SENATE JUDICIARY COMMITTEE
Senator Thomas Umberg, Chair
2025-2026 Regular Session

AB 1162 (Bonta)
Version: April 28, 2025
Hearing Date: June 24, 2025
Fiscal: No
Urgency: No
ID

SUBJECT

Challenges to housing and community-serving projects

DIGEST

This bill permits a defendant or real party in interest in a civil action, including an action brought pursuant to the California Environmental Quality Act, challenging a community-serving project that is connected to an affordable housing development, to make a motion to require the plaintiff to provide a bond for the costs and any damages as a result of delay in carrying out the project, if the civil action has the effect of preventing or delaying the project, as specified.

EXECUTIVE SUMMARY

The California Environmental Quality Act (CEQA) was a landmark law enacted by the California Legislature in 1970 to put in place procedures and protections that ensure that projects undertaken or approved by government agencies give major consideration "to preventing environmental damage, while providing a decent home and satisfying living environment" for Californians. (Pub. Res. Code § 21000(g).) CEQA requires that projects subject to it fully consider, disclose, and address the environmental impacts of the project. Individuals or groups concerned that a government agency failed to comply with CEQA's requirements may challenge the agency's action or approval of the project in court. In recent years, concerns have been raised that too many CEQA lawsuits are frivolous or vexatious lawsuits meant to delay or thwart unwanted projects. California law allows defendants in lawsuits challenging an affordable housing project under CEQA or another law to request that the plaintiff be required to provide a bond to cover the costs and damages of the delay to the project caused by the lawsuit, when the defendant can show that the lawsuit is without merit and was brought in bad faith, vexatiously, for the purpose of delay, or to thwart the affordable nature of the housing development project. AB 1162 extends this law to include lawsuits challenging community-serving projects that have a direct connection or benefit to an affordable housing development, as specified, and permits real parties in interest, in addition to

the defendant, to seek the imposition of the bond requirement. AB 1162 is author-sponsored and is supported by the City of Emeryville, the League of California Cities, and LeadingAge California. The Committee has received no timely opposition to the bill.

PROPOSED CHANGES TO THE LAW

Existing law:

1) Establishes the California Environmental Quality Act (CEQA) to require public agencies to prepare, or cause to be prepared, and to certify the completion of, an environmental impact report (EIR) on a proposed discretionary 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 significant environmental effects. Sets requirements relating to the preparation, review, comment, approval and certification of EIRs. (Pub. Res. Code §§ 21100 et seq.)

2) Defines a "project" for the purpose of CEQA as an activity that may cause either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment, and includes any of the following:
    a) an activity directly undertaken by any public agency;
    b) an activity undertaken by a person which is supported, in whole or in part, through contracts, grants, subsidies, loans, or other forms of assistance from one or more public agencies; or
    c) an activity that involves the issuance to a person of a lease, permit, license, certificate, or other entitlement for use by one or more public agencies. (Pub. Res. Code § 21065.)

3) Provides that an action or proceeding to attack, review, set aside, void, or annul the acts or decisions of a public agency on the grounds that it failed to comply with CEQA may be commenced when it is alleged that:
    a) a public agency is carrying out or has approved a project that may have a significant effect on the environment without having determined whether the project may have a significant effect on the environment;
    b) a public agency has improperly determined whether a project may have a significant effect on the environment;
    c) an environmental impact report prepared by, or caused to be prepared by, a public agency does not comply with CEQA;
    d) a public agency has improperly determined that a project is not subject to CEQA; or
    e) any other act or omission of a public agency does not comply with CEQA. (Pub. Res. Code § 21167.)

4) Requires the superior court and court of appeal to provide lawsuits related to CEQA preference over all other civil actions therein, in the matter of setting the same for hearing or trial, and in hearing the same, to the end that the action or proceeding is to be quickly heard and determined. (Pub. Res. Code § 21167.1(a).)

5) Provides that, in all civil actions, including those brought pursuant to CEQA, that are brought by any plaintiff to challenge a housing development project that meets or exceeds the requirements for low- or moderate-income housing, a defendant may apply to the court by noticed motion for an order requiring the plaintiff to furnish an undertaking as security for costs and any damages that may be incurred by the defendant as the result of a delay in carrying out the development project, if the bringing of the action has the effect of preventing or delaying the project from being carried out. (Code Civ. Proc. § 529.2.)

6) Provides that a defendant seeking a security pursuant to (5), above, must make a motion for that security on the grounds that:
    a) the action is without merit and was brought in bad faith, vexatiously, for the purpose of delay, or to thwart the low- or moderate-income nature of the housing development project. (*Ibid*.)

7) Permits a plaintiff subject to a bond pursuant to (5), above, to request to limit the amount of the undertaking by providing evidence that the undertaking will cause them undue economic hardship. (Code Civ. Proc. § 529.2(b).)

8) Specifies that if, at any time after the plaintiff has filed an undertaking, the housing development plan is changed by the developer in bad faith so that it fails to meet or exceed the requirements for low- or moderate-income housing, the developer shall be liable to the plaintiff for the cost of the undertaking. (Code Civ. Proc. § 529.2(c).)

9) Authorizes a defendant, in any litigation pending in any court of this state and at any time until final judgment is entered, to move the court upon a notice and a hearing for an order requiring the plaintiff to furnish security. Specifies that the motion for an order requiring the plaintiff to furnish security must be based upon the grounds, and supported by a showing, that the plaintiff is a vexatious litigant and there is not a reasonable probability they will prevail in the litigation against the moving defendant. (Code Civ. Proc. § 391.1.)

10) Defines a "vexatious litigant" as a person who does any of the following:
    a) in the immediately preceding seven-year period, has commenced, prosecuted, or maintained in propria persona at least five lawsuits, other than in a small claims court, that have been finally determined adversely to the person or unjustifiably permitted to remain pending at least two years without having been brought to trial or hearing;

b) after the lawsuit has been finally determined against the person, repeatedly relitigates or attempts to relitigate, in propria persona, either the validity of the determination against the same defendant or defendants as to whom the litigation was finally determined or the cause of action, claim, controversy, or any of the issues of fact or law, determined or concluded by the final determination against the same defendant or defendants as to whom the litigation was finally determined;
c) in any litigation while acting in propria persona, repeatedly files unmeritorious motions, pleadings, or other papers, conducts unnecessary discovery, or engages in other tactics that are frivolous or solely intended to cause unnecessary delay; or
d) has previously been declared a vexatious litigant by any state or federal court of record in any action or proceeding based upon the same or substantially similar facts, transaction, or occurrence. (Code Civ. Proc. § 391(b).)

This bill:

1) Authorizes a defendant or a real party in interest in a lawsuit, including one brought pursuant to CEQA, that challenges a community-serving project to request that the court require the plaintiff provide an undertaking when the civil action has the effect of preventing or delaying the project from being carried out.

2) Permits a real party in interest in a lawsuit challenging an affordable housing project to request that the court require the plaintiff provide an undertaking, as specified.

3) Defines "community-serving project" as a project primarily designed to provide public infrastructure, goods, or direct or auxiliary services essential to community well-being, including, but not limited to, projects like housing, shelter, food, health care, hygiene, and safety. Requires a community-serving project to be undertaken by a nonprofit organization, a governmental entity, or an entity that is contracted with a nonprofit or governmental entity. Provides examples of community-serving projects to include:
    a) Community health care services;
    b) Food banks or food distribution programs;
    c) Recovery support services for victims of crime or domestic violence;
    d) Streets, parks, or libraries;
    e) Animal shelters;
    f) Homeless services;
    g) Educational facilities, community centers, and arts and cultural programs; and
    h) Social services.

4) Requires that a qualifying community-serving project have a direct and substantial connection and benefit to an affordable housing project, by satisfying at least one of the following criteria:
    a) the project is physically located on the same site as, or within reasonable proximity to, the affordable housing development, or it provides on-site services that directly support the well-being of affordable housing residents;
    b) the project constructs, improves, or maintains public infrastructure, including public transit enhancements, pedestrian pathways, community centers, parks, and libraries, that enhance the livability, safety, or accessibility of the affordable housing project;
    c) the project is operated by a nonprofit organization, governmental entity, or a contracted entity that provides direct services primarily for the residents of the affordable housing project, such as job training, health care, domestic violence recovery support, educational programs, senior services, and mental health counseling; or
    d) the project is undertaken in conjunction with an affordable housing development that continues to maintain its affordability commitments, funding agreements, or regulatory covenants that ensure services remain accessible to low- and moderate-income individuals.

COMMENTS

1. Author's statement

According to the author:

> California urgently needs more affordable housing and the community services that support residents' well-being. While the California Environmental Quality Act (CEQA) ensures environmental review of development projects, it has been misused by a small group filing baseless lawsuits to delay or block essential affordable housing and related community projects.
>
> AB 1162 builds on recent reforms to stop vexatious CEQA litigation by extending litigation bond protections to community-serving projects directly connected to affordable housing. This allows project sponsors to require plaintiffs who file meritless lawsuits to post a bond covering costs and damages caused by project delays. This tool prevents a single litigant from halting critical projects like food banks, health clinics, parks, and other services that are vital to affordable housing communities.
>
> Supporting AB 1162 means advancing affordable housing and the supportive services that make these communities livable and safe. It helps local

governments and nonprofits build vital housing and community projects without undue obstruction.

2. The CEQA process

The California Environmental Quality Act (CEQA) was a landmark law enacted by the California Legislature in 1970. CEQA was meant to put in place procedures and protections that ensure that projects undertaken or approved by government agencies give major consideration "to preventing environmental damage, while providing a decent home and satisfying living environment" for Californians. (Pub. Res. Code § 21000(g).) Thus, CEQA requires that projects subject to it fully consider, disclose, and address the environmental impacts of the project. However, CEQA does not require specific outcomes for projects; instead, it is focused on "mandating that 'decision makers and the public' study the likely environmental effects of contemplated government actions and thus make fully-informed decisions regarding those actions. … In other words, CEQA does not care what decision is made, as long as it is an informed one." (*Citizens Coalition Los Angeles v. City of Los Angeles* (2018) 26 Cal. App. 5th 561, 577.)

Under CEQA, projects must go through a specific process before the project is approved and commenced. A project is an action subject to a government agency's discretionary funding or approval that has the potential to cause direct physical change to the environment or a reasonably foreseeable indirect physical change. (Pub. Res. Code § 21065.) Some types of projects are statutorily or categorically exempt from CEQA review. While statutory exemptions apply regardless of whether the exempt project will affect the environment, categorical exemptions may still be subject to CEQA review under certain circumstances in which it will have a significant impact. Thus, the first step in the CEQA process is to determine whether the project falls within any exemption to CEQA. If it is determined that the project does fall under an exemption, a notice of exemption is made that includes the finding that the project is exempt from CEQA, and the basis for that finding.

If the project does not fall within an exemption, the lead agency must conduct an initial study to determine whether the project may result in significant environmental effects. (Pub. Res. Code § 21080(c).) If the agency concludes that the project will not cause a significant effect on the environment, it can prepare and publish a negative declaration that states this conclusion and that an Environmental Impact Report (EIR) is thus not required. The agency may then approve the project without further review. However, an agency's initial study may also determine that there is a significant environmental effect, but that the project's owner has agreed to changes or conditions that would avoid the significant adverse impacts. In that case, the agency may produce a mitigated negative decision, and move forward with the project with those changes. If the agency determines that the project may have a significant effect on the environment, the agency must prepare an EIR. The EIR must accurately describe the project, evaluate the

environmental impacts of the project, identify mitigation measures that would reduce the environmental impacts of the project, and review project alternatives that would reduce the project's adverse environmental impacts. The agency must allow the public at least 30 days to submit public comment on the draft EIR, and must respond to each comment submitted regarding the draft EIR. Once that is complete, the comments and the agency's responses becomes part of the final EIR, and the agency must determine whether to approve the project in light of the EIR, deny it, or approve an alternative to the project that would be less harmful to the environment. The agency must make certain findings regarding the project, in light of its EIR and any adopted mitigation measures, before approving the project.

The adequacy of the agency's CEQA review can be challenged in court. An aggrieved plaintiff can sue to set aside the agency's actions for noncompliance with CEQA or challenge their sufficiency under CEQA's requirements. If, for example, an agency determines that the project is exempt from CEQA and approves the project, that determination can be challenged within 35 days of the approval. (Pub. Res. Code § 21167(d).) The agency's determination regarding whether a project has a significant effect on the environment, as well as the agency's EIR itself, if one is completed, may also be challenged for its conclusion or sufficiency. Reports of CEQA lawsuits stalling development projects with litigation has resulted in considerable dialogue over the years regarding whether CEQA results in too much litigation and delay. However, hundreds of projects go through environmental review under CEQA every year without significant litigation. Additionally, because the agency's decision regarding the approval of the project and its environmental review are not otherwise subject to any higher administrative review, CEQA lawsuits act in effect as the primary means of ensuring that state agencies are complying with CEQA's requirements and reviewing agencies' determinations.

3. AB 393's attempt to reign in CEQA lawsuits

Nonetheless, California is currently in a severe housing crisis, and various stakeholders and pro-development groups have raised concerns regarding a perceived flood of CEQA lawsuits from a small number of individuals or groups that they see as frivolous lawsuits to delay or stop the development of housing. Seeking to deter these vexatious lawsuits and ensure that developers of challenged projects can be covered for the costs of delay, California law allows a defendant in such a suit regarding an affordable housing development to request that the court require the plaintiff to post a bond. (Code Civ. Proc. § 529.2.) The bond is meant to cover the costs and any damages incurred by the defendant as a result of delay in the project due to the civil action, so as to provide some security that a frivolous lawsuit will not be able to derail the project. The bond can also operate to discourage the litigant from bringing the lawsuit in the first place because of the potentially significant financial requirements for the bond.

To make such a request, the law prior to this year required the defendant to make the motion to the court on the grounds that: (1) the civil action was brought in bad faith, vexatiously, for the purpose of delay, or to thwart the low- or moderate-income nature of the housing project.; and (2) the plaintiff will not suffer undue economic hardship by filing the undertaking with the court. Under current law, a vexatious litigant is one who has lost at least five lawsuits, or has brought at least five lawsuits that were delayed considerably without resolution, within the past seven years. (Code Civ. Proc. § 391(b).) Last year, the Legislature enacted SB 393 (Glazer, Ch. 285, Stats. 2024) to revise the bond requirements. Primarily, SB 393 placed on the plaintiff the onus of proving that the bond would cause the plaintiff undue economic hardship, rather than on the defendant in the first instance. SB 393 also required that a defendant seeking to require the plaintiff provide a bond show that the civil action is without merit.

4. AB 1162 proposes to include "community-serving projects" in the protections made by SB 393

The author asserts that, while SB 393 provided more protections for developers of affordable housing projects, a gap exists in that vexatious litigants can still delay a project by challenging vital but ancillary projects like food banks, parks, and other services. Such projects would not be covered by the bond provisions in Code of Civil Procedure section 529.2. Thus, if such projects are essential to an affordable housing project, delays in those projects also could ultimately delay or derail the affordable housing project.

AB 1162 attempts to address this by including "community-serving projects" in section 529.2's provisions, thus allowing a defendant or real party in interest in a civil action challenging a community-serving project to also request the court require a bond from the plaintiff, if all other requirements are met. A community-serving project is defined as a project that is "primarily designed to provide public infrastructure, goods, or direct services essential to community well-being, including, but not limited to, housing, shelter, food, health care, hygiene, and safety." A community-serving project must be undertaken by a nonprofit organization, a governmental entity, or an entity that contracts with either a nonprofit or governmental entity. The text of AB 1162 also provides examples of community-serving projects: community health care services, food banks, recovery support services for survivors of crime or domestic violence, streets and parks, libraries, animal shelters, homeless services, educational facilities, community centers, cultural programs, and social services. AB 1162 does not alter or remove the ability for a plaintiff to show that the bond would cause them undue economic hardship, or the grounds for the motion for the bond.

A community-serving project that qualifies under AB 1162's provisions must have a direct and substantial connection and benefit to an affordable housing project. To satisfy this requirement, AB 1162 specifies four sets of criteria, any of which the community-serving project may satisfy in order to have a sufficient connection to an affordable

housing project. These criteria are that the project: be physically located on the same site as, or within reasonable proximity to, the affordable housing development, or provides on-site services that directly support the well-being of residents; constructs, improves, or maintains public infrastructure that enhances the livability, safety, or accessibility of the affordable housing project; is operated by a qualifying entity that provides direct services primarily for the residents of the affordable housing development; or the project is undertaken in conjunction with the affordable housing development.

While this nexus requirement appropriately ties the community-serving project to an affordable housing development, as is the intent of the bill, both the definition of community-serving projects and the criteria for having a connection or benefit to an affordable housing project are quite broad. For example, what exactly are "direct services essential to community well-being?" Moreover, while a direct and substantial connection and benefit to an affordable housing development is a concise requirement, the criteria required to satisfy this requirement are also quite broad. Any project that is located near an affordable housing development, if it otherwise meets the definition of a community-serving project and is undertaken by a nonprofit or government agency would meet the first criteria for having a connection to the affordable housing development. That could include a legal services center or nonprofit that provides some kind of goods or services, whether or not those services are actually provided to the residents of the housing development. It could also cover a coffee shop that is run by a nonprofit to support some charitable purpose, as long as it is near the affordable housing development. In fact, it is far easier to think of projects that do qualify under AB 1162's requirements than projects that do not.

Yet this breadth, perhaps, is part of the point, as it would ensure any project near or beneficial to an affordable housing development can also be better protected from vexatious suits. The author asserts that this is necessary because many projects currently not covered by Section 529.2 are nonetheless vital to the affordable housing project. Indeed, it is good policy to include as many resources and services near affordable housing developments as possible, but AB 1162 could well include projects that are not actually tied to or serve the affordable housing project, and whose approval or denial would not delay or frustrate the affordable housing development itself. Nonetheless, the project would still need to be undertaken by a nonprofit or government entity, and thus cannot benefit wholly-private companies that provide goods in the community. Thus, qualifying projects would still ostensibly have a public, community-serving purpose.

AB 1162 makes one other change to Section 529.2. It specifies that, in addition to a defendant in a suit challenging an affordable housing development or community-serving project, a real party in interest may also seek to require a bond. A real party in interest is a party with a direct interest that may be affected by the lawsuit. In the context of CEQA, this is often the entity or developer that received a permit or approval from the government for the challenged project. A lawsuit challenging a government

entity's approval of a project under CEQA typically names the government entity as the defendant, and also names the developer or similar stakeholder as the real party in interest. By permitting a real party in interest to request that the plaintiff be required to obtain a bond, AB 1162 would allow a party other than the defendant, such as the developer of the project or the nonprofit undertaking it, to make the bond request as well.

SUPPORT

City of Emeryville
LeadingAge California
League of California Cities

OPPOSITION

None received

RELATED LEGISLATION

Pending Legislation: SB 678 (Niello, 2025) permits a defendant in a civil action challenging a project that will engage in fire prevention activities, including an action under CEQA, to request that the plaintiff be required to provide a bond as security for costs and damages that may be incurred by the defendant if the suit would result in preventing or delaying the project, as specified. Permits a plaintiff to request such a bond be decreased because it would result in undue economic hardship. SB 678 was held in the Senate Appropriations Committee.

Prior Legislation:

SB 393 (Glazer, Ch. 285, Stats. 2024) *see* Comment 3.

SB 950 (Jackson, 2020) in addition to various changes to CEQA, would have amended Code of Civil Procedure Section 529.2 to permit a real party in interest, in addition to the defendant, to request a court require that a plaintiff provide a bond in a lawsuit challenging an affordable housing development, and would have expanded the grounds upon which such a motion may be made. SB 950 died in the Senate Environmental Quality Committee due to the COVID-19 related bill limitations.

PRIOR VOTES:

Assembly Floor (Ayes 77, Noes 0)
Assembly Judiciary Committee (Ayes 12, Noes 0)
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