
THIRD READING

Bill No: SB 7
Author: Atkins (D), et al.
Amended: 2/18/21
Vote: 27 - Urgency

SENATE ENVIRONMENTAL QUALITY COMMITTEE: 5-0, 2/22/21
AYES: Allen, Dahle, Gonzalez, Stern, Wieckowski
NO VOTE RECORDED: Bates, Skinner

SENATE APPROPRIATIONS COMMITTEE: 6-0, 2/25/21
AYES: Portantino, Bates, Bradford, Jones, Laird, Wieckowski

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

SOURCE: Author

DIGEST: This bill reenacts the Jobs and Economic Improvement Through
Environmental Leadership Act of 2011 (Act), 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) Established the Act (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 Under AB 900, the Governor had until January 1, 2020, to certify a project and the Act was repealed by its own provisions on January 1, 2021.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 Act, with additional changes. Specifically, those changes 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.
- 2) Specifies procedures for the quantification and mitigation of greenhouse gas (GHG) emissions that would apply to Environmental Leadership Development Projects (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) Authorizes, specifically, the Governor to certify a leadership project before the lead agency files the final EIR 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 (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.
- 7) Specifies that the requirement that resolution occur within 270 days includes any appeals to the court of appeal or the Supreme Court.
- 8) Sunsets the Act, including 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) Takes effect immediately.

Background

- 1) *Jobs and Economic Improvement Through Environmental Leadership Act of 2011*. The Act (AB 900) established specified administrative and judicial review procedures for the review of the environmental review documents and public agency approvals granted for residential, retail, commercial, sports, cultural, entertainment, or recreational use projects, known as Environmental Leadership Development Projects, that meet specified objective environmental standards. The Act sunset on January 1, 2021.
- 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 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 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 OPR, 19 projects were submitted for certification during AB 900's operation. Additionally, the Legislature has applied AB 900-like procedures to the following specific 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 a Senate Office of Research report on the Act, 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 &	Develop a mixed-use project composed	260 multifamily residential,

Wilcox	of multifamily residential dwelling units and retail, office, and restaurant uses.	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: (a) the Sacramento Kings Arena (*Adriana Gianturco Saltonstall et al. v. City of Sacramento*), (b) the Golden State Warriors Arena (*Mission Bay Alliance et al. v. Office of Community Investment and Infrastructure* and a separate non-CEQA lawsuit), and (c) 8150 Sunset Boulevard Mixed Use Development which had four 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, (a) ambiguity if the 270 days applies to business days or calendar days and if it includes appeals to the Supreme Court, (b) non-CEQA related actions which are not subject to the 270 day timeframe that are filed in addition to CEQA actions, or (c) 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. Further, that interpretation would 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, 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 time, the environmental standards have been strengthened to require LEED Gold certification and increase the transportation efficiency to 15%. What are considered environmental leadership qualities is not stagnant and progresses over time. 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 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 OPR.*
- 5) *ELDPs and affordable housing.* SB 7 adds a new category of projects that could qualify for AB 900 certification – smaller affordable housing projects. Compared to other ELDP residential projects, these projects have a lower threshold to meet in order to qualify for AB 900 certification. 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. While difficult to estimate how many projects would qualify under this new 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 for 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, 1.2 million acres of land were burned by nearly 9,000 wildfires, including the Thomas Fire and the Tubbs Fire. The 2018 wildfires proved to be more destructive and deadly, with the Mendocino Complex Fire which was nearly double the size of the Thomas Fire and the Camp Fire which caused the death of 86 people and nearly 19,000 structures. Most recently, 2020 was another record-setting year with 4,397,809 acres of land burned by 9,639 fires, including the August Complex Fire which was the state’s first “gigafire” burning over one million acres across seven counties. Additionally, the Creek Fire 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 provided that judicial review was

to be completed within 270 business days. Recent amendments to the bill remove the reference to business days as it applies to judicial review and to timelines throughout the bill, making it ambiguous if those timeframes are in business days, calendar days, or court days.

FISCAL EFFECT: Appropriation: No Fiscal Com.: Yes Local: Yes

According to the Senate Appropriations Committee:

- 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.
- 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 this bill.
- 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.

SUPPORT: (Verified 2/25/21)

6450 Sunset Owner, LLC
Bay Area Council
Bricklayers and Allied Crafts Local 3
Building and Construction Trades Council of Alameda County, AFL-CIO
Building and Construction Trades Council of Humboldt and Del Norte Counties
Building and Construction Trades Council of San Bernadino & Riverside 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
California Teamsters Public Affairs Council
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 441
IBEW Local 569
IBEW Local 595
IBEW Local 6
IBEW Local 684
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 118
Iron Workers Local 155
Iron Workers Local 155
Iron Workers Local 229
Iron Workers Local 377
Iron Workers Local 378
Iron Workers Local 378
Iron Workers Local 416
Iron Workers Local 433
IUOE Local 12
IUPAT District Council 16
IUPAT District Council 36
IUPAT Local 1176
IUPAT Local 12
IUPAT Local 169
IUPAT Local 272
IUPAT Local 294
IUPAT Local 3

IUPAT Local 3
IUPAT Local 376
IUPAT Local 506
IUPAT Local 718
IUPAT Local 83
Joint Venture Silicon Valley Network
Kern, Inyo & Mono Counties Building and Construction Trades Council, AFL-CIO
Laborers Local 1309
Laborers Local 185
Laborers Local 261
Laborers Local 304
Laborers Local 324
Laborers Local 67
Laborers Local 73
Los Angeles/Orange Counties Building & Construction Trades Council
Monterey/Santa Cruz Counties Building & Construction Trades Council
MP Los Angeles
Napa-Solano Counties Building & 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 Regional EDC
San Francisco Bay Area Planning and Urban Research Association (SPUR)
San Francisco Building and Construction Trades Council
San Francisco Chamber of Commerce
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
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
Sv@home

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 & Allied Workers Local 220
United Union of Roofers, Waterproofers & Allied Workers Local 27
United Union of Roofers, Waterproofers & Allied Workers Local 81
United Union of Roofers, Waterproofers and Allied Workers Local 36

OPPOSITION: (Verified 2/25/21)

City of Beverly Hills

ARGUMENTS IN SUPPORT: According to the City of San Diego, “For years California has been unable to produce enough housing to meet the needs of its growing population. Insufficient supply has been driving up the cost of housing across the state and more acutely in major metropolitan areas. ... The additional criteria and focus of SB 7 places on housing projects will provide impetus to build creative, mixed-use projects in San Diego and throughout the State.”

ARGUMENTS IN OPPOSITION: According to the City of Beverly Hills, “The City of Beverly Hills is concerned that requiring just 15 percent of the units in eligible projects be set aside as affordable units is too low. ... Given the magnitude of our affordable housing crisis, we believe that this important process subsidy should be reserved for projects that produce a more significant amount of affordable units.”

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2/26/21 8:38:49

**** END ****