Judicial Council *of* California

520 Capitol Mall, Suite 600 · Sacramento, California 95814-4717
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PATRICIA GUERRERO
Chief Justice of California
Chair of the Judicial Council

MILLICENT TIDWELL
Acting Administrative Director

September 20, 2023

Hon. Gavin Newsom
Governor of California
1021 O Street, 9th Floor
Sacramento, California 95814

Subject: Senate Bill 619 (Padilla)—Request for Veto

Dear Governor Newsom:

The Judicial Council respectfully requests your veto on SB 619, which expands the Jobs and Economic Improvement Through Environmental Leadership Act of 2021 (Senate Bill 7 (Atkins); Stats. 2021, ch. 19), to include electrical transmission facility projects. This expansion would make these projects, if certified by the California Energy Commission, eligible for the streamlining benefits related to the California Environmental Quality Act (CEQA), including resolving CEQA challenges and any appeals to the courts of appeal or Supreme Court, to the extent feasible, within 270 days of the filing of the certified record of proceedings with the court.

It is important to note that our concerns regarding SB 619 are limited solely to the court impacts of this legislation, and that the Judicial Council is not expressing any views on the CEQA generally or the underlying merits of any potential projects that could be covered by the bill, as those issues are outside the council's purview.

AB 900 (Buchanan; Stats. 2011, ch. 354) initially established the Leadership Act of 2011, which created a process for certain projects to be certified as ELDPs (environmental leadership development projects) and receive expedited judicial review procedures under CEQA. The bill defined an ELDP as a wind or solar renewable energy project, clean energy manufacturing project, or other type of project that meets various environmental criteria. SB 7 (Atkins; Stats. 2021, ch. 19 reenacted the Leadership Act of 2021 and these categories have since been expanded several times to include additional project types.

As with other bills that have sought to expand the list of eligible ELDPs, the requirement in SB 619 that a CEQA lawsuit challenging the certified projects that would be eligible for this form of 270-day expedited judicial review, including any appeals to the Courts of Appeal or Supreme Court, is unworkable and unnecessary.

The council notes that 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. In addition to calendar preferences, existing law further requires that "superior courts in all counties with a population of more than 200,000 shall designate one or more judges to develop expertise in this division and related land use and environmental laws, so that those judges will be available to hear, and quickly resolve, actions or proceedings" brought under CEQA (see Public Resources Code § 21167.1(b)). In 2019, there were over 130 CEQA-trained judges in the 28 counties with populations over 200,000. Fourteen counties with populations less than 200,000 also had at least one CEQA-trained judge. These provisions ensure that CEQA cases are handled expeditiously under current law.

Imposing the 270-day timeline on top of the existing calendar preference is arbitrary and likely to be unworkable in practice. During the council's development process for the rules to implement AB 900, it became clear that 180 days (which was the timeline under the enacted version of that bill) is an unrealistically short timeframe for the Court of Appeal to decide a large CEQA matter. As was the case for initial review in the Court of Appeal, even assuming that no extensions of time are granted for any aspect of the proceeding, under normal circumstances it will take about 180 days just to get to hearing in the superior court, much less to issue a decision, in most of these cases. Even if the superior court were able to issue its decision within 180 days, that would leave only 90 days for proceedings in the Court of Appeal and the Supreme Court.[1]

If SB 619 is enacted, the expedited judicial review requirements for the projects certified for expedited judicial review will likely have an adverse impact on other cases. Like other types of calendar preferences, which the Judicial Council has opposed, setting an extremely tight timeline for deciding these cases has the practical effect of pushing other cases on the courts' dockets to the back of the line. This means that other cases, including cases that have statutorily mandated calendar preferences, such as juvenile cases, criminal cases, and civil cases in which a party is at risk of dying, as well as wage theft cases and other important cases on the courts' dockets, will take longer to decide.

Moreover, expediting review of CEQA causes of action does not necessarily lead to a faster resolution of the entire case, as non-CEQA causes of actions are frequently brought together with

[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.

CEQA claims. These non-CEQA causes of action proceed under the usual civil procedure rules and timelines and can cause delays to the principal CEQA action.

For these reasons, the Judicial Council requests your veto on SB 619.

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

Sincerely,

Cory T. Jasperson
Director, Governmental Affaris

CTJ/AS/jh
cc: Ms. Jessica Devencenzi, Deputy Legislative Secretary, Office of the Governor
Ms. Millicent Tidwell, Acting Administrative Director, Judicial Council of California
Ms. Shelley Curran, Chief Policy & Research Officer, Judicial Council of California

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PATRICIA GUERRERO
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MILLICENT TIDWELL
Acting Administrative Director

September 11, 2023

Hon. Steve Padilla
Member of the Senate, 18th District
1021 O Street, Suite 6640
Sacramento, California 95814

Subject: Senate Bill 619 (Padilla), as amended September 1, 2023—Oppose
Location: Senate Unfinished Business File

Dear Senator Padilla:

The Judicial Council regretfully opposes Senate Bill 619 which expands the Jobs and Economic Improvement Through Environmental Leadership Act of 2021 (SB 7 (Atkins), Stats. 2021, ch. 19), to include electrical transmission facility projects. This expansion would make these projects if certified by the California Energy Commission eligible for the streamlining benefits related to the California Environmental Quality Act (CEQA), including resolving CEQA challenges and any appeals to the courts of appeal or Supreme Court, to the extent feasible, within 270 days of the filing of the certified record of proceedings with the court.

It is important to note that our concerns regarding SB 619 are limited solely to the court impacts of this legislation, and that the Judicial Council is not expressing any views on the CEQA generally or the underlying merits of any potential projects that could be covered by the bill, as those issues are outside the council's purview.

AB 900 (Buchanan; Stats. 2011, ch. 354) initially established the Leadership Act of 2011, which created a process for certain projects to be certified as ELDPs (environmental leadership development projects) and receive expedited judicial review procedures under CEQA. The bill defined an ELDP as a wind or solar renewable energy project, clean energy manufacturing project, or other type of project that meets various environmental criteria. SB 7 (Atkins; Stats. 2021, ch. 19 reenacted the Leadership Act of 2021 and these categories have since been expanded several times to include additional project types.

As with other bills that have sought to expand the list of eligible ELDPs, the requirement in SB 619 that a CEQA lawsuit challenging the certified projects that would be eligible for this form of 270-day expedited judicial review, including any appeals to the Courts of Appeal or Supreme Court, is unworkable and unnecessary.

The council notes that 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. In addition to calendar preferences, existing law further requires that "superior courts in all counties with a population of more than 200,000 shall designate one or more judges to develop expertise in this division and related land use and environmental laws, so that those judges will be available to hear, and quickly resolve, actions or proceedings" brought under CEQA (see Public Resources Code § 21167.1(b)). In 2019, there were over 130 CEQA-trained judges in the 28 counties with populations over 200,000. Fourteen counties with populations less than 200,000 also had at least one CEQA-trained judge. These provisions ensure that CEQA cases are handled expeditiously under current law.

Imposing the 270-day timeline on top of the existing calendar preference is arbitrary and likely to be unworkable in practice. During the council's development process for the rules to implement AB 900, it became clear that 180 days (which was the timeline under the enacted version of that bill) is an unrealistically short timeframe for the Court of Appeal to decide a large CEQA matter. As was the case for initial review in the Court of Appeal, even assuming that no extensions of time are granted for any aspect of the proceeding, under normal circumstances it will take about 180 days just to get to hearing in the superior court, much less to issue a decision, in most of these cases. Even if the superior court were able to issue its decision within 180 days, that would leave only 90 days for proceedings in the Court of Appeal and the Supreme Court.[1]

If SB 619 is enacted, the expedited judicial review requirements for the projects certified for expedited judicial review will likely have an adverse impact on other cases. Like other types of calendar preferences, which the Judicial Council has opposed, setting an extremely tight timeline for deciding these cases has the practical effect of pushing other cases on the courts' dockets to the back of the line. This means that other cases, including cases that have statutorily mandated calendar preferences, such as juvenile cases, criminal cases, and civil cases in which a party is at risk of dying, as well as wage theft cases and other important cases on the courts' dockets, will take longer to decide.

[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.

Moreover, expediting review of CEQA causes of action does not necessarily lead to a faster resolution of the entire case, as non-CEQA causes of actions are frequently brought together with CEQA claims. These non-CEQA causes of action proceed under the usual civil procedure rules and timelines and can cause delays to the principal CEQA action.

For these reasons, the Judicial Council opposes SB 619.

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

Sincerely,

Cory T. Jasperson
Director, Governmental Affaris

CTJ/AS/jh

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

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PATRICIA GUERRERO
Chief Justice of California
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MILLICENT TIDWELL
Acting Administrative Director

July 18, 2023

Hon. Steve Padilla
Member of the Senate, 18th District
1021 O Street, Suite
Sacramento, California 95814

Subject: Senate Bill 619 (Padilla), as amended June 21, 2023—Oppose

Dear Senator Padilla:

The Judicial Council regretfully opposes SB 619 (Padilla), which expands the Jobs and Economic Improvement Through Environmental Leadership Act of 2021 (SB 7 (Atkins), Stats. 2021, ch. 19), to include electrical transmission facility projects that are needed to increase transmission capacity to deliver renewable energy resources or zero-carbon resources to meet the climate change goals for electricity in California. This expansion would make these projects if certified by the California Energy Commission eligible for the streamlining benefits related to the California Environmental Quality Act (CEQA), including resolving CEQA challenges and any appeals to the courts of appeal or Supreme Court, to the extent feasible, within 270 days of the filing of the certified record of proceedings with the court.

AB 900 (Buchanan; Stats. 2011, ch. 354) initially established the Leadership Act of 2011, which created a process for certain projects to be certified as ELDPs (environmental leadership development projects) and receive expedited judicial review procedures under CEQA. The bill defined an ELDP as a wind or solar renewable energy project, clean energy manufacturing project, or other type of project that meets various environmental criteria. These categories have since been expanded several times to include additional project types.

As with other bills that have sought to expand the list of eligible ELDPs, SB 619 requires that a CEQA lawsuit challenging the additional projects that may be certified for this form of expedited judicial review, including any appeals to the Courts of Appeal or Supreme Court, be resolved within 270 days is unworkable and unnecessary.

The council notes that 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. In addition to calendar preferences, existing law further requires that "superior courts in all counties with a population of more than 200,000 shall designate one or more judges to develop expertise in this division and related land use and environmental laws, so that those judges will be available to hear, and quickly resolve, actions or proceedings" brought under CEQA (see Public Resources Code § 21167.1(b)). In 2019, there were over 130 CEQA-trained judges in the 28 counties with populations over 200,000. Fourteen counties with populations less than 200,000 also had at least one CEQA-trained judge. These provisions ensure that CEQA cases are handled expeditiously under current law.

Imposing the 270-day timeline on top of the existing calendar preference is arbitrary and likely to be unworkable in practice. During the council's development process for the rules to implement AB 900, it became clear that 180 days (which was the timeline under the enacted version of that bill) is an unrealistically short timeframe for the Court of Appeal to decide a large CEQA matter. As was the case for initial review in the Court of Appeal, even assuming that no extensions of time are granted for any aspect of the proceeding, under normal circumstances it will take about 180 days just to get to hearing in the superior court, much less to issue a decision, in most of these cases. Even if the superior court were able to issue its decision within 180 days, that would leave only 90 days for proceedings in the Court of Appeal and the Supreme Court.[1]

If SB 619 is enacted, the expedited judicial review requirements for the projects certified for expedited judicial review will likely have an adverse impact on other cases. Like other types of calendar preferences, which the Judicial Council has opposed, setting an extremely tight timeline for deciding these cases has the practical effect of pushing other cases on the courts' dockets to the back of the line. This means that other cases, including cases that have statutorily mandated calendar preferences, such as juvenile cases, criminal cases, and civil cases in which a party is at risk of dying, as well as wage theft cases and other important cases on the courts' dockets, will take longer to decide.

Moreover, expediting review of CEQA causes of action does not necessarily lead to a faster resolution of the entire case, as non-CEQA causes of actions are frequently brought together with CEQA claims. These non-CEQA causes of action proceed under the usual civil procedure rules and timelines and can cause delays to the principal CEQA action.

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For these reasons, the Judicial Council opposes SB 619 and looks forward to continuing the discussions to remove the council's opposition.

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

Sincerely,

Tracy Kenny
Acting Supervising Attorney

TK/lmm
cc: Ms. Jessica Devencenzi, Deputy Legislative Secretary, Office of the Governor
Ms. Millicent Tidwell, Acting Administrative Director, Judicial Council of California
Ms. Shelley Curran, Chief Policy & Research Officer, Judicial Council of California