

A Tale of Two States: Comparing the Implementation of National Environmental Policy Act in Virginia and California

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As we dive into the distinct ways California and Virginia implement the National Environmental Policy Act (NEPA), let's explore how these differences not only impact environmental protection but also shape public participation and reveal the unique approaches states can take in shaping their environmental policies.

[NEPA](#) was signed into law by President Nixon on January 1st, 1970, and is a federal law that “forces” federal agencies in the United States to take a hard look at the environmental impacts of their decisions and actions. However, the discretionary nature of this policy gives authority to US agencies for the final decision making and adaptation processes.

In fact, the Supreme Court since the adaptation of this policy have frequently reiterated the agencies authority over the decision-making process. For instance, in *Andrus v. Sierra Club* ([§ 442 U.S. 347](#) 1979) the Supreme Court unanimously decided that “actions” governed by NEPA are discretionary judgements for the action agency that is taking “action” to make.

After the enactment of NEPA, various states, such as California and Virginia, have passed legislation to enforce environmental regulation in their states. The map below shows the states that currently have an environmental policy in addition to the federal regulations.

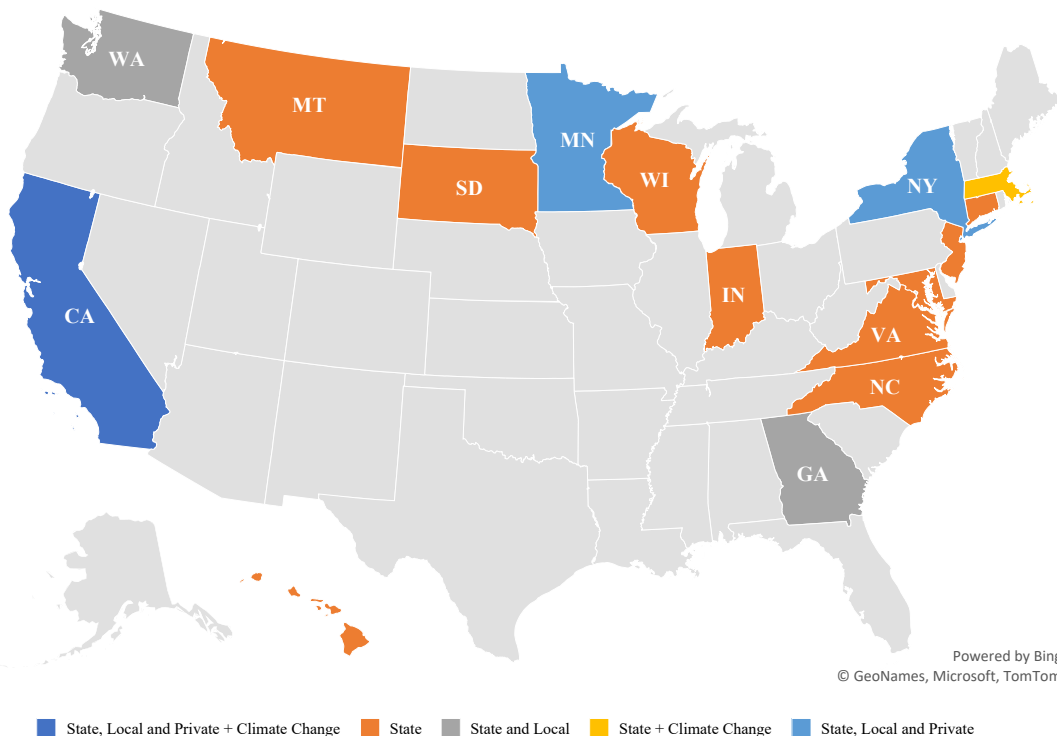


Figure 1: Various level of environmental policy in each state derived from [BallotPedia](#).

This map shows to what level the state environmental policy applies. In states marked orange, the state policy is limited to **state** actions and projects. In states marked gray, the state policy not only applies to **state** actions and projects but also to **local** actions and projects. In the states marked in blue, the state policy not only applies to **state** and **local** actions and projects but also to **private** actions and projects. In Massachusetts (shown in yellow), the state policy is limited to **state** action and projects; however, there is a **climate change** policy in place. Finally, in California (shown in navy), the state policy applies to **state**, **local**, and **private** actions and projects; additionally, there is a **climate change** policy in place. States in grey do not currently have a statewide environmental policy in place. You can find more details on various states environmental regulation [here](#).

We can see that California and Virginia each have their own statewide environmental policy, however, there is a significant difference in the scope of those policies. The Governor of California, Ronald Reagan signed the California Environmental Quality Act ([CEQA](#)) into law on September 18th, 1970, shortly after the enactment of NEPA. CEQA in its current form has far reaching authority in comparison with NEPA. In Virginia, the Code of Virginia ([§ 10.1-1188](#)) was amended in 1972 to require state agencies to submit environmental impact reports on major projects, furthermore, the Code of Virginia ([§ 10.1-1190](#)) prohibits funding state projects that fail to evaluate the environmental impacts of those projects through the Virginia Department of Environmental Quality ([DEQ](#)).

One of the main key differences is the level and role of public involvement in the environmental evaluation process. California's CEQA requires a more stringent public review process compared to NEPA by not only allowing for public participation at the initial stage of a review but also multiple opportunities at later stages for review and comment. On the other hand, Virginia environmental impact reviews for major state projects are not required to go through public review, however, DEQ has some provisions to consult localities in Virginia for such projects.

The two states also differ in how climate change impacts should be factored in environmental impact reviews. Virginia only requires a brief section of an environmental impact assessment to make a comment or analysis on the climate change impacts of that project, such as greenhouse gas emissions or rising sea levels. However, this is a very limited and mostly disregarded section of an environmental impact assessment in Virginia. California's CEQA, on the other hand, has significant climate change requirements; for instance, it mandates the greenhouse gas emission analysis not only as part of the scope of the project but also in a broader global context (CEQA Guidelines, § 15064.4, subd. (b)).

Another difference is the level and scope of analysis that is required for the environmental impact review. In California, a robust model or methodology is selected by the agencies to aid decisionmakers in scientifically factoring in issues like climate change (CEQA Guidelines, § 15064.4, subd. (c)). Additionally, California's long-term climate goals or strategies are factored in the analysis, which in turn enables a more comprehensive review (CEQA Guidelines, § 15064.4, subd. (b)(3)). However, in Virginia, the agency's discretion on model selection is broad, and a deferential standard is applied to the agency's determinations.

This difference in scope of these regulations has resulted in an average of 80% more per capita spending on environmental protection in California versus Virginia over the past 7 years. The figure below shows how environmental spending in Virginia compares to California. This graph further demonstrates how environmental spending has increased at a higher rate in California compared to Virginia over the past 3 years.

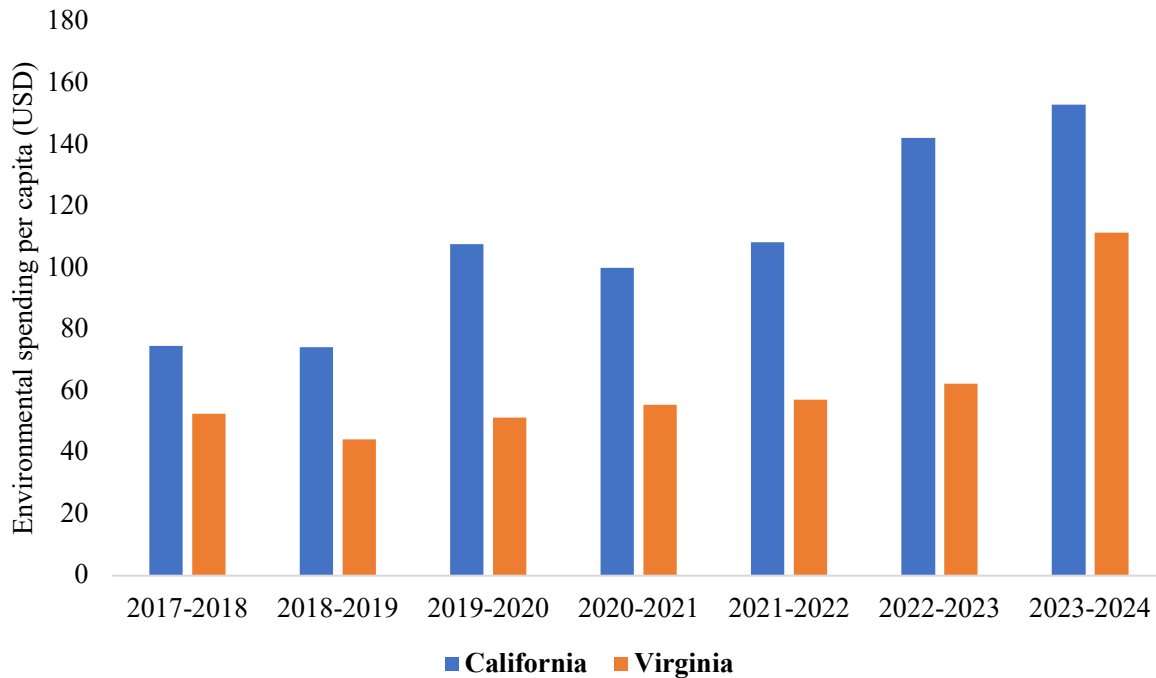


Figure 2: Environmental spending per capita (\$US) California and Virginia 2017-2024.

In conclusion, while this article highlights the differences between Virginia and California's implementation of NEPA, it also emphasizes the importance of understanding how diverse approaches to environmental policy can impact not only individual states but also have broader implications. As we face global environmental challenges, it is crucial for policymakers, stakeholders, and citizens to recognize that the choices made at the state level can serve as valuable lessons and models for other regions and nations. Ultimately, the key insight we can draw from this comparison is that a thorough examination of varying environmental policies can help inform and inspire more effective strategies to address climate change, promote public engagement, and protect our planet for future generations.