

## The Regulatory Labyrinth

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Say you want to develop a property in Riverside County in California. You assume that you will need the usual permits for building and electrical codes—and you will. But what may surprise you is that you’ll first often have to hire a professional archaeologist to survey the lot. The archaeologist will then write the equivalent of an academic article on the history of the lot, from its “prehistoric context” to the present day, including a review of any similar reports about surrounding lots. (One project found 60 such reports for nearby properties.) If evidence exists that something old may be present on the lot, the archaeologist will have to write either one or two more reports, which will include “oral histories” from people who may have walked across the lot and descriptions of any agreements with Native American tribes to supervise digging—for research, not development. If some clay pipes or old bricks are found, you may have to pay for archaeological and Native American monitoring during construction itself and then provide yet another report, which will describe, among other things, how you arranged for “mandatory cultural resources sensitivity training” for your construction workers. The official county archaeologist will then decide whether your report was adequate before allowing the normal building permits—provided, of course, that no problems are found with your paleontological, biological, or other reports.

California was once the powerhouse of American growth and innovation, a place that let people pursue their dreams without inhibition. Its latitudinarian attitude toward builders and entrepreneurs made the state a magnet for migrants from around the world. It grew to become the world’s fifth-largest economy. Its population exploded from 1.5 million in 1900 to about 18 million in 1964, when it became the largest state in the nation, to almost 40 million today.

Yet that expansive, optimistic era is now over. In 2020 and 2021, for the first time in its history, California’s population shrank. Early indications are that it shrank again in 2022. The main reason: the state makes it increasingly hard for people to do a great many things. Indeed, few places in the Western world today make it tougher to construct a new house or launch a new business. When Mercatus Center researchers ranked the states on

the number of separate demands in their regulations, California had by far the most, with almost 400,000 rules. New York was a distant second, with 300,000. California is dead last on the Cato Institute's and the Pacific Research Institute's state rankings on regulatory burdens.

Regulations are choking California, transforming a dynamic center of innovation and job creation into a place where pettifogging bureaucrats besiege citizens and entrepreneurs with demands covering even the minutest actions. It's no surprise that people are leaving.

California has become notorious for its stratospheric housing prices, and nothing has done more to sap the state's entrepreneurial energy and drain its citizens' pocketbooks than restrictions on new building, which drive up those prices. In much of the United States, the median house costs about four times the median income; but in San Diego and Los Angeles, it's more than ten times the median income, in San Francisco more than 11 times, and in San Jose more than 12 times. The median single-family house sold in San Jose now costs about \$1.6 million.

The rules for development are absurdly abstruse. California developers must navigate a labyrinth of environmental, historical, and design reviews, in addition to typical zoning requirements. Even when a development meets all the planners' regulatory demands, bureaucrats and politicians in many cities have "discretionary review" of proposals, enabling them to reject projects based on vague criteria or no criteria at all. Endless public hearings about local projects stymie developers and give politicians more reasons to exercise their veto. San Francisco builders must go through about a dozen public hearings before getting approval, even for a straightforward project. (A recent state law, championed by the pro-building Yes-In-My-Backyard, or YIMBY, movement, seeks to limit such hearings to five.)

Many California cities make developers sell new units below cost—an idea known as "inclusionary zoning." Under this system, if a builder puts up something new or fixes up old units, he has to add cheaper units. As a Los Angeles ordinance says, wherever "the result of the rehabilitation would be a net increase in available dwelling units," builders have to create up to 20 percent new "affordable" units, too. Again not surprisingly, both economic theory and research show that punishing developers for building more houses leads to, well, fewer houses. Cities' bureaucratic processes for allocating these cheaper housing units is so slow that, despite the tight housing market and their below-market rents, hundreds of these affordable apartments sit vacant, sometimes for years, depriving builders of even the minimal funds that they could get for renting them.

California also makes it tougher for people to rent or sell properties, further depressing incentives to build. In 2019, the state became only the second to impose statewide rent control, and it's the only one that allows local governments to adopt their own, additional

rent-control measures on top of the state mandate. A San Francisco law from the same year mandates that sales of buildings with three or more apartments must first offer them to the city's famously ineffective housing nonprofits. California also imposes ridiculous amounts of paperwork on developers, who must provide new residents with information on how to recycle and obtain state solar-energy subsidies, "educational material on the positive impacts of an interior relative humidity between 30 and 60 percent," and lists of public transportation or carpool options in the area, as if newcomers have never heard of Google.

**Restrictive building codes inhibit construction, too.** The state's building standards account for more than 75,000 of its 400,000 regulatory demands. Many go beyond basic health and safety requirements and seek to make every home an environmental mecca. For instance, new homes with garages must have a 208- or 240-volt electric-vehicle charging space. For apartment buildings, the mandated charging space must be at least 18 feet long and nine feet wide, with a slope of no more than 2.083 percent in any direction. Pity the developer whose charging space slopes 2.1 percent west.

Eighty percent of the state's water use goes to agriculture, but the state codes nevertheless mandate that housing developers add costly water-saving features, such as using only "climate adapted plants" and providing the government with a "Landscape Documentation Package" describing all the ways the building limits water use. The state's water regulations also make life harder for those inside the buildings. Toilets can't use more than 1.28 gallons per flush, and showerheads can't release more than 1.8 gallons per minute. Though bathroom faucets are limited to 1.2 gallons per minute, regulations generously allow 1.8 gallons a minute for kitchen faucets.

Many of these codes originate in state laws, passed in normal democratic and logrolling fashion by the legislature. Yet California also gives untold powers to bureaucrats, who can impose new regulations on building projects with zero political input. The five-member California Energy Commission, for example, decided in 2018 that new single-family homes, as well as multifamily homes up to three stories tall, must come with solar-power panels. In 2021, it expanded the rule to new hotels, offices, medical offices, restaurants, grocery stores, and schools. Given that the average solar-panel array in California costs nearly \$15,000, in one bureaucratic stroke the commission added thousands of dollars to the price tag of new buildings.

If someone wants to build in lots up to five miles from the ocean, he is subject to the tender mercies of the California Coastal Commission. A developer will need to obtain a Coastal Development Permit from it, filling out a 24-page application and paying up to \$10,000 per house for the privilege. Since the commission's rules appear completely arbitrary, entire businesses have emerged to help developers get the permits. And

sometimes no permission is forthcoming. In 2015, the commission shot down a proposed 1,375-house development in Southern California by arguing that the 400-acre tract stood on a precious ecological refuge. Fenced off and closed to the public, the site had been used for 70 years for oil production. The developer's plan to clean up the area and turn the majority of it into a nature preserve proved of no avail.

If developers want to tear down old buildings to make new ones, other barriers arise. In a confused bid to mandate housing, California prevents the demolition of residential units unless the new project replaces them with at least the same number of new units, including the same proportion of rent-controlled and “affordable” ones. If a tenant in a demolished unit is low-income, the developer must give him relocation aid and right of first refusal for a new apartment. All these impositions increase the cost of new buildings—and reduce the likelihood of their getting built in the first place. California also demands that 65 percent of construction waste be reused or recycled. Contractors must submit a “Construction Waste Management Plan,” showing how they will achieve these goals.

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Thanks to California's byzantine reporting requirements, academics and progressive activists have what amounts to a full-employment act for writing unnecessary studies. When developer Robert Tillman recently tried to bulldoze and redevelop a laundry in San Francisco, he was hit with complaints that the place was historic. A 135-page, \$23,000 study determined that no, it was not. That was separate from the two “shadow studies” that Tillman had to complete, showing what shadows the proposed building would cast at different times of the year. And the mandated archaeological reports for Riverside County lots were no outlier. When a developer tried to start a condominium project in San Diego County, the county required just such a report. Though 47 similar studies had been conducted within a one-mile radius of the property, and there were no indications of significant artifacts at the project site, the report still recommended hiring a “qualified archaeologist and Native American Monitor” to oversee construction.

The most unnecessary and burdensome studies are those required by the notorious California Environmental Quality Act (CEQA). These can run for thousands of pages and cost millions of dollars. One estimate is that the writing and fees associated with CEQA reports add more than \$2,500 to the cost of every home—and that doesn't include the many millions of dollars each year spent on CEQA-related lawsuits and delays.

California's cities are, by some measures, the densest in the United States. The reason: though the state makes it hard to build up, it makes it harder still to build out. Many cities impose “urban growth boundaries,” preventing any development outside of existing lines,

or “slope density ordinances,” making it impossible to build on hills. Often, cities and the state just buy up land to head off future building. Last year, for instance, California helped purchase 6,000 acres of scrubby ranchland in crowded Los Angeles County—the equivalent of seven Central Parks or so, without the charm—to stave off development.

Another obstacle to building outward is California’s climate-change regime. To discourage driving, the state demands that new developments show that future residents will drive 15 percent less than current residents—exceedingly difficult for any site located more than a few miles from built-up urban areas. The irony is that almost all housing in California is “greener” than housing elsewhere. Due largely to its balmy climate, Californians produce about half the greenhouse gases compared with people in the rest of the United States. Thus, California’s attempts to block building and “sprawl” have hurt the climate by pushing residents to hotter, but freer, states, such as Nevada and Arizona.

While the federal government has the Endangered Species Act, California has its own endangered species act that often curbs development. The act seeks to protect the habitats of certain birds, mammals, reptiles, and fish. A California court recently conducted a wildly creative reading of the act, claiming that bees are a type of fish. According to one advisory service, new projects will need to hire a qualified biologist to write a report and possibly apply for an “incidental take permit” if the site is home to bees or similar “fish.”

California’s high housing costs drive away many skilled workers, but even if such workers could afford to live in the state, it is often illegal for them to practice their craft there. According to the Institute for Justice, California is the second-worst state in the nation in terms of occupational license regulations. The state requires licenses from makeup artists, shampooers, high school sports coaches, upholsterers, and travel agents. It is one of only three states that require licenses for home entertainment system installers, and one of only eight that require them for tree trimmers. California’s fees for these licenses are almost double the national average.

The state has found myriad other ways to make it hard for businesses to find and employ good workers. Besides typical laws against discrimination, for example, California now protects people from getting fired for smoking pot off the job, including if they test positive on urine or blood tests. For the purposes of employment law, smoking pot is now treated the same as fundamental characteristics such as religion or race.

In a more direct blow to entrepreneurialism, the measure AB 5, passed in 2019, forbids companies from using independent contractors unless they meet numerous state rules. Though the website Vox trumpeted the law as a “win” for gig workers, who

could now unionize and get the supposed protections of full-time employees, the company Vox Media, seeking to avoid penalties, cut ties with almost 200 California freelancers before the law went into effect. It's no coincidence that AB 5 was written by Assemblywoman Lorena Gonzalez, a former union official, who later resigned her position in the assembly to become a leader in the state AFL-CIO. The ultimate goal of AB 5 was, and is, to force workers into stodgy, hierarchal companies with stodgy, hierarchal unions attached to them.

One reason that California and, more importantly, California unions try to restrict independent contractors is that the state mandates so many rules for regular employees. Employers must pay sick leave and provide meal and rest breaks. The state in 2022 required a \$15 minimum wage for large employers, the highest of any state, which increased to \$15.50 this year and which now applies to all employers. California is also experimenting with European-style labor regulation of whole sectors. Last year, it set up a council composed of labor and employers to set minimum wage and labor standards in the fast-food industry. The Service Employees International Union, the main backer of the bill, now doesn't have to do the hard work of organizing each local McDonald's and actually winning workers' votes. They can just run the industry from Sacramento.

California was once a shining example of how to attract good manufacturing workers and businesses—but government overreach ended that. While manufacturing employment nationally peaked back in 1979, it kept expanding in California for another decade. Back then, the state had about the same proportion of manufacturing employment as the nation did, but it was some of the most advanced manufacturing on earth, including many silicon chip “fabs” and aerospace engineering facilities. Then California regulation really got going. From 1992 to 2002, the state passed an average of 15 labor-law changes yearly, four times the national average, with advanced and heavy industries feeling the harshest impact. Since the early 1990s, the state has gone from having almost 16 percent of its workforce in manufacturing to less than half that and is now far below the national average.

Though Southern California was once an epicenter of oil drilling and chemical by-products, manufacturing involving fossil fuels now must meet 13,000 rules in the state code. Both chemical and paper manufacturing operate under 10,000 different restrictions. The state's extreme Covid lockdowns and mandates didn't help manufacturing, either. Elon Musk moved the headquarters and the new manufacturing center of his world-leading Tesla company from the Bay Area to Texas after local officials kept sabotaging his plant with pandemic rules. California thus lost one of the most successful manufacturing firms in modern history.

Businesses understand the danger of this overregulation. In 2021, a *Chief Executive* survey confirmed that “once again—yawn—California” was the least attractive

state for business. When *Site Selection* published a list of large business projects by state, including everything from new factories to new call centers, California ranked 46th on projects per capita. Businesses refuse to build in the Golden State, and workers are suffering for it.

For almost every national regulator and attached code, California has its own stricter regulators and codes. The California Environmental Protection Agency and the California Department of Industrial Relations compete not just to enforce but to layer more requirements on top of federal environmental and labor rules. Among other things, California's equivalent of the federal Occupational Safety and Health Administration requires companies with outdoor workers to provide training about how to deal with heat stress. The California Office of Administrative Law supervises more than 200 state agencies and commissions with the power to issue regulations, including the Health Information Integrity Office, the Bureau of Household Goods and Services, the Naturopathic Medicine Committee, and the Department of Pesticide Regulation.

For years, the California Air Resources Board enjoyed a special federal exemption that allowed it, unlike regulators in other states, to impose automobile fuel-efficiency requirements exceeding federal standards. These standards had a significant, but still limited, impact on the national automotive industry. But last year, the unelected bureaucrats at the board voted to end the sales of gas-powered cars by 2035, which could reshape the national auto industry in one stroke. They also proposed to end the sale of gas-powered trucks by 2040. As Secretary of Transportation Pete Buttigieg might say, "Let them buy Teslas" (of course, now made elsewhere). The only comfort for families forced to go electric is that California's gasoline taxes and regulations already make gas cost about a dollar a gallon more than the national average.

Even when California tries to encourage businesses to come to the state, it manages to put in place yet more barriers and regulations. One of California's favorite tactics is to promise tax discounts for certain businesses, but then condition them on achieving some of the state's progressive policy goals. To get tax credits from the California Film Commission, for instance, applicants will need to show a "diversity workplan," with statements about "diversity goals" and a breakdown of wages paid by race and gender. The commission can reject the deal if it thinks that the film company's plan isn't up to its standards, and it can remove tax benefits if the company isn't making a "good faith" effort to carry out its plan.

California requires large insurers, hospitals, water companies, and telephone companies, among other businesses, to submit various diversity plans—from "supplier diversity policy statements" to statements on "outreach and communications to minority, women, LGBT, veteran, and disabled veteran business enterprises." The California Public Utilities Commission requires large utilities to submit LGBT procurement goals, meaning that

these firms must ask their contractors if they are gay or bisexual, which some might not want to divulge.

The state has required these hortatory plans in part because its courts have forbidden explicit racial and gender mandates for businesses. Even California's state courts couldn't stomach two laws that imposed quotas of women and "underrepresented communities" for corporate board directors. These communities included not just different races but anyone who "self-identifies" as gay, lesbian, bisexual, or transgender. Courts, however, have not stopped the state law that says that large toy stores must have a "gender neutral" toy aisle.

California often pronounces onerous new regulations, and then allows almost anyone to sue if businesses don't abide by them. First-time visitors to the state will notice strange signs on products warning about exposure to certain chemicals "known to the State of California to cause cancer and birth defects or other reproductive harm." Proposition 65, passed in 1986, established this labeling rule. The current state list contains more than 900 chemicals, used to make every imaginable product, from shoes to cars to computer parts. Just to ensure your safety, some trees for sale in the Golden State feature Prop. 65 warnings.

Many California businesses, if they happen to contain one of the chemicals somewhere on their property, also post the warnings, including theme parks, bars, and gas stations. If firms ignore the labeling rule, they better watch out. Since 2000, businesses have paid more than \$300 million in legal settlements for failure to post warnings, with attorneys garnering nearly three-fourths of the total. The combination of Prop. 65 and litigation means that many companies, such as BJ's Wholesale Club, now refuse to ship products to California, worried that they might send an improperly labeled item.

California also uses lawsuits to enforce federal rules against businesses. For instance, the Americans with Disabilities Act lets people sue businesses that are inaccessible to the disabled, but a win forces the businesses only to fix the issue. In California, though, a plaintiff can get special monetary rewards for suing successfully. One serial plaintiff, Orlando Garcia, worked with "entrepreneurial" lawyers to file more than 100 lawsuits against businesses, many of them small, in 2021 alone. As Jaynry Mak, owner of Dim Sum Corner in San Francisco's Chinatown, put it, "It's kind of a shakedown for small mom-and-pop businesses."





The state recently banned the sale of eggs from caged chickens, contributing to shortages and price increases; the cost of a dozen eggs in California tripled over the course of a year. (I RYU/VCG/GETTY IMAGES)

Sometimes, California kneecaps businesses by banning them outright. In 2008, Los Angeles nixed new fast-food restaurants in some poorer neighborhoods, contending that such eateries increased obesity (one study showed that obesity rose faster in the areas with the ban). San Francisco forbids chain retail stores from opening without a special permit. It was only after a public kerfuffle with the city that a beloved local taqueria, El Farolito, could expand to another location. The California Air Resources Board voted to ban the sale of gas-powered furnaces and water heaters by 2030, which would disrupt much of the HVAC industry. The state banned the manufacture or sale of products using chemicals in the group PFAS, though the federal government says that the danger of these chemicals is low to nonexistent for consumer products. California recently banned the sale of eggs from caged chickens. This not only upset many farmers' livelihoods but also contributed to egg shortages in the state. An avian flu outbreak and the limited supply of cage-free chickens caused the price of a dozen eggs in California to go from \$2.35 in January 2022 to \$7.37 in January of this year, if a shopper could find them at all. Years ago, the state said that supermarkets could no longer hand out plastic bags at checkout; in 2022, it banned supermarkets from providing them even for vegetables or raw meat. Supermarkets now face potential lawsuits if they fail to abide by the plastic bans.

An abundance of economic literature shows that complex rules tend to breed corruption, since they enable politicians to extract funds from businesses in exchange for exemptions and special favors. And though many assume that California's political culture is less corrupt than, say, that of Illinois, the state's politicians have modern, progressive ways to extract funds.

Though California has strict rules on political donations, it has some surprising gaps. California has no rules against large state contractors providing campaign contributions to the governor, something that even Illinois banned years ago. Almost 1,000 state vendors and their employees gave a total of over \$10 million to now-governor Gavin Newsom during his state campaigns. These companies secured over \$6 billion in government payments just in 2021.

Politicians also can get firms to “behest” payments for favored charities or private groups. Jennifer Siebel Newsom, the governor's wife, is the cofounder of the California Partners Project, a group whose goal has been “supporting women's representation on boards.” (It railed against the courts' striking down of board quota laws.) The governor has behested businesses and others to make “charitable” contributions to this group, even though it is not listed as a charity in any government or other database and no information is available on how much Siebel Newsom receives from it. Businesses, including many regulated by the state, such as the Silicon Valley Bank of Menlo Park, have complied with Governor Newsom's entreaties, and his wife's group has raised \$1.6 million from such arrangements.

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As the *Sacramento Bee* reported, Siebel Newsom's actual registered charity—the Representation Project, which claims to use “the transformative power of storytelling to awaken consciousness around harmful gender stereotypes”—also benefited from gifts after the governor's intercessions. The givers include state-regulated businesses such as AT&T and Comcast. The charity has paid Siebel Newsom almost \$300,000 a year, adding up to at least \$2.3 million in salary over the previous decade. Her salary ate up about 20 percent of the charity's donations. Besides directly lining her pocket, the charity made a few films that featured the governor, as well as other allies like Nancy Pelosi and Senator Dianne Feinstein.

Few public officials in California are so remiss as to ignore the possibilities of behested payments. In 2020, the governor's requests to firms and individuals led to payments of more than \$200 million to his favored groups. Mayor Eric Garcetti of Los Angeles had a Mayor's Fund for Los Angeles that raised six-figure gifts from companies like Snap Inc. and Edison International. State Senator Maria Elena Durazo managed to get almost \$1.5

million behested for the California Latino Legislative Caucus Foundation, including a six-figure sum from Altria, the tobacco group. How some of these nonprofits differ from traditional political slush funds is hard to divine.

Though California has empowered regulators to micromanage every aspect of modern life, other states have shown that it is possible to rein in regulators and limit their power. Wisconsin requires agencies to point to explicit legal authority for new regulations and prevents them from using vague statements to expand their power. Idaho mandates that some regulations “sunset” every five years unless regulators can show that they are “the least restrictive” means to protect the public. New Hampshire requires new regulations to have a cost-benefit analysis, completed not by the regulators themselves, as in most places, but by an independent analyst. The Ohio Supreme Court recently said that courts should not give deference to regulators when they are interpreting their own laws or expanding their powers.

Yet California’s politicians show little appetite for reining in the regulatory state. After all, they are reaping the rewards of their own intervention. The more they regulate developers and businesses, the more they can ask them for funds in exchange for special exemptions and favors.

The problem is that everyone has a breaking point—and in our federal system, if businesses and people don’t like your rules and your demands, they can move. A recent Hoover Institution [analysis](#) showed that 352 company headquarters left the state from 2018 to 2021, including 11 Fortune 1000 companies. Hundreds of thousands of people, including this writer, have departed, too. If California’s politicians and bureaucrats think that businesses and people will abide by ever more rules and hand over ever more money, even as other states roll back regulations and mandates, they’re dreaming.