

SENATE THIRD READING
SB 7 (Atkins)
As Amended February 18, 2021
2/3 vote. Urgency

SUMMARY

Reenacts and revises 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), as defined. Also expands AB 900 eligibility to include smaller housing projects. Urgency measure.

Major Provisions

- 1) Reenacts AB 900 with the following deadlines:
 - 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, 2026.
- 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 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 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 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's Office of Planning and Research (OPR) to charge an applicant fee.
- 8) Authorizes the Governor, before a lead agency's approval of an 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.
- 9) Provides that an ELDP certified by the Governor under the former AB 900 before January 1, 2020, and that is approved by a lead agency on or before January 1, 2022, shall be entitled to

the benefits of, and shall comply with, the requirements set forth in the former AB 900 chapter as it read on January 1, 2020.

10) Is an urgency statute.

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 are eligible for existing statutory or categorical exemptions under CEQA, without having to meet the additional conditions, process, and expense associated with AB 900. The AB 900 process requires a project applicant to meet AB 900's environmental and labor conditions, complete an environmental impact report (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

SB 7 seeks to help address our state's affordable housing crisis by extending and expanding provisions of a CEQA streamlining statute known as "AB 900," which reduces paperwork and expedites legal challenges to large, multi-benefit housing, energy, and manufacturing projects.

SB 7 extends the 2021 'sunset' of AB 900 through the end of the year 2025 for the larger projects covered under the prior law. But it also expands the law to apply streamlining to much smaller housing projects, lowering the threshold of qualifying projects to \$15 million, an 85% reduction in required investment over the prior law.

Under SB 7, housing projects are required to have at least 15% affordable housing, to be infill projects, and to meet "skilled and trained" labor requirements and elevated environmental standards.

SB 7 does not affect CEQA mitigation or limit legal challenges under CEQA.

Rather, it helps speed up processing of important projects while protecting the environment.

Arguments in Support

According to San Jose Mayor Sam Liccardo, "The City was not able to meet the December 31, 2020, deadline for AB 900 due to the pandemic delaying the production of the (Downtown West Mixed Use Plan) EIR and other project documents, slowing the project review process, and making meaningful public involvement more challenging... SB 7 will allow additional time to complete the project documents, complete an extensive community engagement process, and conduct the required public hearings. SB 7 would also extend CEQA streamlining provisions to housing developments."

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 about \$875,000, over the next four years, for OPR to assist the Governor's office in the review of ELDPs, including the quantification of 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 AB 900 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.

VOTES

SENATE FLOOR: 34-0-5

YES: Allen, Archuleta, Atkins, Bates, Becker, Borgeas, Bradford, Caballero, Cortese, Dahle, Dodd, Durazo, Eggman, Gonzalez, Hertzberg, Hueso, Hurtado, Jones, Laird, Leyva, McGuire, Min, Newman, Nielsen, Ochoa Bogh, Pan, Portantino, Roth, Rubio, Skinner, Umberg, Wieckowski, Wiener, Wilk

ABS, ABST OR NV: Glazer, Grove, Limón, Melendez, Stern

ASM NATURAL RESOURCES: 9-1-1

YES: Luz Rivas, Flora, Chau, Friedman, Mathis, McCarty, Muratsuchi, Seyarto, Wood

NO: Stone

ABS, ABST OR NV: Cristina Garcia

ASM APPROPRIATIONS: 16-0-0

YES: Lorena Gonzalez, Bigelow, Calderon, Carrillo, Chau, Megan Dahle, Davies, Fong, Gabriel, Eduardo Garcia, Levine, Quirk, Robert Rivas, Holden, Akilah Weber, Berman

UPDATED

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CONSULTANT: Lawrence Lingbloom / NAT. RES. / (916) 319-2092

FN: 0000319