



Protect Our Progress

EFFECTIVENESS & ACCOUNTABILITY INITIATIVE



Senate Select Committee on Infrastructure Streamlining and Workforce Equity

Tuesday, June 27, 2023

Issue:

Extension of the Jobs and Economic Improvement Through Environmental Leadership Act, as reflected in SB 149.

Summary

This bill extends the Jobs and Economic Improvement Through Environmental Leadership Act (Act) of 2011, most recently updated in SB 7 (Atkins, Chapter 19, Statutes of 2021). Under this program, projects meeting certain criteria can apply to the governor to become certified Environmental Leadership Development Projects (ELDPs) and receive expedited judicial review under the California Environmental Quality Act (CEQA). Expedited judicial review includes a concurrent preparation of the record and environmental review and a stipulation that the CEQA case receives a streamlined judicial review of 270 days, as feasible. Under existing law, an ELDP must be certified by the Governor before January 1, 2024 and a certified project must be approved by the lead agency before January 1, 2025. SB 149 would extend these dates to Jan 1, 2032 and Jan 1, 2033, respectively.

Comments

CEQA Process and Timeline

CEQA is designed to (a) make government agencies and the public aware of the environmental impacts of a proposed project, (b) ensure the public can take part in the review process, and (c) identify and implement measures to mitigate or eliminate any negative impact the project may have on the environment. CEQA is a self-executing statute that is enforced by

civil lawsuits that can challenge any project's environmental review. Public agencies, as well as private individuals and organizations, can file lawsuits under CEQA.

Under CEQA, state and local agencies must complete and adopt a Negative Declaration in 180 days, and certify an Environmental Impact Report within a year. If there is a compelling circumstance to extend this timeline, agencies may take longer, but only if the project applicant consents. After the environmental review is completed, the case may be subject to litigation. The Judicial Council asserts that it takes over six months just for a CEQA case to get a hearing, let alone a decision.

To help speed CEQA cases through the court system, current law provides several measures to prioritize CEQA cases and speed up judicial review, including:

- The Superior Court and the Court of Appeal must give CEQA lawsuits preference over all other civil actions;
- If feasible, the Court of Appeal must hear a CEQA appeal within one year of filing;
- Discovery is generally not allowed, as CEQA cases are generally restricted to review of the record;
- Counties with a population of over 200,000 must designate one or more judges to develop expertise on CEQA and hear CEQA cases.

Expedited Review for Environmental Leadership Projects

In addition to the expediting measures that apply broadly to CEQA cases, certain projects are also eligible for expedited review through the Jobs and Economic Improvement through Environmental Leadership Act.

The Act offers two judicial streamlining provisions to certified projects. Firstly, certified projects are required to prepare the administrative record, the comprehensive document at the heart of CEQA cases, concurrently, rather than sequentially, with the environmental review. Secondly, certified projects are given expedited judicial review requiring that the CEQA case be heard in 270 days, including all appeals, as feasible.

Both processes are described in more detail below:

Concurrent Preparation. Preparing the administrative record can take between 60 days (the time required in law, before extensions) to over a year for more complex projects. Given the length of time it takes to prepare the record, doing so while environmental review is ongoing (rather than sequentially) could reduce the CEQA review timeline by months or a year or more. In addition, the concurrent preparation requires that the lead agency prepare the record, rather than the petitioner. This can reduce delays given that the petitioner does not have access to the lead agency's records, may not have the same resources available to compile the record, or may in some cases use the record preparation process to delay the case, since there are no time limits for them to prepare the record.

270-day Judicial Review. For contentious projects, judicial review for a CEQA Superior and Appellate court process case can take three to four years. By requiring a 270-day judicial review period, even with the caveat of “as feasible,” ELDP projects are more likely to move on an accelerated timeline

ELDP Criteria: SB 7 Updates

The Act was first developed in 2011 through AB 900 (Buchanan, Chapter 354, Statutes of 2011), but was most recently updated in 2021 with SB 7 (Atkins, 2021). SB 7 made several changes to the program, including extending the 2021 sunset of AB 900 through 2025 for the projects covered under the prior law, and expanded the law to apply streamlining to much smaller housing projects. SB 7 lowered the threshold of qualifying projects to \$15 million, required housing projects have at least 15% affordable housing to be infill projects, and stipulated projects to meet "skilled and trained" labor requirements and elevated environmental standards.

SB 7 also strengthened the existing eligibility criteria in AB 900, stipulating that projects have no net additional greenhouse gas (GHG) emissions. Under AB 900, the determination of GHG neutrality was left up to CARB’s discretion, and there were no geographic restrictions on the location of GHG offset programs. SB 7 required projects to first prioritize direct emissions reductions that also reduce other air emissions within the same air district in which the project is located before using offsets, and required that those offsets be taken within the same air district as the proposed project.

ELDP Projects and Others

A 2019 report by the Senate Office of Research entitled “Review of Environmental Leadership Development Projects” summarized the number of projects that had applied for certification, and the timeliness and legal challenges faced by ELDP’s. According to the report, 19 projects were submitted for certification during AB 900’s operation. At the time of the report, only three projects were completed or actively progressing. These three projects included two solar energy projects and nine projects with at least some residential housing element.

In addition to the projects certified as ELDP, the Legislature has applied similar CEQA streamlining provisions 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

Effectiveness of ELDP Streamlining.

In addition to summarizing projects, the Senate Office of Research’s “Review of Environmental Leadership Development Projects” report tracked the timeline of ELDP projects from 2011 to 2018. The report found that no ELDP project was actually reviewed within 270 days. At the time the report was authored, the following projects had been completed in timelines ranging from 352-578 days.

Project	Business Days	Calendar Days
Kings Arena	243	352
Warriors Arena	257	376
8150 Sunset Boulevard	395	578

Cases can take longer to resolve for several reasons, including (1) ambiguity over whether the 270-day limit applies to business days or calendar days, and whether it includes appeals to the Supreme Court; (2) legal actions not related to CEQA, which are not subject to the 270-day timeframe; or (3) consolidation of many, and sometimes complicated, actions.

However, while ELDP projects were not completed within 270 days, the report also found those projects were reviewed under a faster timeline compared to other similar projects. According to the report, the average time for an ELDP-comparable project to complete the judicial review process was 3-5 years, meaning that the 1-2-year timeline for ELDP projects represents significant time-savings.

Reason to Extend the Sunset

The current ELDP certification program through SB 7 is set to sunset Jan 1, 2024. After this date, no more projects will be eligible to be certified by the Governor. Projects that were certified before this date have one additional year to be approved by the lead agency in order to receive CEQA streamlining provisions.

SB 7 extended the sunset for ELDP's certification by just three years. During this relatively small time window, only one project was able to apply for ELDP certification.

The ELDP certification program and other similar CEQA streamlining provisions have been successful in a number of ways. The certification has sped the deployment of several desirable projects and has required those projects to meet high labor and environmental criteria. Offering CEQA judicial streamlining for projects that meet high environmental and labor standards gives these projects a competitive edge, and allows the Legislature to incentivize building the type of projects that align with the State's policy goals. Extending the sunset on this certification until January 1, 2032 and allowing certified projects to be approved by the lead agency before January 1, 2033, will create more opportunity for the types of projects, especially smaller affordable housing projects that were only recently made eligible for streamlining under SB 7, to move forward more quickly.