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February 24, 2013

New CEQA Bill - Cure or Band-Aid?

In response to a business community campaign calling for broad CEQA reform, California State Senator Senate President pro Tempore Darrell Steinberg released his highly anticipated CEQA "modernization" bill, [SB 731](#). So far, the bill is more remarkable for what it lacks, than for what it contains:

- **A Co-author.** 2012's chief CEQA reform champion, Senator Michael Rubio, abruptly resigned from the state senate on February 22, the same day the legislation expected to bear his name was introduced.
- **Details.** Senator Steinberg describes his CEQA bill as a "framework." Others have used the term "outline." The bill expresses intentions to address various topics but contains no specifics. Reflecting the resulting ambiguity, the bill is receiving positive press from both the Silicon Valley Leadership Group and the Natural Resources Defense Council.
- **Standards-based Reform.** The bill states "It is not the intent of the Legislature to replace full CEQA analysis with state or local standards". Why does the bill include a cryptic sentence saying what the bill doesn't do? Because state and local standards were the heart of the far more sweeping reform measure that Senator Rubio floated at the end of the 2012 legislative session. The Rubio legislation posited that since CEQA's passage, a host of other environmental laws had been enacted to regulate most (if not all) of the subjects CEQA addresses. The Rubio legislation suggested that if a CEQA document discusses compliance with these other laws, project challengers should not be able to file a CEQA suit to demand more analysis and mitigation. With the possible exception of the land-use related topics detailed below, the Rubio approach appears to be dead.
- **Changes to Standing Rules.** Many of the business community's examples of CEQA abuses can be traced to litigation by trade unions using CEQA to leverage project-labor agreements, other businesses using CEQA to stifle competition, and landowners using CEQA to protect property values. The new Steinberg bill contains no indication that the legislation will tighten procedural rules about who can file suit. Perhaps tellingly, early press stories quote the environmental community, the business community, and a trade union representative, as if each should be provided equal time in a debate over CEQA reform.

While the Steinberg bill doesn't include sweeping measures to overhaul CEQA, it targets some important areas of the law where revisions, if carefully crafted, could reduce delay and uncertainty:

- **Significance Thresholds.** The bill calls for the Legislature to set thresholds of significance for noise, aesthetics, parking and traffic levels of service. The idea is that if a project can meet such a threshold, no additional environmental review would be required for those impacts. If the thresholds are set high enough to allow a large number of projects to fit within existing CEQA exemptions or to rely on negative declarations rather than Environmental Impact Reports, they could be effective in reducing CEQA paperwork and litigation risk. On the other hand, these types of thresholds likely would create a presumption that projects exceeding them necessitate full EIRs. If set too low, the thresholds could require heightened environmental review for projects that otherwise would merit little attention. The bill also states that it would not preclude local agencies from setting more stringent thresholds, which could eliminate benefits in slow- and no-growth communities.
- **Limited Review for Specified Projects.** The bill proposes to convert CEQA Guidelines addressing infill development to statutory provisions. It also expresses an intent to explore amendments to expand the definition of "infill" to include projects in the Central Valley, and to further streamline CEQA review for renewable energy, advanced manufacturing, transit, bike, pedestrian, and renewable energy transmission projects. Many of these provisions appear designed to advance Governor Brown's agenda for infrastructure and renewable energy development. The reference to transit projects and infill in the Central Valley may be designed to promote High Speed Rail and pave the way for local development near

stations slated for near-term development in the Central Valley. Statutory relief from CEQA review for renewable energy and renewable energy transmission projects appears designed to further the Governor's 2050 Renewable Portfolio Standards. The reference to bike projects likely stems from litigation forcing the City of San Francisco to prepare an EIR for a bicycle path plan.

- **Projects Implementing Specific Plans and Sustainable Communities Strategies.** The bill proposes to tighten up existing streamlining provisions to provide greater certainty and avoid duplicative CEQA review for projects implementing a specific plan. The bill also suggests that similar treatment might be available for projects implementing Sustainable Communities Strategies adopted under SB 375 or other types of plans adopted within the past five years. While CEQA already authorizes this type of streamlined environmental review, the existing statutory provisions contain vaguely worded exceptions that can make it risky to rely on them. As a result, many cities and counties subject projects implementing adopted plans to unnecessary and lengthy CEQA reviews.
- **Late Hits and Data Dumps.** The bill states an intention to address the practice of filing last minute comment letters, often containing voluminous data and new information. Published court cases have allowed project opponents to use eleventh hour comments and studies to support CEQA litigation, placing public agencies at a disadvantage in demonstrating that their record contains evidence to rebut claims never before brought to their attention. More recent court cases have been critical of such practices, and have narrowed the extent that project opponents may rely on issues raised only generally, or buried in voluminous materials. Legislation in this area could reduce litigation risks, but also runs a chance of negating recent court decisions that already were beginning to close this loophole.
- **Judicial Remedies.** The bill would provide clearer instructions to courts in crafting a remedy that preserves portions of a CEQA document that are not found to violate CEQA. The bill also calls for exploring options to keep approvals in place so that projects can proceed while an agency cures a CEQA defect. These types of changes could be effective for two reasons. First, if they make litigation less likely to halt project construction or operation, they could reduce the incentive to file a CEQA lawsuit. Second, they could reduce the time that it takes to cure a CEQA defect. However, the law already provides much of this flexibility.

Time will tell whether the final bill will be effective in reducing CEQA paperwork, cost, and delay. The bill merits close attention to ensure that it does not create yet more hoops for projects to jump through, or undermine some of the streamlining and flexibility already built into CEQA. We will continue to provide updates as the legislative process unfolds.

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