

SENATE JUDICIARY COMMITTEE
Senator Thomas Umberg, Chair
2023-2024 Regular Session

AB 3265 (Bryan)
Version: June 20, 2024
Hearing Date: July 2, 2024
Fiscal: Yes
Urgency: No
AM

SUBJECT

California Environmental Quality Act: environmental leadership media campus
projects: judicial streamlining

DIGEST

This bill authorizes a lead agency that is a city within the County of Los Angeles to certify a media campus for an expedited administrative and 365-day judicial review process for litigation involving the California Environmental Quality Act (CEQA) if the project meets certain criteria.

EXECUTIVE SUMMARY

For a handful of major projects that meet certain environmental standards, existing law provides for accelerated CEQA review and requires courts, to the extent feasible, to resolve judicial challenges arising from that process within 270 days of the filing of the administrative record. These provisions are intended to expedite beneficial development but entail potential tradeoffs with respect to the sufficiency of environmental review, the burden on courts, and access to justice for other litigants, a concern magnified by the judicial backlog arising from the COVID-19 pandemic.

This bill provides for expedited CEQA administrative and 365-day judicial review, including all appeals, for environmental leadership media campus projects that meet certain criteria and are certified by a lead agency that is a city within the County of Los Angeles. The bill is author sponsored and supported by the Fox Corporation. The bill is opposed by the Judicial Council of California and Western Electrical Contractors Association (WECA). The bill passed the Senate Environmental Quality Committee on a vote of 6 to 0.

PROPOSED CHANGES TO THE LAW

Existing law:

- 1) Requires lead agencies with the principal responsibility for carrying out or approving a proposed discretionary project to prepare a negative declaration, mitigated declaration, or environmental impact report (EIR) for this action, unless the project is exempt from CEQA (CEQA includes various statutory exemptions, as well as categorical exemptions in the CEQA Guidelines). (Pub. Res. Code § 21100 et seq.)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. (§ 21165 et seq.)
- 3) Established the Jobs and Economic Improvement through Environmental Leadership Act, which established CEQA administrative and judicial review procedures for an “environmental leadership” project. These provisions sunset on January 1, 2034. (§ 21178 et seq.)
- 4) Authorizes certain transit projects to be eligible for expedited administrative and judicial review under CEQA. (§ 21168.6.9.)

This bill:

- 1) For CEQA-based challenges to an EIR or approval for “environmental leadership media campus projects” (ELMCPs), requires that the Judicial Council adopt rules of court that require the challenge, including any potential appeals to the Court of Appeal or Supreme Court, to be resolved, to the extent feasible, within 365 days of the filing of the certified record of proceedings with the court. Requires the Judicial Council to adopt a rule of court to establish procedures to implement these provisions.
- 2) Provides an ELMCP must be certified by a lead agency within the County of Los Angeles and meet specified criteria, including, among others:
 - a) The project will result in an investment of at least one billion dollars in California.
 - b) The project does not result in any net additional greenhouse gas (GHG) emissions, including, but not limited to, from employee transportation, as specified.
 - c) The project will generate at least 1,000 jobs during construction.

¹ All further references are to the Public Resources Code unless otherwise indicated.

- d) The project creates high-wage, highly skilled jobs that pay prevailing wages and living wages, employs a skilled and trained workforce, as defined, provides construction jobs and permanent jobs for Californians, and helps reduce unemployment. These requirements do not apply to a contractor or subcontractor performing work that is subject to a project labor agreement.
 - e) The project applicant demonstrates compliance with specified recycling requirements.
 - f) The project applicant agrees to pay any additional costs incurred by the courts in hearing and deciding any case subject to this bill, including payment of the costs for the appointment of a special master if deemed appropriate by the court, in a form and manner specified by the Judicial Council.
 - g) The project applicant agrees to pay the costs of preparing the record of proceedings for the project concurrent with review and consideration of the project pursuant to CEQA, in a form and manner specified by the lead agency for the project.
- 3) Establishes requirements and timeframes for the preparation of an EIR, submission of public comment, the public hearing on the EIR, nonbinding mediation between the lead agency and the commenters, and preparation, certification, and submission to a court in a CEQA lawsuit, of the record of administrative proceedings.

COMMENTS

1. Stated need for the bill

The author writes:

California has a rich history as the entertainment capital of the world. However, the construction of soundstages in California have not kept pace with the recent growth in the production of film, scripted television and streaming content which forces more production outside of California. AB 3265 would allow a streamlined review and approval process for “environmental leadership media campus projects” that will foster studio construction and renovation within Los Angeles County. These projects will generate thousands of full-time jobs during construction and thousands of additional permanent jobs once they are constructed and operating.

2. CEQA

Enacted in 1970, CEQA requires state and local agencies to follow a set protocol to disclose and evaluate the significant environmental impacts of proposed projects and to adopt feasible measures to mitigate those impacts. CEQA itself applies to projects

undertaken or requiring approval by public agencies, and, if more than one agency is involved, CEQA requires one of the agencies to be designated as the “lead agency.” The environmental review process required by CEQA consists of: (1) determining if the activity is a project; (2) determining if the project is exempt from CEQA; and (3) performing an initial study to identify the environmental impacts and, depending on the findings, preparing either a Negative Declaration (for projects with no significant impacts), a Mitigated Negative Declaration (for projects with significant impacts but that are revised in some form to avoid or mitigate those impacts), or an EIR (for projects with significant impacts).

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. Before approving any project that has received environmental review, an agency must make certain findings pertaining to the project’s environmental impact and any associated mitigation measures. If mitigation measures are required or incorporated into a project, the public agency must adopt a reporting or monitoring program to ensure compliance with those measures. To enforce the requirements of CEQA, a civil action may be brought under several code sections to attack, review, set aside, void, or annul the acts or decisions of a public agency for noncompliance with the act.

“CEQA operates, not by dictating proenvironmental outcomes, but rather by mandating that ‘decision makers and the public’ study the likely environmental effects of contemplated government actions and thus make fully informed decisions regarding those actions. ... In other words, CEQA does not care what decision is made as long as it is an informed one.” (*Citizens Coalition Los Angeles v. City of Los Angeles* (2018) 26 Cal. App. 5th 561, 577.)

3. Expedited judicial review under CEQA

Unlike other environmental laws specific to air resources, water resources, or the control of toxic substances, there is no statewide bureaucracy charged with enforcement of CEQA. Rather, it is enforced through citizen participation and litigation if necessary. Arguably, this makes the implementation of CEQA more efficient and expeditious than if a state agency were created to administer the law. Thus, CEQA litigation could more appropriately be characterized as mere enforcement.

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

- discovery is generally not allowed, as CEQA cases are generally restricted to review of the record;²

² See *Cadiz Land Co. v. Rail Cycle, LP* (2000) 83 Cal.App.4th 74, 122.

- concurrent preparation of the record of proceedings to enable judicial review to occur sooner;³
- counties with a population of over 200,000 must designate one or more judges to develop expertise on CEQA and hear CEQA cases (§ 21167.1 (b));
- both the Superior Court and the Court of Appeal must give CEQA lawsuits preference over all other civil actions (§ 21167.1(a)); and
- if feasible, the Court of Appeal must hear a CEQA appeal within one year of filing (§ 21167.1(a)).

Additionally, several bills have provided for a 270-day judicial review period for environmental leadership projects,⁴ as well as for specified stadium projects,⁵ and a San Diego transit and transportation facilities project.⁶

The principal framework associated with these provisions is AB 900 (Buchanan, Ch. 354, Stats. 2011), which were extended and revised by SB 7 (Atkins, Ch. 19; Stats. 2021). These provisions establish procedures for 270-day expedited judicial review for “environmental leadership” projects with a minimum investment of \$100,000,000 that are certified by the Governor and meet specified conditions. Such projects include clean renewable energy projects, clean energy manufacturing projects, and LEED Gold-certified infill site projects with transportation efficiency 15 percent greater than comparable projects and zero net additional GHG emissions, and housing development projects with a minimum investment of \$15,000,000.

A 2019 report entitled *Review of Environmental Leadership Development Projects* from the Senate Office of Research reviewed litigation under AB 900 and SB 743 (Steinberg, Ch. 386, Stats. 2013), which provided for 270-day review for the Sacramento Kings arena. The report found the following timelines, which under then-existing law began when the administrative record was certified⁷ and include the trial court, court of appeal, and the Supreme Court’s denial of review, for those cases:

Project	Business days	Calendar days
Kings arena	243	352
Warriors arena	257	376
8150 Sunset Boulevard	395	578

The report concludes that these projects were reviewed under a faster timeline than normally would apply, benefiting the developers and providing upfront financial

³ SB 122 (Jackson, Ch. 476, Stats. 2016).

⁴ AB 900 (Buchanan, Ch. 354, Stats. 2011); SB 7 (Atkins, Ch. 19; Stats. 2021).

⁵ SB 292 (Padilla, Ch. 353, Stats. 2011); SB 743 (Steinberg, Ch. 386, Stats. 2013) (see *Saltonstall v. City of Sacramento* (2014) 231 Cal.App.4th 837, 855-856); AB 734 (Bonta, Ch. 959, Stats. 2018); AB 987 (Kamlager-Dove, Ch. 961, Stats. 2018).

⁶ AB 2731 (Gloria, Ch. 291, Stats. 2020).

⁷ See *id.* at pp. 6-8 (noting some uncertainties in the calculation methodology).

security. The report also states that “the impacts to the court from such a short timeline also should be taken into consideration when determining how fast the Legislature would like [AB 900] cases resolved,” and suggests a longer timeline may be appropriate.⁸ In 2021, the Legislature enacted SB 44 (Allen, Ch. 663, Stats. 2021) to make certain transit projects eligible for expedited administrative and judicial review under CEQA within 365 calendar days, to the extent feasible. This bill includes the same 365-timeline for expedited judicial review.

4. Statements in support

The Fox Corporation writes in support, stating:

According to a recent studio production space case study, Los Angeles has the largest number of stages, square footage, and talent pool (384, 5.2M, and 198K respectively), strong tech innovation, and is therefore well suited to form production bubbles for COVID precautions. The construction of soundstages in California has not kept pace with the recent growth in the production of film, scripted television and streaming content which forces more production outside of California. The segment of entertainment production that has had the most detrimental effect on California’s infrastructure is the loss of big-budget feature films which require the use of several large sound stages building complex sets.

Adding to the need for updating the State’s film and television production facilities is the arrival of digital technology. New cinematography, sound recording and editing tools have provided sophisticated visual and audio effects for filmmakers during production and post production. While technology has revolutionized the creative brilliance of the film and television industry, its deployment requires infrastructure improvements for high-speed internet connections and cloud-based storage solutions at California’s “media production campuses.”

Though the Los Angeles area has the largest number of soundstages of any city in the world, studios are operating near 100% capacity with waiting lists as long as five film productions deep for those spaces, financial advisor Deloitte said in a 2021 report. As a result, a number of studios and media production campuses are making hundreds of millions of dollars in investments to expand and improve their historic production facilities.

AB 3265 will be a catalyst for sustained job growth by streamlining the process for renovating sound stages, and updating production facilities to incorporate the latest graphics and audio technology. These investments will provide environmental benefits and keep productions in-state for decades to come. AB 3265 will meet the highest environmental standards set in prior streamlined environmental bills that

⁸ *Id.* at p. 15.

have been signed into law. In addition, the bill contains language that will assure the creation of high paying jobs throughout the construction of the project through Labor Peace Agreements.

5. Statements in opposition

Under separation of powers principles, the Legislature cannot constitutionally mandate that courts resolve cases on any particular timeframe. (*See Saltonstall v. City of Sacramento* (2014) 231 Cal.App.4th 837, 855-856 [upholding a similar 270-day expedited review provision for the Sacramento Kings arena only because it contained a “to the extent feasible” provision].) Writing in opposition, the Judicial Council argues that compliance with the 270-day review provision is not feasible, stating:

- *The 365-day timeline is problematic in practice.* CEQA cases are inherently complex and time-consuming. Even in an unrealistic scenario in which no extensions of time were requested or granted for any aspect of a case, such a CEQA case would take an estimated six months just to get to a hearing, not to mention a decision. The reason this is an unrealistic scenario is because parties almost always request – and even stipulate to – continuances, delays, or other procedural extensions. Assuming a court was able to issue its decision within six months, that would leave only 185 days for proceedings in the Court of Appeal and the Supreme Court. 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.
- *CEQA cases often include ancillary administrative and non-CEQA judicial causes of action.* Expediting review of CEQA causes of action does not necessarily lead to a faster resolution of the entire case, as non-CEQA causes of actions are frequently brought together with CEQA claims. These non-CEQA causes of action proceed under the usual civil procedure rules and timelines and can cause delays to the principal CEQA action.

These concerns are compounded by the congestion courts have experienced as a result of the COVID-19 pandemic, leaving some litigants without access to justice. This Committee held a joint hearing in February 2021 with the Assembly Judiciary Committee that sought to address this crisis. The background paper for the hearing stated: “For many of these litigants, their cases arise from critical needs and interests, such as eviction, domestic violence, child custody disputes, health care, and debt collection.”⁹ The Judicial Council, in opposition, points out that expedited review

⁹ Joint Informational Hearing of Assembly and Senate Committees on Judiciary: *COVID and the Courts: Assessing the Impact on Access to Justice, Identifying Best Practices, and Plotting the Path Forward* (Feb. 23,

provisions such as the one in this bill may entail zero-sum tradeoffs that could further delay justice for some:

[...] setting an extremely tight timeline for deciding these complex cases has the practical effect of pushing other cases on the courts' dockets to the back of the line, even those with their own statutorily mandated calendar preferences. This means that juvenile cases, criminal cases, wage theft cases, and civil cases in which a party is at risk of dying will take longer to resolve.¹⁰

The Western Electrical Contractors Association (WECA), a self-titled "Merit Shop Employer Association," opposes provisions in the bill related to project labor agreements. WECA writes that it "staunchly opposes project labor agreements (PLAs), considering them wasteful and discriminatory. In light of this, WECA strongly opposes including these provisions in AB 3265."

SUPPORT

Fox Corporation

OPPOSITION

Judicial Council of California
Western Electrical Contractors Association (WECA)

RELATED LEGISLATION

Pending Legislation: None known.

Prior Legislation:

SB 7 (Atkins, Ch. 19; Stats. 2021) *see* Comment 3), above.

SB 44 (Allen, Ch. 663; Stats. 2021) *see* Comment 3), above.

AB 900 (Buchanan, Ch. 354, Stats. 2011) *see* Comment 3), above.

2021) Background Paper, <https://jud.senate.ca.gov/content/2020-21-informationaloversight-hearings> (as of Mar. 21, 2021).

¹⁰ Under existing law, certain parties are entitled to calendar preference, including a party that is at least 70 years old and in ill health, a party in a personal injury or wrongful death matter who is under the age of 14, or a party that is unlikely to survive beyond another six months. (Code of Civ. Proc. § 36).

Additionally, certain actions receive calendar preference, including appeals in probate proceedings, contested election cases, and actions for libel or slander by a person who holds any elective public office or a candidate for any such office alleged to have occurred during the course of an election campaign. (Code of Civ. Proc. § 44.) In fact, existing law already provides that both the Superior Court and the Court of Appeal must give CEQA lawsuits preference over all other civil actions. (§ 21167.1(a).)

PRIOR VOTES

Senate Environmental Quality Committee (Ayes 6, Noes 0)
 Assembly Floor (Ayes 64, Noes 0)
 Assembly Appropriations Committee (Ayes 14, Noes 0)
 Assembly Judiciary Committee (Ayes 11, Noes 0)
Assembly Natural Resources Committee (Ayes 10, Noes 0)
