



CEQA Reforms for Clean Energy Projects: Still Possible Despite Senate Budget Committee Rejection?

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On May 19, 2023, California Governor Gavin Newsom proposed a legislative package of 10 bills reforming the California Environmental Quality Act (CEQA) intended to speed up construction of clean energy projects by streamlining regulations for solar, wind, and battery storage projects, transit and regional rail infrastructure projects, water storage projects, and the Delta Tunnel plan. The proposed measures were designed as mechanisms to accelerate such projects to completion in order to maximize California's share of federal infrastructure dollars available through the Infrastructure Investment and Jobs Act and Inflation Reduction Act (IRA) and expedite the implementation of projects that meet the state's ambitious economic, climate, and social goals.

However, on May 27, 2023, the Senate Budget Committee shot down the proposed reforms, though not for fundamental policy reasons. In a 3-0 vote, a Senate Budget Committee found Newsom's package was too complex for last-minute consideration under the June 2, 2023 deadline. All may not be lost. Given Governor Newsom's statements regarding the urgency of passing his proposal, it is safe to assume this vote will not kill efforts to reform CEQA. For example, over the next few weeks, these bills could return to Senate or Assembly committees in budget negotiations or may be reintroduced through policy committees. Considering the high probability that CEQA reform will be given another chance in the near future, it is crucial to understand Governor Newsom's recent proposal and its related implications.

By exempting specific categories of projects, limiting court review to 9 months, streamlining permitting, and eliminating existing processes, Newsom's proposals were anticipated to cut red tape, expedite court review, maximize federal funding, and allow state agencies to use new types of contracts, which would fast-track projects while still ensuring environmental review and community engagement. Governor Newsom's reform also aimed to limit the time opponents could delay projects through judicial challenges.¹ The proposed reforms complement the 20 or so CEQA reform bills signed into law this year in an attempt to maximize housing production.

This package of proposals follows a previous [report](#) from the Infrastructure Advisor to California (former Los Angeles Mayor Antonio Villaraigosa) and California Forward urging permitting reform. Together, these proposals could cut project timelines by more than 3 years, save businesses and state and local governments hundreds of millions of dollars, and significantly reduce paperwork.

¹ CEQA has long been criticized for bogging down projects. CEQA lawsuits typically take 1-2 years to resolve at the trial court level, with the preparation of the administrative record alone taking between 4 and 17 months.

Also on May 19, 2023, Governor Newsom signed an [executive order](#) to authorize a strike team to accelerate clean infrastructure projects across the State by implementing an all-of-government strategy for planning and development.

Proposals

1. Administrative Record

- The proposed reforms related to the preparation of the administrative record necessary for all judicial challenges under CEQA would reduce the scope and schedule in order to reduce the litigation time.
- This proposal amends Public Resources Code section 21167.6 to:
 1. Allow the lead agency to override a petitioner's election to prepare the administrative record within 60 days of the filing of the writ petition.²
 2. The administrative record would be limited to emails and memoranda actually put before decision-makers, meaning most internal communications are no longer required to be included in the record.^{3, 4}
- Unlike the majority of the bills in this package, record preparation reforms are not limited to a preferred list of infrastructure or clean energy projects.

2. Judicial Streamlining

- The judicial streamlining proposal for water, transportation, clean energy, and certain semiconductor or microelectronics projects is designed to provide swift resolution to challenges to critical infrastructure projects by shortening the time limit for judicial challenge to 270 days.
- Additionally, agencies using this streamlined judicial process must prepare the administrative record concurrently with the administrative approval process. This reform is intended to resolve CEQA lawsuits (including review by the Courts of Appeal and California Supreme Court) in less than 1 year, instead of the current trend of 4-10 years.
- The proposed reform would be a new law to reduce project delays and take advantage of the substantial public benefits expected from the federal IRA and Creating Helpful Incentives to Produce Semiconductors (CHIPS) and Science Act, as well as separate investments reflected in the Biden Administration's proposed budget.
 - The following clean energy projects are eligible for this judicial streamlining:
 - Solar or wind electrical generating powerplants
 - Energy storage systems
 - Projects for the manufacturing, production, or assembly of energy storage, wind, or solar energy systems
 - Electric transmission projects

² Under current law, petitioners challenging a project may elect to prepare the record themselves, even though lead agencies are in physical possession of the relevant documents and are in the best position to efficiently gather, organize, and prepare the record.

³ This proposal does not change the definition of "public record" for California Public Records Act purposes, so internal emails are still discoverable unless the deliberative process exemption applies.

⁴ Currently, parties often argue over the scope and contents of the record in court, which results in voluminous records filed long after the 60-day timeframe to compile the record. In particular, parties dispute what documents should be included under Public Resources Code section 21167.6, subdivision (e)(10), which requires the record to include "all internal agency communications" that are "related to the project or to compliance with [CEQA]."

- The following projects supportive of California's Water Supply Strategy are also eligible for expedited judicial review:
 - Delta Conveyance Project
 - Water Storage Projects funded by the California Water Commission pursuant to the Water Storage Investment Program created by Proposition 1 (Water Code §§79750 *et seq.*)
 - Water recycling projects
 - Desalination projects
 - Canal or other conveyance maintenance and repair
- Semiconductor or microelectronic research and development facilities satisfying the federal requirements related to investments in new or expanded facilities awarded funds under the CHIPS and Science Act.

3. Green Bank Financing

- The Green Bank⁵ financing proposal allows state agencies and nonprofits to work on securing Green Bank funding for state climate projects. The EPA will distribute grant funding under the program in 3 areas: \$14 billion for the National Clean Investment Fund Competition, \$6 billion for the Clean Communities Investment Accelerator, and \$7 billion for Solar for All.
- This proposal amends Section 63048.93(f) of the Government Code to allow the California Infrastructure and Economic Development Bank (IBank) and the Department of Water Resources (DWR) to access and utilize federal funding provided in the IRA to finance projects that reduce GHG emissions, with an emphasis on projects that benefit low-income and disadvantaged communities.

4. Accelerating Environmental Mitigation for Transportation

- The accelerated environmental mitigation for transportation proposal streamlines the implementation of environmental mitigation measures for efficient delivery of the California Department of Transportation's (Caltrans) projects. This language recognizes transportation funding that provides secure, long-term funding for state highway structures, such as wildlife crossings, used to satisfy California Endangered Species Act (CESA) permit requirements.
- This proposal amends Section 2081 of the Fish and Game Code and Section 104 of the Streets and Highways Code, and adds Sections 104.1, 126, and 126.1 to the Streets and Highways Code to provide Caltrans with clear authority to transfer property, including an endowment to preserve, restore, and maintain an environmental mitigation site pursuant to permit conditions. This language would allow Caltrans to transfer an endowment and funds to enhance a property for environmental mitigation purposes independent of the property transfer, as well as make advance payments for mitigation under its contracting authority to reserve mitigation credits for future transportation projects.

5. NEPA Assignment for Rail Projects

- This proposal amends Section 13979.2 of the Government Code to permanently authorize the California Transportation Agency (CalSTA) to assume federal responsibilities under the National Environmental Policy Act (NEPA) for any railroad, public transportation, or multimodal project. This proposal terminates federal NEPA authority, which often results in lengthy, expensive delays.
- This proposal removes the current sunset provision and permanently authorizes the consent of California

⁵ The Green Bank is a Greenhouse Gas Reduction Fund administered by the U.S. EPA to achieve climate change goals.

to the jurisdiction of federal courts and the waiver of immunity by CalSTA with regards to the performance of certain federal environmental responsibilities under NEPA.

6. **Direct Contracting Authority for I-15 Wildlife Crossings**

- This proposal adds Section 143.2 to the Streets and Highways Code, relating to transportation, and authorizes Caltrans to directly contract to construct 3 wildlife crossings over Interstate 15 as part of the Brightline West high-speed rail project between California and Nevada.
- This proposal would save taxpayer dollars and reduce costly delays by allowing one entity to manage the delivery of wildlife crossings simultaneously with the delivery of the railway.

7. **Job Order Contracting – Caltrans**

- This proposal adds Article 6.5 (beginning with Section 217) of Chapter 1 of Division 1 of the Streets and Highways Code, relating to transportation, to authorize Caltrans to use the job order contracting method to complete routine transportation projects and maintenance work.
- Independent studies in other states using this method show 8 to 16 percent cost savings and a time savings of around 9 months.

8. **Progressive Design Build Authority – Department of Water Resources and Caltrans**

- Adds Article 6.7 (beginning with Section 10215) to Chapter 1 of Part 2 of Division 2 of the Public Contract Code to allow the DWR and Caltrans to establish a progressive design-build (PDB) pilot program on up to 8 infrastructure projects per department until January 1, 2031.
- PDB allows construction contracts to be awarded prior to the completion of design work, resulting in shorter project delivery schedules and greater cost savings. PDB also provides the advantage of expedited delivery due to having 1 entity provide design and construction like traditional design-build, while allowing the public agency to give design feedback later in the process.

9. **Reclassification of Fully Protected Species**

- This proposal amends sections of the Fish and Game Code, Public Resources Code, Government Code, and Penal Code relating to protected species to ensure better species conservation and improved permitting for essential infrastructure projects.
- By repealing the 4 existing statutes designating species as “fully protected” under California law, the bill reclassifies the 37 fully protected species so that 15 will be listed as threatened under the CESA, 19 will be listed as endangered under the CESA, and 3 will have no listing status and would retain the protections afforded to species generally under the Fish and Game Code.

10. **Delta Reform Act Refinement**

- This proposal amends portions of the Water Code relating to the Sacramento-San Joaquin Delta to make refinements to the Delta Reform Act that will streamline certain review processes so Delta Plan⁶ projects can be planned, permitted, and built faster while protecting the environment.
- This proposal establishes a 60-day statute of limitations to challenge a Council action, including decisions on appeals. Meanwhile, the remainder of the Delta Plan remains in effect, even if portions are invalidated

⁶ The Delta Reform Act of 2009 (Act) created the Delta Stewardship Council (Council) to direct the Council to draft a comprehensive, legally enforceable, long-term plan to guide state and local actions to further the goals of providing a more reliable water supply for California and protecting, restoring, and enhancing the Delta ecosystem (the Delta Plan).

by a court, which ensures the Legislature's intent of empowering the Council to develop and implement a legally enforceable Delta Plan.

Conclusion

Although the proposed CEQA reform was rejected by the Senate, Governor Newsom is likely to reintroduce these proposals to reduce CEQA-based delays and ensure California projects receive federal funds for critical infrastructure and clean technology projects. However, many maintain that these changes are not enough to address the current trend of opponents weaponizing CEQA in order to delay or halt critical projects.

Sheppard Mullin is monitoring this and will provide updates as they become available.

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