The California Chamber of Commerce is currently collecting signatures for an initiative that would substantially change the California Environmental Quality Act (CEQA). Given the Chamber's resources, I think it's likely they will get enough signatures to qualify the initiative, which means either the legislature cuts a deal with the Chamber to enact legislation and take the initiative off the ballot, or it goes before the voters this fall. So a thorough evaluation of what this initiative might do is important.

The basic concept of the initiative (as noted in this Twitter thread by Chris Elmendorf) is that it would create a new CEQA process for "essential" projects. That CEQA process would have strict timeframes for completion of any environmental review, timeframes that can be enforced by a court, requiring an agency doing CEQA review to make a final decision within a set period. The process would allow the proponent of the project to define the project's scope (in other words, what the project involves) and to identify a single alternative (as opposed to multiple alternatives) to be considered in the analysis. For this new process, a project proponent can require that the only "significant" impacts under CEQA that might trigger a duty to analyze and mitigate would be impacts that are the result of a violation of a written standard in a preexisting law, regulation or policy. Legal challenges to CEQA compliance can only invoke violations of "objective," written standards of law, and courts cannot generally speaking stop projects based on violations of CEQA.

But perhaps most importantly, the initiative would require all agencies approving projects by private applicants to only apply the law in place at the time the applicant submitted their application for the project – the initiative thus "vests" rights to develop or proceed with projects by immunizing proposals from any changes in law after the proposal is submitted. That is a fundamental change from California law in general (which mostly "vests" rights at later stages of project review and approval, with some exceptions).

These are major changes compared to current CEQA – because of their scope, I will break my analysis up over a series of blog posts. The key points I will elaborate on, each in a subsequent blog post, are:

- Primacy: The initiative is a broad one, which is to be aggressively interpreted, and which overrides all other conflicting law.

- Vested rights: Vesting rights as of the date of submission of application creates the possibility of strategic behavior – project proponents might submit projects very early, maintain projects in process for extended periods of time, or file repeated applications, to try and “freeze” law with respect to their projects. This could fundamentally undermine the ability of the state and local governments to update legal protections for the environment.
- Changed procedures: The statute imposes new, rigorous timeframes and procedures for all agency permitting, not just permitting through CEQA, overriding any inconsistent provisions in any other law.
- Significance standard: CEQA review would ultimately only consider whether a project meets pre-existing, written legal standards. And enforcement of CEQA review would only apply to “objective” written standards, with a definition of “objective” that may well exclude all non-quantitative legal standards. For instance, prohibitions on “substantial” negative impacts on the habitat of endangered species may not fall within the scope of CEQA anymore. The result may be that CEQA is transformed into a checklist of whether the project complies with existing laws, leaving no independent significance for CEQA.
- Self-identification of project scope and alternatives: Project proponents can self-identify what their project’s purpose is, what the physical scope of the project is, and what the alternative to the project is. That may allow project proponents to narrowly define their project (and thus its possible impacts) to avoid finding impacts that will inevitably result from the construction of the project. And the limited judicial remedies mean that courts may not be able to prevent major changes to a project after the CEQA review is completed. The upshot is that CEQA review may not actually cover what is actually built, allowing major components of projects to avoid any CEQA review at all.
- Breadth: The breadth of the kinds of projects that are deemed “essential” is large. Freeways certainly count. As do almost all dam, irrigation, and water projects in the state. Logging in general probably does. It is plausible data centers, light industrial facilities, and other similar projects might well count as well. And it is plausible that any development of any natural area in the state qualifies. This initiative is not just about housing or renewable energy.
- Lock in: The initiative requires a two-thirds vote in the legislature to amend the initiative, meaning that drafting flaws, unintended consequences and policy changes may not be able to be implemented.
- Undercuts other environmental laws: The implementation of many other California environmental laws depends on CEQA. For instance, most of the habitat protections for species listed under the California Endangered Species

Act (CESA) occur through CEQA review. Those might be wiped out with this initiative. Local land-use regulations would still apply, but any changes to local land-use law for a covered project appear to be covered by the accelerated review process for the initiative.

- What the measure gets right: I'm sympathetic to a number of the goals of the initative. There are real problems with CEQA: Local governments (and probably more importantly, neighborhood groups) sandbagging applicants with endless requests for more environmental review, dragging out timeframes. Mission creep in which CEQA is invoked for an increasingly broad range of any impact in the world, such as the noise produced by students in new housing. Local governments delaying CEQA decisions endlessly. Providing greater clarity over what CEQA covers, what kinds of impacts are "significant," and timeframes for decisionmaking would have real benefits. But they are also in tension with other important goals, such as the role that environmental review plays as a "backstop" for emerging or new environmental harms, for gaps in other statutory systems, and for cumulative impacts.

My analysis hits what I think are the most important points of the initiative. There are other issues (such as a fairly drastic restriction on public comments for CEQA review of essential projects) that matter as well, but which I will not focus on here.

One final note: This is based on my initial review of what is quite a complicated ballot initiative. I'm sure I've made some errors and omissions in the analysis, and if so, please do let me know in the comments. As appropriate, I'll update the writeups.