
SENATE COMMITTEE ON APPROPRIATIONS

Senator Anthony Portantino, Chair
2021 - 2022 Regular Session

SB 7 (Atkins) - Environmental quality: Jobs and Economic Improvement Through Environmental Leadership Act of 2021

Version: February 18, 2021

Urgency: Yes

Hearing Date: February 25, 2021

Policy Vote: E.Q. 5 - 0

Mandate: Yes

Consultant: Ashley Ames

Bill Summary: This bill would reenact the Jobs and Economic Improvement Through Environmental Leadership Act of 2011 until January 1, 2026, and would expand the Act's eligibility to include smaller housing projects.

Fiscal Impact:

- The Office of Planning and Research (OPR) estimates costs of \$872,000 annually until the January 1, 2026 sunset (General Fund) to verify qualifying criteria, correspond and coordinate with applicants, and prepare application packages for presentation to the Governor. These costs could be partially offset by fee revenue paid by applicants. (See staff comments.)
- 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. (See staff comments.)
- 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.

Background:

Existing law, under the California Environmental Quality Act (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) Established 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. Under AB 900, the Governor had until January 1, 2020, to certify a project and the Act was repealed by its own provisions on January 1, 2021. (PRC §21178 et seq.).

The Jobs and Economic Improvement Through Environmental Leadership Act of 2011 (AB 900). AB 900 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. The Act sunset on January 1, 2021.

Housing challenges in California. California faces a severe housing shortage. In its most recent statewide housing assessment, the California Department of Housing and Community Development (HCD) estimated that California needs to build an additional 100,000 units per year over recent averages of 80,000 units per year to meet the projected need for housing in the state. A variety of causes have contributed to the state's lack of adequate housing production. Recent reports by the Legislative Analyst's Office and others point to local approval processes as a major factor. The building industry has indicated it believes that CEQA review is a factor.

California Environmental Quality Act (CEQA) proceedings. 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 timeframe for certain CEQA-related actions or proceedings. Such mandates on a court can delay access for other cases, such as medical malpractice suits, wrongful death suits, or contract disputes, as well as potentially exacerbate a court's backlog on civil documents, such as filing a new civil complaint, processing answers and cross complaints, or processing a demurrer or summary judgement. Calendar preferences and guaranteed timeframes create additional demands on our courts that have very limited resources and a never-ending supply of cases to hear.

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. 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.

Proposed Law: This bill would reenact the Jobs and Economic Improvement Through Environmental Leadership Act of 2011, with certain changes. Specifically, those changes to the Act are:

- 1) Expanding streamlining eligibility to small housing development projects that are located on an infill site; meet certain planning criteria specified in a sustainable communities strategy or alternative planning strategy, as applicable; result in a minimum \$15,000,000, but less than \$100,000,000 investment in California upon completion, and have at least 15% of its housing dedicated to affordable housing.
 - a. Requiring, upon completion of the housing development project, the lead agency or applicant to notify the Office of Planning and Research (OPR) of the number of housing units and affordable housing units established by the project.
- 2) Specifying procedures for the quantification and mitigation of GHG emissions that would apply to ELDPs, except for smaller housing projects, and prioritizes on-site and local direct GHG emissions reductions over offsets.
- 3) Adding 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) Specifically authorizing the Governor to certify a leadership project before the lead agency files the final environmental impact report for the project if specified conditions are met.
- 5) Requiring 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) Authorizing 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.
- 7) Specifying that the rule of court established by Judicial Council under the Act is to require resolution within 270 days and includes any appeals to the court of appeal or the Supreme Court.
- 8) Sunsetting the Jobs and Economic Improvement Through Environmental Leadership Act of 2011, including the changes made by this bill, on January 1, 2026.
- 9) Providing that projects certified by the Governor under the former Act before January 1, 2020, and approved by the lead agency by January 1, 2022, are subject to the benefits and requirements of the former Act.
- 10) Taking effect immediately.

Related Legislation:

SB 995 (Atkins, 2020) would have extended the Jobs and Economic Improvement Through Environmental Leadership Act for four years and made various changes to the act, including expanding certification eligibility to smaller housing development projects. SB 995 died on the Senate Floor.

AB 2991 (Santiago, 2020) would have extended the Jobs and Economic Improvement Through Environmental Leadership Act for five years, and made various changes to the requirements of the Act. AB 2991 died in the Assembly Appropriations Committee.

SB 25 (Caballero, 2019) would have provided qualified projects, which included housing projects that would obtain LEED Gold certification and with a minimum 40% affordable housing, with expedited judicial review. SB 25 died in the Assembly Natural Resources Committee.

SB 621 (Glazer, 2019) would have provided affordable housing projects that met certain requirements, including LEED Gold certification and a minimum 30% of the housing units be affordable housing, with expedited judicial review. SB 621 died in the Assembly Natural Resources Committee.

AB 246 (Santiago, Chapter 522, Statutes of 2017) extended the operation of AB 900 by 2 years, until 2021, changed the environmental requirements for ELDPs to require LEED Gold certification instead of LEED Silver, increased the transportation efficiency requirement from 10% to 15%, and required the project to demonstrate compliance with commercial and organic waste recycling.

SB 734 (Galgiani, Chapter 210, Statutes of 2016) extended the operation of AB 900 by two years, until 2019, adding prevailing wage conditions, and required multifamily residential projects certified under AB 900 to provide unbundled parking.

Staff Comments:

OPR costs. This bill would extend the AB 900 program, and would require OPR to take over administration of the program (previously administered by the California Air Resources Control Board). OPR indicates that it would require additional staff capacity to verify qualifying criteria, correspond and coordinate with applicants, and prepare application packages for presentation to the Governor. OPR anticipates that it would need four additional full-time employees consisting of a transportation expert, an emissions quantification expert, an attorney, and a program coordinator, at a total cost of \$872,000 annually until the bill sunsets on January 1, 2026 (General Fund).

Fee revenue. The bill authorizes OPR 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. However, establishing an application fee poses some logistical challenges. OPR notes that AB 900 applications were sporadic, and that it is uncertain how the addition of smaller housing projects would affect the volume or timing of applications. These challenges would make it difficult to establish and collect an accurate fee initially. OPR would need upfront funding as well as stable ongoing funding in order to hire the positions needed for program implementation. However, staff expects that OPR would eventually be able to establish a fee, and that fee revenue could partially offset OPR's costs.

Court costs. This bill would result in potential cost pressure of an unknown amount to the state-funded court system to process and hear challenges to a project's environmental review within the timeframes prescribed by the bill. It is possible that, absent this bill, the state would face similar costs resulting from challenges to a project that would occur over a period longer than timeframes prescribed by this bill. However, the acceleration of some cases due to this bill could result in the need for extra personnel and resources in order for the courts to hear them within the required period.

Possibility that California Air Resources Control Board (CARB) could perform work.

Both CARB and OPR determined that this bill reassigns all of the work CARB used to perform under the AB 900 program to OPR. As such, CARB expects no fiscal impact from this bill. However, it is possible that the Administration could request that CARB assist with the bill's workload given the department's history of administering the AB 900 program. Under this scenario, CARB expects costs of \$814,000 annually (General Fund or Air Pollution Control Fund) in order to implement the provisions of this bill. Staff notes that, under this scenario, the costs associated with this bill would shift from OPR to CARB, and OPR would no longer have any costs associated with this bill.

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