
SENATE COMMITTEE ON ENVIRONMENTAL QUALITY

Senator Allen, Chair

2021 - 2022 Regular

Bill No: SB 7
Author: Atkins
Version: 2/18/2021
Urgency: Yes
Consultant: Genevieve M. Wong

Hearing Date: 2/22/2021
Fiscal: Yes

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

DIGEST: Reenacts the Jobs and Economic Improvement Through Environmental Leadership Act of 2011, and expands the Act's eligibility to include smaller housing projects, until January 1, 2026.

ANALYSIS:

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 Under AB 900, the Governor had until January 1, 2020, to certify a project and the Act was repealed by its own provisions on January 1, 2021.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.).

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

- 1) Expands 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) Requires, 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) Specifies 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) 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) Specifically authorizes 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) 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.
- 7) Specifies 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) Sunsets the Jobs and Economic Improvement Through Environmental Leadership Act of 2011, including the changes made by this bill, on January 1, 2026.

- 9) Provides 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) Would take effect immediately.

Background

- 1) *Jobs and Economic Improvement Through Environmental Leadership Act of 2011*. 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 Act sunset on January 1, 2021.

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 case which took longer than 270 days to resolve. 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.

- 2) *California's housing challenges*. 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. Prior to the onset of COVID-19, California was building approximately 100,000 to 115,000 units a year in recent years.

A variety of causes have contributed to the state's lack of adequate housing production. Recent reports by the Legislative Analyst's Office (LAO) and others point to local approval processes as a major factor. They argue that local governments control most of the decisions about where, when, and how to build new housing, and those governments are quick to respond to vocal

community members who may not want new neighbors. The building industry also points to CEQA review, and housing advocates note a lack of a dedicated source of funds for affordable housing. Others have pointed to a lack of available labor to construct the amount of housing needed.

- 3) *ELDP Projects*. According to the Office of Planning and Research, 19 projects were submitted for certification during AB 900's operation. Additionally, the Legislature has applied AB 900-like procedures to the following specified projects:
- SB 292 (Padilla, Chapter 353, Statutes of 2011) which proposed a downtown Los Angeles football stadium and convention center that would achieve specified traffic and air quality mitigations. This project has not proceeded.
 - SB 743 (Steinberg, Chapter 386, Statutes of 2013) established special CEQA procedures modeled after SB 292 for the Sacramento Kings arena project and included specified traffic and air quality mitigations.
 - AB 734 (Bonta, Chapter 959, Statutes of 2018) authorized the Governor to certify, and established special CEQA procedures modeled after AB 900 for, the Oakland Sports and Mixed-Use Project if the project met specified conditions. Unlike AB 900, AB 734 required that 50% of the GHG emissions reductions necessary to achieve the zero-net additional GHG emissions requirement be from on-site and local reduction measures, limited the type of GHG offset credits that can be purchased to achieve the other 50% of the necessary GHG emissions reductions, and required a transportation demand management plan that achieves a 20% reduction in vehicle trips.
 - AB 987 (Kamlager-Dove, Chapter 961, Statutes of 2018) was similar to AB 734 but applied to a proposed basketball arena for the Los Angeles Clippers in Inglewood. AB 987 required a transportation demand management plan that achieves 15% reduction in vehicle trips by 2030 and additional reductions in local criteria pollutants.
- 4) *ELDPs and housing*. Ten of the 19 ELDPs included a housing component, and, as of the date of the SOR report, none of the projects have been completed.

Project Name	Description	Proposed Housing Units
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; 105 affordable housing units (approx. 11%)
6220 West Yucca	Residential housing and hotel redevelopment on a 1.16-acre site	210 residential
Potrero Power Station	Covert a closed power station to housing, commercial, community facilities, and entertainment/assembly uses on a 29-acre lot	About 2,601 dwelling units, 30% will be below market rate
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, <i>some</i> 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) *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, as well as potentially exacerbating 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 time frames create additional demands and burdens on our courts that have very limited resources and a never-ending supply of cases to hear.

- 2) *Guaranteed time frames.....are not always guaranteed: AB 900 lawsuits.* An expedited judicial review does not guarantee that a challenge to a project will be resolved within 270 days, as demonstrated by: (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), and (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*). These cases demonstrated that 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.
- 3) *Can the expedited judicial review be applied to non-CEQA challenges?* It has been suggested that the phrase “or the granting of any approval” in similar AB-900 related bills could be read to include challenges to land-use approvals that are not related to CEQA. Consequently, it has been argued that such language applies the expedited review provisions to non-CEQA claims against eligible projects when paired with a CEQA claim. This interpretation, however, is not consistent with the principles of statutory construction, and ignores the statutory context in which the provision is situated. Such an interpretation would also imply that provisions outside of CEQA have been indirectly amended, which is at tension with another rule of statutory construction: that interpretations that imply an amendment to other sections are to be avoided. Finally, according to the Judicial Council, the court in the 8150 Sunset project under AB 900 separated CEQA claims and non-CEQA claims, resolving the latter on a normal timeline. This indicates that the court did not view the expedited review provision under AB 900 as also applying to non-CEQA related land use approvals.
- 4) *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 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, the

environmental standards have been strengthened to require LEED Gold certification and increase the transportation efficiency to 15%. As the state continues to battle environmental impacts such as climate change, the standard of what is considered environmental leadership should also progress. Providing an expedited judicial review is a substantial benefit for developers and the environmental standards required should ensure that these projects are not the status quo and instead are exemplary examples of environmental leadership and deserving of the preferential treatment received under the Act.

As the bill continues through the legislative process, the author may wish to consider amending the bill to modernize and strengthen the environmental protections of these ELDPs in the following ways:

- a) Require LEED Platinum instead of LEED Gold for ELDPs, not including the affordable housing development projects.*
 - b) Require Tier 1 energy efficiency, as described in California Green Building Standards Code.*
 - c) Replace the 15% transportation efficiency requirement with a requirement that the project achieves 20% reduction in vehicle miles traveled per capita compared to existing development, as determined by the Governor's Office of Planning and Research.*
- 5) *ELDPs and affordable housing.* SB 7 adds a new category of projects that could qualify for AB 900 certification – smaller affordable housing projects. To qualify, the project must, among other things, 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, ELDP residential projects were subject to LEED Gold, did not have a minimum affordable housing requirement, and were required to result in \$100 million investment in California. By lowering the investment requirement, removing the LEED component thereby lowering environmental standards, and imposing a minimum affordable housing requirement, SB 7 provides an incentive for the development of affordable housing projects.
- 6) *Diminishing returns.* In the almost 10 years that AB 900 was operative, 19 ELDPs were certified. Although it is difficult to estimate how many projects could ultimately qualify under this new affordable housing 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.

- 7) *Should CEQA streamlining be applied in fire-risk areas?* Over the past two decades, California's wildfire season has significantly increased in severity, with each year becoming more destructive than the last.

In 2017, nearly 9,000 wildfires ignited across the state, burning 1.2 million acres of land, destroying more than 10,800 structures, and killing at least 46 people. Five of California's most destructive wildfires on record occurred that year, including the Thomas Fire, which became the largest recorded fire in California history at the time, and the Tubbs Fire, which destroyed 5,643 structures making it the most destructive fire in California history – at the time.

The 2018 wildfire season eclipsed 2017 as the most destructive and deadliest year for wildfires in California. The Mendocino Complex Fire in July 2018 nearly doubled the size of the Thomas Fire and burned 459,123 acres, becoming the largest fire in California history. The Camp Fire in November 2018 became California's most destructive and deadliest wildfire, which caused the deaths of 86 people and destroyed nearly 19,000 structures.

While the 2019 season was relatively quiet compared to previous years with the largest fire, the Kincadee Fire, burning 77,758 acres of land; in 2020, the state saw another record-setting year with 9,639 fires burning 4,397,809 acres of land. The August Complex fire, the first "gigafire" burned over 1 million acres across seven counties. The fires destroyed over 10,000 structures and cost over \$12.079 billion in damages, including over \$10 million in property damage and \$2.079 billion in fire suppression costs. The Creek Fire, a fire that burned most of the Sierra National Forest, took over four months to be fully contained and required hundreds of people to be rescued by National Guard helicopters.

Given the escalating intensity of wildfires over recent years, should projects in these high fire-risk areas be given expedited review?

- 8) *Continued ambiguity for the courts.* The former AB 900 provisions were ambiguous on whether the 270 day judicial review period was in calendar days or in business days, as discussed in the SOR report. In SB 995 (Atkins, 2020) and the introduced version of SB 7, both bills amended the Act to provide that judicial review was to be completed within 270 business days. Recent amendments to the bill remove the reference to business days not only as it applies to judicial review but also to timelines throughout the bill, making it ambiguous if those timeframes are in business days, calendar days, or court

days.

Related/Prior Legislation

SB 995 (Atkins, 2020) 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) 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) provided qualified projects, which includes housing projects that will 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) provided affordable housing projects that meet 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.

SOURCE: Author

SUPPORT:

Bay Area Council
Bricklayers and Allied Crafts Local 3
Building and Construction Trades Council of Alameda County, AFL-ICO

Building and Construction Trades Council of San Bernadino & Riverside Counties
Building and Construction Trades Council of Humboldt and Del Norte Counties
Building and Construction Trades Council of Stanislaus, Merced, Tuolumne and
Mariposa Counties

California Association of Realtors

California Labor Federation, AFL-CIO

California Northstate University

California State Council of Laborers

Cement Masons Local 600

Central City Association of Los Angeles

City of San Diego

City of San Diego Council President Pro Tem Stephen Whitburn

City of San Jose

Contra Costa Building and Construction Trades Council

District Council 16, International Union of Painters and Allied Trades

Facebook, INC.

Fresno, Madera, Kings and Tulare Building & Construction Trades Council, AFL-CIO

Google

Harridge Development Group

Heat and Frost Insulators and Allied Workers Local 16

Hollywood Chamber of Commerce

IBEW Local 40

IBEW Local 6

IBEW Local 595

IBEW Local 684

IBEW Local 441

IBEW Local 952

Imperial County Building & Construction Trades Council AFL-CIO

International Brotherhood of Boilermakers Local 549

International Brotherhood of Boilermakers, Western States Section

International Union of Elevator Constructors, Local 8

International Union of Operating Engineers, Cal-Nevada Conference

International Union of Painter and Allied Trades AFL-CIO

Iron Workers Local 155

Iron Workers Local 378

Iron Workers Local 118

Iron Workers Local 155

Iron Workers Local 229

Iron Workers Local 377

Iron Workers Local 378

Iron Workers Local 416

Iron Workers Local 433

IOUE Local 3

IOUE Local 12

IUPAT Local 3
IUPAT District Council 16
IUPAT District Council 36
IUPAT Local 1176
IUPAT Local 12
IUPAT Local 83
IUPAT Local 169
IUPAT Local 272
IUPAT Local 294
IUPAT Local 83
IUPAT Local 376
IUPAT Local 506
IUPAT Local 718
Joint Venture Silicon Valley Network
Kern, Inyo & Mono Counties Building and Construction Trades Council, AFL-CIO
Laborers Local 1309
Laborers Local 261
Laborers Local 67
Laborers Local 185
Laborers Local 304
Laborers Local 324
Laborers Local 73
Los Angeles/Orange Counties Building & Construction Trades Council
Monterey/Santa Cruz Counties Building & Construction Trades Council
Napa-Solano Counties Building and Construction Trades Council
North Bay Building Trades Council
OPCMIA Local 400
Operative Plasterers and Cement Masons Local 300
Plasterers' and Shophands' Local 66
Plumbers and Pipefitters Local 447
Plumbers and Pipefitters Local Union 38
Sacramento-Sierra Building and Construction Trades Council
San Diego County's Building Trades Unions
San Diego EDC
San Francisco Bay Area Planning and Urban Research Association (SPUR)
San Francisco Building and Construction Trades Council
San Joaquin Building Trades Council
San Mateo County Building and Construction Trades Council
Santa Clara & San Benito Counties Building & Construction Trades Council
Sheet Metal Workers' Local Union No. 104 (SMART)
Silicon Valley Leadership Group
Sprinkler Fitters UA Local 483
Sprinkler Fitters UA Local 669
State Building & Construction Trades Council of California AFL-CIO

Supervisor Nathan Fletcher, District 4, County of San Diego

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Teamsters Local 386

Teamsters Local 853

TechEquity Collaborative

Tri-counties Building and Construction Trades Council

United Association Local 230

United Association Local 246

United Association Local 355

United Association Local 38

United Association Local 447

United Association Local 467

United Association Local 483

United Association Local 669

United Association of Plumbers, Pipefitters and Refrigeration Fitters Local No. 246

United Union of Roofers, Waterproofers and Allied Workers Local 36

United Union of Roofers, Waterproofers & Allied Workers Local 220

United Union of Roofers, Waterproofers & Allied Workers Local 27

United Union of Roofers, Waterproofers & Allied Workers Local 81

OPPOSITION:

None received

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