



JUDICIAL COUNCIL OF CALIFORNIA

GOVERNMENTAL AFFAIRS

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TANI G. CANTIL-SAKAUYE
Chief Justice of California
Chair of the Judicial Council

MARTIN HOSHINO
Administrative Director

CORY T. JASPERSON
Director, Governmental Affairs

March 30, 2022

Hon. Benjamin Allen, Chair
Senate Environmental Quality Committee
1021 O Street, Ste 6610
Sacramento, California 95814

Subject: Senate Bill 1274 (McGuire), as introduced – Oppose
Hearing: Senate Environmental Quality Committee – April 20, 2022

Dear Senator Allen:

The Judicial Council is opposed to SB 1274, which adds to the list of environmental leadership development projects under the Jobs and Economic Improvement Through Environmental Leadership Act of 2021 (Pub. Resources Code §§ 21178-21189.3) (Environmental Leadership Act) a clean energy transmission project that upgrades existing transmission infrastructure to bring renewable energy from an offshore wind project located within or adjacent to the County of Humboldt.

It is important to note that our concerns are limited solely to the court impacts of this legislation, and that the Judicial Council is not expressing any views on CEQA generally or the underlying merits of these offshore wind projects, as those issues are outside the council's purview. Last year, the council opposed SB 7 (Stats. 2021, ch. 19) on these same grounds, and this bill seeks to further expand SB 7's scope.

Adding these offshore wind projects to the list of projects under the Environmental Leadership Act means that any CEQA challenge to these projects, as with all Environmental Leadership Act projects certified by the Governor for California Environmental Quality Act (CEQA) streamlining, subjects these offshore wind projects to the requirement that any action or proceeding brought to attack, review, set aside, void, or annul the certification of an environmental impact report for an environmental leadership development project or the granting of any project approvals, including any potential appeals to the court of appeal or the Supreme

Court, be resolved, to the extent feasible, within 270-days of the filing of the certified record of proceedings with the court.

Adding these projects to the Environmental Leadership Act's requirement that any CEQA lawsuits challenging these additional projects, including any appeals therefrom, be resolved within 270 days is problematic as CEQA actions are already entitled under current law to calendar preference "over all other civil actions" pursuant to section 21167.1(a) of the Public Resources Code in both the superior courts and the Courts of Appeal. Imposing a 270-day timeline for the review of lawsuits from CEQA for these projects, on top of existing CEQA calendar preferences, even with language that references "to the extent feasible," is an arbitrary and unrealistically short timeframe for California's trial courts to address all of the issues each CEQA case is likely to present.

There are several reasons why the time frame is, from the outset, not feasible.

- *CEQA cases are complex and time-consuming.* Under normal circumstances and assuming the unrealistic context in which no extensions of time are requested or granted for any aspect of a case, CEQA cases take, on average, an estimated six months to get to hearing, much less to a decision. So, even if the court was able to issue its decision within six months (approximately 180 days), that would leave only three months (the remaining 90 days) for proceedings in the court of appeal, which is impracticable.¹ And, of course, it is more than likely that one or more parties will request, if not stipulate to, continuances, delays, or other procedural extensions. Given these common requests and stipulated delays, a 270-day timeframe is not feasible.
- *Active CEQA cases often include ancillary administrative and non-CEQA judicial causes of action.* Providing expedited judicial review for these additional projects is even more unworkable in light of the common occurrence that CEQA cases involve ancillary motions, administrative review, other causes of action, and other civil actions and appeals in the middle of the CEQA action. These actions proceed under administrative (local governmental) and civil procedure (non-CEQA courtroom) timelines, often resulting in temporary stays or delays in the principal CEQA action. In other words, even if CEQA-specific procedures could be limited to 270 days for one or more of the projects, other, non-CEQA procedures related to the same cases that would occur in non-CEQA courtrooms and administrative hearings cannot be concluded in that same timeframe. These ancillary hearings and procedures make the 270-day goal not feasible.
- *The expedited judicial review requirements will likely have an adverse impact on other cases in the courts.* Like other types of calendar preferences that the Judicial Council has previously opposed, setting an extremely tight timeline for deciding CEQA cases has the practical effect of pushing other cases on a court's docket to the back of the line. This could mean that as these additional projects' CEQA cases proceed, other cases, possibly

¹ In a typical civil appeal, it takes more than 95 days from when a trial court decision becomes final just for the record on appeal to be prepared and filed in the Court of Appeal. This does not include any time for briefing, oral argument, analysis of the issues, or preparation of a decision by the court.

Hon. Benjamin Allen

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those including statutorily mandated calendar preferences, such as juvenile cases, criminal cases, civil cases in which a party is at risk of dying, wage theft cases, election issues, and other important issues, will take longer to decide.

For these reasons, the Judicial Council opposes SB 1274.

Should you have any questions or require additional information, please contact Kate Nitta at 916-323-3121.

Sincerely,

Sent March 30, 2022

Cory T. Jaspersen
Director, Governmental Affairs

CTJ/KN/jh

cc: Members, Senate Environmental Quality Committee
Hon. Mike McGuire, Member of the Senate
Mr. Scott Seekatz, Consultant, Senate Republican Office of Policy
Ms. Hazel Miranda, Legislative Affairs Secretary, Office of the Governor
Mr. Martin Hoshino, Administrative Director, Judicial Council of California
Ms. Shelley Curran, Chief Policy & Research Officer, Judicial Council of California



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March 28, 2022

Hon. Mike McGuire
Senator, 2nd District
1021 O Street, Ste 8620
Sacramento, California 95814

Subject: Senate Bill 1274 (McGuire), as introduced – Oppose

Dear Senator McGuire:

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Sincerely,

Sent March 28, 2022

Kate Nitta
Attorney

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cc: Ms. Jessica Devencenzi, Deputy Legislative Secretary, Office of the Governor
Mr. Martin Hoshino, Administrative Director, Judicial Council of California
Ms. Shelley Curran, Chief Policy & Research Officer, Judicial Council of California