
UNFINISHED BUSINESS

Bill No: SB 995
Author: Atkins (D), Caballero (D), Rubio (D) and Wiener (D), et al.
Amended: 8/25/20
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

SENATE APPROPRIATIONS COMMITTEE: 7-0, 6/18/20
AYES: Portantino, Bates, Bradford, Hill, Jones, Leyva, Wieckowski

SENATE FLOOR: 32-4, 6/25/20
AYES: 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
NOES: Grove, Jones, Moorlach, Morrell
NO VOTE RECORDED: Bates, Borgeas, Dahle, Melendez

ASSEMBLY FLOOR: Not available

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 expedited California
Environmental Quality Act (CEQA) administrative and judicial review procedure

established by the Jobs and Economic Improvement Through Environmental Leadership Act for “environmental leadership development projects” (ELDP) and expands the Act’s eligibility to include smaller housing projects.

Assembly Amendments prohibit any part of a housing project that is seeking eligibility under the Act from being used for a rental unit, from being designated for hotel, motel, bed and breakfast inn, or other transient-lodging use, or from being used for manufacturing or industrial uses; specify procedures for the quantification and mitigation of greenhouse gas (GHG) emissions for eligible projects, except for the smaller housing projects; and prioritize on-site and local direct GHG emissions reductions over offsets.

ANALYSIS:

Existing law, under 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 development projects that meet certain requirements, including a minimum investment of \$15,000,000 in California, at least 15 percent of the project is dedicated to housing that is affordable to lower income households, and labor requirements, eligible for certification.
 - a) Prohibits any part of the housing project from being used for manufacturing or industrial uses, a rental unit for a term shorter than 30 days, or designated for hotel, motel, bed and breakfast inn, or other transient-lodging use.
 - b) Specifies that if a local agency has adopted an inclusionary zoning ordinance that establishes a minimum percentage for affordable housing within the jurisdiction that is higher than the 15 percent required by the bill, that the ordinance shall be used.
 - c) Specifies that a housing development project is a project for residential units only, mixed use development with at least two-thirds of the square footage dedicated to residential use, or transitional or supportive housing.
- 4) Specifies procedures for the quantification and mitigation of GHG emissions that would apply to ELDPs, except for the smaller housing projects, and prioritizes on-site and local direct GHG emissions reductions over offsets.
- 5) Requires the project applicant to agree to pay the costs of the trial court, in addition to the existing requirement to pay for the costs of the court of appeal.
- 6) Authorizes the Office of Planning and Research to charge a fee to an applicant seeking certification pursuant to the Act for costs incurred by the Governor's Office in implementing the Act.

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 Housing Units</i>
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 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: (1) the Sacramento Kings Arena (*Adriana Gianturco Saltonstall et al. v. City of Sacramento*), (2) the Golden State Warriors Arena (*Mission Bay Alliance et al. v. Office of Community Investment and Infrastructure* and a separate non-CEQA lawsuit), (3) 8150 Sunset Boulevard Mixed Use Development which had 4 CEQA challenges to the 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*), and (4) the Los Angeles Clippers Arena (*Saulo Eber Chan*; *MSG Forum, LLC v. Gavin C. Newsom*; *Joint Legislative Budget Committee*). The first three challenges have demonstrated that 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. The fourth action, against the Los Angeles Clippers Arena, 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. 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.
- 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.

Related/Prior Legislation

SB 757 (Allen) makes zero-emission, fixed guideway transit projects eligible for expedited CEQA administrative and judicial review procedures established by AB 900, subject to the enactment of this bill.

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

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.

SUPPORT: (Verified 8/30/20)

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Associated Builders and Contractors Northern California Chapter

Bay Area Council

California Apartment Association

California Association of Realtors

City of San Diego

City of San Jose

Civil Justice Association of California

Council President Georgette Gómez, City of San Diego

Downtown San Diego Partnership

Habitat for Humanity California

Los Angeles Business Council

Riley Realty, LP

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

San Diego County Board of Supervisors, Greg Cox, Chairman

San Diego Regional Economic Development Corporation
San Francisco Bay Area Planning and Urban Research Association
San Francisco Housing Action Coalition
Schneider Electric
Southern California Leadership Council
Yimby Law

OPPOSITION: (Verified 8/31/20)

Angeles Mesa Homeowners Community Group
Associated Builders and Contractors - Southern California Chapter
California Judges Association
City of Hidden Hills
City of Malibu
City of Torrance
Communities United Cd7
Friends of Sunset Park
Riviera Homeowners Association
Shadow Hills Property Owners Association
Sustainable Tamalmonite
Tamalpais Design Review Board
Victoria/54th Ave Block Club
View Heights Block Club
WCH Association
Western Electrical Contractors Association

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