# Senate Bill 55

# California Environmental Quality Act

# Senator Jackson

## **Summary**

## Since its passage in 1970, the California Environmental Quality Act has played a central role in protecting the state’s environment and providing Californians with information about projects approved in their communities. Over the past 50 years, CEQA has evolved into a comprehensive statute with a significant regulatory framework, and a sizeable body of case law interpreting its provisions. Emerging public policy needs and new judicial decisions require the Legislature to periodically revisit the statute to improve its functioning and align current provisions with new case law. This bill revises several provisions to shorten the time needed for, and to reduce inefficiencies in, judicial challenges under CEQA. This bill also includes proposals to promote equity and increase access to CEQA review.

## **Background**

The California Environmental Quality Act (CEQA) is arguably California’ most important environmental law. It embodies California’s strong public policy of protecting the environment, bringing together public participation and considerations of air quality, water quality, hazardous materials, and other environmental impacts into one comprehensive law so that agencies may make informed decisions.

Several causes have been suggested to explain California’s ongoing housing supply crisis. At a joint informational hearing in March 2019, the Senate Environmental Quality and Judiciary Committees reviewed the extent to which the review of projects under CEQA, as well as CEQA-related judicial challenges may play in retarding housing development in California. The committees found that undergoing CEQA review enables developers to comply with California’s several environmental laws under a unified process. Additionally, the committees noted that the rate of litigation challenging project approvals is extremely low. Approximately one percent of all projects reviewed by state agencies required an environmental impact report (EIR), and roughly the same percentage of projects approved by state agencies were subject to litigation.

However, despite considerably low percentages of full environmental review and judicial challenges to new project proposals, consternation over CEQA remains. In an effort to improve the process for project review, and to reduce the likelihood, time, and cost of litigation, a volunteer committee of prominent CEQA practitioners and policy experts was convened by bill sponsor, Planning and Conservation League, to construct a comprehensive proposal to revise and update provisions of the statute. The volunteer committee labored for over a year, and ultimately advanced a package consisting of a dozen (and one) proposals.

## **Solution - SB 55**

**Goal 1:** **Record Streamlining** (SEC.18)

Amendments reduce the time and expense from preparing a record by encouraging litigating parties to engage in coordinated, cooperative effort to streamline the record content.

**Goal 2: Case Management Procedures** (SEC. 17, 18, 20)

Amendments establish an early mandatory Case Management Conference (CMC) enabling parties and the court to facilitate expeditious resolution of issues that could delay the timely completion of a sufficient record.

**Goal 3: Tolling Agreements** (SEC. 14, 5, 6)

Amendments clarify that tolling agreements are effective to toll the commonly applicable statutes of limitations, and that legal counsel for a public agency has the authority to execute tolling agreements on behalf of that agency.

**Goal 4: Pre-hearing Settlement Meeting** (SEC. 19, 20)

Amendments revise current provisions governing mandatory settlement conferences, allowing an initial meeting to occur by phone, and among counsel only. Amendments additionally provide for a second settlement meeting after the mandatory case management conference (Goal 2), with all parties present, to increase the chance of fruitful settlements.

**Goal 5: CEQA Judicial Expertise** (SEC. 15, 16)

Amendments encourage the state court system to extend the normal terms of CEQA judges in order to facilitate the accumulation of CEQA expertise over time; require Judicial Council to undertake a study to formulate recommendations for how, if necessary, to expand the number of CEQA judges and to facilitate the transfer of complex CEQA cases to experienced CEQA judges; Amendments further allow any party the right to make a motion to transfer the case to a county with a CEQA judge or to have the Judicial Council appoint a CEQA judge to hear the case in the locale the matter was originally filed.

**Goal 6: Final EIR Comments** (SEC. 13, 23)

To avoid submission of “eleventh hour” comments which agencies cannot adequately review, amendments provide for an optional alternative process whereby FEIRs are released for public review at least 30 days before a hearing on project approval, and written comments on those FEIRs must be submitted at least 10 days before final hearing.

**Goal 7: “Tuolumne Jobs Fix”** (SEC. 2, 3, 4)

To avoid the bypassing of CEQA, allowed by a loop hole in Elections Code, this amendment requires that voter-sponsored initiative measures not be directly approved by the legislative body whenever that approval would constitute an approval of a “project” within the meaning of CEQA. Rather, all such initiatives must go to the ballot.

**Goal 8: Emergency Housing Exemption** (SEC. 12)

To avoid bad-faith challenges to housing of our state’s most vulnerable residents, this amendment exempts homeless shelters, and supportive housing projects in urbanized areas from the need to comply with CEQA, when meeting prescribed criteria.

**Goal 9: Environmental Justice and Modernization** (SEC. 7, 8, 9, 10)

Amendments explicitly add environmental justice considerations to the mandated considerations of the CEQA process, and remove outmoded language and inappropriate references to gender.

**Goal 10: Decluttering** (SEC. 11, 21, 22)

These amendments repeal expired project approvals and other now-obsolete sections from CEQA.

#### Support

Planning and Conservation League (**sponsor**)

#### Status

At Assembly Rules for policy committee referrals.

#### Contact

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