As I noted in my initial analysis of the California Chamber of Commerce's ballot initiative to rollback most of CEQA, one important point about the initiative is how many different projects are covered by it – despite the framing that it only covers "essential projects."

One kind of development project that is particularly controversial right now are data centers. The state legislature has been considering legislation that would (essentially) mandate the application of CEQA to data centers. National polling shows that data centers are deeply unpopular with the broader public. The number of data center projects nationally that are running into local opposition and being stopped is increasing rapidly. One California city just passed a ban on new data centers.

So would data centers be covered by the CEQA rollback in the Cal Chamber's initiative? I think the answer is likely yes. And that has a range of really important implications for any efforts to restrict the construction of data centers.

The scope of the initiative applies to "essential projects," which includes several categories. For our purposes, the category that is relevant is "essential broadband Internet access project." That term is defined in the initiative as:

> "a project to provide massmarket retail service by wire service, wireless service, or radio to customers in this state that provides the capability to transmit data to, and receive data from, all or substantially all Internet endpoints, including, but not limited to, any capabilities that are incidental to and enable the operation of the communications service, but excluding dial-up Internet access service."

Proposed new Section 21028(i)(1).

It is not hard to make arguments that data centers "provide[] the capability to transit data to, and receive data from, all or substantially all Internet endpoints" and provide "capabilities that are incidental to and enable the operation of the communications service." If one looks at arguments made by the data center lobbying organization (the Data Center Coalition (DCC)) and other proponents to state regulatory agencies (often in the context of what kinds of electricity rates new data centers will get), you will find arguments like:

> "There is growing demand for the digital services that have become central to our daily lives and modern economy-everything from the way we work and learn to how we buy groceries, bank, and even access medical care now occurs online. With an average of 21 connected devices per household in the U. S., the role of data centers is expected to grow as consumers and businesses generate twice as much data in the next five years as they did in the past decade. This growth is driven by the widespread adoption of cloud services, the proliferation of connected devices, and the rapid scaling of advanced technologies like generative AI. . . . "

Submission by the DCC to the Texas Public Utilities Commission (link). Similar language is in other DCC submissions in Texas (like here).

Or take this quote from a DCC submission in Pennsylvania to its utility regulator:

> "Imagine a world where every online transaction, medical appointment, remote class, and virtual meeting flows seamlessly, ensuring that our daily lives remain uninterrupted and connected. Data centers make this possible. The demand for digital services is at an all-time high, playing a vital role in Americans' daily routines. Our work, education, grocery shopping, banking, and even medical care increasingly occurs online. Data centers are at the heart of this transformation, providing the essential digital infrastructure that support the applications, platforms, and services we rely on every day, ensuring we remain connected in our modern lives and that businesses, organizations and individuals are able to remain competitive and grow our 21st century economy."

And relatedly, see this filing by a different advocacy group in California before the Public Utilities Commission, arguing that data centers should be treated as "telephone facilities" because they facilitate voice over internet telephone systems.

These arguments all frame data centers as facilities that are central to the operation of the Internet, and its functionality – which fits well within the broad language of the definition of "essential broadband Internet access project."

There are two additional provisions in the initiative that buttress a conclusion that

data centers may fall within its scope. First, the scope of an essential project under the initiative includes “all related and ancillary public, private, and utility infrastructure and public service facilities required by a utility or public agency, or included in an essential project application as part of the ‘whole of the project,’ to serve a project.” Proposed new Section 21028(m)(1)(B). A data center might fall within the scope of this – for instance, a proponent could construct new fiber optic wiring that clearly falls within the definition of “essential broadband Internet access project,” and that wiring connects to a data center that is framed as part of the “whole of the project” and makes the additional fiber optic useful (and thus is required).

Finally, the initiative has a provision that calls for it to be broadly interpreted. Proposed new Section 21029 states that the initiative “should be interpreted and implemented to afford the fullest possible weight to the interest of, and the approval and realization of, essential projects.” This is a thumb on the scale that might lead courts to conclude that, if in doubt, projects should be considered within the scope of the initiative.

In the next post I’ll discuss the possible implications of data centers falling within the scope of the initiative.