

The battle for CEQA

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California's core environmental protection law, a 43-year-old statute frequently denounced by developers and business interests as a tangle of red tape, is on a Capitol hit list once again.

But the political dynamic this year is unusual: Those pushing hard for change are Democrats, including Gov. Brown, the Senate and Assembly leaders and a farm-belt lawmaker.

At issue is the California Environmental Quality Act, or CEQA, which requires builders and others to detail their projects' potential impacts over time on the environment and offer ways to fix them – which helps local zoning commissions and city councils weigh the benefits and negatives of the proposals in their decision-making.

The Act, which Ronald Reagan signed into law in 1970, has long been cited as the underpinning of California's aggressive environmental protections and a shield against well-heeled special interests.

It also is seen as a sort of grass-roots environmental protection law because it is driven by the locals through the courts, not by Sacramento-based regulators. The law has been used to protect everything from ocean waters to tribal burial grounds. It has been altered over the years – 334 times since 1990 alone, by one count -- but its over-arching goal largely remains in place.

“They haven't fundamentally changed CEQA, ever,” said Ron Stork of the Friends of the River. “There have been court decisions from time to time. But to some degree, it's a living process and now it's been around for a long time.”

The law has protected Californians from “from many tons of toxic air pollution and related health effects, such as childhood asthma. CEQA played a principal role in the electrification of the Port of Los Angeles, making it the cleanest port in the country, improving the working conditions for truckers and health of nearby communities,” noted David Pettit of the Natural Resources Defense Council.

But CEQA, long under fire from its traditional foes, is now taking hits from lawmakers, the Democratic allies of environmentalists and others who say – with some evidence – that the law can add years to the approvals needed for major projects to get under way. They argue that the law needs to be modernized.

“I've never seen a CEQA exemption I didn't like,” Brown said last year in a comment that has rippled through the environmental and business communities. Brown, who also has said that changing CEQA was “the Lord's work,” is likely to refer to environmental legislation in his State of the State address on Thursday.

“It (CEQA) is overwhelmingly abused for non-environmental purposes,” said Carl Guardino, the president and CEO of the Silicon Valley Leadership Group, a coalition representing some 375 businesses. The group favors changes to CEQA.

Guardino noted that his group has taken an array of pro-environmental positions, such as support for AB 32, the landmark law to curb climate-changing greenhouse gases, and Steinberg's SB 375. The group has supported tax initiatives to provide funding resources for environmental protections and has favored improvements in

“Our pro-environmental legislation, regulation and taxation run deep... But we believe CEQA needs to be modernized in a way that will enable CEQA to do what it is supposed to do,” he added.

With Brown, Assembly Speaker John A. Pérez and Senate Leader Darrell Steinberg – the three most powerful elected state leaders – amenable to discussing changing CEQA, the potential is great for the most significant alterations ever to the law.

“The Speaker is certainly open to discussions about CEQA, but he believes that these discussions need to be held in full view of the public, with input from all the various stakeholders,” spokesperson John Vigna wrote in an email. “With something as complex as CEQA reform, the Speaker believes it’s important to make sure every voice is heard so that the final product, if any, has been thoroughly vetted.”

Steinberg, D-Sacramento, who last September blocked efforts at the 11th hour to rewrite CEQA, has publicly placed a CEQA overhaul high on the Legislature’s agenda. He said he has supported CEQA, but “like any well-intentioned law in existence for more than 40 years, changes are needed to eliminate abuses. We must ensure CEQA is used to protect our environment through a more efficient and timely process.”

Steinberg authored a major bill, SB 375 signed into law by former Gov. Arnold Schwarzenegger, to curb urban sprawl and promote transit-friendly development. That legislation contained CEQA exemptions for some projects. Steinberg also authored SB 900, which speeded up judicial review of CEQA projects.

He also named Sen. Michael Rubio, D-Bakersfield, as the new chair of the Senate Environmental Quality Committee, which will be Ground Zero of any effort this year to rewrite the law. Rubio carried the CEQA-change bill last year, SB 317, and he is expected to carry CEQA-linked legislation again this year.

Rubio replaced termed-out Sen. Joe Simitian, D-Palo Alto, who authored SB 226, a 2011 bill to, among other things, streamline CEQA to expedite urban infill projects. Brown signed that bill into law.

No new CEQA-reform language is in print – yet.

But those familiar with the issue say the broad goal is to make sure environmentally worthy projects are allowed to proceed, particularly projects that already have passed environmental muster from an array of agencies.

An [analysis of 95 published court decisions from 1997 to 2012](#) in which a CEQA lawsuit challenged a project’s Environmental Impact Report showed that nearly six in 10 suits challenged infill development projects, and a third involved public works projects. Since a goal of infill projects is to curb greenhouse gases, there is an irony in the use of the state’s premier environmental law to challenge them.

“That discussion about CEQA and greenhouse gases is one we’re going to have, but we’re not really there yet,” one Capitol staffer noted.

The analysis, compiled by the Holland & Knight law firm, was distributed by the CEQA Working Group, a coalition of dozens of organizations, including the Alliance for Jobs, which represents about 2,000 construction companies and 80,000 unionized workers; the Silicon Valley Leadership Group, the Bay Area Council, the California Hospital Association and various business and affordable house groups.

Critics note that CEQA-based suits have been used to block projects for reasons that have nothing to do with the

They cite San Luis Obispo, where an 800-megawatt solar energy array was delayed because of concerns about wildlife protection, and Lompoc, where a 97.5-megawatt wind farm was put on hold because of nearby landowners' complaints about their views being disturbed. The most widely cited example is in Los Angeles, where a major extension of light-rail construction was delayed by a homeowner. That case is before the state Supreme Court.

A [study by the NRDC](#), citing data from the state attorney general's office, covered CEQA projects during a six-month period in 2011 in San Francisco. The report found that "only 18 lawsuits were filed out of 5,203 projects considered under CEQA. Since all of these projects were located in San Francisco, they represent urban infill projects surrounded by neighbors."

Modernization means reforming CEQA to take into account some 120 major environmental laws that were approved since CEQA was enacted, noted attorney Jennifer Hernandez of Holland & Knight. With modernization in place, suits without merit would be curbed.

"For example, you couldn't sue to stop a project that already has been approved by planners, has an approved EIR and the project meets the requirements of SB 375," said Hernandez, who specializes in environmental issues.

But just because projects have approvals from other environmental agencies doesn't mean they should be allowed to proceed, Pettit noted.

"For example, most air regulations are regional, even statewide. So somebody wants to build a refinery next to your house, and they say, 'Look, I've got a permit.' But that doesn't do anything for you, because you have to live next door," he said.

Attempts to get CEQA exemptions are rife in the Capitol.

Last year, for example, lawmakers approved and Gov. Brown signed an 11th-hour bill to exempt key pieces of an \$80 million law-enforcement communications project from CEQA. Brown's predecessor, Arnold Schwarzenegger, backed an effort to exempt 25 major projects from CEQA across the state – a plan that sparked an immediate frenzy as lobbyists sought to get their clients on the list. Earlier, in CEQA-linked exemptions, lawmakers and the governor approved air-emission credits for the South Coast Air Quality Management District and a proposed NFL stadium in Los Angeles County.

In a new twist for 2013, some of the most adamant foes of CEQA – led by farmers and their allies -- are embracing the law in order to block two huge public works projects, the bullet-train and the effort to move water under or around the sprawling estuary east of San Francisco.

The Brown administration hopes to push forward with both projects.