

# Major, Proposed CEQA Amendments Sent to California Governor Jerry Brown

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In the waning hours of its just-concluded session, the California Legislature passed and sent to Governor Jerry Brown a package of bills that, if signed into law by Brown, will represent the most significant amendments to the California Environmental Quality Act (CEQA) in many years. I believe it's likely Brown will approve some or all of them.

My colleague, Berkeley Law Professor Eric Biber, has previously commented on one of the bills currently on Governor Brown's desk. In his earlier post, Eric provides a thoughtful background on CEQA, correctly notes that it's a more powerful statute than the National Environmental Policy Act (on which CEQA was originally modeled), and then goes on to criticize the new CEQA bill he profiles.

I'm actually not as hostile to this legislation as Eric obviously is. But I agree with him that the bills are noteworthy indeed.

Last Friday the California Legislature actually passed and sent to Governor Brown three separate CEQA "reform" bills. My own view is that this legislative package can best be subtitled "The Good, the Bad & the Ugly"—it contains features that fit each of these descriptions. But the bills, if signed into law by Brown, are unquestionably a big deal, and actually implicate a number of other environmental issues beyond just CEQA.

Given the complexity of the legislative package, I'll briefly summarize the three bills here, and analyze each of them more fully in subsequent posts:

SB 292 is the narrowest of the three bills, but of particular interest to Southern Californians. It concerns one of the biggest, currently-pending urban infill projects in California: the so-called Convention Center Modernization and Farmers Field Project slated for downtown Los Angeles. A key component of this project is a proposed, new sports stadium designed primarily to lure an NFL football team back to Los Angeles. Rather than grant the proposed project an outright exemption from CEQA, SB 292 affords expedited judicial review to any CEQA-based challenge(s) to the project, in exchange for the developer's and city officials' commitment to make the project carbon-neutral and traffic-friendly.

The key, specific litigation reforms contained in SB 292 are: 1) a requirement that any CEQA lawsuit challenging the project be filed in the state Court of Appeal, rather than in a California trial court; and 2) a mandate that the appellate courts hear and decide such lawsuits on a very expedited basis.

SB 900, by contrast, contains similar CEQA judicial review "reforms," but applies them to a significantly larger group of potential projects. Citing California's stagnant economy and chronically high unemployment rates, SB 900 creates expedited judicial review procedures for

large, so-called “environmental leadership development projects.” Such projects include: 1) LEED-certified residential, retail, commercial, sports, cultural, entertainment, and recreational urban infill projects; 2) wind- and solar-powered electricity generating facilities; and 3) “clean energy manufacturing projects” that create renewable energy generation, energy efficiency technology or clean energy vehicles. To qualify as an environmental leadership development project, a project must further involve an investment of at least \$10 million; create “high-wage, highly skilled jobs”; be carbon-neutral; and incorporate “binding and enforceable” measures to mitigate adverse environmental impacts. Any CEQA challenge to such an environmental leadership development project must be filed directly in the state Court of Appeal, where it is subject to expedited judicial review (though the details differ from those contained in SB 292).

SB 226, which focuses on renewable energy and urban infill projects, potentially has the broadest impact of any of the three CEQA bills. SB 226 contains a variety of CEQA amendments applicable to such projects: first, it exempts from CEQA review the installation of a solar energy system on the roof of an existing building or parking lot. Second, it amends the CEQA review provisions contained in SB 375, California’s landmark 2008 legislation designed to better integrate California land use, transportation and climate policies. Third, it significantly expands SB 375’s definition of urban infill projects and directs the Governor’s Office of Planning and Research to develop amendments to California’s CEQA Guidelines (the state administrative regulations implementing CEQA) by July 2012 to create “statewide standards” for California infill projects. (While SB 226, curiously, does not explicitly require the Guideline amendments to create CEQA exemptions or short-cuts for urban infill projects, that’s the clear implication of the bill.) Finally, SB 226 expands the California Energy Commission’s current permitting jurisdiction over thermal power plants to include electric generating facilities using photovoltaic technology as well. (This latter provision appears intended to address the pending Calico Solar Project in eastern San Bernardino County, California, a project that changed both ownership and solar technologies earlier this year.)

In sum, the three-bill CEQA reform package contains some worthwhile provisions. It’s hard to argue, for example, that installation of solar panels to existing structures should require CEQA review. And both SB 292 and SB 900 incorporate welcome and long-overdue requirements that CEQA documents, public comments, etc., be made available on-line, rather than simply in paper form.

But there are numerous questionable features as well. Why, for example, should only multi-million dollar projects be entitled to expedited CEQA review under CEQA, as opposed to worthwhile projects proposed by small business? Finally, all three bills contain technical glitches and internal inconsistencies that are inherent in legislation that—as here—is rushed to passage at the 11th hour of a legislative session, rather than subjected to the more typical and deliberate committee hearing process, legislative staff review, etc.

Each of these three CEQA “reform” bills has its own political back-story and additional, key features, which I’ll attempt to address in a series of posts in the near future. For now, suffice it to say that this legislative package, if approved by Governor Brown, represents the most significant amendments to CEQA in many years.