
SENATE COMMITTEE ON APPROPRIATIONS

Senator Anthony Portantino, Chair
2019 - 2020 Regular Session

SB 995 (Atkins) - Environmental quality: Jobs and Economic Improvement Through Environmental Leadership Act of 2011: housing projects

Version: June 2, 2020

Urgency: No

Hearing Date: June 9, 2020

Policy Vote: E.Q. 5 - 0

Mandate: Yes

Consultant: Ashley Ames

Bill Summary: This bill would extend the Jobs and Economic Improvement Through Environmental Leadership Act of 2011 until 2025, and would make housing projects that meet certain requirements eligible for certification under the Act.

Fiscal Impact:

- The California Air Resources Control Board (CARB) estimates ongoing costs of \$384,000 (special fund) annually to determine within 60 days whether a project will result in a net increase of greenhouse gas (GHG) emissions.
- Unknown costs (General Fund) to the Governor's Office of Planning and Research to review and certify "leadership projects" and, potentially, to issue guidelines regarding application and certification of projects.
- Potential unknown cost pressure (General Fund) to the state-funded court system to process and hear challenges to the project's environmental review within the timeframes prescribed by the bill. (See staff comments.)
- Unknown but likely minor costs (General Fund) to Judicial Council to adopt rules of the court to guide implementation of the provisions of this bill and to report to the Legislature.

Background:

The Jobs and Economic Improvement Through Environmental Leadership Act of 2011 (AB 900). AB 900 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.

California Environmental Quality Act (CEQA) proceedings. 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 timeframe 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.

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.

Proposed Law: This bill would:

- 1) Require 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) Extend the Governor's authority to certify a leadership project to January 1, 2024, and repeal AB 900 January 1, 2025.
- 3) Make 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.

Related 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.

Staff Comments:

CARB costs. CARB notes that it did not receive any additional resources to complete the additional analyses required under AB 900. It is resource intensive for CARB to determine within 60 days whether a project will result in a net increase of greenhouse gas emissions, as application materials and calculation methodologies often exceed thousands of pages. To cover this workload, CARB has had to divert staff from other core program areas, which is no longer sustainable.

In 2019, CARB worked on nine projects under the AB 900 program and made GHG emissions determinations for eight of the nine projects, six of which were undergoing simultaneous review. Based on this bill's authorization allowing residential projects of only \$15 million or more to qualify and the recent trend of increasing project applications of greater complexity, CARB anticipates that its workload could continue to increase if this bill is enacted.

Court costs. This bill would result in potential cost pressure of an unknown amount to the state-funded court system to process and hear challenges to a project's environmental review within the timeframes prescribed by the bill. It is possible that, absent this bill, the state would face similar costs resulting from challenges to a project that would occur over a period longer than timeframes prescribed by this bill. However, the acceleration of some cases due to this bill could result in the need for extra personnel and resources in order for the courts to hear them within the required period.

The Governor's May Revision of the state budget includes significant proposed cuts to trial court operations that increase the likelihood that this bill could result in cost pressure. Specifically, the May Revision withdraws a January budget proposal of \$107.6 million (General Fund) ongoing to support trial court operations, and instead proposes a reduction of \$206.2 million (General Fund) ongoing in order to balance the state budget.

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