



Last week, the Newsom administration [announced](#) a budget [trailer bill package](#) it said was designed to facilitate the deployment of historic federal infrastructure funding for climate-friendly projects. The package consists of 11 separate trailer bills, dealing with a variety of topics ranging from the California Environmental Quality Act (CEQA) to state contracting rules. Unsurprisingly, the two CEQA reform bills—one relating to administrative record preparation and another to streamlining of judicial review for certain infrastructure projects—have received much of the media’s attention. But the package also makes a major change to California species protection law.

Before discussing the substance of that change, a quick refresher for those unfamiliar with the California legislative process: Typically, bills implementing policy changes are required to be introduced early in the year’s session and pass through policy committees before being voted on by the full legislative house in which they’re introduced. This year, the last day for policy committees to hear bills fell at the end of April, so some may be wondering how these newly-introduced policy changes are nonetheless on the path to becoming law.

The answer is that trailer bills, which are bills that implement the California budget bill by making any needed changes to existing state law, are not required to be heard in policy committees. Instead, they can be introduced at any time while the Legislature is in session,

only need to pass by a simple majority vote (as opposed to some kinds of bills, which require a two-thirds vote), and go into effect as soon as they are passed and signed by the Governor, rather than on January 1 of the year following their passage. Because trailer bills don't go through the typical legislative process, they have much less public exposure, meaning that in practice, trailer bills can be—and are—used as a vehicle to make big changes with minimal process.

Now back to this year's “Fully Protected Species Trailer Bill.” The [bill](#) would eliminate the most restrictive category of species protection under California law, which has existed since 1970 and applies to 37 species. “Fully protected” status, which applies to a group of species that include the Golden eagle and the California condor, prohibits any take (hunting, pursuing, killing, catching, capturing—or trying to do any of that) of the species except for scientific research or if the species' conservation and management is provided for in a natural community conservation plan (NCCP).

In practice, this means that when a project site sits within fully protected species habitat, the State cannot authorize a take if an NCCP is not in place, and the project developer is on the hook for civil and criminal liability if a take occurs. Because the NCCP process can be long and complex, individual projects typically don't undertake it, but without such a plan the feasibility of a development where a fully protected species is present can be called into question, resulting in delays and, sometimes, abandonment of the project.

Because 27 of California's 37 fully protected species are also listed as threatened or endangered under the California Endangered Species Act (CESA), which was passed in 1984, the Newsom administration proposes to utilize that framework instead, categorizing the 10 remaining species either as threatened or as delisted (3 fully protected species had originally been listed under CESA but were delisted by the Fish and Game Commission). The end result is that 15 formerly fully protected species would end up listed as threatened, and 19 as endangered, under CESA. The administration's position is that this change will allow the State to require take mitigation and conservation for these species while enabling important infrastructure projects to move forward.

But CESA protections are not as stringent as those provided by “fully protected” status. Take is permitted without the “broad-based ecosystem approach to planning for the protection and perpetuation of biological diversity” that an [NCCP represents](#). And as [some research](#) has shown, even when mitigation plans pursuant to CESA are in place, data gaps make it difficult to be sure that they truly make up for ongoing land use and other project-related activities.

While the Newsom administration promotes this change as a win for species and green infrastructure alike, the reality is murkier; the legislation will lower a permitting barrier, but with consequences to listed species. And all through the fast-tracked trailer bill process—without much room for scrutiny or debate.