

Date of Hearing: August 18, 2020

ASSEMBLY COMMITTEE ON APPROPRIATIONS

Lorena Gonzalez, Chair

SB 995 (Atkins) – As Amended August 12, 2020

Policy Committee: Natural Resources

Vote: 8 - 1

Urgency: No

State Mandated Local Program: Yes

Reimbursable: No

SUMMARY:

This bill extends the expedited California Environmental Quality Act (CEQA) administrative and judicial review procedures established by the Jobs and Economic Improvement Through Environmental Leadership Act (Leadership Act) for “environmental leadership development projects” (Leadership Projects) for four years. Additionally, this bill expands the Leadership Act to include smaller housing projects. Among other provisions, this bill:

- 1) Extends eligibility to any housing project that will result in a minimum investment of \$15 million, provided at least 15% of the project is affordable to lower income households and the project is not used as a short-term rental. Clarifies that where a jurisdiction has an inclusionary ordinance requiring more than 15% affordable housing, the higher inclusionary requirement applies.
- 2) Adds additional construction labor requirements for all eligible projects and requires certification by the Governor.
- 3) Clarifies that the 270-day judicial review deadline is counted in business days and includes appeals to the court of appeal or Supreme Court.
- 4) Requires a lead agency to prepare a master EIR for a general plan, plan amendment, plan elements, or specific plan for housing projects where the state has provided funding for the preparation of the master EIR.
- 5) Establishes guidelines for baseline quantification and mitigation of GHG emissions, as specified, to be certified by the Governor.
- 6) Requires an applicant to pay costs of the superior court, as well as the Court of Appeal, in hearing and deciding any case.
- 7) Establishes a process for the certification of an alternative project, as defined, by the Governor.

FISCAL EFFECT:

- 1) Annual General Fund costs of \$875,000, over the next four years, for the Office of Planning and Research (OPR) to assist the Governor’s office in the review of leadership projects,

including the quantification of greenhouse gas (GHG) emissions, and to issue guidelines regarding application and certification of projects, as necessary.

- 2) Unknown General Fund administrative costs for the Governor's legal office to continue and expand its Leadership Act operations for four more years to include housing and alternative projects.

COMMENTS:

- 1) **Background and Purpose.** In 2011, AB 900 (Buchanan) and SB 292 (Padilla), Chapters 353 and 354 respectively, Statutes of 2011, established expedited CEQA judicial review procedures for a limited number of projects. For AB 900, it was large-scale projects meeting extraordinary environmental standards and providing significant jobs and investment. For SB 292, it was a proposed downtown Los Angeles football stadium and convention center project achieving specified traffic and air quality mitigations.

For the eligible projects, the bills provided for original jurisdiction by the Court of Appeal and a compressed schedule requiring the court to render a decision on any lawsuit within 175 days. This promised to reduce the existing judicial review timeline by 100 days or more, while creating new burdens for the courts and litigants to meet the compressed schedule.

AB 900's provision granting original jurisdiction to the Court of Appeal was invalidated in 2013 by a decision in Alameda Superior Court in "Planning and Conservation League v. State of California." AB 900 was subsequently revised to restore jurisdiction to superior courts and require resolution of lawsuits within 270 days, to the extent feasible.

This bill updates and extends the Leadership Act for four years and expands eligibility to include smaller housing units.

- 2) **Leadership Act.** To date, 17 projects have been certified by the Governor under the Leadership Act. Conditions for certification include Leadership in Energy and Environmental Design (LEED) gold-certified infill site projects, clean renewable energy projects, and clean energy manufacturing projects. The Leadership Act sunsets January, 1, 2021.
- 3) **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 apply to business days or calendar days and if it includes appeals to the Supreme Court, (b) non-CEQA related actions that are not subject to the 270 day timeframe and are filed in addition to CEQA actions, or (c) consolidation of many, and sometimes complicated, actions.
- 4) **Related Legislation.** SB 757 (Allen) expands eligibility for CEQA administrative and judicial review procedures established by Leadership Act to allow zero-emission rail transit projects to be considered as leadership projects. SB 757 is single-joined to this bill and is pending in this committee.