This is the eighth in a series of blog posts on the California Chamber of Commerce's proposed ballot initiative amending the California Environmental Quality Act (CEQA). The first blog post is here. The second blog post is here. The third blog post is here. The fourth blog post is here. The fifth blog post is here. The sixth blog post is here. The seventh blog post is here.

The initiative also attempts to insulate itself from subsequent amendment by the state legislature. Section 21034 prohibits amendments by the state legislature except by a two-thirds vote. That could be a real problem. It could hamstring the ability of the state legislature to respond to drafting errors, interpretations of the initiative by courts that are absurd or problematic, changed economic, social, or ecological conditions, or changing public policy.

The two-thirds vote requirement is particularly problematic because, as my review has hopefully made clear, there is a lot of uncertainty about how this initiative might play out if it is enacted. The scope of the provision could be extremely broad in terms of projects covered; it may facilitate broad evasion of CEQA review requirements, even the ones that remain for covered projects; it may prevent the ability of the state legislature or state agencies to respond to rapidly changing environmental conditions or new harms in updating environmental laws (because of the broad vested rights it applies to all state environmental laws).

Some of these problems might be avoided to the extent that the state legislature just enacts a new law – call it CEQA 2.0 – that is in a different division of the state code, and thus is not covered by the initiative. That CEQA 2.0 would be exempt from this streamlined process, and could sweep all these projects back in, with the exact same requirements as exist now.

However, there are some reasons to doubt the utility of such an approach. First, that provision cannot fix the broad vested rights in the initiative, which (as I've noted before), apply to all permits issued by state and local agencies. And because the initiative overrides all other laws, any new regulatory systems would necessarily be covered by the initiative as well.

But the initiative provision that provides it overrides any conflicting law might have even more teeth than that. Even for a CEQA 2.0 subsequently enacted by the legislature, one could argue that such a CEQA 2.0 conflicts with the purposes of this initiative. Thus, one might interpret proposed new Section 21014(e)(1), which provides that where there is a "conflict . . . between this chapter and any other law,

this chapter shall be controlling," as applying to the new CEQA 2.0. Proposed new Section 21014(e)(2) provides that "the provisions of this chapter shall control and supersede any conflicting requirement for environmental review of an essential project, and any accompanying permit review. No provision of Section 21100 or any other law shall invalidate or limit the application of this chapter to an essential project."

Given these provisions, the initiative would seem to exempt covered projects from that new CEQA 2.0. Indeed, such an aggressive interpretation would seem to be encouraged by proposed new Section 21029(a) which (as noted above) calls for a broad interpretation of the initiative to provide for "the approval and realization of, essential projects." If that is the case, then this initiative ties the hands of the state legislature not just with respect to this initiative text itself, but with respect to any future legislation that might potentially conflict with the goals of the initiative. That would be sweeping indeed.