to be resolved, to the extent feasible, within 365 days of the filing of the certified record of proceedings.

It is important to note that our concerns are limited solely to the court impacts of this legislation, and that the Judicial Council is not expressing any views on CEQA generally or the underlying merits of any potential projects that may be covered by SB 44, as those issues are outside the council's purview.

The requirement in SB 44 that all CEQA lawsuits challenging any of the proposed projects that could be covered by the bill, including any appeals therefrom, be resolved within 365 days is problematic as CEQA actions are already entitled under current law to calendar preference "over all other civil actions" pursuant to section 21167.1(a) of the Public Resources Code in both the superior courts and the Courts of Appeal. Imposing a 365-day timeline for the review of potentially a large number of "environmental leadership transit projects," on top of existing

CEQA calendar preferences, even with language that references “to the extent feasible,” is an arbitrary and unrealistically short timeframe for California’s trial courts to address all of the issues each CEQA case is likely to present.

There are several reasons why the time frame is, from the outset, not feasible.

- *CEQA cases are complex and time-consuming.* Under normal circumstances and assuming the unrealistic context in which no extensions of time are requested or granted for any aspect of a case, CEQA cases take, on average, an estimated six months to get to hearing, much less to a decision. So, even if the court was able to issue its decision within six months (approximately 180 days), that would leave only three months (the remaining 90 days) for proceedings in the court of appeal, which is impracticable.<sup>1</sup> And, of course, it is more than likely that one or more parties will request, if not stipulate to, continuances, delays, or other procedural extensions. Given these common requests and stipulated delays, a 365-day timeframe is not feasible.
- *Active CEQA cases often include ancillary administrative and non-CEQA judicial causes of action.* Providing expedited judicial review for the projects that may fall under SB 44 is even more unworkable in light of the common occurrence that CEQA cases involve ancillary motions, administrative review, other causes of action, and other civil actions and appeals in the middle of the CEQA action. These actions proceed under administrative (local governmental) and civil procedure (non-CEQA courtroom) timelines, often resulting in temporary stays or delays in the principal CEQA action. In other words, even if CEQA-specific procedures could be limited to 365 days for one or more of the projects, other, non-CEQA procedures related to the same cases that would occur in non-CEQA courtrooms and administrative hearings cannot be concluded in that same timeframe. These ancillary hearings and procedures make the 365-day goal not feasible.
- *The courts are already experiencing significant civil backlogs as a result of the COVID-19 pandemic.* Given the impacts the COVID-19 pandemic has had on the courts, as discussed comprehensively at the February 23, 2021 joint hearing of the Assembly and Senate Judiciary Committees, placing CEQA cases at the front of the line 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, as well

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<sup>1</sup> In a typical civil appeal, it takes more than 95 days from when a trial court decision becomes final just for the record on appeal to be prepared and filed in the Court of Appeal. This does not include any time for briefing, oral argument, analysis of the issues, or preparation of a decision by the court.

as wage theft cases, unlawful detainer and foreclosure cases, and other important cases on the courts' dockets, will take longer to decide.

The council has studied the workload costs created by expedited CEQA judicial review requirements and determined that trial and appellate courts expend a combined average of \$340,000 in workload costs on each case eligible for expedited judicial review. While no specific projects are listed in the bill, based on the seven projects the bill establishes as a limit to which its provisions apply, we estimate that this bill will have a fiscal impact of up to \$2.4 million in the form of expedited trial and appellate court workloads to adjudicate the seven projects in the time required by the bill. Although we believe that the cost recovery in proposed section 21168.6.9 (b)(3) of the Public Resources Code would likely address the workload costs created by SB 44, we note that the branch would need additional expenditure and position authority for the additional staff that would be needed to address the increased workload resulting from the expedited judicial review.

For these reasons, the Judicial Council requests your veto on SB 44.

Should you have any questions or require additional information, please contact Kate Nitta at 916-323-3121.

Sincerely,

*Sent September 9, 2021*

Cory T. Jaspersen  
Director, Governmental Affairs

CTJ/KN/jh

cc: Hon. Benjamin Allen, Member of the Senate  
Ms. Jessica Devencenzi, Deputy Legislative Affairs Secretary, Office of the Governor  
Mr. Martin Hoshino, Administrative Director, Judicial Council of California



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### GOVERNMENTAL AFFAIRS

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*Chair of the Judicial Council*

MARTIN HOSHINO  
*Administrative Director*

CORY T. JASPERSON  
*Director, Governmental Affairs*

August 4, 2021

Hon. Lorena Gonzalez, Chair  
Assembly Appropriations Committee  
State Capitol, Room 2114  
Sacramento, California 95814

Subject: Senate Bill 44 (Allen), as amended July 14, 2021 – Oppose unless amended

Dear Assembly Member Gonzalez:

The Judicial Council regretfully must oppose SB 44 unless amended to remove the 365-day expedited judicial review provision. This bill, among other things, requires actions or proceedings related to the environmental leadership transit projects, as defined, seeking judicial review pursuant to CEQA or the granting of project approvals, including any appeals therefrom, to be resolved, to the extent feasible and to the extent prioritizing the action or proceeding will not exacerbate any existing civil case backlogs, within 365 days of the filing of the certified record of proceedings.

#### *Fiscal Impact*

The council has studied the workload costs created by expedited CEQA judicial review requirements and determined that trial and appellate courts expend a combined average of \$340,000 in workload costs on each case eligible for expedited judicial review. While no specific projects are listed in the bill, based on the seven projects the bill establishes as a limit to which its provisions apply, we estimate that this bill will have a fiscal impact of up to \$2.4 million in the form of expedited trial and appellate court workloads to adjudicate the seven projects in the time required by the bill. Although we believe that the cost recovery in proposed section 21168.6.9 (b)(3) of the Public Resources Code would likely address the workload costs created by SB 44, we note that the branch would need additional expenditure and position authority for the additional staff that would be needed to address the increased workload resulting from the expedited judicial review.

Hon. Lorena Gonzalez

August 4, 2021

Page 2

For these reasons, the council regretfully opposes SB 44 unless amended.

Should you have any questions or require additional information, please contact Mark Neuburger at 916-323-3121.

Sincerely,

*Sent August 4, 2021*

Cory T. Jaspersen  
Director, Governmental Affairs

CTJ/KN/jh

cc: Members, Assembly Appropriations Committee  
Hon. Benjamin Allen, State Senator, 26<sup>th</sup> District  
Ms. Jessica Devencenzi, Deputy Legislative Affairs Secretary, Office of the Governor  
Mr. Martin Hoshino, Administrative Director, Judicial Council of California



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*Director, Governmental Affairs*

June 28, 2021

Hon. Mark Stone, Chair  
Assembly Judiciary Committee  
State Capitol, Room 3146  
Sacramento, California 95814

Subject: Senate Bill 44 (Allen), as amended June 28, 2021 – Oppose unless amended

Dear Assembly Member Stone:

The Judicial Council regrettably must oppose SB 44 unless amended to remove the 270-day expedited review provision. This bill, among other things, requires actions or proceedings related to the environmental leadership transit projects, as defined, seeking judicial review pursuant to CEQA or the granting of project approvals, including any appeals therefrom, to be resolved, to the extent feasible, within 270 days of the filing of the certified record of proceedings.

It is important to note that our concerns are limited solely to the court impacts of this legislation, and that the Judicial Council is not expressing any views on CEQA generally or the underlying merits of any potential projects that may be covered by SB 44, as those issues are outside the council's purview.

The requirement in SB 44 that all CEQA lawsuits challenging any of the proposed projects that could be covered by the bill, including any appeals therefrom, be resolved within 270 days is problematic as CEQA actions are already entitled under current law to calendar preference "over all other civil actions" pursuant to section 21167.1(a) of the Public Resources Code in both the superior courts and the Courts of Appeal. Imposing a 270-day timeline for the review of potentially a large number of "environmental leadership transit projects," on top of existing CEQA calendar preferences, even with language that references "to the extent feasible," is an

arbitrary and unrealistically short timeframe for California's trial courts to address all of the issues each CEQA case is likely to present.

There are several reasons why the time frame is, from the outset, not feasible.

- *CEQA cases are complex and time-consuming.* Under normal circumstances and assuming the unrealistic context in which no extensions of time are requested or granted for any aspect of a case, CEQA cases take, on average, an estimated six months to get to hearing, much less to a decision. So, even if the court was able to issue its decision within six months (approximately 180 days), that would leave only three months (the remaining 90 days) for proceedings in the court of appeal, which is impracticable.<sup>1</sup> And, of course, it is more than likely that one or more parties will request, if not stipulate to, continuances, delays, or other procedural extensions. Given these common requests and stipulated delays, a 270-day timeframe is not feasible.
- *Active CEQA cases often include ancillary administrative and non-CEQA judicial causes of action.* Providing expedited judicial review for the projects that may fall under SB 44 is even more unworkable in light of the common occurrence that CEQA cases involve ancillary motions, administrative review, other causes of action, and other civil actions and appeals in the middle of the CEQA action. These actions proceed under administrative (local governmental) and civil procedure (non-CEQA courtroom) timelines, often resulting in temporary stays or delays in the principal CEQA action. In other words, even if CEQA-specific procedures could be limited to 270 days for one or more of the projects, other, non-CEQA procedures related to the same cases that would occur in non-CEQA courtrooms and administrative hearings cannot be concluded in that same timeframe. These ancillary hearings and procedures make the 270-day goal not feasible.
- *The courts are already experiencing significant civil backlogs as a result of the COVID-19 pandemic.* Given the impacts the COVID-19 pandemic has had on the courts, as discussed comprehensively at the February 23, 2021 joint hearing of the Assembly and Senate Judiciary Committees, placing CEQA cases at the front of the line 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, as well as wage theft cases, unlawful detainer and foreclosure cases, and other important cases on the courts' dockets, will take longer to decide.

For these reasons, the council regretfully opposes SB 44 unless amended.

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Hon. Mark Stone  
June 28, 2021  
Page 3

Should you have any questions or require additional information, please contact Kate Nitta at 916-323-3121.

Sincerely,

*Sent June 28, 2021*

Cory T. Jaspersen  
Director, Governmental Affairs

CTJ/KN/jh

cc: Members, Assembly Judiciary Committee  
Hon. Benjamin Allen, Member of the Senate  
Ms. Jessica Devencenzi, Deputy Legislative Affairs Secretary, Office of the Governor  
Mr. Martin Hoshino, Administrative Director, Judicial Council of California



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*Administrative Director*

CORY T. JASPERSON  
*Director, Governmental Affairs*

June 16, 2021

Hon. Luz Rivas, Chair  
Assembly Natural Resources Committee  
State Capitol, Room 3126  
Sacramento, California 95814

Subject: Senate Bill 44 (Allen), as amended April 27, 2021 – Oppose unless amended  
Hearing: Assembly Natural Resources Committee – June 23, 2021

Dear Assembly Member Rivas:

The Judicial Council regretfully must oppose SB 44 unless amended to extend the rule-making deadline to January 1, 2023, and to remove the 270-day expedited review provision. This bill, among other things, requires actions or proceedings related to the environmental leadership transit projects, as defined, seeking judicial review pursuant to CEQA or the granting of project approvals, including any appeals therefrom, to be resolved, to the extent feasible, within 270 days of the filing of the certified record of proceedings. It also requires the Judicial Council, on or before April 1, 2022, to amend the California Rules of Court, as necessary, to implement this subdivision.

It is important to note that our concerns are limited solely to the court impacts of this legislation, and that the Judicial Council is not expressing any views on CEQA generally or the underlying merits of any potential projects that may be covered by SB 44, as those issues are outside the council's purview.

Beginning with the rule-making provision, the Judicial Council requests a one-year delay in the implementation of any legislation that directs the council to amend or draft new rules of court. This delay ensures that the council may faithfully undertake the months-long internal and external/public review and feedback processes required for the adoption of new or modified rules of court. In the case of SB 44, the proposed April 1, 2022 deadline for enacting rules is simply

not achievable as it does not allow for the development of the rules and public review process necessary to vet the rules. We respectfully request a delay to January 1, 2023 to amend the California Rules of Court to implement the proposed subdivision.

The requirement in SB 44 that all CEQA lawsuits challenging any of the proposed projects that could be covered by the bill, including any appeals therefrom, be resolved within 270 days is problematic as CEQA actions are already entitled under current law to calendar preference “over all other civil actions” pursuant to section 21167.1(a) of the Public Resources Code in both the superior courts and the Courts of Appeal. Imposing a 270-day timeline for the review of potentially a large number of “environmental leadership transit projects,” on top of existing CEQA calendar preferences, even with language that references “to the extent feasible,” is an arbitrary and unrealistically short timeframe for California’s trial courts to address all of the issues each CEQA case is likely to present.

There are several reasons why the time frame is, from the outset, not feasible.

- *CEQA cases are complex and time-consuming.* Under normal circumstances and assuming the unrealistic context in which no extensions of time are requested or granted for any aspect of a case, CEQA cases take, on average, an estimated six months to get to hearing, much less to a decision. So, even if the court was able to issue its decision within six months (approximately 180 days), that would leave only three months (the remaining 90 days) for proceedings in the court of appeal, which is impracticable.<sup>1</sup> And, of course, it is more than likely that one or more parties will request, if not stipulate to, continuances, delays, or other procedural extensions. Given these common requests and stipulated delays, a 270-day timeframe is not feasible.
- *Active CEQA cases often include ancillary administrative and non-CEQA judicial causes of action.* Providing expedited judicial review for the projects that may fall under SB 44 is even more unworkable in light of the common occurrence that CEQA cases involve ancillary motions, administrative review, other causes of action, and other civil actions and appeals in the middle of the CEQA action. These actions proceed under administrative (local governmental) and civil procedure (non-CEQA courtroom) timelines, often resulting in temporary stays or delays in the principal CEQA action. In other words, even if CEQA-specific procedures could be limited to 270 days for one or more of the projects, other, non-CEQA procedures related to the same cases that would occur in non-CEQA courtrooms and administrative hearings cannot be concluded in that same timeframe. These ancillary hearings and procedures make the 270-day goal not feasible.

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- *The courts are already experiencing significant civil backlogs as a result of the COVID-19 pandemic.* Given the impacts the COVID-19 pandemic has had on the courts, as discussed comprehensively at the February 23, 2021 joint hearing of the Assembly and Senate Judiciary Committees, placing CEQA cases at the front of the line 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, as well as wage theft cases, unlawful detainer and foreclosure cases, and other important cases on the courts' dockets, will take longer to decide.

The council has studied the workload costs created by expedited CEQA judicial review requirements and determined that trial and appellate courts expend a combined average of \$340,000 in workload costs on each case eligible for expedited judicial review. While no specific projects are listed in the bill, based on the four (4) transit projects that the Los Angeles Metropolitan Transportation Authority, the bill's sponsor, has identified as priority projects for which expedited judicial review would apply, the estimated fiscal impact is \$1.4 million. This estimate could increase, however, as the provisions of SB 44 apply to transit projects statewide which may lead transit agencies to adjust their projects in the future to meet the bill's eligibility requirements. Finally, we note that new unfunded workload to the courts could result in delays of court services, prioritization of court cases, and may impact access to justice.

For these reasons, the council regretfully opposes SB 44 unless amended.

Should you have any questions or require additional information, please contact Kate Nitta at 916-323-3121.

Sincerely,

*Sent June 16, 2021*

Cory T. Jaspersen  
Director, Governmental Affairs

CTJ/KN/jh

cc: Members, Assembly Natural Resources Committee  
Hon. Benjamin Allen, Senator, 26<sup>th</sup> District  
Mr. Lawrence Lingbloom, Chief Consultant, Assembly Natural Resources Committee  
Ms. Jessica Devencenzi, Deputy Legislative Affairs Secretary, Office of the Governor  
Mr. Martin Hoshino, Administrative Director, Judicial Council of California



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*Chair of the Judicial Council*

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*Administrative Director*

CORY T. JASPERSON  
*Director, Governmental Affairs*

April 22, 2021

Hon. Anthony Portantino, Chair  
Senate Appropriations Committee  
State Capitol, Room 3086  
Sacramento, California 95814

Subject: Senate Bill 44 (Allen), as amended April 5, 2021 – Oppose unless amended  
Hearing: Senate Appropriations Committee – May 3, 2021

Dear Senator Portantino:

The Judicial Council regrettably must oppose SB 44 unless amended to extend the rule-making deadline to January 1, 2023, and to remove the 270-day expedited review provision. This bill, among other things, requires actions or proceedings related to the environmental leadership transit projects, as defined, seeking judicial review pursuant to CEQA or the granting of project approvals, including any appeals therefrom, to be resolved, to the extent feasible, within 270 days of the filing of the certified record of proceedings. It also requires the Judicial Council, on or before April 1, 2022, to amend the California Rules of Court, as necessary, to implement this subdivision.

It is important to note that our concerns are limited solely to the court impacts of this legislation, and that the Judicial Council is not expressing any views on CEQA generally or the underlying merits of any potential projects that may be covered by SB 44, as those issues are outside the council's purview.

Beginning with the rule-making provision, the Judicial Council requests a one-year delay in the implementation of any legislation that directs the council to amend or draft new rules of court. This delay ensures that the council may faithfully undertake the months-long internal and external/public review and feedback processes required for the adoption of new or modified rules of court. In the case of SB 44, the proposed April 1, 2022 deadline for enacting rules to

implement the proposed projects is simply not achievable as it does not allow for the development of the rules and public review process necessary to vet the rules. We respectfully request a delay to January 1, 2023 to amend the California Rules of Court to implement the proposed subdivision.

The requirement in SB 44 that all CEQA lawsuits challenging any of the proposed projects that could be covered by the bill, including any appeals therefrom, be resolved within 270 days is problematic as CEQA actions are already entitled under current law to calendar preference “over all other civil actions” pursuant to section 21167.1(a) of the Public Resources Code in both the superior courts and the Courts of Appeal. Imposing a 270-day timeline for the review of potentially a large number of “environmental leadership transit projects,” on top of existing CEQA calendar preferences, even with language that references “to the extent feasible,” is an arbitrary and unrealistically short timeframe for California’s trial courts to address all of the issues each CEQA case is likely to present.

There are several reasons why the time frame is, from the outset, not feasible.

- *CEQA cases are complex and time-consuming.* Under normal circumstances and assuming the unrealistic context in which no extensions of time are requested or granted for any aspect of a case, CEQA cases take, on average, an estimated six months to get to hearing, much less to a decision. So, even if the court was able to issue its decision within six months (approximately 180 days), that would leave only three months (the remaining 90 days) for proceedings in the court of appeal, which is impracticable.<sup>1</sup> And, of course, it is more than likely that one or more parties will request, if not stipulate to, continuances, delays, or other procedural extensions. Given these common requests and stipulated delays, a 270-day timeframe is not feasible.
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- *The courts are already experiencing significant civil backlogs as a result of the COVID-19 pandemic.* Given the impacts the COVID-19 pandemic has had on the courts, as discussed comprehensively at the February 23, 2021 joint hearing of the Assembly and Senate Judiciary Committees, placing CEQA cases at the front of the line means that

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Hon. Anthony Portantino

April 22, 2021

Page 3

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For these reasons, the council regretfully opposes SB 44 unless amended.

Should you have any questions or require additional information, please contact Kate Nitta at 916-323-3121.

Sincerely,

*Sent April 22, 2021*

Cory T. Jaspersen  
Director, Governmental Affairs

CTJ/KN/jh

cc: Members, Senate Appropriations Committee  
Hon. Benjamin Allen, Member of the Senate  
Mr. Mark McKenzie, Principal Consultant, Senate Appropriations Committee  
Ms. Jessica Devencenzi, Legislative Affairs Secretary, Office of the Governor  
Mr. Martin Hoshino, Administrative Director, Judicial Council of California



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MARTIN HOSHINO  
*Administrative Director*

CORY T. JASPERSON  
*Director, Governmental Affairs*

April 5, 2021

Hon. Thomas Umberg, Chair  
Senate Judiciary Committee  
State Capitol, Room 3076  
Sacramento, California 95814

Subject: Senate Bill 44 (Allen), as amended March 1, 2021 – Oppose unless amended  
Hearing: Senate Judiciary Committee – April 13, 2021

Dear Senator Umberg:

The Judicial Council regrettably must oppose SB 44 unless amended to extend the rule-making deadline to January 1, 2023, and to remove the 270-day expedited review provision. This bill, among other things, requires actions or proceedings related to the environmental leadership transit projects, as defined, seeking judicial review pursuant to CEQA or the granting of project approvals, including any appeals therefrom, to be resolved, to the extent feasible, within 270 days of the filing of the certified record of proceedings. It also requires the Judicial Council, on or before April 1, 2022, to amend the California Rules of Court, as necessary, to implement this subdivision.

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Hon. Thomas Umberg

April 5, 2021

Page 3

Senate Judiciary Committees, placing CEQA cases at the front of the line 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, as well as wage theft cases, unlawful detainer and foreclosures cases, and other important cases on the courts' dockets, will take longer to decide.

For these reasons, the council regretfully opposes SB 44 unless amended.

Should you have any questions or require additional information, please contact Kate Nitta at 916-323-3121.

Sincerely,

*Sent April 5, 2021*

Cory T. Jasperson

Director, Governmental Affairs

CTJ/KN/jh

cc: Members, Senate Judiciary Committee  
Hon. Benjamin Allen, Member of the Senate  
Ms. Genevieve Wong, Principal Consultant, Senate Judiciary Committee  
Ms. Jessica Devencenzi, Legislative Affairs Secretary, Office of the Governor  
Mr. Martin Hoshino, Administrative Director, Judicial Council of California



JUDICIAL COUNCIL OF CALIFORNIA  
GOVERNMENTAL AFFAIRS

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TANI G. CANTIL-SAKAUYE  
*Chief Justice of California*  
*Chair of the Judicial Council*

MARTIN HOSHINO  
*Administrative Director*

CORY T. JASPERSON  
*Director, Governmental Affairs*

March 11, 2021

Hon. Benjamin Allen, Chair  
Senate Environmental Quality Committee  
State Capitol, Room 4076  
Sacramento, California 95814

Subject: Senate Bill 44 (Allen), as amended March 1, 2021 – Oppose unless amended  
Hearing: Senate Environmental Quality Committee – March 15, 2021

Dear Senator Allen:

The Judicial Council regrettably must oppose SB 44 unless amended to extend the rule-making deadline to January 1, 2023, and to remove the 270-day expedited review provision. This bill, among other things, requires actions or proceedings related to the environmental leadership transit projects, as defined, seeking judicial review pursuant to CEQA or the granting of project approvals, including any appeals therefrom, to be resolved, to the extent feasible, within 270 business days of the filing of the certified record of proceedings. It also requires the Judicial Council, on or before April 1, 2022, to amend the California Rules of Court, as necessary, to implement this subdivision.

It is important to note that our concerns are limited solely to the court impacts of this legislation, and that the Judicial Council is not expressing any views on CEQA generally or the underlying merits of any potential projects that may be covered by SB 44, as those issues are outside the council's purview.

Beginning with the rule-making provision, the Judicial Council requests a one-year delay in the implementation of any legislation that directs the council to amend or draft new rules of court. This delay ensures that the council may faithfully undertake the months-long internal and external/public review and feedback processes required for the adoption of new or modified rules of court. In the case of SB 44, the proposed April 1, 2022 deadline for enacting rules to

implement the proposed projects is simply not achievable as it does not allow for the development of the rules and public review process necessary to vet the rules. We respectfully request a delay to January 1, 2023 to amend the California Rules of Court to implement the proposed subdivision.

The requirement in SB 44 that all CEQA lawsuits challenging any of the proposed projects that could be covered by the bill, including any appeals therefrom, be resolved within 270 business days is problematic as CEQA actions are already entitled under current law to calendar preference pursuant to section 21167.1(a) of the Public Resources Code in both the superior courts and the Courts of Appeal. Imposing a 270-day timeline for the review of potentially a large number of “environmental leadership transit projects,” on top of existing CEQA calendar preferences, even with language that references “to the extent feasible,” is an arbitrary and unrealistically short timeframe for California’s trial courts to address all of the issues each CEQA case is likely to present.

There are several reasons why the time frame is, from the outset, not feasible.

- *CEQA cases are complex and time-consuming.* Under normal circumstances and assuming the unrealistic context in which no extensions of time are requested or granted for any aspect of a case, CEQA cases take, on average, an estimated six months to get to hearing, much less to a decision. So, even if the court was able to issue its decision within six months (approximately 180 days), that would leave only three months (the remaining 90 days) for proceedings in the court of appeal, which is impracticable.<sup>1</sup> And, of course, it is more than likely that one or more parties will request, if not stipulate to, continuances, delays, or other procedural extensions. Given these common requests and stipulated delays, a 270-day timeframe is not feasible.
- *Active CEQA cases often include ancillary administrative and non-CEQA judicial causes of action.* Providing expedited judicial review for the projects that may fall under SB 44 is even more unworkable in light of the common occurrence that CEQA cases involve ancillary motions, administrative review, other causes of action, and other civil actions and appeals in the middle of the CEQA action. These actions proceed under administrative (local governmental) and civil procedure (non-CEQA courtroom) timelines, often resulting in temporary stays or delays in the principal CEQA action. In other words, even if CEQA-specific procedures could be limited to 270 days for one or more of the projects, other, non-CEQA procedures related to the same cases that would occur in non-CEQA courtrooms and administrative hearings cannot be concluded in that same timeframe. These ancillary hearings and procedures make the 270-day goal not feasible.
- *The courts are already experiencing significant civil backlogs as a result of the COVID-19 pandemic.* Given the impacts the COVID-19 pandemic has had on the courts, as discussed comprehensively at the February 23, 2021 joint hearing of the Assembly and

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<sup>1</sup> In a typical civil appeal, it takes more than 95 days from when a trial court decision becomes final just for the record on appeal to be prepared and filed in the Court of Appeal. This does not include any time for briefing, oral argument, analysis of the issues, or preparation of a decision by the court.

Hon. Benjamin Allen

March 11, 2021

Page 3

Senate Judiciary Committees, placing CEQA cases at the front of the line 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, as well as wage theft cases, unlawful detainer and foreclosures cases, and other important cases on the courts' dockets, will take longer to decide.

For these reasons, the council regretfully opposes SB 44 unless amended.

Should you have any questions or require additional information, please contact Kate Nitta at 916-323-3121.

Sincerely,

*Sent March 11, 2021*

Cory T. Jasperson

Director, Governmental Affairs

CTJ/KN/jh

cc: Members, Senate Environmental Quality Committee  
Hon. Benjamin Allen, Member of the Senate  
Ms. Genevieve Wong, Principal Consultant, Senate Environmental Quality Committee  
Ms. Kirstin Kolpitzke, Consultant, Assembly Republican Office of Policy  
Ms. Jessica Devencenzi, Legislative Affairs Secretary, Office of the Governor  
Mr. Martin Hoshino, Administrative Director, Judicial Council of California



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This delay ensures that the council may faithfully undertake the months-long internal and external/public review and feedback processes required for the adoption of new or modified rules of court. In the case of SB 44, the proposed April 1, 2022 deadline for enacting rules to implement the proposed projects is simply not achievable as it does not allow for the development of the rules and public review process necessary to vet the rules. We respectfully request a delay to January 1, 2023 to amend the California Rules of Court to implement the proposed subdivision.

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Kate Nitta

Attorney

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