



Judicial Council of California

ADMINISTRATIVE OFFICE OF THE COURTS

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

WILLIAM C. VICKREY
Administrative Director of the Courts

RONALD G. OVERHOLT
Chief Deputy Director

April 21, 2011

Hon. Mary Hayashi, Chair
Assembly Business, Professions and Consumer Protection Committee
State Capitol, Room 3013
Sacramento, California 95814

Subject: Assembly Bill 314 (Gorell), as introduced - Oppose
Hearing: Assembly Business, Professions and Consumer Protection Committee – May 3, 2011

Dear Assembly Member Hayashi:

The Judicial Council opposes AB 314, which would require that contracts pertaining to the acquisition and construction of court facilities be subject to the provisions of the Public Contract Code. As explained more fully below, sufficient oversight and cost controls for the construction of court facilities are already in place. The council believes that the enactment of AB 314 would result in significant delays in the construction or the cancellation of critically needed facilities, as well as increasing the long term cost of operating and maintaining the courts and delaying putting over 100,000 people to work.

Government Code section 70374(b)(2) currently provides that the acquisition and construction of court facilities are not subject to the provisions of the Public Contract Code (PCC), but shall be subject to facilities contracting policies and procedures adopted by the Judicial Council after consultation and review by the Department of Finance (DOF). The Judicial Council adopted the

Court Facilities Contracting Policies and Procedures on December 7, 2007, following the required consultation and review by DOF.

Budget trailer bill language enacted this year (SB 78, Stats. 2011, ch. 10), provides among other things for the creation of a new California Judicial Branch Contract Law. Senate Bill 78, which became effective on March 24, 2011, applies specified provisions of the PCC that are applicable to state agencies and departments to certain contracts entered into or amended by judicial branch entities on or after October 1, 2011. Notably, SB 78 specifically provides that the new California Judicial Branch Contract Law does not apply to procurement and contracting by judicial branch entities that are related to trial court construction, including, but not limited to, the planning, design, construction, rehabilitation, renovation, replacement, lease, or acquisition of trial court facilities. (See Public Contract Code section 19204(c).)

In addition, SB 78 requires the Judicial Council to provide a report to the Joint Legislative Budget Committee (JLBC) by January 15, 2013, on the process, transparency, costs, and timeliness of its construction procurement practices, and requires the Legislative Analyst's Office (LAO) to conduct an analysis of the report's findings and compare the costs and timeliness of methods of delivery used by the judiciary to projects of comparable size, scope, and geographic location procured under the PCC provisions applicable to state agencies. (Stats. 2011, ch. 10, sec. 22.) SB 78 specifically precluded the "approval, review, or involvement of any other state entity, including, but not limited to, the Department of General Services..." in judicial branch procurement under the California Judicial Branch Contract Law. (Public Contract Code section 19207.)

The current court facilities contracting procedures include multiple levels of review at every phase of the projects by the Department of Finance, JLBC, and the Public Works Board, thereby ensuring proper accountability, oversight, and cost controls. If AB 314 were to be enacted, for the remaining 7 projects authorized by SB 1732 and all 41 projects authorized by SB 1407, the Department of General Services (DGS) would have to manage the bidding, enter into contracts for construction and manage the construction.

DGS does not have authority for the Construction Manager at Risk (CMAR) method that is currently being utilized for judicial branch construction projects, so they would use the design-bid-build method, resulting in increased costs, potentially lower quality and an increased potential for claims litigation.

Putting court construction projects under the requirements of the Public Contract Code would result in at least a one-year delay in all projects. The Judicial Council estimates that if AB 314 were to be enacted, there would be a cost increase of over \$570 million over the life of the projects, which means that some projects would most likely need to be cancelled.

Hon. Mary Hayashi
April 21, 2011
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In sum, the Judicial Council believes that AB 314 is an unnecessary and unwarranted measure that will result in costly delays, will jeopardize jobs, will not result in any greater accountability, and will interfere with the obligation of the judicial branch to provide the necessary facilities infrastructure in order to meet the needs of the public we serve.

For all of these reasons, the Judicial Council opposes AB 314.

Sincerely,

A handwritten signature in black ink, appearing to read "Daniel Pone", written in a cursive style.

Daniel Pone
Senior Attorney

DP/lp

cc: Members, Assembly Business, Professions and Consumer Protection Committee

Hon. Jeff Gorell, Member of the Assembly

Ms. Joanna Gin, Consultant, Assembly Business, Professions and Consumer Protection Committee

Mr. Aaron Maguire, Deputy Legislative Affairs Secretary, Office of the Governor

Ms. Kirsten Kolpitcke, Deputy Director of Legislation, Governor's Office of Planning and Research

Mr. Ted Blanchard, Consultant, Assembly Republican Office of Policy



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April 21, 2011

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Member of the Assembly
State Capitol, Room 4208
Sacramento, California 95814

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