
THIRD READING

Bill No: SB 995
Author: Atkins (D), Caballero (D), Rubio (D) and Wiener (D), et al.
Amended: 6/18/20
Vote: 21

SENATE ENVIRONMENTAL QUALITY COMMITTEE: 5-0, 5/29/20
AYES: Allen, Hertzberg, Hill, McGuire, Wieckowski
NO VOTE RECORDED: Bates, Dahle

SENATE APPROPRIATIONS COMMITTEE: 5-1, 6/18/20
AYES: Portantino, Bradford, Hill, Leyva, Wieckowski
NOES: Jones
NO VOTE RECORDED: Bates

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

SOURCE: Author

DIGEST: This bill 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 and labor 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, mitigated negative declaration, 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. Prescribes 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) Establishes the Jobs and Economic Improvement Through Environmental Leadership Act of 2011 (AB 900, Buchanan, Chapter 354, Statutes of 2011), which established CEQA administrative and judicial review procedures for an "environmental leadership" project (PRC §21178 et seq.).

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 on January 1, 2025.
- 3) Makes infill housing projects that meet certain requirements, including a minimum investment in California, affordable housing requirements, and labor requirements, eligible for certification.

Background

- 1) *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.

- 2) *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.
- 3) *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	<i>Proposed</i> 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	Convert 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	Baseball stadium, residential housing, hotel, entertainment, office, retail, and	3,000 residential

Stadium (AB 734)	open space redevelopment on a 55-acre site	
------------------	--	--

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, (a) ambiguity if the 270 days applies to business days or calendar days and if it includes appeals to the Supreme Court, (b) non-CEQA related actions which are not subject to the 270 day timeframe that are filed in addition to CEQA actions, or (c) 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 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 the 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.

SB 955 clarifies this ambiguity in the AB 900 process by specifying that the timeframe is in business days and includes any appeals to the Supreme Court.

- 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. After a change in venue to the San Francisco Superior Court, the trial court, on July 18, 2016, ruled in favor of the project sponsor, the Warriors. On November 29, 2016, the Court of Appeal issued its decision on the case. 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.

- 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.

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.

- 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. 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 (Leadership in Energy and Environmental Design) 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 requirements should ensure that these projects are exemplary examples of environmental leadership and deserving of the preferential treatment they would receive in the judicial system.
- 4) *ELDPs and affordable housing*. SB 995 adds a new category of projects eligible for AB 900 certification - affordable housing projects. To qualify, the project must 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, current ELDP residential projects 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.

This bill does not specify what ratio of housing a project must provide to be considered a “housing project” eligible for AB 900 certification. As such, the bill could potentially allow a project that offers a minimal amount of housing to be certified as long as 15% of the housing is affordable housing.

- 5) *Diminishing returns.* In the almost 10 years since AB 900’s enactment, 19 ELDPs have been certified. Presumptively, this is due to 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 proposed category for affordable housing has a considerably lower threshold to meet - \$15 million investment and no LEED certification requirement. The intent being 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.

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

According to the Senate Appropriations Committee:

- The California Air Resources Control Board 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 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.
- 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.

SUPPORT: (Verified 6/18/20)

1HWY1

Associated Builders and Contractors Northern California Chapter

Bay Area Council

California Apartment Association

California Association of Realtors

Central City Association of Los Angeles

City of San Diego

Civil Justice Association of California

Council President Georgette Gómez, City of San Diego

Downtown San Diego Partnership

Facebook

Habitat for Humanity California

Los Angeles Business Council

Riley Realty, LP

San Diego Regional Economic Development Corporation

San Francisco Bay Area Planning and Urban Research Association

San Francisco Housing Action Coalition

Schneider Electric

Supervisor Greg Cox, Chairman, San Diego County Board of Supervisors

Supervisor Nathan Fletcher, 4th District, San Diego County Board of Supervisors

YIMBY Law

OPPOSITION: (Verified 6/25/20)

City of Torrance

Livable California

Southern California Chapter of Associated Builders and Contractors

Sustainable Tamalmon

Western Electrical Contractors Association

Prepared by: Genevieve M. Wong / E.Q. / (916) 651-4108

6/25/20 12:39:00

**** END ****