
THIRD READING

Bill No: SB 25
Author: Caballero (D) and Glazer (D)
Amended: 4/30/19
Vote: 21

SENATE ENVIRONMENTAL QUALITY COMMITTEE: 5-2, 4/10/19
AYES: Allen, Bates, Hill, Skinner, Stone
NOES: Stern, Wieckowski

SENATE JUDICIARY COMMITTEE: 5-1, 4/23/19
AYES: Borgeas, Allen, Caballero, Jones, Umberg
NOES: Wieckowski
NO VOTE RECORDED: Jackson, Monning, Stern

SENATE APPROPRIATIONS COMMITTEE: Senate Rule 28.8

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

SOURCE: Habitat for Humanity California

DIGEST: This bill 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 standards, including those relating to the environment and inclusionary housing.

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% of census tracts that either have poverty rates of at least 20% or median family incomes of no more than 80% 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, until January 1, 2025, 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, is not located in high or very high fire hazard severity zone, and meets certain requirements including environmental standards and inclusionary housing standards.
- 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) 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) Requires Judicial Council, on or before September 1, 2020, to adopt rules of court that apply 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.

Background

- 1) *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 an 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.

- 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.

- a) *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 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

b) *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.

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.

c) *Streamlined Judicial Review*

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

- Amendments to provisions governing litigation and mediation;
- 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) *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% 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, the Senate Committee on Environmental Quality 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 five 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 University of California, Berkeley, 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 eight months to complete, while 42.3% were reviewed under streamlining provisions or exemptions for affordable housing, infill, and transit-priority projects, which took just six 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) *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 *EIR* 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.
- 3) *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 qualified projects. The 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.

Related/Prior Legislation

SB 621 (Glazer, 2019) establishes expedited judicial review of environmental review and approvals granted for an “affordable housing project,” as defined, and

requires Judicial Council to submit reports to the Legislature pertaining to CEQA litigation. SB 621 is on the Senate Floor.

AB 3030 (Caballero, 2018) would have exempted from CEQA residential and mixed-use projects that: provide 50% affordable housing, are financed by a “qualified opportunity fund”, meet 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 the Senate Appropriations Committee.

FISCAL EFFECT: Appropriation: No Fiscal Com.: Yes Local: Yes

SUPPORT: (Verified 5/14/19)

Habitat for Humanity California (source)
BizFed
California Council for Affordable Housing
Unibail-Rodamco-Westfield

OPPOSITION: (Verified 5/15/19)

Associated Builders and Contractors of Northern California Chapter
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
Plumbing-Heating-Cooling Contractors Association of California
Sierra Club California
Western Electrical Contractors Association

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