

Date of Hearing: April 28, 2021

ASSEMBLY COMMITTEE ON NATURAL RESOURCES

Luz Rivas, Chair

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

SENATE VOTE: 34-0

SUBJECT: Environmental quality: Jobs and Economic Improvement Through Environmental Leadership Act of 2021

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.

EXISTING LAW:

- 1) Pursuant to CEQA, requires a lead agency with the principal responsibility for carrying out or approving a proposed discretionary project to evaluate the environmental effects of its action and prepare a negative declaration, mitigated negative declaration, or environmental impact report (EIR). If an initial study shows that the project may have a significant effect on the environment, the lead agency must prepare an EIR. CEQA authorizes judicial review of the agency's decision to carry out or approve the project. Challenges alleging improper determination that a project may have a significant effect on the environment, or alleging an EIR does not comply with CEQA, must be filed in the superior court within 30 days of filing of the notice of approval. The courts are required to give CEQA actions preference over all other civil actions.
- 2) Pursuant to AB 900, which sunset January 1, 2021, established procedures for expedited administrative and judicial review (i.e., limiting public comments, requiring preparation of the record concurrently with the administrative process, and requiring the courts to resolve lawsuits challenging CEQA or other approvals within 270 days from the date the certified record is filed with the court, to the extent feasible) for ELDPs certified by the Governor and meeting specified conditions, including Leadership in Energy and Environmental Design (LEED) gold-certified infill site projects, clean renewable energy projects, and clean energy manufacturing projects.
 - a) Defined ELDP as a CEQA project that is one of the following:
 - i) A residential, retail, commercial, sports, cultural, entertainment, or recreational use project that is certified as LEED gold or better by the United States Green Building Council and, where applicable, that achieves a 15% greater standard for transportation efficiency than for comparable projects.
 - (1) Required that these projects be located on an infill site.

- (2) Required a project that is within a metropolitan planning organization for which a sustainable communities strategy (SCS) or alternative planning strategy (APS) is in effect, to be consistent with specified policies in either the SCS or APS.
- ii) A clean renewable energy project that generates electricity exclusively through wind or solar, but not including waste incineration or conversion.
- iii) A clean energy manufacturing project that manufactures products, equipment, or components used for renewable energy generation, energy efficiency, or for the production of clean alternative fuel vehicles.
- b) Authorized a person proposing to construct an ELDP to apply to the Governor for certification that the ELDP is eligible for streamlining. Required the person to supply evidence and materials that the Governor deems necessary to make a decision on the application. Required any evidence or materials be made available to the public at least 15 days before the Governor certifies a project pursuant to AB 900.
- c) Authorized the Governor to certify an ELDP if the Governor finds the project met all of the following conditions:
 - i) The project will result in a minimum investment of \$100 million in California upon completion of construction.
 - ii) The project creates high-wage, highly skilled jobs that pay prevailing wages and living wages, provides construction jobs and permanent jobs for Californians, and helps reduce unemployment.
 - (1) Requires contractors and subcontractors to pay to all construction workers employed in the execution of the project at least the general prevailing rate of per diem wages.
 - (2) Provides that this obligation may be enforced by the Labor Commissioner through the issuance of a civil wage and penalty assessment pursuant to relevant provisions of the Labor Code, unless all contractors and subcontractors performing work on the project are subject to a project labor agreement that requires the payment of prevailing wages and provides for enforcement through an arbitration procedure.
 - iii) The project does not result in any net additional greenhouse gas (GHG) emissions, including emissions from employee transportation, as determined by the Air Resources Board (ARB).
 - iv) A multifamily residential project provides unbundled parking, such that private vehicle parking spaces are priced and rented or purchased separately from dwelling units, except for units subject to affordability restrictions in law that prescribe rent or sale prices, where the cost of parking spaces cannot be unbundled from the cost of dwelling units.
 - v) The project applicant has entered into a binding and enforceable agreement that all mitigation measures required under CEQA shall be conditions of approval of the

- project, and those conditions will be fully enforceable by the lead agency or another agency designated by the lead agency. In the case of environmental mitigation measures, the applicant agrees, as an ongoing obligation, that those measures will be monitored and enforced by the lead agency for the life of the obligation.
- vi) The project applicant agrees to pay the costs of the Court of Appeal in hearing and deciding any case, including payment of the costs for the appointment of a special master if deemed appropriate by the court, in a form and manner specified by the Judicial Council.
 - vii) The project applicant agrees to pay the costs of preparing the administrative record for the project concurrent with review and consideration of the project pursuant to CEQA, in a form and manner specified by the lead agency for the project.
- d) Required the Governor, prior to certifying a project, to make a determination that each of the conditions specified above has been met. These findings are not subject to judicial review.
 - e) If the Governor determined that an ELDP is eligible for streamlining, required the Governor to submit that determination, and any supporting information, to the Joint Legislative Budget Committee (JLBC) for review and concurrence or non-concurrence.
 - f) Required the JLBC to concur or non-concur in writing within 30 days of receiving the Governor's determination.
 - g) Deemed the ELDP certified if the JLBC fails to concur or non-concur on a determination by the Governor within 30 days of the submittal.
 - h) Authorized the Governor to issue guidelines regarding application and certification of projects pursuant to AB 900. These guidelines are not subject to the rulemaking provisions of the Administrative Procedure Act.
 - i) Required the Judicial Council to adopt a rule of court to establish procedures that require resolution, to the extent feasible, within 270 days, including any appeals, of a lawsuit challenging the certification of the EIR or any project approvals for a certified ELDP.
 - j) Prohibited AB 900 from applying to an ELDP if the applicant fails to notify a lead agency prior to the release of the draft EIR for public comment.
 - k) Required the draft and final EIR to include a specified notice in no less than 12-point type regarding the draft and final EIR being subject to AB 900.
 - l) Provided that the provisions of AB 900 are severable.
 - m) Provided that nothing in AB 900 affects the duty of any party to comply with CEQA, except as otherwise provided in AB 900.
 - n) Prohibited AB 900 from applying to a project if the Governor does not certify the project prior to January 1, 2020.

- o) Provided that certification of the ELDP expires and is no longer valid if the lead agency fails to approve the project prior to January 1, 2021.

THIS BILL:

- 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 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 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.

FISCAL EFFECT: Unknown

COMMENTS:

- 1) **Background.** CEQA provides a process for evaluating the environmental effects of applicable projects undertaken or approved by public agencies. If a project is not exempt from CEQA, an initial study is prepared to determine whether the project may have a significant effect on the environment. If the initial study shows that there would not be a significant effect on the environment, the lead agency must prepare a negative declaration. If the initial study shows that the project may have a significant effect on the environment, the lead agency must prepare an EIR.

Generally, an EIR must accurately describe the proposed project, identify and analyze each significant environmental impact expected to result from the proposed project, identify mitigation measures to reduce those impacts to the extent feasible, and evaluate a range of reasonable alternatives to the proposed project. If mitigation measures are required or incorporated into a project, the agency must adopt a reporting or monitoring program to ensure compliance with those measures.

CEQA actions taken by public agencies can be challenged in superior court once the agency approves or determines to carry out the project. CEQA appeals are subject to unusually short statutes of limitations. Under current law, court challenges of CEQA decisions generally must be filed within 30 to 35 days, depending on the type of decision. The courts are required to give CEQA actions preference over all other civil actions. The petitioner must request a hearing within 90 days of filing the petition and, generally, briefing must be completed within 90 days of the request for hearing. However, CEQA imposes no deadline for the court to render a decision.

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.

From 2012-2020, 17 projects were certified under AB 900:

- McCoy Solar Energy Project in Riverside County.
- Apple Campus 2 in Cupertino.
- Soitec Solar Energy Project in San Diego County.
- 8150 Sunset Boulevard, a mixed-use commercial and residential project in Hollywood.
- Event Center and Mixed-Use Development at Mission Bay Blocks (i.e., Warriors arena) in San Francisco.

- Qualcomm Stadium Reconstruction Project in San Diego.
- 6701 Sunset/Crossroads, a mixed-use residential, hotel, and commercial project in Hollywood.
- Yucca-Argyle Project, a mixed-use residential, hotel, and commercial project in Hollywood.
- 10 Van Ness Avenue, a mixed-use commercial/residential redevelopment project in San Francisco.
- 1045 Olive Street Project, a mixed-use commercial/residential redevelopment project in downtown Los Angeles.
- Hollywood Center Project, a mixed-use project in Hollywood.
- Potrero Power Station Mixed-use Project in San Francisco.
- 3333 California Street Project, a mixed-use commercial/residential redevelopment project in San Francisco.
- Hollywood & Wilcox Mixed-Use Project, a residential/retail/office project in Hollywood.
- Balboa Reservoir, a mixed-income housing/retail project in San Francisco.
- Downtown West Mixed Use Plan, an office/retail/hotel/events/housing/utility project in San Jose.
- California Northstate University Medical Center Project, a hospital/medical office project in Elk Grove.

- 2) **Senate review of ELDPs.** In April 2019, the Senate Office of Research (SOR) published a review of ELDPs certified under AB 900 (<https://sor.senate.ca.gov/environmentalquality>).

One key finding from the report is that the benefits of achieving zero-net additional GHG emissions and the transportation efficiency requirements, as well as the benefits from jobs and housing creation, are largely unknown and uncertain. The unknown benefits from jobs and housing creation are simply due to not having any requirements for the project developers to report these statistics. However, the uncertainty from the GHG emissions and transportation efficiency requirements is primarily due to the problematic use of a baseline to measure current existing conditions. The report found that ELDPs appear to have much discretion in choosing various assumptions to determine their baselines and a lack of guidance and ambiguity presents verification challenges during the certification process. To resolve this issue, the SOR report provided recommendations for the Legislature to consider that would eliminate the use of a baseline and provide more robust upfront and locally-specific environmental benefits. These options included requiring upfront traffic and air pollution impact fees, a vehicle miles traveled threshold, and site-specific clean energy requirements.

To date, two ELDPs, the Warriors arena and 8150 Sunset Boulevard projects (as well as Sacramento's Golden One Center project subject to similar procedures) have been challenged in court and received expedited judicial review. Although the shortened judicial review timeline of 270 days was not always met for these projects, the SOR report found that these projects have moved through the litigation process much faster than normal timelines. The ELDPs have likely received a significant streamlining benefit largely due to the concurrent preparation of the administrative record, as well as the judges' deference to meeting the timeline and establishing streamlined court procedures. Additionally, the report found that all of the petitioners for the three ELDP CEQA cases stated that the shortened judicial review

timeline did not adversely affect their ability to present their issues before the court. Recommendations from the SOR report related to the expedited judicial review process includes extending and clarifying the 270-day timeline and reducing adverse impacts on lead agencies when concurrently preparing the administrative record by extending some requirements.

- 3) **Is AB 900 keeping pace with environmental leadership on GHG mitigation and clean air?** Following the enactment of AB 32 in 2006, SB 97 was enacted in 2007 to confirm the requirement to address environmental impacts of GHG emissions under CEQA and require the adoption of CEQA Guidelines for the mitigation of GHG emissions or the effects of GHG emissions, including effects associated with transportation or energy consumption. SB 97 requires the CEQA Guidelines to be periodically updated to incorporate new information or criteria established by ARB pursuant to AB 32.

Under CEQA Guidelines adopted pursuant to SB 97, a project's GHG emissions can be reduced by "off-site measures, including offsets that are not otherwise required" and "measures that sequester greenhouse gases." The CEQA Guidelines allow projects to reduce GHG emissions by relying on voluntary market offsets that are not otherwise required as well as other offsite and sequestration measures that result in GHG reductions.

When it was enacted in 2011, AB 900 required projects to achieve GHG neutrality, without specifying how. In practice, the AB 900 projects have relied heavily on voluntary offsets. Meanwhile, California's climate policy has focused increasingly on achieving local clean air co-benefits and reducing the reliance on offsets. In 2017, the Legislature's extension of the cap-and-trade program, AB 398, included a reduction in total amount of offsets that may be used for compliance, coupled with a requirement that at least half of offsets result in environmental benefits within California. A companion measure, AB 617, focused on improving local air quality by updating pollution controls at large industrial facilities in the cap-and-trade program and implementing community-based emission reduction programs in the most pollution-burdened communities.

Over the same time period, CEQA practice has demonstrated the feasibility of GHG mitigation plans that incorporate significant on-site and local direct GHG reduction measures, rather than relying entirely on offsets to mitigate projects' GHG emissions. For example, Newhall Ranch, a large project of over 20,000 homes and related development in Los Angeles County near Santa Clarita, was approved in 2017 with the developer's commitment to "achieve zero net GHG emissions using feasible and reliable emission-reduction actions related to the land development project, the implementation of direct measures to reduce GHG emissions on-site, and the procurement of GHG offsets." To achieve net zero GHG, 13 mitigation measures were adopted for Newhall Ranch, including on-site, off-site and offsets. In total, approximately 55% of the GHG reductions are from on-site and local direct reduction measures, with the balance from offset projects, including some located in California.

In 2018, the Legislature passed AB 734 (Bonta) and AB 987 (Kamlager) to provide expedited judicial review for the Oakland A's and Los Angeles Clippers projects respectively. AB 734 and AB 987 required at least 50% of GHG mitigation from on-site and local direct GHG reduction measures, and limited the use of offsets to 50% of GHG mitigation.

This bill replaces AB 900's "GHG neutral, as determined by ARB" standard with improved procedures for the quantification and mitigation of GHG emissions for eligible projects, except for housing projects from \$15-100 million. The bill requires the baseline for GHG emissions be established based upon the physical conditions at the project site at the time the application is submitted and prioritizes on-site and local direct GHG emissions reductions over offsets.

- 4) **AB 900's real world performance.** 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.

- 5) **Prior legislation.** This bill is substantially similar to SB 995 (Atkins), as amended and approved by this committee on August 6, 2020 by a vote of 8-1. Though SB 995 passed the Assembly on August 31, 2020 by a vote of 62-4, it was not passed by the Senate before sine die adjournment of the 2019-2020 session.

REGISTERED SUPPORT / OPPOSITION:

Support

Bay Area Council
California Association of Realtors
California Labor Federation, AFL-CIO
California Professional Firefighters
California State Association of Electrical Workers
California Yimby
City of Lafayette
City of San Jose

Council of Infill Builders
County of San Diego Supervisor Nathan Fletcher, District 4
Facebook
Google
Harridge Development Group
Hollywood Chamber of Commerce
International Brotherhood of Boilermakers, Western States Section
Joint Venture Silicon Valley Network
San Diego's Building and Construction Trades
San Diego City Council President Pro Tem Stephen Whitburn
San Diego County Local 30 Unite Here
San Diego Economic Development Corporation
San Diego Regional Chamber of Commerce
San Francisco Bay Area Planning and Research Association (SPUR)
San Jose Downtown Association
Schneider Electric
Silicon Valley at Home
Silicon Valley Leadership Group
Southern California Association of Governments
State Building and Construction Trades Council of California
TechNet
Valley Industry and Commerce Association
Zillow Group

Opposition

City of Beverly Hills
City of Cupertino (unless amended)
Judicial Council of California
StopTheMillenniumHollywood.com
Sustainable Tamalmonite

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