

AMENDED IN SENATE JANUARY 31, 2012

AMENDED IN SENATE JANUARY 12, 2012

AMENDED IN SENATE JANUARY 4, 2012

**SENATE BILL**

**No. 52**

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**Introduced by Senator Steinberg**

(Coauthors: Assembly Members Buchanan and Gordon)

December 15, 2010

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An act to amend Sections 21178, 21180, 21181, 21183, 21185, 21187, and 21189.2 of the Public Resources Code, relating to environmental quality, ~~and declaring the urgency thereof, to take effect immediately.~~

LEGISLATIVE COUNSEL'S DIGEST

SB 52, as amended, Steinberg. Environmental quality: jobs and economic improvement.

(1) The California Environmental Quality Act (CEQA) requires a lead agency, as defined, to prepare, or cause to be prepared, and certify the completion of, an environmental impact report (EIR) on a project that it proposes to carry out or approve that may have a significant effect on the environment or to adopt a negative declaration if it finds that the project will not have that effect. CEQA also requires a lead agency to prepare a mitigated negative declaration for a project that may have a significant effect on the environment if revisions in the project would avoid or mitigate that effect and there is no substantial evidence that the project, as revised, would have a significant effect on the environment.

CEQA establishes procedures for creating the administrative record and judicial review procedure for any action or proceeding brought to

challenge the lead agency's decision to certify the EIR or to grant project approvals.

The Jobs and Economic Improvement Through Environmental Leadership Act of 2011 establishes alternative procedures for creating the administrative record and specified judicial review procedures for the judicial review of the EIR and approvals granted for a leadership project related to the development of a residential, retail, commercial, sports, cultural, entertainment, or recreational use project, or clean renewable energy or clean energy manufacturing project. The act authorizes the Governor, upon application, to certify a leadership project for streamlining pursuant to the act if certain conditions are met.

The act requires that the project result in a minimum investment of \$100,000,000 in California upon completion of construction and not result in any net additional emission of greenhouse gases, including greenhouse gas emissions from employee transportation.

This bill would require instead that a project result in a minimum investment of \$100,000,000 spent on planning, design, and construction of the project. The bill, in order to maximize public health, environmental, and employment benefits, would require a lead agency to place the highest priority on feasible measures that will reduce greenhouse gas emissions on the project site and in the neighboring communities of the project site.

(2) The act requires a party seeking judicial review of the EIR to bring concurrently other claims alleging a public agency has granted land use approvals or a leadership project in violation of relevant laws.

This bill would repeal this provision.

(3) The act requires the Judicial Council to report to the Legislature on or before January 1, 2015, on the effects of the act, including specific information on benefits, costs, and detriments.

The bill would require instead that the Judicial Council report to the Legislature on the effects of the act on the administration of justice. The bill also would make technical and clarifying changes.

Because a lead agency would be required to perform additional actions, this bill would impose a state-mandated local program.

(4) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

~~(5) This bill would declare that it is to take effect immediately as an urgency statute.~~

Vote:  $\frac{2}{3}$ -majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: yes.

*The people of the State of California do enact as follows:*

- 1 SECTION 1. Section 21178 of the Public Resources Code is
- 2 amended to read:
- 3 21178. The Legislature finds and declares all of the following:
- 4 (a) The overall unemployment rate in California is 12 percent,
- 5 and in certain regions of the state that rate exceeds 13 percent.
- 6 (b) The California Environmental Quality Act (Division 13
- 7 (commencing with Section 21000)) requires that the environmental
- 8 impacts of development projects be identified and mitigated.
- 9 (c) The act also guarantees the public an opportunity to review
- 10 and comment on the environmental impacts of a project and to
- 11 participate meaningfully in the development of mitigation measures
- 12 for potentially significant environmental impacts.
- 13 (d) There are large public and private projects under
- 14 consideration in various regions of the state that would replace old
- 15 and outmoded facilities with new job-creating facilities to meet
- 16 those regions' needs while also establishing new, cutting-edge
- 17 environmental benefits to those regions.
- 18 (e) These projects are publicly financed, privately financed, or
- 19 financed from revenues generated from the projects themselves
- 20 that do not require taxpayer financing.
- 21 (f) These projects further will generate thousands of full-time
- 22 jobs during construction and thousands of additional permanent
- 23 jobs once they are constructed and operating.
- 24 (g) These projects also present an unprecedented opportunity
- 25 to implement nation-leading innovative measures that will
- 26 significantly reduce traffic, air pollution, and other significant
- 27 environmental impacts, and fully mitigate the greenhouse gas
- 28 emissions resulting from passenger vehicle trips attributed to the
- 29 project.
- 30 (h) These pollution reductions will be the best in the nation
- 31 compared to other comparable projects in the United States.
- 32 (i) The purpose of this act is to provide unique and
- 33 unprecedented streamlining benefits under the California

1 Environmental Quality Act for projects that provide the benefits  
2 described above for a limited period of time to put people to work  
3 as soon as possible.

4 SEC. 2. Section 21180 of the Public Resources Code is  
5 amended to read:

6 21180. For the purposes of this chapter, the following terms  
7 shall have the following meanings:

8 (a) “Applicant” means a public or private entity or its affiliates,  
9 or a person or entity that undertakes a public works project or  
10 proposes a project, and its successors, heirs, and assignees.

11 (b) “Environmental leadership development project,” “leadership  
12 project,” or “project” means a project as described in Section 21065  
13 that is one of the following:

14 (1) A residential, retail, commercial, sports, cultural,  
15 entertainment, or recreational use project that is designed to be  
16 certified as LEED silver or better by the United States Green  
17 Building Council and that achieves and maintains a 10-percent  
18 greater standard for transportation efficiency than for comparable  
19 projects. These projects shall be located on an infill site. For a  
20 project that is within a metropolitan planning organization for  
21 which a sustainable communities strategy or alternative planning  
22 strategy is in effect, the infill project shall be consistent with the  
23 general use designation, density, building intensity, and applicable  
24 policies specified for the project area in either a sustainable  
25 communities strategy or an alternative planning strategy, for which  
26 the State Air Resources Board, pursuant to subparagraph (H) of  
27 paragraph (2) of subdivision (b) of Section 65080 of the  
28 Government Code, has accepted a metropolitan planning  
29 organization’s determination that the sustainable communities  
30 strategy or the alternative planning strategy would, if implemented,  
31 achieve the greenhouse gas emission reduction targets.

32 (2) A clean renewable energy project that generates electricity  
33 exclusively through wind or solar, but not including waste  
34 incineration or conversion.

35 (3) A clean energy manufacturing project that manufactures  
36 products, equipment, or components used for renewable energy  
37 generation, energy efficiency, or for the production of clean  
38 alternative fuel vehicles.

39 (c) “Transportation efficiency” means the number of private  
40 automobile trips by employees, visitors, or customers of the

1 residential, retail, commercial, sports, cultural, entertainment, or  
2 recreational use project divided by the total number of employees,  
3 visitors, and customers.

4 SEC. 3. Section 21181 of the Public Resources Code is  
5 amended to read:

6 21181. This chapter does not apply to a project if the applicant  
7 fails to notify a lead agency prior to the release of the draft  
8 environmental impact report for public comment that the applicant  
9 is electing to proceed pursuant to this chapter. The lead agency  
10 shall notify the Secretary of the Natural Resources Agency if the  
11 applicant provides notification pursuant to this chapter.

12 SEC. 4. Section 21183 of the Public Resources Code is  
13 amended to read:

14 21183. The Governor shall not certify a leadership project for  
15 streamlining pursuant to this chapter unless all the following  
16 conditions are met:

17 (a) The project will result in a minimum investment of one  
18 hundred million dollars (\$100,000,000) spent on planning, design,  
19 and construction of the project.

20 (b) The project creates high-wage, highly skilled jobs that pay  
21 prevailing wages and living wages and provide construction jobs  
22 and permanent jobs for Californians, and helps reduce  
23 unemployment.

24 (c) The project does not result in any net additional emission  
25 of greenhouse gases, including greenhouse gas emissions from  
26 employee transportation, as determined by the State Air Resources  
27 Board pursuant to Division 25.5 (commencing with Section 38500)  
28 of the Health and Safety Code. To maximize public health,  
29 environmental, and employment benefits, the lead agency shall  
30 place the highest priority on feasible measures that will reduce  
31 greenhouse gas emissions on the project site and in the neighboring  
32 communities of the project site. Offset credits shall be employed  
33 by the applicant only after feasible local emission reduction  
34 measures have been implemented. The applicant shall, to the extent  
35 feasible, place the highest priority on the purchase of offset credits  
36 that produce emission reductions within the boundaries of an  
37 applicable air pollution control district or air quality management  
38 district.

39 (d) The project applicant has entered into a binding and  
40 enforceable agreement that all mitigation measures required

1 pursuant to this division to certify the project under this chapter  
2 shall be conditions of approval of the project, and those conditions  
3 will be fully enforceable by the lead agency or another agency  
4 designated by the lead agency. In the case of environmental  
5 mitigation measures, the applicant agrees, as an ongoing obligation,  
6 that those measures will be monitored and enforced by the lead  
7 agency for the life of the obligation.

8 (e) The project applicant agrees to pay the costs of the Court of  
9 Appeal in hearing and deciding any case, including payment of  
10 the costs for a special master if deemed appropriate by the court,  
11 in a form and manner specified by the Judicial Council, as provided  
12 in the Rules of Court adopted by the Judicial Council pursuant to  
13 subdivision (b) of Section 21185.

14 (f) The project applicant agrees to pay the costs of preparing  
15 the administrative record for the project concurrent with review  
16 and consideration of the project pursuant to this division, in a form  
17 and manner specified by the lead agency for the project.

18 SEC. 5. Section 21185 of the Public Resources Code is  
19 amended to read:

20 21185. (a) Notwithstanding any other law, any action or  
21 proceeding alleging that a lead agency has approved or is  
22 undertaking a leadership project certified by the Governor in  
23 violation of this division shall be conducted in accordance with  
24 the following streamlining benefits:

25 (1) The action or proceeding shall be filed in the Court of Appeal  
26 with geographic jurisdiction over the project.

27 (2) The Court of Appeal shall issue its decision on all petitions  
28 for writ of mandate filed pursuant to this subdivision within 175  
29 days of the filing of the last petition.

30 (3) The court may appoint a master to assist the court in  
31 managing and processing the case.

32 (4) The court may order extensions of time only for good cause  
33 and in order to promote the interests of justice.

34 (b) On or before July 1, 2012, the Judicial Council shall adopt  
35 Rules of Court to implement this chapter.

36 SEC. 6. Section 21187 of the Public Resources Code is  
37 amended to read:

38 21187. The draft and final environmental impact report shall  
39 include a notice in no less than 12-point type stating the following:  
40

1 “THIS EIR IS SUBJECT TO CHAPTER 6.5 (COMMENCING  
 2 WITH SECTION 21178) OF DIVISION 13 OF THE PUBLIC  
 3 RESOURCES CODE, WHICH PROVIDES, AMONG OTHER  
 4 THINGS, THAT ANY JUDICIAL ACTION CHALLENGING  
 5 THE CERTIFICATION OF THE EIR OR THE APPROVAL OF  
 6 THE PROJECT DESCRIBED IN THE EIR IS SUBJECT TO  
 7 THE PROCEDURES SET FORTH IN CHAPTER 6.5 AND  
 8 MUST BE FILED WITH THE COURT OF APPEAL. A COPY  
 9 OF CHAPTER 6.5 IS INCLUDED IN THE APPENDIX TO THIS  
 10 EIR.”

11  
 12 SEC. 7. Section 21189.2 of the Public Resources Code is  
 13 amended to read:

14 21189.2. The Judicial Council shall report to the Legislature  
 15 on or before January 1, 2015, on the effects of this chapter on the  
 16 administration of justice.

17 SEC. 8. No reimbursement is required by this act pursuant to  
 18 Section 6 of Article XIII B of the California Constitution because  
 19 a local agency or school district has the authority to levy service  
 20 charges, fees, or assessments sufficient to pay for the program or  
 21 level of service mandated by this act, within the meaning of Section  
 22 17556 of the Government Code.

23 ~~SEC. 9. This act is an urgency statute necessary for the~~  
 24 ~~immediate preservation of the public peace, health, or safety within~~  
 25 ~~the meaning of Article IV of the Constitution and shall go into~~  
 26 ~~immediate effect. The facts constituting the necessity are:~~

27 ~~The continued economic crisis in the state requires immediate~~  
 28 ~~attention and the expedited processes provided by this legislation~~  
 29 ~~for projects that provide important environmental and economic~~  
 30 ~~benefits will serve as a basis for new and increased economic~~  
 31 ~~development in the state.~~

**SENATE RULES COMMITTEE**

SB 52

Office of Senate Floor Analyses  
1020 N Street, Suite 524  
(916) 651-1520 Fax: (916) 327-4478

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THIRD READING

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Bill No: SB 52  
Author: Steinberg (D), et al.  
Amended: 1/31/12  
Vote: 21

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SENATE ENVIRONMENTAL QUALITY COMMITTEE: 6-0, 1/11/12  
AYES: Simitian, Blakeslee, Hancock, Kehoe, Lowenthal, Pavley  
NO VOTE RECORDED: Strickland

SENATE APPROPRIATIONS COMMITTEE: Senate Rule 28.8

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**SUBJECT**: Environmental quality: jobs and economic improvement

**SOURCE**: Author

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**DIGEST**: This bill clarifies the Jobs and Economic Improvement Through Environmental Leadership Act of 2011 [AB 900 (Buchanan and Gordon), Chapter 354, Statutes of 2011], by (1) clarifying the definition of “applicant” and “transportation efficiency”; (2) clarifying that the \$100 million minimum project investment is spent on planning, design, and project construction; providing that priority for greenhouse gas emission reduction occur on the project site and in neighboring communities; and providing for offset credit reductions procedures for these reductions; (3) clarifying that procedures relating to an action or proceeding alleging a violation of the California Environmental Quality Act (CEQA) apply to the lead agency, rather than a public agency; (4) revising Judicial Council reporting requirements to reference justice administrative issues rather than project certification issues; and (5) clarifying legislative intent.

Senate Floor Amendments of 1/31/12 delete the urgency clause.

CONTINUED

**ANALYSIS:** Existing law, under the Jobs and Economic Improvement Through Environmental Leadership Act of 2011 (part of CEQA), sets procedures relating to an “environmental leadership development project” (ELDP).

An ELDP is defined as one of the following:

1. A residential, retail, commercial, sports, cultural, entertainment, or recreational use project that is Leadership Energy and Environmental Design (LEED) certified (silver or better); achieves a 10% greater standard for transportation efficiency (as defined) than for comparable projects; located on an infill site; and, if within a metropolitan planning organization where a sustainable communities strategy or alternative planning strategy is in effect, is consistent with certain requirements specified for that project in the strategy while meeting certain related requirements.
2. A clean renewable energy project that generates electricity exclusively through wind or solar, but not including waste incineration or conversion.
3. A clean energy manufacturing project that manufactures products, equipment, or components used for renewable energy generation, energy efficiency, or for production of clean alternative fuel vehicles.

According to the intent of the Jobs and Economic Improvement Through Environmental Leadership Act of 2011, enacted by AB 900 (Buchanan and Gordon) Chapter 354, Statutes of 2011, the Act “provides streamlining benefits under CEQA for a limited period of time to put people to work as soon as possible” and these projects “present an unprecedented opportunity to implement nation-leading innovative measures that will significantly reduce traffic, air quality, and other significant environmental impacts, and fully mitigate the greenhouse gas emissions resulting from passenger vehicle trips attributed to the project.”

#### Specifics of SB 52

1. Provides a technical clarification to the definition of “applicant,” clarifies that the use must be designed to be LEED silver or better, and provides that the definition of “transportation efficiency” refers to private automobile trips rather than vehicle trips. (Public Resources

Code (PRC) Section 21180).

2. Requires the lead agency, prior to release of a draft environmental impact report (EIR) for public comment that an applicant is electing to proceed pursuant to CEQA, to notify the Secretary of the Natural Resources Agency if the applicant provides notification, rather than fails to provide notification, and corrects a cross reference. (PRC Section 21181).
3. Clarifies that the \$100 million minimum project investment is spent on planning, design, and project construction; provides that priority for greenhouse gas emission reductions occur on the project site and in neighboring communities, and provides offset credit procedures for these reductions; clarifies that special master costs are not limited to appointment of the special master; and makes other clarifying amendments. (PRC Section 21183).
4. Clarifies that procedures relating to an action or proceeding alleging a violation of CEQA apply to the lead agency, rather than a public agency, and strikes a requirement to file concurrent claims; and authorizes the court to order, rather than grant, extensions of time only for good cause. (PRC Section 21185).
5. Clarifies cross-references in the specified notice which is required to be included in EIR reports (PRC Section 21187); revises the Judicial Council reporting requirement to reference justice administration issues rather than project certification issues (PRC Section 21189.2); and clarifies legislative intent to, among other things, reference public projects (PRC Section 21178).

NOTE: Refer to the Senate Environmental Quality Committee analysis for existing law background.

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

**SUPPORT:** (Verified 1/17/12)

California League of Conservation Voters  
Natural Resources Defense Council

CONTINUED

**OPPOSITION:** (Verified 1/18/12)

American Wood Council

**ARGUMENTS IN SUPPORT:** According to the author's office, when AB 900 was heard and approved by the Senate Environmental Quality Committee on September 9, 2011 (5-1), authors of the bill wanted to address certain issues in 2012 that were raised regarding the bill. For example, Assemblymembers Buchanan and Gordon submitted a letter to the Journal on September 9, 2011, regarding LEED certification, legislative intent relating to public and private projects, and court orders for extension of time. SB 52 amendments clarify these issues. SB 52 also responds to issues raised by others by, for example, correcting cross references; clarifying definitions; specifying priorities for greenhouse gas emission reductions and providing for offset credits; clarifying special master costs to be paid by the applicant; and clarifying that the Act applies to an action or proceeding alleging a violation of CEQA by the lead agency.

**ARGUMENTS IN OPPOSITION:** The American Wood Council states that "the inclusion of language requiring the use of only the non-consensus and proprietary LEED green building rating system is of concern. Unfortunately, the LEED system does not appropriately recognize the energy saving and environmental benefits of renewable wood products. Through several specific credits, the LEED system puts U.S. wood products at a significant disadvantage to competing (and environmentally inferior) building materials."

DLW:mw 1/31/12 Senate Floor Analyses

SUPPORT/OPPOSITION: SEE ABOVE

\*\*\*\* **END** \*\*\*\*

## Assembly Bill No. 900

### CHAPTER 354

An act to add and repeal Chapter 6.5 (commencing with Section 21178) of Division 13 of the Public Resources Code, relating to environmental quality.

[Approved by Governor September 27, 2011. Filed with  
Secretary of State September 27, 2011.]

#### LEGISLATIVE COUNSEL'S DIGEST

AB 900, Buchanan. Jobs and Economic Improvement Through Environmental Leadership Act of 2011.

(1) The California Environmental Quality Act (CEQA) requires a lead agency, as defined, to prepare, or cause to be prepared, and certify the completion of, an environmental impact report (EIR) on a project that it proposes to carry out or approve that may have a significant effect on the environment or to adopt a negative declaration if it finds that the project will not have that effect. CEQA also requires a lead agency to prepare a mitigated negative declaration for a project that may have a significant effect on the environment if revisions in the project would avoid or mitigate that effect and there is no substantial evidence that the project, as revised, would have a significant effect on the environment.

CEQA establishes procedures for creating the administrative record judicial review procedure for any action or proceeding brought to challenge the lead agency's decision to certify the EIR or to grant project approvals.

This bill would enact the Jobs and Economic Improvement Through Environmental Leadership Act of 2011 and establish specified judicial review procedures for the judicial review of the EIR and approvals granted for a leadership project related to the development of a residential, retail, commercial, sports, cultural, entertainment, or recreational use project, or clean renewable energy or clean energy manufacturing project. The act would authorize the Governor to certify a leadership project for streamlining pursuant to the act if certain conditions are met. The bill would repeal the act as of January 1, 2015.

Because the lead agency would be required to use these alternative procedures for creating the administrative record if the project applicant so chooses and the project is certified by the Governor, this bill would impose a state-mandated local program. The bill would require, among other things, that the project create high-wage, highly skilled jobs and not result in any net additional emission of greenhouse gases, including greenhouse gas emissions from employee transportation.

(2) This bill would make legislative findings and declarations as to the act's unique and unprecedented streamlining benefits under the California Environmental Quality Act.

(3) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

(4) This bill would become operative only if SB 292 is enacted and takes effect on or before January 1, 2012.

*The people of the State of California do enact as follows:*

SECTION 1. Chapter 6.5 (commencing with Section 21178) is added to Division 13 of the Public Resources Code, to read:

CHAPTER 6.5. JOBS AND ECONOMIC IMPROVEMENT THROUGH  
ENVIRONMENTAL LEADERSHIP ACT OF 2011

21178. The Legislature finds and declares all of the following:

(a) The overall unemployment rate in California is 12 percent, and in certain regions of the state that rate exceeds 13 percent.

(b) The California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code) requires that the environmental impacts of development projects be identified and mitigated.

(c) The act also guarantees the public an opportunity to review and comment on the environmental impacts of a project and to participate meaningfully in the development of mitigation measures for potentially significant environmental impacts.

(d) There are large projects under consideration in various regions of the state that would replace old and outmoded facilities with new job-creating facilities to meet those regions' needs while also establishing new, cutting-edge environmental benefits to those regions.

(e) These projects are privately financed or financed from revenues generated from the projects themselves and do not require taxpayer financing.

(f) These projects further will generate thousands of full-time jobs during construction and thousands of additional permanent jobs once they are constructed and operating.

(g) These projects also present an unprecedented opportunity to implement nation-leading innovative measures that will significantly reduce traffic, air quality, and other significant environmental impacts, and fully mitigate the greenhouse gas emissions resulting from passenger vehicle trips attributed to the project.

(h) These pollution reductions will be the best in the nation compared to other comparable projects in the United States.

(i) The purpose of this act is to provide unique and unprecedented streamlining benefits under the California Environmental Quality Act for projects that provide the benefits described above for a limited period of time to put people to work as soon as possible.

21180. For the purposes of this chapter, the following terms shall have the following meanings:

(a) “Applicant” means a public or private entity or its affiliates, or a person or entity that undertakes a public works project, that proposes a project and its successors, heirs, and assignees.

(b) “Environmental leadership development project,” “leadership project,” or “project” means a project as described in Section 21065 that is one the following:

(1) A residential, retail, commercial, sports, cultural, entertainment, or recreational use project that is certified as LEED silver or better by the United States Green Building Council and, where applicable, that achieves a 10-percent greater standard for transportation efficiency than for comparable projects. These projects must be located on an infill site. For a project that is within a metropolitan planning organization for which a sustainable communities strategy or alternative planning strategy is in effect, the infill project shall be consistent with the general use designation, density, building intensity, and applicable policies specified for the project area in either a sustainable communities strategy or an alternative planning strategy, for which the State Air Resources Board, pursuant to subparagraph (H) of paragraph (2) of subdivision (b) of Section 65080 of the Government Code, has accepted a metropolitan planning organization’s determination that the sustainable communities strategy or the alternative planning strategy would, if implemented, achieve the greenhouse gas emission reduction targets.

(2) A clean renewable energy project that generates electricity exclusively through wind or solar, but not including waste incineration or conversion.

(3) 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.

(c) “Transportation efficiency” means the number of vehicle trips by employees, visitors, or customers of the residential, retail, commercial, sports, cultural, entertainment, or recreational use project divided by the total number of employees, visitors, and customers.

21181. This chapter does not apply to a project if the applicant fails to notify a lead agency prior to the release of the draft environmental impact report for public comment that the applicant is electing to proceed pursuant to this chapter. The lead agency shall notify the Secretary of the Natural Resources Agency if the applicant fails to provide notification pursuant to this section.

21182. A person proposing to construct a leadership project may apply to the Governor for certification that the leadership project is eligible for streamlining provided by this chapter. The person shall supply evidence and materials that the Governor deems necessary to make a decision on the application. Any evidence or materials shall be made available to the public

at least 15 days before the Governor certifies a project pursuant to this chapter.

21183. The Governor may certify a leadership project for streamlining pursuant to this chapter if all the following conditions are met:

(a) The project will result in a minimum investment of one hundred million dollars (\$100,000,000) in California upon completion of construction.

(b) The project creates high-wage, highly skilled jobs that pay prevailing wages and living wages and provide construction jobs and permanent jobs for Californians, and helps reduce unemployment.

(c) The project does not result in any net additional emission of greenhouse gases, including greenhouse gas emissions from employee transportation, as determined by the State Air Resources Board pursuant to Division 25.5 (commencing with Section 38500) of the Health and Safety Code.

(d) The project applicant has entered into a binding and enforceable agreement that all mitigation measures required pursuant to this division to certify the project under this chapter 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.

(e) 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, as provided in the Rules of Court adopted by the Judicial Council pursuant to subdivision (f) of Section 21185.

(f) 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 this division, in a form and manner specified by the lead agency for the project.

21184. (a) The Governor may certify a project for streamlining pursuant to this chapter if it complies with the conditions specified in Section 21183.

(b) (1) Prior to certifying a project, the Governor shall make a determination that each of the conditions specified in Section 21183 has been met. These findings are not subject to judicial review.

(2) (A) If the Governor determines that a leadership project is eligible for streamlining pursuant to this chapter, he or she shall submit that determination, and any supporting information, to the Joint Legislative Budget Committee for review and concurrence or nonconcurrence.

(B) Within 30 days of receiving the determination, the Joint Legislative Budget Committee shall concur or nonconcur in writing on the determination.

(C) If the Joint Legislative Budget Committee fails to concur or nonconcur on a determination by the Governor within 30 days of the submittal, the leadership project is deemed to be certified.

(c) The Governor may issue guidelines regarding application and certification of projects pursuant to this chapter. Any guidelines issued pursuant to this subdivision are not subject to the rulemaking provisions of the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code).

21185. (a) Notwithstanding any other law, any action or proceeding alleging that a public agency or has approved or is undertaking a leadership project certified by the Governor in violation of this division shall be conducted in accordance with the following streamlining benefits:

(1) The action or proceeding shall be filed in the Court of Appeal with geographic jurisdiction over the project.

(2) Any party bringing such a claim shall also file concurrently any other claims alleging that a public agency has granted land use approvals for the leadership project in violation of the law. The Court of Appeal shall have original jurisdiction over all those claims.

(3) The Court of Appeal shall issue its decision in the case within 175 days of the filing of the petition.

(4) The court may appoint a master to assist the court in managing and processing the case.

(5) The court may grant extensions of time only for good cause shown and in order to promote the interests of justice.

(b) On or before July 1, 2012, the Judicial Council shall adopt Rules of Court to implement this chapter.

21186. Notwithstanding any other law, the preparation and certification of the administrative record for a leadership project certified by the Governor shall be performed in the following manner:

(a) The lead agency for the project shall prepare the administrative record pursuant to this division concurrently with the administrative process.

(b) All documents and other materials placed in the administrative record shall be posted on, and be downloadable from, an Internet Web site maintained by the lead agency commencing with the date of the release of the draft environmental impact report.

(c) The lead agency shall make available to the public in a readily accessible electronic format the draft environmental impact report and all other documents submitted to, or relied on by, the lead agency in the preparation of the draft environmental impact report.

(d) A document prepared by the lead agency or submitted by the applicant after the date of the release of the draft environmental impact report that is a part of the record of the proceedings shall be made available to the public in a readily accessible electronic format within five business days after the document is released or received by the lead agency.

(e) The lead agency shall encourage written comments on the project to be submitted in a readily accessible electronic format, and shall make any comment available to the public in a readily accessible electronic format within five days of its receipt.

(f) Within seven business days after the receipt of any comment that is not in an electronic format, the lead agency shall convert that comment into

a readily accessible electronic format and make it available to the public in that format.

(g) The lead agency shall certify the final administrative record within five days of its approval of the project.

(h) Any dispute arising from the administrative record shall be resolved by the Court of Appeal pursuant to Section 21185.

21187. The draft and final environmental impact report shall include a notice in no less than 12-point type stating the following:

“THIS EIR IS SUBJECT TO CHAPTER 6.5 (COMMENCING WITH SECTION 21178) OF THE PUBLIC RESOURCES CODE, WHICH PROVIDES, AMONG OTHER THINGS, THAT ANY JUDICIAL ACTION CHALLENGING THE CERTIFICATION OF THE EIR OR THE APPROVAL OF THE PROJECT DESCRIBED IN THE EIR IS SUBJECT TO THE PROCEDURES SET FORTH IN SECTION 21178.2 OF THE PUBLIC RESOURCES CODE AND MUST BE FILED WITH THE COURT OF APPEAL. A COPY OF CHAPTER 6.5 OF THE PUBLIC RESOURCES CODE IS INCLUDED IN THE APPENDIX TO THIS EIR.”

21188. The provisions of this chapter are severable. If any provision of this chapter or its application is held to be invalid, that invalidity shall not affect any other provision or application that can be given effect without the invalid provision or application.

21189. Except as otherwise provided expressly in this chapter, nothing in this chapter affects the duty of any party to comply with this division.

21189.1. (a) If a lead agency fails to certify an environmental impact report for a leadership project subject to this chapter on or before June 1, 2014, this chapter shall not apply to that project. The lead agency shall notify the Secretary of the Natural Resources Agency by July 1, 2014, if an environmental impact report subject to this chapter has not been certified by that date.

(b) If, prior to June 1, 2014, a certification issued pursuant to this chapter has not been used or the time period during which an action or proceeding, for purposes of Section 21185, may be filed under this chapter has not elapsed, the certification expires and is no longer valid.

21189.2. The Judicial Council shall report to the Legislature on or before January 1, 2015, on the effects of this chapter, which shall include, but not be limited to, a description of the benefits, costs, and detriments of the certification of leadership projects pursuant to this chapter.

21189.3. This chapter shall remain in effect until January 1, 2015, and as of that date is repealed unless a later enacted statute extends or repeals that date.

SEC. 2. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because a local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act, within the meaning of Section 17556 of the Government Code.

SEC. 3. This act shall become operative only if Senate Bill 292 of the 2011–12 Regular Session is enacted and takes effect on or before January 1, 2012.

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**SENATE RULES COMMITTEE**

AB 900

Office of Senate Floor Analyses  
1020 N Street, Suite 524  
(916) 651-1520 Fax: (916) 327-4478

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THIRD READING

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Bill No: AB 900  
Author: Buchanan (D) and Gordon (D)  
Amended: 9/8/11 in Senate  
Vote: 21

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PRIOR VOTES NOT RELEVANT

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**SUBJECT:** Jobs and Economic Improvement Through Environmental Leadership Act

**SOURCE:** Author

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**DIGEST:** This bill enacts the Jobs and Economic Improvement Through Environmental Leadership Act of 2011, and establishes specified judicial review procedures for the judicial review of the environmental impact report (EIR) and approvals granted for a leadership project related to the development of a residential, retail, commercial, sports, cultural, entertainment, or recreational use project, or clean renewable energy or clean energy manufacturing project. The Act authorizes the Governor to certify a leadership project for streamlining pursuant to the act if certain conditions are met. This bill repeals the Act as of January 1, 2015.

**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 declaration, or 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).

CONTINUED

(Public Resources Code §21000 et seq.).

2. Sets requirements relating to preparation, review, comment, approval and certification of environmental documents, as well as procedures relating to an action or proceeding to attack, review, set aside, void, or annul various actions of a public agency on the grounds of noncompliance with CEQA.

This bill enacts the Jobs and Economic Improvement Through Environmental Leadership Act of 2011, setting procedures relating to an “environmental leadership development project” (ELDP) which:

1. Require an ELDP to be one of the following (§21180(b)):
  - A. A residential, retail, commercial, sports, cultural, entertainment, or recreational use project that is LEED certified (silver or better); achieves a 10% greater standard for transportation efficiency (as defined) than for comparable projects; located on an infill site; and, if within a metropolitan planning organization where a sustainable communities strategy or alternative planning strategy is in effect, is consistent with certain requirements specified for that project in the strategy while meeting certain related requirements.
  - B. A clean renewable energy project that generates electricity exclusively through wind or solar, but not including waste incineration or conversion.
  - C. A clean energy manufacturing project that manufactures products, equipment, or components used for renewable energy generation, energy efficiency, or for production of clean alternative fuel vehicles.
2. Define an “applicant” to be a “public or private entity or its affiliates, or a person or entity that undertakes a public works project, that proposes a project and its successors, heirs, and assignees.” (§21180(a)).
3. Prohibit the Act from applying to a project if the applicant fails to notify a lead agency prior to release of the draft EIR for public comment that the applicant is electing to proceed pursuant to the Act. The lead agency must notify the Secretary of the Natural Resources Agency if the

- applicant fails to provide this notice. (§21181).
4. Set procedures relating to the governor for an ELDP which:
    - A. Authorize a person proposing to construct an ELDP to apply to the governor for certification that the ELDP is eligible for streamlining under the Act. The person must supply evidence and materials that the governor deems necessary to make a decision on the application, which must be made available to the public at least 15 days before the governor certifies a project. (§21182).
    - B. Authorize the governor to certify an ELDP for streamlining if certain conditions are met (e.g., project will result in a minimum investment of \$100 million; project creates high wage, highly skilled jobs that pay prevailing wages and living wages; project does not result in any net additional emission of greenhouse gases, as determined by the State Air Resources Board; project applicant has entered into a binding and enforceable agreement that all mitigation measures will be conditions of project approval; project applicant pays Court of Appeal costs in hearing and deciding any case, including costs for appointment of a special master, and costs of preparing the administrative record). (§21183).
    - C. Require the governor to make a determination that each of the above conditions (4 b) has been met prior to certifying a project, and these findings are not subject to judicial review. If the governor determines that an ELDP is eligible for streamlining pursuant to the Act, that determination and any supporting information must be submitted to the Joint Legislative Budget Committee for review and concurrence or nonconcurrence. The Committee must concur or nonconcur within 30 days of receiving the determination, and failure to concur or nonconcur on this determination within that period is deemed ELDP certified. (§21184(a), (b)).
    - D. Authorize the governor to issue guidelines regarding application and certification of ELDPs under the Act, which are not subject to the Administrative Procedure Act. (§21194(c)).
  5. Set procedures that apply to any action or proceeding alleging that a public agency has approved or is undertaking an ELDP certified by the

governor in violation of CEQA (§21185) which:

- A. Require the action or proceeding to be filed in the Court of Appeal with geographic jurisdiction over the project.
  - B. Require any party bringing a claim to file concurrently any other claims alleging that a public agency has granted land use approvals for the ELDP in violation of the law. The Court of Appeal must have original jurisdiction over these claims.
  - C. Require the Court to issue its decision in the case within 175 days of the filing of the petition.
  - D. Authorize the Court to appoint a master to assist the Court in managing and processing the case.
  - E. Authorize the Court to grant extensions of time only for good cause shown and in order to promote the interests of justice.
6. Set requirements for preparation and certification of the administrative record for an ELDP certified by the governor. (§21186).
  7. Require 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 the Act. (§21187).
  8. Provide that provisions of the Act are severable, and if any provision or its application is held to be invalid, that invalidity cannot affect any other provision or application that can be given effect without the invalid provision or application. (§21188).
  9. Provide that nothing in the Act affects the duty of any party to comply with CEQA, except as otherwise provided in the Act. (§21189).
  10. Prohibit the Act from applying to an ELDP if a lead agency does not certify an EIR for an ELDP on or before June 1, 2014, and the lead agency must notify the Secretary of the Natural Resources Agency by July 1, 2014, if an EIR subject to the Act has not been certified by that date. (§21189.1(a)).

11. Provide that certification of the ELDP expires and is no longer valid if, prior to June 1, 2014, a certification issued pursuant to the Act has not been used or the time period during which an action or proceeding filed under the Act has not elapsed. (§21189.1(b)).
12. Require the Judicial Council to report to the Legislature on or before January 1, 2015, on the effects of the Act, which must include, but not be limited to, a description of the benefits, costs, and detriments of the certification of ELDPs pursuant to the Act. (§21189.2).
13. Provides that this Act becomes operative only if SB 292 (Padilla) is enacted and takes effect on or before January 1, 2012.
14. Contain related legislative intent. (§21178).
15. Contain an urgency clause. (SEC. 4).
16. Sunset January 1, 2015. (§21189.3).

### Background

CEQA provides a process for evaluating the environmental effects of a project, and includes statutory exemptions, as well as categorical exemptions in the CEQA guidelines. If a project is not exempt from CEQA, an initial study is prepared to determine whether a 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. Prior to approving any project that has received environmental review, an agency must make certain findings. 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.

If a mitigation measure would cause one or more significant effects in addition to those that would be caused by the proposed project, the effects of the mitigation measure must be discussed but in less detail than the

significant effects of the proposed project.

Comments

Purpose of Bill. According to the intent of the Jobs and Economic Improvement Through Environmental Leadership Act of 2011, AB 900 “provides streamlining benefits under CEQA for a limited period of time to put people to work as soon as possible” and these projects “present an unprecedented opportunity to implement nation-leading innovative measures that will significantly reduce traffic, air quality, and other significant environmental impacts, and fully mitigate the greenhouse gas emissions resulting from passenger vehicle trips attributed to the project.”

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

**SUPPORT:** (Verified 9/9/11)

California Labor Federation  
California State Association of Electrical Workers  
California State Pipe Trades Council  
State Sheet Metal Workers

**OPPOSITION:** (Verified 9/9/11)

Planning and Conservation League  
Sierra Club California

DLW:mw 9/9/11 Senate Floor Analyses

SUPPORT/OPPOSITION: SEE ABOVE

\*\*\*\* **END** \*\*\*\*