

AMENDED IN SENATE MAY 6, 1999
AMENDED IN SENATE APRIL 5, 1999

SENATE BILL

No. 1165

**Introduced by Senators Sher and Ortiz
(Coauthor: Senator Rainey)**

February 26, 1999

An act to add Section 1094.8 to the Code of Civil Procedure, relating to judicial review, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

SB 1165, as amended, Sher. Expedited judicial review.

Existing law provides for judicial review of decisions by a local public agency regarding the issuance, revocation, suspension, or denial of a business permit.

This bill would set forth an expedited procedure for judicial review of decisions by a local public agency regarding the issuance, revocation, suspension, or denial of a permit involving expressive conduct protected by the First Amendment to the United States Constitution, as specified.

The bill would declare that it is to take effect immediately as an urgency statute.

Vote: $\frac{2}{3}$. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 1094.8 is added to the Code of
2 Civil Procedure, to read:

3 1094.8. (a) Notwithstanding anything to the contrary
4 in this chapter, an action or proceeding to review the
5 issuance, revocation, suspension, or denial of a permit or
6 other entitlement for expressive conduct protected by
7 the First Amendment to the United States Constitution
8 shall be conducted in accordance with subdivision (d).

9 (b) For purposes of this section, the following
10 definitions shall apply:

11 (1) The terms “permit” and “entitlement” are used
12 interchangeably.

13 (2) The term “permit applicant” means both an
14 applicant for a permit and a permitholder.

15 (3) The term “public agency” means a city, county,
16 city and county, a joint powers authority or similar public
17 entity formed pursuant to Section 65850.4 of the
18 Government Code, or any other public entity authorized
19 by law to issue permits for expressive conduct protected
20 by the First Amendment to the United States
21 Constitution.

22 (c) A public agency may, if it so chooses, designate the
23 permits or entitlements to which this section applies by
24 adopting an ordinance or resolution which contains a
25 specific listing or other description of the permits or
26 entitlements issued by the public agency which are
27 eligible for expedited judicial review pursuant to this
28 section because the permits regulate expressive conduct
29 protected by the First Amendment to the United States
30 Constitution.

31 (d) The procedure set forth in this subdivision, when
32 applicable, shall supersede anything to the contrary set
33 forth in this chapter.

34 (1) Within five court days after receipt of written
35 notification from a permit applicant that the permit
36 applicant will seek judicial review of a public agency’s
37 action on the permit, the public agency shall prepare,



1 certify, and make available the administrative record to
2 the permit applicant.

3 (2) Either the public agency or the permit applicant
4 may bring an action in accordance with the procedure set
5 forth in this section. If the permit applicant brings the
6 action, the action shall be in the form of a petition for writ
7 of mandate pursuant to Section 1085 or 1094.5, as
8 appropriate.

9 (3) The party bringing the action pursuant to this
10 section shall file and serve the petition on the respondent
11 no later than ~~seven~~ 21 court days following the public
12 agency's final decision on the permit. The title page of the
13 petition shall contain the following language in 18-point
14 type:

15 "ATTENTION: THIS MATTER IS ENTITLED TO
16 PRIORITY AND SUBJECT TO THE EXPEDITED
17 HEARING AND REVIEW PROCEDURES
18 CONTAINED IN SECTION 1094.8 OF THE CODE OF
19 CIVIL PROCEDURE."

20 (4) The clerk of the court shall set a hearing for review
21 of the petition no later than 25 calendar days from the
22 date the petition is filed. Moving, opposition, and reply
23 papers shall be filed as provided in the California Rules of
24 Court. The petitioner shall lodge the administrative
25 record with the court no later than 10 days in advance of
26 the hearing date.

27 (5) Following the conclusion of the hearing, the court
28 shall render its decision in an expeditious manner
29 consistent with constitutional requirements in view of the
30 particular facts and circumstances. In no event shall the
31 decision be rendered later than 20 days after the matter
32 is submitted or ~~60~~ 50 days after the date the petition is
33 filed pursuant to paragraph (4), whichever is earlier.

34 (e) If the presiding judge of the court in which the
35 action is filed determines that, as a result of either the
36 press of other court business or other factors, the court
37 will be unable to meet any one or more of the deadlines
38 provided within this section, the presiding judge shall
39 request the temporary assignment of a judicial officer to
40 hear the petition and render a decision within the time



1 limits contained herein, pursuant to Section 68543.8 of the
2 Government Code. Given the short time period involved,
3 the request shall be entitled to priority.

4 (f) In any action challenging the issuance, revocation,
5 suspension, or denial of a permit or entitlement, the
6 parties to the action shall be permitted to jointly waive
7 the time limits provided for herein.

8 SEC. 2. This act is an urgency statute necessary for the
9 immediate preservation of the public peace, health, or
10 safety within the meaning of Article IV of the
11 Constitution and shall go into immediate effect. The facts
12 constituting the necessity are:

13 In order for a judicial action or proceeding reviewing
14 the issuance, revocation, suspension, or denial of a permit
15 or other entitlement for expressive conduct protected by
16 the First Amendment to the United States Constitution
17 to proceed to hearing and have a decision rendered in an
18 expeditious manner consistent with constitutional
19 requirements in view of the holding in *Baby Tam & Co.,*
20 *Inc. v. City of Las Vegas* (1998) 154 F.2d 1097, it is
21 necessary that this act take effect immediately.

