
SENATE COMMITTEE ON ENVIRONMENTAL QUALITY

Senator Allen, Chair

2019 - 2020 Regular

Bill No: SB 995
Author: Atkins
Version: 5/19/2020
Urgency: No
Consultant: Genevieve M. Wong

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Fiscal: Yes

SUBJECT: Environmental quality: Jobs and Economic Improvement Through Environmental Leadership Act of 2011: housing projects

DIGEST: Extends for four years the Jobs and Economic Improvement Through Environmental Leadership Act of 2011 until 2025; and makes housing projects that meet certain requirements, including specified affordable housing requirements, eligible for certification under the Act.

ANALYSIS:

Existing law, under 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) Allows lead agencies to prepare master environmental impact reports (master EIRs) for specified projects that include smaller, individual subsequent projects. Proscribes information included in a master EIR, including a description of anticipated projects that would be within the scope of the master EIR and a description of potential impacts of the anticipated subsequent projects (PRC §21157).
- 3) 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 (PRC

§§21165 et seq.) .

- 4) Establishes the Jobs and Economic Improvement Through Environmental Leadership Act of 2011 (AB 900, Buchanan, Gordon, Chapter 354, Statutes of 2011), which establishes CEQA administrative and judicial review procedures for an "environmental leadership" project. Among the provisions of AB 900 (PRC §21178 et seq.):
 - a) Establishes procedures for expedited judicial review (i.e. requiring the courts to resolve lawsuits within 270 days) for "environmental leadership" projects certified by the Governor and meeting specified conditions.
 - b) Defines "environmental leadership" project as a CEQA project that is one of the following:
 - i) A residential, retail, commercial, sports, cultural, entertainment, or recreational use project that is certified as LEED gold or better by the United States Green Building Council, that is located on an infill site, and, where applicable, that achieves a 15% greater standard for transportation efficiency than for comparable projects.
 - a) Requires a project that is within a metropolitan planning organization for which a sustainable communities strategy (SCS) or alternative planning strategy (APS) is in effect, to be consistent with specified policies in either the SCS or APS, which, if implemented, would achieve greenhouse gas (GHG) emission reduction targets.
 - ii) A clean renewable energy project that generates electricity exclusively through wind or solar, but not including waste incineration or conversion.
 - iii) A clean energy manufacturing project that manufactures products, equipment, or components used for renewable energy generation, energy efficiency, or for the production of clean alternative fuel vehicles.
 - c) Allows a person proposing to construct a leadership project to apply to the Governor for certification that the leadership project is eligible for streamlining.

- d) Authorizes the Governor to certify a leadership project if the Governor finds the project meets all of the following conditions:
 - i) The project will result in a minimum investment of \$100 million in California upon completion of construction.
 - ii) The project creates high-wage, highly skilled jobs that pay prevailing wages and living wages, provides construction jobs and permanent jobs for Californians, and helps reduce unemployment.
 - iii) The project does not result in any net additional GHG emissions, including emissions from employee transportation, as determined by the Air Resources Board pursuant to the California Global Warming Solutions Act of 2006.
 - iv) The project applicant has entered into a binding and enforceable agreement that all mitigation measures required under CEQA shall be conditions of approval of the project, and those conditions will be fully enforceable by the lead agency or another agency designated by the lead agency. In the case of environmental mitigation measures, the applicant agrees, as an ongoing obligation, that those measures will be monitored and enforced by the lead agency for the life of the obligation.
 - v) The project applicant agrees to pay the costs of the Court of Appeal in hearing and deciding any case.
 - vi) The project applicant agrees to pay the costs of preparing the administrative record 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.
- e) Requires the Judicial Council to adopt a rule of court to establish procedures that require resolution within 270 days, including any appeals, of a lawsuit challenging the certification of the EIR or any project approvals for a certified environmental leadership project.
- f) Sets requirements for preparation and certification of the administrative record for a leadership project certified by the Governor.

- g) Required the Judicial Council to report to the Legislature on or before January 1, 2017, on the effects of AB 900 on the administration of justice.

This bill:

- 1) Requires a lead agency to prepare a master EIR for a general plan, plan amendment, plan element, or specific plan for housing projects where the state has provided funding for the preparation of the master EIR.
- 2) Extends the Governor's authority to certify a leadership project to January 1, 2024, and repeals AB 900 January 1, 2025.
- 3) Makes housing projects that meet certain requirements eligible for certification, including:
 - a) The project is located on an infill site.
 - b) For a project located within a metropolitan planning organization for which a sustainable communities strategy or alternative planning strategy is in effect, the project is consistent with the general use designation, density, building intensity, and applicable policies specified in either a sustainable communities strategies or an alternative planning strategy, as specified.
 - c) The project will result in a minimum investment of \$15 million in California upon completion.
 - d) At least 15 percent of the housing project is affordable housing.

Background

- 1) *California's housing shortage.* California is in the midst of a serious housing crisis. California is home to 21 of the 30 most expensive rental housing markets in the country, which has had a disproportionate impact on the middle class and the working poor. Housing units affordable to low-income earners, if available, are often in serious states of disrepair. The Department of Housing and Community Development (HCD) estimates that approximately 2.7 million lower-income households are rent-burdened (meaning they spend at least 30% of their income on rent), 1.7 million of which are severely rent-burdened (spending at least 50% of their income on rent). Not a single county in the state has an adequate supply of affordable homes. According to a 2015 study by the California Housing Partnership Corporation, California has a shortfall of 1.5

million affordable homes and 13 of the 14 least affordable metropolitan areas in the country.

A major factor in this crisis is the state's housing shortage. From 1954-1989, California constructed an average of more than 200,000 new homes annually, with multifamily housing accounting for the largest share of housing production. Since then, however, construction has dropped significantly. HCD estimates that approximately 1.8 million new housing units – 180,000 new homes per year, are needed to meet the state's projected population and housing growth by 2025.

- 2) *Jobs and Economic Improvement Through Environmental Leadership Act of 2011*. Existing law provides a framework for expediting CEQA review of major projects. The Jobs and Economic Improvement Through Environmental Leadership Act of 2011 (hereafter AB 900 or Act), established specified administrative and judicial review procedures for the review of the environmental review documents and public agency approvals granted for designated residential, retail, commercial, sports, cultural, entertainment, or recreational use projects, known as Environmental Leadership Development Projects (ELDP). To qualify as an ELDP, the project must meet specified objective environmental standards. The Legislature has also applied similar expedited frameworks for specific sports stadiums that meet certain objective environmental standards.
- 3) *ELDP Projects to Date*. According to the Office of Planning and Research, the following projects have had AB 900 applications submitted:
 - McCoy Solar Energy Project (January 12, 2012);
 - Apple Campus 2 (April 19, 2012);
 - Soitec Solar Energy Project (January 7, 2013);
 - 8150 Sunset Boulevard (January 31, 2014);
 - Event Center and Mixed-Use Development at Mission Bay Blocks (The Golden State Warriors Arena) (February 17, 2014);
 - Qualcomm Stadium Reconstruction Project (August 25, 2015);
 - Crossroads Hollywood (August 29, 2016);
 - 6220 West Yucca Project (April 17, 2017);
 - 1045 Olive Street Project (December 19, 2017);
 - Hollywood Center Project (May 2, 2018);
 - Potrero Power Station Mixed-use Project (July 18, 2018);
 - 10 Van Ness Avenue Mixed-Use Project (August 8, 2018);
 - 3333 California Street Project (August 24, 2018);

- Inglewood Basketball and Entertainment Center (AB 987) (January 3, 2019);
- Hollywood & Wilcox Mixed-Use Project (February 5, 2019);
- Oakland Sports and Mixed-Use Project at Howard Terminal (March 20, 2019 – *not yet certified*);
- Balboa Reserve (June 25, 2019);
- Downtown West Mixed Use Plan (September 3, 2019);
- California Northstate University Medical Center Project (September 24, 2019).

This does not include specified projects to which the Legislature has applied AB 900-like procedures. These projects are:

- SB 292 (Padilla, Chapter 353, Statutes of 2011) which proposed a downtown Los Angeles football stadium and convention center that would achieve specified traffic and air quality mitigations. This project has not proceeded.
- SB 743 (Steinberg, Chapter 386, Statutes of 2013) established special CEQA procedures modeled after SB 292 for the Sacramento Kings arena project and included specified traffic and air quality mitigations.
- AB 734 (Bonta, Chapter 959, Statutes of 2018) established special CEQA procedures modeled after AB 900 for the Oakland Sports and Mixed-Use Project. Unlike AB 900, AB 734 required that 50% of the GHG emissions reductions necessary to achieve the zero-net additional GHG emissions requirement be from on-site and local reduction measures, limited the type of GHG offset credits that can be purchased to achieve the other 50% of the necessary GHG emissions reductions, and required a transportation demand management plan that achieves a 20% reduction in vehicle trips.
- AB 987 (Kamlager-Dove, Chapter 961, Statutes of 2018) was similar to AB 734 but applied to a proposed basketball arena for the Los Angeles Clippers in Inglewood. AB 987 required a transportation demand management plan that achieves 15% reduction in vehicle trips by 2030 and additional reductions in local criteria pollutants.

- 4) *Review of ELDPs.* In April 2019, the Senate Office of Research (SOR) released a report describing projects that have qualified for expedited CEQA judicial

review pursuant to AB 900 and statutes similar to AB 900. In addition to analyzing the estimated benefits derived from ELDPs, the report also examined the legal challenges faced by three projects: the Sacramento Kings Arena, the Golden State Warriors arena, and the 8150 Sunset Boulevard mixed-use development project; each discussed in more detail below. The report also included some recommendations to the Legislature that would provide clarity to the act, increase reporting requirements, and strengthen environmental attributes of the ELDPs.

- 5) *ELDPs and housing*. According to the SOR report, 10 of the 19 ELDPs have included a housing component. As of the date of the SOR report, none of the projects have been completed. Below is a summary of housing projects and their proposed housing units.

Project Name	Description	Proposed Housing Units
8150 Sunset Boulevard	Residential housing, retail, and restaurant redevelopment on a 2.56-acre site	249 residential units, 28 of which will be affordable housing (approx. 11%)
Crossroads Hollywood	Residential housing units and hotel rooms	950 residential
6220 West Yucca	Residential housing and hotel redevelopment on a 1.16-acre site	210 residential
Potrero Power Station	Covert a closed power station to housing, commercial, community facilities, and entertainment/assembly uses on a 29-acre lot	2,400 to 3,000 residential
Hollywood Center	Residential housing and usable open space development on a 4.46-acre site	872 residential, 133 of which will be affordable senior housing (approx. 15%)
1045 Olive Street	Residential housing and commercial redevelopment on a 0.96-acre site	974 residential
10 South Van Ness Avenue	Residential housing, public space, and business redevelopment on a 1.17-acre site	980 residential
Hollywood & Wilcox	Develop a mixed-use project composed of multifamily residential dwelling units and retail, office, and restaurant uses.	260 multifamily residential, up to 10% of which would be workforce housing
3333 California Street	Create new residential housing and retail, office, and childcare uses	558 residential, some of which would be affordable housing
Oakland Athletics Stadium (AB 734)	Baseball stadium, residential housing, hotel, entertainment, office, retail, and open space redevelopment on a 55-acre site	3,000 residential

Comments

- 1) *AB 900 lawsuits.* Of the projects that have been subject to AB 900, or similar expedited judicial review, four projects have been challenged under CEQA. Expedited judicial review does not always guarantee a 270 day timeframe and cases can take longer to resolve due to, among other reasons, (1) ambiguity if the 270 days applies to business days or calendar days and if it includes appeals to the Supreme Court, (2) non-CEQA related actions which are not subject to the 270 day timeframe that are filed in addition to CEQA actions, or (3) consolidation of many, and sometimes complicated, actions.

- a) *Sacramento Kings Arena.* Several CEQA lawsuits were filed against the Sacramento Kings Arena and were consolidated into *Adriana Gianturco Saltonstall et al. v. City of Sacramento*. The overarching claim was that the city prematurely approved the arena project because the EIR process (1) did not study an alternative area that would have involved remodeling an existing arena, (2) was deficient in analyzing traffic congestion on an interstate freeway, and (3) misrepresented the size of crowds inside and around the downtown area. The Sacramento Kings Arena was not certified pursuant to AB 900, but SB 743, which authorized the streamlining of the Arena, required that any CEQA-related judicial review, including appeals, be resolved within 270 days from the certification of the administrative record.

The City of Sacramento certified the administrative record on June 2, 2014. On October 17, 2014, the trial court in Sacramento issued a decision denying all of the CEQA challenges. The Court of Appeal affirmed the trial court's decision on February 18, 2015, and the petition for review by the California Supreme Court was denied May 20, 2015.

The SOR report notes that neither AB 900 nor SB 743 specified whether the 270 day limitation applies to calendar days or business days.

Additionally, it is unclear whether appeals to the Supreme Court are included in timeframe. When including the appeal to the Supreme Court, the timeline between certification of the record and the Supreme Court denial for the Sacramento Kings Arena was 243 business days or 352 calendar days.

- b) *Golden State Warriors Arena and two lawsuits.* The AB 900 process cannot expedite or insulate a project from non-CEQA-related litigation and

cannot ensure that a project will be completed faster.

In *Mission Bay Alliance et al. v. Office of Community Investment and Infrastructure*, Mission Bay Alliance, which is a coalition of University of California, San Francisco (UCSF) stakeholders, donors, faculty, and physicians, argued that (1) the 18,500-seat arena would congest area streets with traffic, slowing down access to the UCSF Medical Center at Mission Bay, which is located across the street from the proposed arena and (2) the arena is at odds with the life science research and health care facilities that have been built in the neighborhood.

The case was initially filed on January 7, 2016, in Sacramento County Superior Court. The Golden State Warriors moved for a change of venue which was granted. The CEQA case was received and filed in the San Francisco County Superior Court and on July 18, 2016, a trial court ruled in favor of the project sponsor, the Warriors. On November 29, 2016, the Court of Appeal issued its decision on the case, 225 business days or 327 calendar days after the petition was initially filed. The decision was appealed; and ultimately, in January 2017, the California Supreme Court declined to hear the case.

In the second lawsuit, the plaintiffs sought to invalidate an agreement between UCSF and the Warriors, which included a \$10 million Mission Bay Transportation Improvement Fund for controlling traffic flow in the area. Although the CEQA case had concluded as of January, 2017, the second, non-CEQA-related case in Alameda was still pending at that time. The Warriors team has stated that the lawsuits delayed the opening of the arena by one year, to 2019. One lawsuit had special, fast-tracking CEQA-related litigation privileges and the other did not. Although AB 900 expedited the litigation process for the CEQA case, the second lawsuit demonstrates that CEQA is not the only body of law subject to civil litigation and that AB 900 does not guarantee a project from being litigation-free after 270 days.

- c) *8150 Sunset Boulevard Mixed-Use Development*. Four separate CEQA cases were filed on December 1, 2016, challenging approval of the 8150 Sunset Boulevard project: *Los Angeles Conservancy v. City of Los Angeles*; *Fix the City, Inc. v. City of Los Angeles*; *JDR Crescent v. City of Los Angeles*; and *Manners v. City of Los Angeles*. The trial court ordered the four cases to coordinate and consolidate their arguments as much as possible, delaying initial hearing of the case. The Los Angeles Conservancy (LAC) petitioned the Superior Court to prevent the

destruction of a bank building (the Lytton Building) that it stipulated had historical significance, while the other petitioners presented 24 allegations of CEQA noncompliance. The trial court granted the LAC's petition in full on July 21, 2017, while denying the claims of the other parties on all other issues. The decision allowed the project to proceed but barred the proposed destruction of the Lytton Building. The subsequent Court of Appeal ruling was issued on March 23, 2018, with a modified opinion and denial of the request for a rehearing finalized on April 19, 2018. The Court of Appeal agreed with the city's claim that the trial court erred in finding it failed to comply with CEQA and rejected all cross-appeals from the petitioners except for one related to the conversion of a traffic lane. An appeal to the Supreme Court was denied on June 13, 2018.

Because the project was certified as an AB 900 project, it had a required judicial review timeline, including any appeals, of 270 days from certification of the administrative record. When excluding the appeal to the Supreme Court, the timeline between the administrative record certification and the final Court of Appeal's modified decision was 357 business days or 523 calendar days. When including the appeal to the Supreme Court, the timeline was 395 business days or 578 calendar days.

- d) *Los Angeles Clippers Arena*. In January 2020, a petition was filed challenging the certification of a proposed Los Angeles Clippers basketball arena in Inglewood (*Saulo Eber Chan; MSG Forum, LLC v. Gavin C. Newsom; Joint Legislative Budget Committee*). Similar to the Sacramento Kings Arena, AB 987 required that any CEQA-related judicial review of the Los Angeles Clippers Arena, including appeals, be resolved within 270 days from certification of the administrative record. In its complaint, the petitioners allege that AB 987 violates the California Constitution because (1) it is invalid "special legislation," (2) it grants the Legislature power reserved for the executive and judicial branches, and (3) it curtails the judiciary's constitutional jurisdiction to review executive action in favor of review by a single legislative committee, violating the Constitution's separation of powers. This case is still pending.
- 2) *Guaranteed Time Frames*. Current law requires the courts to give CEQA-related cases preference over "all other civil actions... so that the action or proceeding shall be quickly heard and determined" (PRC §21167.1). In addition to this existing mandate, the AB 900 process provides that the courts, to the extent feasible, must complete the judicial review process in a given time frame for certain CEQA-related actions or proceedings. As a consequence, such mandates on a court delay access for other, unknown 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. Calendar preferences and guaranteed time frames create additional demands and burden on our courts that have very limited resources and a never-ending supply of cases to hear.

- 3) *Ensuring the "Leadership" in Environmental Leadership Development Project.* As originally enacted in 2011, AB 900 required ELDPs to, among other things, be certified as LEED silver or better, achieve a 10 percent greater standard for transportation efficiency for comparable projects, and not result in any net additional emission of greenhouse gases. Over the last nine years, those environmental standards have been strengthened to require LEED Gold certification and increase the transportation efficiency to 15 percent. As society continues to battle environmental impacts such as climate change, the standard of what is considered to be environmental leadership should also progress. Providing an expedited judicial review is a substantial benefit for developers and the environmental standards required should ensure that these projects are exemplary examples of environmental leadership and deserving of the preferential treatment they would receive in the judicial system.

The Committee may wish to amend the bill to modernize and strengthen the environmental protections in the following ways:

- a) Require LEED Platinum instead of LEED Gold.*
 - b) Require Tier 1 energy efficiency, as described in California Green Building Standards Code.*
 - c) Replace the 15% transportation efficiency requirement with a requirement that the project achieves 20% reduction in vehicle miles traveled per capita compared to existing development, as determined by the Governor's Office of Planning and Research.*
- 4) *ELDPs and affordable housing.* SB 995 adds a new category of projects that could qualify for AB 900 certification - affordable housing projects. To qualify, the project must, among other things, be located on an infill site, be consistent with a sustainable communities strategy or alternative planning strategy, have at least 15% of the project be dedicated to affordable housing, and must result in a minimum investment of \$15 million in California. In comparison, ELDP residential projects currently are subject to LEED Gold, do not have a minimum affordable housing requirement, and are required to result in \$100 million investment in California. By lowering the investment requirement, removing the LEED component, and imposing a minimum

affordable housing requirement, SB 995 provides an incentive for the development of affordable housing projects.

As the bill proceeds, the author may want to consider the following:

- Specifying what percentage of a project shall be dedicated to housing for a project to be considered a “housing project” and eligible for AB 900 certification. Current CEQA exemptions for residential housing projects vary for the minimum amount of housing a project can have – the affordable housing exemption (§21159.23) prohibits retail services from exceeding 15% of the total floor area of a project; whereas the exemption for infill projects prohibits retail uses from exceeding 25%. Under the Government Code, projects that are at least two-thirds residential are considered residential projects.
 - Requiring the project applicant to report the actual number of housing units created once the project is completed, as recommended by the SOR report. This will help the Legislature better understand the benefits provided by ELDPs.
- 5) *Diminishing returns.* In the almost 10 years since the enactment of AB 900, 19 ELDPs have been certified. Presumptively, this is because the high standards a project must meet in order to qualify, such as resulting in a \$100 million dollar investment in California and LEED-Gold certification. The new proposed category for affordable housing has a considerably lower threshold to meet - \$15 million investment and no LEED certification requirement. The intent of adding these projects as a new category eligible for certification is to provide incentive for the construction of these projects and to increase housing in California.

Although it is difficult to estimate how many projects could ultimately qualify under this new category, if numerous projects are fast-tracked to the front of judicial calendars, courts may be forced to repeatedly miss the 270 day deadline. In a sense, adding this new category could be a victim of its own success: at some point, the more projects that are eligible to benefit from accelerated judicial review, the smaller the impact of that benefit.

- 6) *Impact on the administration of justice.* AB 900 required Judicial Council, by January 1, 2017, to submit a report to the Legislature on the impact of AB 900 on the administration of justice. At the time of the report, only eight projects had been certified, one of which had resulted in a court case subject to the timeframes of AB 900 – the Golden State Warriors Arena (described above). In

its report, Judicial Council noted that “because there has been only one case subject to the requirements of [AB 900], at [that] time Judicial Council [was] unable to draw any general conclusions about the impact of [AB 900] on the administration of justice.” Since the report’s publication, 10 additional projects have been certified or made subject to AB 900-like timeframes and one project is pending certification.

Because AB 900 and similar timeframes continue to be a concern for its impact on the administration of justice, the committee may wish to amend the bill to require Judicial Council to submit another report, by January 1, 2024, on that issue, which would give the Legislature time to review the report before the repeal of AB 900 in 2025.

- 7) *Let’s be clear.* The SOR report brought to light some ambiguities in the AB 900 process – (1) whether the 270 day timeframe was to be counted in calendar days or business days and (2) whether the 270 day timeframe included appeals to the Supreme Court.

The committee may wish to amend the bill to clarify that the 270 timeframe is business days and that timeframe also includes any appeals to the Supreme Court.

- 8) *Adding co-authors.* The author would like to add the following Senators as joint authors, principal co-authors, and co-authors, as specified:

- Joint authors: Senators Caballero and Rubio
- Principal co-authors: Senators L. Gonzalez, Hill, and McGuire
- Co-author: Senator Roth

Related/Prior Legislation

AB 2991 (Santiago) extends the Jobs and Economic Improvement Through Environmental Leadership Act for five years, and makes various changes to the requirements of the Act. AB 2991 is in the Assembly Appropriations Committee.

SB 25 (Caballero, 2019) provides qualified projects, which includes housing projects that will obtain LEED Gold certification and with a minimum 40% affordable housing, with expedited judicial review. SB 25 is in the Assembly Natural Resources Committee.

SB 621 (Glazer, 2019) provides affordable housing projects that meet certain requirements, including LEED Gold certification and a minimum 30% of the

housing units be affordable housing, with expedited judicial review. SB 621 is in the Assembly Natural Resources Committee.

See above, Background

SOURCE: Author

SUPPORT:

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