

**TITLE 14, DIVISION 6.3. OFFICE OF PLANNING AND RESEARCH
INITIAL STATEMENT OF REASONS**

Chapter 2. Regulations Governing Applicant Fees for Environmental Leadership Project Applications

BACKGROUND AND PROBLEM STATEMENT

In 2021, the Legislature adopted the Jobs and Economic Improvement Through Environmental Leadership Act (hereafter “Act”) (codified at Public Resources Code sections 21178-21189.3), which reenacted the 2011 act of the same name. The Act authorizes the Governor, until January 1, 2024, to certify projects that meet specified requirements for judicial streamlining benefits under the California Environmental Quality Act (“CEQA”). Once certified, a project is eligible to utilize procedures developed by the Judicial Council which, to the extent feasible, require that all actions or proceedings brought to challenge that project, including appeals, be resolved within 270 days of the filing the certified record of proceedings with the Court. In order to be eligible for CEQA streamlining, among other requirements, projects must not result in any net additional emission of greenhouse gases and must meet certain specified labor requirements. Additionally, the Act allows affordable housing projects meeting certain requirements to apply for judicial streamlining certification. Under the Act, the Governor’s Office of Planning and Research (“OPR”) reviews applications for judicial streamlining, and recommends to the Governor whether a project meets the requirements for certification.

Public Resources Code section 21184.7 authorizes OPR to charge a fee to applicants seeking certification under the Act for the costs incurred in its implementation of the SB 7 program. The section does not specify what the fee is or how OPR will administrate it. The proposed rule will establish this application fee and provide clarity on how it will be administered.

BENEFITS

Benefits of the proposed rule include allowing OPR to recoup some of the costs of reviewing applications for judicial streamlining certification under the Act, which will sustain OPR’s ability to implement the Act. Implementation of the Act will benefit the public in a number of ways, including streamlining the judicial review of projects that replace old and outmoded facilities, generate thousands of full-time jobs during construction and operation, and implement innovative measures that significantly reduce significant greenhouse gas emission and other impacts. Streamlined projects are also required to mitigate their emissions on-site or locally to the extent feasible, meaning these projects will achieve emissions reductions in their communities. Further, the proposed rule will provide clarity and transparency for applicants on the fee process. Specifically, the proposed rule clarifies the fee amount, when and how to submit their fees, and when the application fee will go into effect. Additionally, the proposed rule provides a fee exemption for affordable housing project applicants, which will lessen the burdens of applying for judicial streamlining on those types of projects. This exemption will benefit the public by lessening the burden of applying for judicial streamlining under the Act on affordable housing projects, which are an important part of addressing California’s housing shortage.

SPECIFIC PURPOSE, NECESSITY AND RATIONALE FOR ADOPTION

OPR proposes adding Chapter 2, Sections 16100, 16101, 16102, and 16103 of Division 6.3 of Title 14 of the California Code of Regulations, as follows.

Section 16100. Fees

The purpose of proposed Section 16100 is to establish the application fee amount for filing an application for streamlining certification pursuant to the Act. The proposed section sets the fee at \$39,000 per application. The proposed application fee is based on the estimated costs to OPR of reviewing one application under the program, including overhead costs. As reflected in Figure 1 below, one application takes approximately 324.49 OPR staff hours to review and process for recommendation to the Governor for certification. The hourly rate to support all staff members, including salary, benefits and overhead costs, such as facility and IT costs, is \$120.19. This results in total cost per application of around \$39,000 to recoup OPR’s costs of reviewing each application. This fee estimate does not include implementation costs to OPR unrelated to application review, including the costs related developing guidelines for the submission of applications under the Act, application review for affordable housing project applicants, undergoing the rulemaking to institute this proposed rule, hiring staff, and conferring with the Governor’s office on non-application specific issues.

Figure 1: Cost per application calculation

Total OPR staff hours per application	Hourly rate	Total Cost per Application
324.49	\$120.19	≈\$39,000

The proposed section is necessary to provide applicants with the information regarding the application fees they will have to pay when submitting an application under the Act. Additionally, the proposed section’s fees will allow OPR to recoup some of its costs of implementing the Act. This will permit OPR to sustainably fund its implementation costs, while not imposing so great an expense as to make applying for certification under the Act infeasible for potential applicants.

Section 16101. Submission of Fees

The purpose of proposed section 16100 is to specify the due date of the application fees established by proposed section 16100 as well as how applicants can submit their application fees. The proposed section also clarifies that proof that the application fee has been mailed at the time the applicant submits their application is sufficient for OPR to begin reviewing the application and that the fee must be received and processed prior to certification.

Proposed subsection (a) specifies that the application fee for each application is due and payable at the time of filing the application with OPR. The proposed subsection is necessary to provide applicants with information on when the fees should be submitted and to provide OPR with a time when it can expect to receive the funds to recoup part of its costs.

Proposed subsection (b) specifies that the application fees should be submitted by check to the Office of Planning and Research and that the check for the application fees can be submitted or mailed to OPR’s offices at 1400 10th Street, Sacramento, CA 95814. The proposed method of payment was established because it imposes the lowest processing costs on OPR. The proposed subsection is necessary to clarify to applicants how to submit application fees and what method of payment is acceptable.

Proposed subsection (c)(1) specifies that applicants must include their name alongside submission of their application fee. This proposed subsection is necessary because it enables OPR to identify which application the fee should be applied to.

Proposed subsection (c)(2) specifies that applicants must include their project name alongside submission of the application fee. This proposed subsection is necessary to further enable OPR to identify which application the fee should be applied to, particularly in cases where the same entity has submitted multiple applications for different projects.

Proposed subsection (c)(3) specifies that applicants must include alongside their application fee a statement that the enclosed check is the application fee for the applicants Environmental Leadership Project Application and that OPR is authorized to process the check. This proposed subsection is necessary because it will enable OPR staff to direct the check to the appropriate staff person(s) when it arrives at OPR's office. Additionally, it provides confirmation to OPR that the applicant authorizes OPR to process the check.

Proposed subsection (d) specifies that proof that the application fee has been mailed at the time an applicant submits their application shall be sufficient for OPR to begin reviewing the application. The proposed subsection further specifies that the application fee must be received and processed prior to certification by the Governor. This proposed subsection is necessary because applicants are often operating on constrained timelines and this subsection provides assurance to applicants that OPR will be able to start moving their application forward while the application fee is in the mail. Additionally, the subsection is necessary because it provides OPR with assurances that the application fee check will be received and processed prior to certification.

Section 16102. Exemption for Affordable Housing Project Applicants

Proposed section 16102 specifies that applicants of an affordable housing project, defined as meeting conditions set forth in Section 21180, subdivision (b)(4) of the Public Resources Code, are exempt from the fee set forth in proposed section 16100. The purpose of the proposed section is to lessen the burdens of affordable housing projects that, as defined in the Public Resources Code, have smaller overall budgets and for which the application fee might be prohibitively expensive. The proposed section is necessary in order to ensure that affordable housing projects, which are important to reducing California's housing crisis, are not prevented from accessing the CEQA judicial streamlining provided under the Act.

Section 16103. Applicability

The purpose of proposed section 16103 is to specify that Chapter 2, Division 6.3 of Title 14 proposed by this rulemaking, is applicable to all applications submitted after the effective date of the regulations. The proposed section is necessary because it provides clarity to prospective applicants about whether they will be subject to the application fee.

TECHNICAL, THEORETICAL, AND/OR EMPIRICAL STUDIES, REPORTS OR DOCUMENTS

No technical, theoretical and/or empirical studies, reports or documents were relied on in proposing these regulations.

ECONOMIC IMPACT ASSESSMENT/ANALYSIS

Based on the following economic impact analysis, OPR concludes that this regulatory proposal will have the following effects:

- (1) It will not create or eliminate any jobs within the State of California;
- (2) It will not create new, or eliminate existing, businesses within the State of California;

- (3) It will not expand businesses currently doing business within the State of California; and
- (4) It will benefit the health and welfare of California residents and the state's environment by sustaining OPR's implementation of the CEQA judicial streamlining provisions of the Act.

In regards to creating or eliminating jobs in California, OPR does not anticipate that that the proposed regulation will have any effect. As discussed above, the proposed rule will impose a one-time fee of thirty-nine thousand (\$39,000) on projects submitting an application for CEQA judicial streamlining certification under the Act, exempting affordable housing project applicants. While OPR anticipates that applicants may hire staff, such as consultants, to help them prepare their judicial streamlining application, the proposed rule will not impact those jobs, and will merely establish an application fee. Additionally, because the fee only represents less than 1% of the minimum one hundred million (\$100,000,000) investment required for non-affordable housing project applicants ($\leq .039\%$), OPR does not expect that this will cause the loss of any jobs. Additionally, because compliance with the proposed rule only requires submitting the check to OPR, OPR anticipates the administrative burden imposed by this proposed rule will be minimal, and will not cause the loss of any jobs.

In regards to creating new or eliminating existing businesses within California, OPR does not anticipate that the proposed regulation will have any impacts. The implementation of a fee for applicants applying to this program represents less than 1% of the minimum one hundred million (\$100,000,000) investment required for non-affordable housing project applicants under the Act ($\leq .039\%$). Thus, OPR does not anticipate that it will eliminate any existing businesses. Additionally, the imposition of the fee will not require applicants to contract with outside businesses, and so the proposed rule will create new businesses in California either. While OPR anticipates that applicants may contract with outside businesses, such as consulting businesses, to help them prepare their judicial streamlining application, the proposed rule will not impact those contracts, and will merely establish an application fee. Additionally, because compliance with the proposed rule only requires submitting the check to OPR, OPR anticipates the administrative burden imposed by this proposed rule will be minimal, and will not cause the loss of any jobs.

OPR does not anticipate that the proposed rule will expand existing businesses in California. As discussed above, the fee imposed by the proposed rule will not require that applicants contract with outside businesses. While OPR anticipates that applicants may contract with outside businesses, such as consulting businesses, to help them prepare their judicial streamlining application, the proposed rule will not impact those contracts, and will merely establish an application fee.

OPR anticipates that the proposed rule will benefit the health and welfare of the public by enabling OPR to recoup some of its costs and be able to continue sustainably implementing the CEQA judicial streamlining program under the Act. Under the proposed rule, OPR will recoup approximately \$117,000 in costs expended to implement the Act between the effective date of the proposed rule and January 1, 2024, when the Act requires all applications to be certified by the Governor. Continued implementation of the Act will benefit the public and the environment by judicial streamlining the judicial review of projects that replace old and outmoded facilities, generate thousands of full-time jobs during construction and operation, and implement innovative measures that significantly reduce significant greenhouse gas emissions and air quality impacts. Additionally, continued implementation of the Act will enable affordable housing projects to apply for CEQA judicial streamlining, which will ease judicial delays for affordable housing projects in California.

EVIDENCE SUPPORTING FINDING NO SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT DIRECTLY AFFECTING BUSINESS

The proposed rule would impose a thirty-nine thousand dollar fee (\$39,000) on applicants applying for judicial streamlining certification benefits under the Act to recoup some of OPR's costs of implementing the Act. OPR estimates that it will receive approximately five applications between the effective date of the proposed rule and January 1, 2024, when the Act requires all applications submitted under the Act to be certified by the Governor. Of those applications, two are estimated to be affordable housing projects, which are exempt from the proposed rule's fee requirement. Thus, the total fees collected by OPR under the proposed rule are estimated to be \$117,000 statewide.

The fee set by the proposed rule will not have a significant adverse impact on businesses. As defined in the Act, non-affordable housing applicants must have a minimum investment of one hundred million dollars (\$100,000,000) in California upon completion of construction in order to apply. (Public Resources Code § 21183(a)(1).) This means, assuming that a project applicant has a total investment of one hundred million dollars, the fee imposed on development applicants represents less than 1% ($\leq .039\%$) of the applicant's total investment. Additionally, the proposed rule would not impose any fees at all on affordable housing applicants, which the Act defines as having smaller overall investments of between fifteen million (\$15,000,000) and one hundred million dollars (\$100,000,000).

Nor would the other requirements of the proposed rule impose a significant adverse economic impact on businesses statewide. The remaining provisions of the proposed rule do not impose any new significant duties on applicants under the Act, and merely set forth minor procedural requirements needed for OPR to process the fees set by the proposed rule, and set the form and deadline for the fee payment. OPR does not anticipate that the additional duties imposed by these provisions, which specify identifying information that should be submitted with the fee, and that the fee should be submitted by check to OPR's offices, will impose any significant costs on applicants.

ALTERNATIVES DETERMINATION

No reasonable alternative to the regulatory proposal would either be more effective in carrying out the purpose for which the action is proposed or would be less burdensome and equally effective in achieving the purposes of the regulation in a manner that ensures full compliance with the law being implemented or made specific. Set forth below are the alternatives which were considered and the reasons each alternative was rejected:

Recouping All Implementation Costs Alternative

The first alternative considered by OPR is an alternative rule that would seek to recoup all of OPR's costs of implementing the Act, as opposed to only the average costs of reviewing and processing one application. These additional costs include staffing and administrative costs related to preparing guidelines for applicants, application review for affordable housing project applicants, undergoing the rulemaking to institute this proposed rule, hiring staff, and conferring with the Governor's office on non-application specific issues.

The total estimated yearly costs of OPR implementing the Act are \$725,000. OPR estimates it will receive 5 applications between the effective date of the proposed rule and January 1, 2024. Thus, in order to recoup all its costs, under this alternative OPR would implement a fee of \$145,000 per application.

Ultimately, OPR rejected this alternative in favor of the proposed rule because of the high cost per application. Environmental leadership development projects have a number of other CEQA-related expenses around the time of application, including the costs of preparing their applications, litigation expenses, and judicial council fees. Alongside these other costs, recouping all of OPR's implementation costs could make the program infeasible for certain, otherwise-qualifying, applicants. This would lessen the benefits to the state from judicial streamlining the judicial review of projects that replace old and outmoded facilities, generate thousands of full-time jobs during construction and operation, and implement innovative measures that significantly reduce significant greenhouse gas emission and other impacts. Additionally, because of their smaller overall budgets, the high cost per application would impact affordable housing project applicants even more significantly than other types of project applicants. This could prevent affordable housing applicants from applying for judicial streamlining under the Act.

No Affordable Housing Exemption Alternative

The second alternative considered by OPR is an alternative that would implement the same fee as the proposed rule, but would not provide an exemption for affordable housing project applicants. This alternative would have the benefit of recouping additional revenue for OPR. OPR estimates that it will receive two affordable housing project applications per year. Under this alternative OPR would receive an additional \$78,000 in application fees per year to recoup more of its costs of implementing the Act.

OPR rejected this alternative in favor of the proposed rule because this alternative, by requiring affordable housing projects pay the same application fee as other projects, might make CEQA judicial streamlining certification under the Act inaccessible for those projects. As defined in the Act at Section 21180, subdivision (b)(4) of the Public Resources Code, affordable housing project applicants must have a much smaller total investment than other project applicants, therefore the application fee would represent a much larger portion of their overall budget. OPR felt that this alternative would not benefit the public if it impacted the ability of affordable housing projects to apply to receive judicial streamlining benefits under the Act.

Alternatives Not Considered by OPR

No Fee Alternative

OPR did not consider an alternative that would impose no application fees under the program. Such an alternative was not a reasonable or feasible alternative because OPR would recoup none of its fees from implementing the program. This would not allow OPR to sustainably continue to implement the program.