

SENATE THIRD READING  
SB 995 (Atkins, et al.)  
As Amended August 25, 2020  
Majority vote

## **SUMMARY:**

Extends for four years the expedited California Environmental Quality Act (CEQA) administrative and judicial review procedures established by the Jobs and Economic Improvement Through Environmental Leadership Act [AB 900 (Buchanan), Chapter 354, Statutes of 2011] for "environmental leadership development projects" (ELDPs). Expands AB 900 eligibility to include smaller housing projects.

### **Major Provisions**

- 1) Extends AB 900's certification deadlines and sunset for four years, as follows:
  - a) ELDP must be certified by the Governor before January 1, 2024.
  - b) ELDP must be approved by the lead agency before January 1, 2025.
  - c) AB 900 chapter sunsets January 1, 2025.
- 2) Extends eligibility to housing projects that will result in a minimum investment of \$15 million, but less than \$100 million, provided at least 15% of project is affordable to lower income households and the project is not used as a short-term rental.
- 3) Adds additional construction labor requirements to the existing prevailing wage/project labor agreement requirements, requiring eligible projects to use a "skilled and trained" workforce for all construction work.
- 4) Requires project applicants to pay the costs of the trial court, in addition to the court of appeal, in hearing and deciding any case.
- 5) Clarifies that the 270-day judicial review deadline is counted in business days and includes appeals to the court of appeal or Supreme Court.
- 6) Specifies procedures for the quantification and mitigation of greenhouse gas (GHG) emissions for eligible projects, except for housing projects from \$15-100 million. Requires the baseline for GHG emissions be established based upon the physical conditions at the project site at the time the application is submitted. Prioritizes on-site and local direct GHG emissions reductions over offsets.
- 7) Authorizes the Governor, before a lead agency's approval of a ELDP, to certify a project alternative if the alternative also complies with AB 900's statutory conditions at the time of the Governor's original certification.
- 8) Requires a lead agency to prepare a master Environmental Impact Report (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.

**COMMENTS:**

In 2011, AB 900 and SB 292 (Padilla), Chapter 353, 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 these 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.

Of the 17 projects certified in eight years of AB 900, only two projects have been built to date, and neither includes housing.

The two completed projects are the Apple Campus in Cupertino and the Golden State Warriors arena (Chase Center) in San Francisco. These two projects took different approaches to "environmental leadership" and mitigating project GHG emissions.

The Apple project, a large, ring-shaped office building, was designed and built consistent with Apple's corporate sustainability goals. The zero-net-energy building reduced GHG compared to the prior office buildings. Apple further committed to extraordinary measures to encourage employees to use bicycles, transit, and electric vehicles to reduce vehicle emissions. Construction emissions were offset by committing to purchase 100% renewable energy.

The Warriors project deducted the baseline GHG emissions from its prior arena in Oakland to reduce its GHG mitigation obligation, then committed to mitigate remaining GHG emissions by purchasing voluntary offsets. (This is consistent with the approach proposed by many other AB 900 projects.)

Though the Chase Center was certified by the Governor in 2015 and opened in August 2019, the Warriors first offset purchase was not executed until March 26, 2020. To offset its construction emissions, the Warriors purchased offsets sourced from the Hernando County Landfill in Florida at a cost of \$3.50/ton. The total cost of offsetting construction emissions for the \$1.4 billion Chase Center was \$39,869. The cost of a single courtside season ticket in the 18,064-seat Chase Center is \$52,800.

Many infill housing projects consistent with the applicable SCS are eligible for existing statutory or categorical exemptions under CEQA, without having to meet the additional conditions, process, and expense associated with AB 900 or master EIR certification.

The master EIR process has had limited use by local governments to plan for housing because a master EIR expires after five years and does not offer the longevity of a program EIR or the streamlining benefits of a specific plan EIR, which enables a full CEQA exemption for subsequent residential projects.

The AB 900 process requires a project applicant to meet AB 900's environmental and labor conditions, complete an EIR, prepare for an expedited trial in the event of litigation, and pay agency and court costs. It may be more suited for large projects with teams of attorneys and consultants, rather than smaller housing projects that may be exempt from CEQA or eligible for a negative declaration, and not required to prepare an EIR, under current law.

**According to the Author:**

No statement provided.

**Arguments in Support:**

According to the Home Building Alliance, SB 995 is an important tool to help address California's increasing need for additional housing units.

**Arguments in Opposition:**

According to Judicial Council, imposing a 270-day timeline for the review of potentially hundreds of housing projects, on top of existing CEQA calendar preferences, is an arbitrary and unrealistically short timeframe for California's trial courts to address all of the issues each CEQA case is likely to present.

**FISCAL COMMENTS:**

According to the Assembly Appropriations Committee:

- 1) Annual General Fund costs of \$875, 000, over the next four years, for Office of Planning and Research (OPR) to assist the Governor's office in the review of leadership projects, including the quantification of 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.
- 3) OPR and Governor's office costs will be offset by the applicant fee should one be established.

**VOTES:**

**SENATE FLOOR: 32-4-4**

**YES:** Allen, Archuleta, Atkins, Beall, Bradford, Caballero, Chang, Dodd, Durazo, Galgiani, Glazer, Lena Gonzalez, Hertzberg, Hill, Hueso, Hurtado, Jackson, Leyva, McGuire, Mitchell, Monning, Nielsen, Pan, Portantino, Roth, Rubio, Skinner, Stern, Umberg, Wieckowski, Wiener, Wilk

**NO:** Grove, Jones, Moorlach, Morrell

**ABS, ABST OR NV:** Bates, Borgeas, Dahle, Melendez

**ASM NATURAL RESOURCES: 8-1-2**

**YES:** Friedman, Flora, Chau, Eggman, Luz Rivas, Mathis, McCarty, Cunningham

**NO:** Mark Stone

**ABS, ABST OR NV:** Cristina Garcia, Muratsuchi

**ASM APPROPRIATIONS: 16-0-2**

**YES:** Gonzalez, Bigelow, Bauer-Kahan, Bloom, Bonta, Calderon, Carrillo, Chau, Diep, Eggman, Gabriel, Eduardo Garcia, Petrie-Norris, Quirk, Robert Rivas, Voepel

**ABS, ABST OR NV:** Megan Dahle, Fong

**UPDATED:**

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