

Date of Hearing: May 5, 2021

ASSEMBLY COMMITTEE ON APPROPRIATIONS

Lorena Gonzalez, Chair

SB 7 (Atkins) – As Amended February 18, 2021

Policy Committee: Natural Resources

Vote: 9 - 1

Urgency: Yes

State Mandated Local Program: Yes

Reimbursable: No

SUMMARY:

This bill re-establishes the expedited California Environmental Quality Act (CEQA) administrative and judicial review procedures in 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:

- 2) Extends eligibility to any housing project that will result in a minimum investment of \$15 million, but less than \$100 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.
- 3) Adds additional construction labor requirements for all eligible projects.
- 4) 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.
- 8) Allows a project certified by the Governor under the former Leadership Act before January 1, 2020, and approved by a lead agency on or before January 1, 2022, to be governed by the requirements of the former act.

FISCAL EFFECT:

- 1) Annual General Fund costs of about \$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. These costs could be partially offset by fee revenue paid by applicants

- 2) Unknown General Fund administrative costs for the Governor's legal office to reinstate and expand its Leadership Act operations for four more years to include housing and alternative projects.
- 3) Potential unknown but likely minor 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.
- 4) Potential 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.

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.

On January 1, 2021, the Leadership Act expired. This bill updates and re-enacts 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, few 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) **Prior legislation.** This bill is substantially similar to SB 995 (Atkins), although the fee to pay the costs of the Governor's office was mandatory unlike this bill. SB 995 did not pass the Senate before sine die adjournment of the 2019-2020 session.

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