

A dangerous bill

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by Eric Biber

California is known in the United States for its aggressive environmental laws, some of the most aggressive in the United States. One of the key reasons for that reputation is the California Environmental Quality Act (CEQA). CEQA is similar to the federal National Environmental Policy Act (NEPA) in that it requires a public review of the environmental impacts of proposed government actions before any commitments to the project are made. CEQA, however, is generally considered to be much stronger than NEPA on that it covers a wider range of activities (NEPA is only limited to federal actions; CEQA covers a wide range of major development projects because it covers any discretionary state or local decisions, which includes a lot of local land-use decisions), and because CEQA imposes some substantive requirements on the environmental review process (unlike NEPA, which just requires a review, without requiring any particular findings as to the environmental pros or cons of the project).

But CEQA has recently been the subject of a number of proposals to cut back on its scope. First, in 2009 and this spring the Democrat-controlled state legislature created two special exemptions from CEQA for (two) proposed football stadiums in Los Angeles. Then, as part of the budget fights earlier this year, the Republicans in the state legislature demanded that CEQA be significantly trimmed back as part of a deal for GOP support for tax cuts. Now, the Democrats in the state legislature have passed a bill that would provide for accelerated judicial review under CEQA of projects that (a) are over \$100 million in cost; (b) create “high-wage, highly skilled jobs that pay prevailing wages and living wages”; (c) result in no net gain in greenhouse gas emissions; and (d) are either LEED-silver or above certified infill projects, or are “clean energy” projects. (Text of bill is [here](#).) Projects certified to meet these standards are given expedited judicial review, with any lawsuits being directed immediately to the California Court of Appeals (skipping the trial court) and requiring a decision by the court within 175 days.

The justification for the bill is the terrible employment conditions in California. The argument is that shorter judicial review will reduce project uncertainty and therefore increase investment in projects that create jobs and are good for the environment.

These are good arguments, but nonetheless the bill is a dangerous one, if not a terrible one. The problem is that if this is a good idea for an exemption, why not extend it to other activities that create jobs and are good for the environment (whether it be smaller projects, or other kinds of projects like reforestation ones)? And while the list of projects that might qualify for exemptions in this case seem worthy, it’s hard to know how to draw the line in many circumstances. It’s not always easy to decide whether something is “good for the environment” or not. Assessment can be difficult (Are paper or plastic bags more environmentally friendly? Disposable or reusable diapers?). And there may be fundamental differences based on values as to what is the environmentally friendly outcome. (For instance, in responding to climate change impacts on wilderness areas, is it more important to leave nature alone to respond, or to attempt to offset the impacts of climate change?) Even in this context, there are many environmental groups who would object to the concept that all “clean energy” proposals are environmentally friendly,

including those who challenge the construction of large-scale solar projects in the California desert.

The fuzziness of the concept of “good for the environment” means that politics will be driving a lot of the action as to where we have exemptions or not. The prior exemption was driven by Los Angeles-area legislators who want to build a new football stadium to get a NFL team to return to the city. It seems that a major driver for the most recent proposal is to provide a similar exemption for a new basketball stadium in Sacramento.

At some point, the number of exemptions will break down the principle that CEQA is a statute of general applicability. The more exemptions, the more politics will determine what is covered by CEQA. And that can't be good for the environment, as short-term economic benefits will win out all too often over long-term environmental costs. Indeed, one of the purposes of review statutes such as CEQA and NEPA was to make sure that environmental costs and benefits were made clearer so that they might have some impact on the political process and ensure greater weighting of environmental factors.