

**TITLE 14, DIVISION 6.3. OFFICE OF PLANNING AND RESEARCH  
NOTICE OF PROPOSED RULEMAKING ACTION**

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

**NOTICE IS HEREBY GIVEN** that the Office of Planning and Research (“OPR”) proposes to adopt the regulations described below after considering all comments, objections and recommendations regarding the proposed action.

**PUBLIC HEARING**

OPR did not schedule a public hearing on this proposed action. However, OPR will hold a hearing if it receives a written request for a public hearing from any interested person, or their authorized representative, no later than 15 days before the close of the written comment period.

**WRITTEN COMMENT PERIOD**

Any interested person, or their authorized representative, may submit written comments relevant to the proposed regulatory action via email or mail to:

OFFICE OF PLANNING AND RESEARCH  
ATTN: SHANNON CLARK  
1400 TENTH STREET  
SACRAMENTO, CA 95814  
EMAIL: [comments@opr.ca.gov](mailto:comments@opr.ca.gov)

The written comment period closes on **January 17, 2023**. OPR will only consider timely received comments. When commenting, please indicate that your comment refers to this rulemaking action.

**AUTHORITY AND REFERENCE**

Public Resources Code section 21184.7 authorizes OPR to adopt these proposed regulations. The proposed regulations implement, interpret and make specific the application fees for applications submitted pursuant to the Jobs and Economic Improvement through Environmental Leadership Act of 2021. (Pub. Resources Code sections 21180, 21181, 21182, 21183, 21183.5, 21183.6, 21184, 21184.5, 21184.7, 21185, 21186, 21187, 21187.5, 21188, 21189, 21189.1, 21189.3.)

**INFORMATION DIGEST/POLICY STATEMENT OVERVIEW**

**Summary of Existing Laws and Effect of Proposed Action**

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). The Act permits Environmental Leadership Development Projects (“projects”) that meet the requirements outlined in the Act and are certified by the Governor to receive streamlined judicial review under the California Environmental Quality Act (“CEQA”). Public Resources Code section 21184.7 authorizes OPR to charge a fee to applicants seeking certification for the costs incurred by OPR in reviewing applications for recommendation to the Governor for certification for judicial streamlining.

The regulations proposed in this rulemaking action specify the fees that applicants must pay when submitting applications to OPR for judicial streamlining pursuant to CEQA. The regulations also specify a due date and procedures for the submission of fees. Specifically, the proposed regulations specify that

1) application fees for projects are due at the time of filing the application with OPR, 2) that application fees should be submitted by check to OPR's address, and 3) that applicants must include their name, the name of the project seeking certification, and a statement that the enclosed check is the application fee for the applicant's Environmental Leadership Project Application and that OPR is authorized to process the check. The proposed rule further states that proof that the application fee has been mailed at the time an applicant submits their application is sufficient to allow OPR to begin reviewing the application, and that the application fee must be received and processed prior to certification by the Governor. The proposed regulations exempt affordable housing project applicants, as defined at Section 21180, subdivision (b)(4) of the Public Resources Code, from the application fees established by the regulations. The proposed regulations also specify that the application fee applies to all applications submitted after the effective date of the regulations.

### **Objectives and Anticipated Benefits of the Proposed Regulation**

The broad objective of the proposed regulations is to ensure that OPR is reimbursed for some of its costs of reviewing judicial streamlining applications while also not imposing overly burdensome costs on Environmental Leadership Development Project applicants. These regulations would allow OPR to recoup a portion of its costs without making the application process infeasible for applicants, including affordable housing project applicants. Additionally, these proposed rules specify the due date for application fees and establish procedures for the submission of application fees to ensure that OPR is able to process application fees quickly and efficiently and to provide clarity for projects.

Benefits of the proposed rule include allowing OPR to recoup some of the costs of reviewing applications for 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. Additionally, the proposed rule clarifies when applications are due and provides a fee exemption for affordable housing projects, which will lessen the burdens of applying to this program on those types of projects. This will benefit the public by making judicial streamlining under the Act more accessible to affordable housing projects, which are an important part of addressing California's housing shortage.

### **Evaluation of Inconsistency/Incompatibility with Existing State Regulations**

OPR determined that these proposed regulations are not inconsistent or incompatible with existing regulations. After conducting a review for any regulations that would relate to or affect this area, OPR has concluded that these are the only regulations that concern reimbursement of OPR's costs for implementation of the Act.

### **DISCLOSURES REGARDING THE PROPOSED ACTION**

OPR has made the following initial determinations:

*Mandate on local agencies or school districts:* None.

*Costs to a local agency or school district required to be reimbursed pursuant to Government Code section 17500 et seq.:* None.

*Other nondiscretionary cost or savings imposed on local agencies:* None

*Cost or savings in federal funding to the state:* None

*Cost or savings to any state agency:* The proposed regulations establish a thirty-nine thousand dollar (\$39,000) application fee to be paid to OPR by applicants to reimburse OPR for the costs of implementing the Act. The proposed regulations exempt affordable housing project applicants, as defined at Section 21180, subdivision (b)(4) of the Public Resources Code, from this application fee. OPR estimates that it will receive approximately 5 applications between the effective date of this rule and January 1, 2024, when the Act requires all applications be certified. Of these applications, OPR estimates that two applications will be affordable housing applications, which are exempt from the application fee under the proposed rule. Therefore, OPR estimates that OPR will recover approximately one hundred and seventeen thousand dollars (\$117,000) in implementation costs.

*Cost Impact on a representative private person or business:* The proposed regulations establish a thirty-nine thousand dollar (\$39,000) application fee to be paid to OPR by applicants to reimburse OPR for the costs of implementing the Act. The proposed regulations exempt applicants of an affordable housing project, meeting conditions set forth in Section 21180, subdivision (b)(4) of the Public Resources Code, from this application fee. OPR estimates that it will receive approximately 5 applications in the next year. Therefore, a representative, non-affordable housing project applying for certification under the Act, would have a cost impact of \$39,000. Pursuant to Public Resources Code section 21183(a)(1), a non-affordable housing project applicant must have a minimum total investment of one hundred million dollars in order to apply for certification under the Act. This means, that the fee imposed on development applicants represents less than one percent (1%) of the applicant's total investment. Because the proposed rule does not impose any burdensome procedures for the submission of application fees, OPR does not anticipate that the proposed rule will impose any other costs on project applicants outside of the application fee. OPR also notes that applying for streamlining certification under the Act is voluntary, and any prospective project applicant may avoid the application costs imposed by the proposed rule by not submitting an application.

*Significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states:* OPR has determined that this proposed regulatory action will not have a significant statewide adverse economic impact affecting business. This determination is based on the fact that the establishment of a \$39,000 application fee on approximately three project applicants will not create or eliminate existing businesses, and will not affect the expansion of business currently doing business within California. Pursuant to Public Resources Code section 21183(a)(1), a non-affordable housing project applicant must have a minimum total investment of one hundred million dollars in order to apply for certification under the Act. This means, that the fee imposed on development applicants represents less than one percent (1%) of the applicant's total investment. Submitting an application for judicial streamlining is entirely voluntary, and thus the application fee set by the proposed rule would not impose any mandatory costs on California businesses.

*Significant effect on housing costs:* None.

*Small business determination:* OPR has determined that the proposed regulatory action will not affect small business. As defined in Government Code section 11342.610, a small business does not include "a subdivider or developer" or "general construction [activities] where the annual gross receipts exceed

nine million five hundred thousand dollars (\$9,500,000). Because OPR anticipates that all projects applying for streamlining under the Act will be developers, and because by definition all the project applicants subject to the application fee must have a minimum project investment of one hundred million dollars (\$100,000,000) the proposed rule will not apply to small businesses as defined in section 11342.610.

### **RESULTS OF ECONOMIC IMPACT ANALYSIS/ASSESSMENT**

OPR concludes that the proposed rule (1) will not create or eliminate any jobs within the state of California, (2) will not create new or eliminate existing businesses within California, (3) will not expand businesses currently doing business within the California, and (4) will benefit the health and welfare of California residents and the state's environment by sustaining OPR's implementation of the CEQA streamlining provisions of the Act.

*Benefits of the proposed action:* OPR anticipates that the proposed rule will benefit California by allowing OPR to recoup approximately one hundred and seventeen thousand dollars (\$117,000) in implementation costs, thus allowing OPR to be able to continue sustainably implementing the Act. Continued implementation of the Act will benefit the public and the environment by 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. 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, continued implementation of the Act will enable affordable housing projects to apply for CEQA streamlining, which will ease judicial delays for affordable housing projects in California.

### **CONSIDERATION OF ALTERNATIVES**

In accordance with Government Code section 11346.5, subdivision (a)(13), OPR must determine that no reasonable alternative considered by the Board or that has otherwise been identified and brought to the attention of OPR would be more effective in carrying out the purpose for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

OPR invites interested persons to present statements or arguments with respect to alternatives to the proposed regulation during the written comment period.

### **CONTACT PERSONS**

Inquiries concerning the proposed action may be directed to:

Shannon Clark  
Office of Planning and Research  
1400 Tenth Street  
Sacramento, CA 95814  
Telephone: (916) 758-0705  
Email: [Shannon.clark@opr.ca.gov](mailto:Shannon.clark@opr.ca.gov)

The backup contact person for this proposed action is:

Ryan Silber  
Office of Planning and Research  
1400 Tenth Street  
Sacramento, CA 95814  
Telephone: (916) 322-0548  
Email: ryan.silber@opr.ca.gov

## **AVAILABILITY OF DOCUMENTS**

### **Availability of Statement of Reasons, Text of Proposed Regulations and Rulemaking File**

OPR has compiled a record for this regulatory action, which includes the Initial Statement of Reasons (ISOR), proposed regulatory text, and the documents relied upon to prepare this regulatory action. This material is contained in the rulemaking file and is available for public inspection upon request to Shannon Clark using the contact information above.

### **Availability of Changed or Modified Text**

After considering all timely and relevant comments received, OPR may adopt the proposed regulation substantially as described in this Notice. OPR may also adopt the proposed regulatory language with other modifications if the text as modified is sufficiently related to the originally proposed text that was noticed to the public. In the event that such modifications are made, the full regulatory text, with the modifications clearly indicated, will be made available to the public for review and or written comment at least 15 days before it is adopted. The public may request a copy of the modified regulatory text by contacting Shannon Clark using the contact information listed above.

### **Availability of the Final Statement of Reasons**

Upon its completion, copies of the Final Statement of Reasons may be obtained by contacting Shannon Clark using the contact information above, or by accessing the website listed below.

### **Availability of Documents on the Internet**

Copies of this Notice, the proposed text of the regulation, and the initial statement of reasons can be accessed through [OPR's website](https://opr.ca.gov/ceqa/judicial-streamlining/) at: <https://opr.ca.gov/ceqa/judicial-streamlining/>