

Date of Hearing: July 3, 2012

ASSEMBLY COMMITTEE ON JOBS, ECONOMIC DEVELOPMENT AND THE
ECONOMY

V. Manuel Pérez, Chair

SB 52 (Steinberg) – As Amended: June 26, 2012

SENATE VOTE: 32-4

SUBJECT: Environmental quality: jobs and economic improvement

SUMMARY: Modifies the Jobs and Economic Improvement Through Environmental Leadership Act of 2011 (Act), which creates an expedited judicial review procedure under the California Environmental Quality Act (CEQA) for various types of LEED Silver certified infill site projects, clean renewable energy projects, and clean energy manufacturing projects. Specifically, this bill:

- 1) Modifies the legislative findings to specify that the eligible "projects" may include both public and privately sponsored and financed projects. [Public Resources Code (PRC) 21178]
- 2) Provides a technical clarification to the definition of "applicant" pursuant to the environmental leadership development project (ELD project). (PRC Section 21180)
- 3) Modifies the requirement that certain ELD projects be certified as LEED Silver or better, to requiring that the ELD project be designed to be certified as LEED Silver or better by the U.S. Green Building Council. These provisions apply to residential, retail, commercial, sports, entertainment or recreational ELD projects. In a related issue, the bill states that ELD project requirements do not affect any compliance requirements under the California Green Building Standards Code. (PRC Section 21180)
- 4) Refines the definition of "transportation efficiency" to only apply to the number of private automobile trips and not all vehicle trips. The bill also makes all ELD projects demonstrate that they can maintain a 10% greater standard for transportation efficiency than for other comparable projects. Existing law applied the transportation efficiency standard to only applicable project and did not require the efficiencies to be maintained. (PRC Section 21180)
- 5) Revises the lead agency notice requirement to the Secretary of Natural Resources from providing notice if an applicant fails to provide notice to the lead agency, to notifying the Secretary when an applicant notifies the lead agency of their intention to move forward on an ELD project. The bill also corrects a cross reference. (PRC Section 21181)
- 6) Prohibits the Governor from certifying a project for streamlining if specified conditions are not met, rather than authorizing the Governor to certify an ELD project if the specified conditions are met. (PRC Section 21183)
- 7) Clarifies that the minimum project investment of \$100 million may be spent on planning, design, and project construction. (PRC Section 21183)

- 8) Adds specificity to the requirement that ELD projects do not result in additional greenhouse gas emissions by stating that emission reductions and offsets should be obtained as close to the project site as possible and that reductions are a higher priority than offsets. (PRC Section 21183)
- 9) Clarifies the full range of Court of Appeals costs that an ELD project applicant agrees to pay as a condition of ELD project certification. (PRC Section 21183)
- 10) Clarifies that procedures relating to an action or proceeding alleging a violation of the Act apply to the lead agency, rather than any 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)
- 11) Clarifies cross-references in the specified notice which is required to be included in the environmental impact report (EIR). (PRC Section 21187)
- 12) Revises the Judicial Council reporting requirement to only include justice administration issues rather than issues arising from ELD project certification. (PRC Section 21189.2)
- 13) Makes other technical and conforming changes.

EXISTING LAW:

- 1) Establishes the Act, which creates expedited judicial review procedures under the California Environmental Quality Act (CEQA) for various types of LEED Silver certified infill site projects, clean renewable energy projects, and clean energy manufacturing projects.
- 2) Requires, pursuant to CEQA, a lead agency with the principal responsibility of carrying out or approving a proposed discretionary project to evaluate the environmental effects of its action and prepare a negative declaration, mitigated negative declaration, or EIR. If an initial study shows that the project may have a significant effect on the environment, the lead agency must prepare an EIR.
- 3) Authorizes judicial review of CEQA actions taken by public agencies, following the agency's decision to carry out or approve the project. Legal challenges alleging improper determination that a project may have a significant effect on the environment, or alleging an EIR does not comply with CEQA, must be filed in the Superior Court within 30 days of filing of the notice of approval.

FISCAL EFFECT: The measure was referred from the Senate Appropriations Committee to the Senate Floor pursuant to 28.8.

COMMENTS:

- 1) Purpose of the Bill: According to the author, "SB 52 is a cleanup bill to AB 900 of last year which created significant new CEQA streamlining for environmental leadership projects. The members will recall that the bill was heard in the closing days of the legislative session last August. At that time, the author of this measure committed to working over the fall with a member working group on cleanup amendments to the bill. He also committed to putting a

preprint bill in to signal what those changes would be (which became SB 2 Preprint). Both of these actions were taken.

SB 52 is the technical cleanup bill that incorporates those changes needed to fix clear problems or mistakes in the prior legislation.

There are parties who also wish to discuss expanding the current law to other projects (eg. Transit projects, county public works projects etc). other parties wish to weaken the standards in current law with respect to LEED versus CAL-GREEN. Those changes have been reviewed and set aside since they are not technical cleanup and would engender new opposition to the bill. In addition, at least some of the changes are being proposed as part of other authors measures. The author wishes to limit this bill solely to the technical cleanup amendments committed to and agreed upon. "

- 2) Role of CEQA in the Development Process: The California Environmental Quality Act was established in 1970 for the purpose of providing a better framework and process to inform decision makers and the public about the potential environmental impacts of proposed projects.

Most proposals for physical development in California are subject to the provisions of CEQA, which requires at least some level of prescribed environmental review. If a project will not cause any adverse environmental impacts, a public agency may adopt a brief document known as a Negative Declaration. If the project may cause adverse environmental impacts, the public agency must prepare a more detailed study called an EIR. An EIR contains in-depth studies of potential impacts, measures to reduce or avoid those impacts and an analysis of alternatives to the project. If mitigation measures are required or incorporated into a project, the agency must also adopt a reporting or monitoring program to ensure compliance with those measures.

In addition to its mission to inform, CEQA also provides a mechanism for stakeholder groups and other government entities to meaningfully engage in the development approval process. Consultation with the public and other stakeholders is required and the lead public agency is encouraged to consult early in the review process.

During its over 40-year history, CEQA has become one of the state's most controversial laws. Considered by some as the epitome of good government and environmental protection, CEQA is viewed by others as impeding the state's economy and used by groups to keep out good community development projects. Some of the most common complaints about CEQA are related to its cost to developers for legal conflicts and delays and costs caused by uncertain and inconsistent requirements, according to the Public Policy Institute of California.

As a self-enforcing statute, CEQA enforcement is carried out through the courts, rather than an executive branch government office. While studies indicate that the threat of litigation is a serious consideration for developers, research shows that the actual number of lawsuits is low—perhaps about one lawsuit for every 350 project reviews (Binger and McBride, 1991; Landis et al., 1995). Developers contend, however, that the threat of lawsuits forces them to spend millions of dollars to try to "bulletproof" their environmental documents. In oversight hearings on the state's economic competitiveness by the Assembly Committee on Jobs,

Economic Development, and the Economy, CEQA reform and regulatory streamlining have consistently been identified as a significant concern for the private sector and a key contributing factor to California being perceived as being a difficult place to do business.

SB 52 addresses these concerns by refining the provisions of the Act to provide an expedited and streamlined judicial review process for ELD projects that are approved by the lead agency and subsequently challenged in court.

- 3) Moving Forward on Streamlining CEQA: In 2011, two measures were introduced proposing expedited judicial review for significant development projects. AB 900 (Buchanan and Gordon) addressed large-scale projects that could meet extraordinary environmental standards, create a significant number of new jobs and require substantial capital investment for the development. SB 292 (Padilla) was a more narrowly targeted bill, which called for streamlining the environmental review of a proposed downtown Los Angeles football stadium and convention center project.

In the final two days of the 2011 session, a compromise proposal was brought forward with the help of Senate and Assembly leadership and amended into AB 900. Among other requirements, eligible projects were required to have a minimum of \$100 million in construction costs; create high-wage and highly skilled jobs; and fully mitigate greenhouse gas emission. Given the short timeline before the close of session, there was no time to make technical corrections or fully discuss possible alternative policy approaches. The authors submitted a letter to the Assembly Journal (9/9/2011) outlining three areas for clarification and possible further legislative action: LEED Silver certification of ELD projects, definition of applicant, and the conditions by which courts would extend timelines.

There are currently three potential development projects which could utilize the expedited judicial review provisions, if they are challenged: the Los Angeles arena, the McCoy solar energy project in Riverside County (application pending), and Apple Campus 2 in Cupertino (application pending).

SB 52 is intended to serve as the clean-up vehicle for AB 900 and, according to the Senate Environmental Quality Committee analysis, includes changes proposed by Senator Steinberg, Assemblymembers Buchanan and Gordon, and other stakeholders.

- 4) LEED Certification: Leadership in Energy and Environmental Design, more commonly known as LEED, is a third party certification program sponsored by the U.S. Green Building Council (USGBC), a 501(c) 3, located in Washington D.C. The USGBC's mission is to support a market-based transformation of building and community design, and it is internationally recognized as a leader in green and sustainable design.

The LEED 2009 rating system was designed for new commercial office buildings, but according to the LEED manual, it has been applied to a range of building types including hotels and institutional buildings such as libraries, museums, and churches. According to the LEED website, there are more than 4.5 billion square feet of construction space involved in the LEED system.

LEED certification is awarded based on an application submitted to the USGBC after the project has been completed. Project applications are evaluated on such things as site planning, energy and water efficiency, and interior and external materials. Projects must meet minimum program requirements, called prerequisites, and score points for demonstrating a higher performance quality. As an example, if project construction included an erosion and sedimentation control plan, the project met the required prerequisite. Projects that meet prerequisites and are also constructed on a previously developed site within a high density community earn 5 points. If the same building is developed on a previous brownfield site, the project earns 1 point. Below is a chart of the major categories and points.

LEED Rating System for New Construction	
Category	Maximum Score for Category
Sustainable Sites	26
Water Efficiency	10
Energy and Atmosphere	35
Materials and Resources	14
Indoor Environmental Quality	15
Innovation in Design	6
Regional Priority	4

Source: LEED 2009 New Construction and Major Renovations

Projects earning 40-49 points receive LEED certification; 50-59 points receive Silver certification and scoring 60-79 points earns the project Gold certification. Periodically the USGBC updates its certification criteria under a process that includes a vote by the membership of the USGBC. The 2009 rating system is currently being updated. Final approval was expected in 2012, but is now being postponed to June 2013 in "response to concerns raised by members, core LEED users and stakeholders, and in an effort to provide the marketplace a view of the full LEED program experience prior to ballot."

- 5) Concerns with LEED Certification: A coalition of business and development organizations are concerned with the requirement that ELD projects must meet or exceed LEED Silver certification. Among other issues, the coalition questions the public policy of mandating California projects meet a proprietary, nongovernmental standard that can change without notice or control of the state. In support of this position, the coalition cites areas of the LEED rating system that would be more relevant to projects in other parts of the U.S. and other areas of the rating system that earn points toward certification for environmental standards that are lower than the California Green Building Code - including standards for water efficiency, fireplaces and thermal insulation.

Further, the LEED certification rating system does not recognize progressive and sustainable practices in California including renewable wood products and water conservation efforts of California's landscape industry. ELD project status should be used to encourage in-state environmental leadership, coalition members say, but in order to do that, these practices would need to be measured.

- 6) Related Legislation: Below is a list of related legislation from current and prior sessions.

- a) AB 900 (Buchanan and Gordon) Environmental Leadership Act: Establishes the Jobs and Economic Improvement through Environmental Leadership Act of 2011, which creates an expedited judicial review procedure under CEQA for various types of LEED silver certified infill site projects, clean renewable energy project, and clean energy manufacturing project. Status: The bill was signed by the Governor, Chapter 354, Statutes of 2011.
- b) AB 292 (Padilla) Los Angeles Football Stadium: This bill establishes expedited judicial review procedures and requires implementation of specified traffic and air quality mitigation measures under CEQA for the proposed downtown Los Angeles football stadium and convention center project. Status: The bill was signed by the Governor, Chapter 353, Statutes of 2011.
- 7) Double Referral: This bill was double referred from the Assembly Rules Committee to the Assembly Committee on Natural Resources (NR) and the Assembly Committee on Jobs, Economic Development, and the Economy. The measure passed NR on a 6-3 vote on June 18, 2012.

REGISTERED SUPPORT / OPPOSITION:

NOTE: The Committee only posts the names of entities that have submitted letters expressing support or opposition positions. Letters that indicate "support if amended" or "oppose unless amended" are not reflected on the analysis. These letters are held on file and are available for public inspection.

Support

County of Los Angeles

Opposition

None received

Analysis Prepared by: Toni Symonds / J., E.D. & E. / (916) 319-2090