

## **BUILDERS CHARGE NEW CEQA-STREAMLINING LAWS, GUIDELINES UNHELPFUL**

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The building industry contends a 2011 law aiming to jump-start the economy by streamlining the state's environmental review process for development projects is failing to attract much interest because strict eligibility criteria prevents most projects from qualifying. Most housing, transportation and land-use project proponents say their projects are unable to qualify for the streamlining due to costly, stringent environmental mitigation criteria, sources said.

Industry groups are currently working with Senate President Darrell Steinberg (D-Sacramento) on "cleanup" legislation to broaden the scope of projects eligible for the law's benefits, but it is unclear whether agreements will be struck, sources said.

Meanwhile, draft guidelines by the governor's office to implement another 2011 law to streamline the California Environmental Quality Act (CEQA) process for approving urban infill projects are also under fire from industry officials, who claim the guidelines will only allow the most environmentally friendly projects to qualify. If the state is serious about promoting more urban infill development, it should apply the CEQA streamlining and benefits to a broader scope of projects, industry officials say.

Implementation of the two CEQA-reform laws is being closely watched by numerous stakeholders because the measures have been touted by leading Democratic lawmakers as providing a bold move to stimulate the economy while still preserving environmental protection. Proposals for significant CEQA reforms have long been sought by industry groups, but environmentalists have historically challenged major attempts to amend CEQA.

Gov. Jerry Brown's (D) Office of Planning & Research (OPR) late last month released for public review draft guidelines to implement the 2011 law SB 226. OPR last month also released guidelines to implement the 2011 law AB 900, which aims to streamline the judicial process for projects challenged under CEQA. The law sends CEQA litigation for certain large projects directly to the court of appeal, instead of lower courts, and requires a decision on the merits in a short time frame, the governor's office said in a Jan. 25 statement.

AB 900 authorizes the governor to pick specific projects to be eligible for this CEQA judicial streamlining if the proponents agree to certain conditions, such as stringent environmental standards like greenhouse gas (GHG) neutrality. Projects also must total at least \$100 million in order to qualify. AB 900 expires Jan. 1, 2015.

Supporters of AB 900, including Steinberg, said it should help stimulate the economy by allowing projects to advance through the CEQA process in a more timely manner and by putting "people to work as soon as possible," according to a Senate floor analysis drafted before the bill was signed.

Many environmental groups opposed the bill last year, arguing it could limit the public's voice in challenging certain projects under CEQA.

A development and construction industry source said the biggest challenge to AB 900 implementation is to identify projects that would actually qualify for the CEQA judicial streamlining available under the law. "We had a meeting of our lawyers last year and we asked them if any project could take advantage of [AB 900]," the source said. "And nobody raised their hand. So it's hard for us to see any benefit for projects that we do."

The source had heard that a few solar power plant projects may qualify for AB 900's benefits, but large housing, transportation and land-use projects are unlikely to qualify, or their proponents are unlikely to show interest, the source said. "I think the [\$100 million] requirement and the size of the projects, and demand that they be carbon-neutral, makes it very difficult for us to see any benefit for projects we do."

Other industry sources also said that the AB 900 guidelines are not drawing much interest because most developers believe their projects cannot qualify.

Steinberg recently introduced SB 52, intended to be cleanup legislation to address technical and other issues tied to AB 900. But SB 52 is only intended to be a "technical cleanup bill and is not intended to expand or contract the projects eligible" for CEQA streamlining under AB 900, a Steinberg spokesman told lawmakers during a hearing last month (*see Jan. 13 issue*).

The industry source said talks are still ongoing with Steinberg regarding SB 52 and other potential bills to address CEQA streamlining available under AB 900. "There has been some talk about opening up the project criteria to capture more projects, so we'd like to talk about that."

A Steinberg spokeswoman argued there is no reason to believe the conditions in AB 900 are too strict. She said there is already one major solar project "in the hopper" under AB 900 in Riverside County. "The law had broad support from both sides of the aisle, business and labor,"

the spokeswoman said. "[Steinberg] has indicated he is willing to discuss further actions to help streamline the process and create jobs during this legislative session."

Meanwhile, the SB 226 guidelines released last month by OPR are also drawing criticism from industry officials, sources said. OPR has scheduled Feb. 21-23 public workshops to discuss the draft guidelines in Sacramento, Fresno and Los Angeles.

SB 226 requires OPR to develop by July 1 CEQA guidelines for statewide standards for the review of infill projects that promote "specified state environmental, transportation and land use goals." The law requires the secretary of the Natural Resources Agency to certify and adopt the guidelines by Jan. 1, 2013.

Sen. Joe Simitian (D-Palo Alto), the author of the law, said he advanced the bill last year in the wake of budget talks that did not result in CEQA reforms that some believe could help create jobs and advance renewable projects in the state. Simitian argued the bill would avoid typical CEQA pitfalls that stymie projects while still protecting the environment.

While an "initial statement of reasons" in the OPR draft guidelines for SB 226 discusses how critical urban infill development is to public health and the environment, the guidelines themselves only serve to incentivize projects that meet the most stringent of environmental standards, sources said.

These strict project performance standards are likely to be viewed by industry groups as unworkable and conflicting with the state's overarching goals of encouraging more urban infill growth , sources said.

OPR's draft guidelines acknowledge that "much work remains" and that SB 226 "raises difficult issues requiring a high degree of public input and participation."

OPR's draft also acknowledges that "standards that permit only the very highest quality projects may not create enough to draw development inward from undeveloped fringe locations." Therefore, draft performance standards include a "graduated set of requirements in order to make the process as simple as possible for higher performing projects, while requiring more from lower performing projects."