BAD LAST MINUTE BILLS

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Governor Brown has until October 9 to approve, veto or allow bills to become law without his signature. Therefore, this October 7 report will be limited to two bad bills he has already approved into law. AB 900 and SB 292 were rushed through the California Legislature during its final days without due hearing or analysis. They were passed at the urging of large project developers. They are bad bills because it is doubtful that they permit adequate judicial review of decisions under the California Environmental Quality Act (CEQA).

SB 292 provides for an abbreviated period for judicial review of the Environmental Impact Report and approvals granted for the construction of a new football stadium in Los Angeles. The decision of the District Court of Appeal must be issued within 175 days of the filing of a petition for review, and an additional 60 days is allowed if there is review by the California Supreme Court.

AB 900 similarly provides for abbreviated judicial review under CEQA of projects anywhere related to residential, retail, commercial, sports, cultural, entertainment, recreational or clean energy uses, if they cost more than $1,000,000. The law will expire on January 1, 2015, unless extended.

These bills were the subject of an editorial in the September 19 Enterprise-Record, which pointed out the unfairness of singling out large projects of wealthy developers for expedited review. It also noted the need for streamlining CEQA to avoid prolonged review litigation, but failed to consider whether adequate review would be possible under the brief period proposed in the bill.

Review of lead agency approvals under CEQA needs streamlining, but it can be done without crippling CEQA. The new laws were enacted without any in depth consideration of how much time is necessary for judicial review. The 175 days allowed for completion of review by the District Court of Appeal may sound like ample time to those not familiar with the judicial system, but it is a small fraction of the time required for most of the complicated litigation in our overburdened courts. Large development projects involve many environmental issues and extensive scientific analyses. The decisions of lead agencies cannot be dealt with in summary fashion. The new laws are a disguised effort to bypass CEQA. The fact that AB 900 is scheduled to automatically expire on January 1, 2015 is a clear indication that the Legislature recognized that the tight review schedule it mandates may prevent adequate review and defeat the purposes of CEQA.