JUDICIAL COUNCIL OF CALIFORNIA

770 L Street, Suite 1240 • Sacramento, California 95814-3368
Telephone 916-323-3121 • Fax 916-323-4347 • TDD 415-865-4272

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

MARTIN HOSHINO
Administrative Director

CORY T. JASPERSON
Director, Governmental Affairs

April 13, 2015

Hon. Mike A. Gipson
Member of the Assembly
State Capitol, Room 4164
Sacramento, California 95814

Subject: AB 1298 (Gipson), as amended March 26, 2015 – Oppose

Dear Assembly Member Gipson:

The Judicial Council is opposed to AB 1298. This bill, among other things, seeks to apply the rules of court governing expedited judicial review of actions or proceedings brought pursuant to the California Environmental Quality Act (CEQA) challenging a specified downtown arena project in the City of Sacramento[1] to cases seeking judicial review of a public agency's action in certifying the environmental impact report and in granting project approvals for a specified entertainment and sports center project located in the City of Carson. AB 1298 also prohibits a court from staying or enjoining the construction or operation of the stadium project unless the court finds either of the following: (i) the continued construction or operation of the stadium

[1] See SB 743 (Steinberg), Stats. 2013, ch. 386, sec. 7, codified at Public Resources Code 21168.6.6(d), which provides that "*[o]n or before July 1, 2014*, the Judicial Council shall adopt a rule of court to establish procedures applicable to actions or proceedings brought to attack, review, set aside, void, or annul the certification of the environmental impact report for the [Sacramento downtown arena] project or the granting of any project approvals that require the actions or proceedings, including any potential appeals therefrom, be resolved, to the extent feasible, within 270 days of certification of the record of proceedings … (emphasis added)." The rules of court mandated by SB 743 were adopted by the Judicial Council, effective July 1, 2014 (see Calif. Rules of Court, rules 3.2220 et seq.). Although the intent of this bill is to apply the same 270-day timeline and judicial review procedures to the City of Carson stadium project (see *proposed* Public Resources Code section 21168.6.9(b), at p. 4, lines 1-5), the current language may not accomplish this purpose given that the timeline for adopting the SB 743 implementing rules of court has already passed. At a minimum, if AB 1298 moves forward, the bill should be amended to allow sufficient time (e.g., July 1, 2016) for the Judicial Council to update the rules of court to make them also applicable to the City of Carson stadium project.

presents an imminent threat to the public health and safety; or (ii) the stadium site contains unforeseen important Native American artifacts or unforeseen important historical, archaeological, or ecological values that would be materially, permanently, and adversely affected by the continued construction or operation of the stadium unless the court stays or enjoins the construction or operation of the stadium. The bill specifies further that if the court finds that either of the above criteria is satisfied, the court shall only enjoin those specific activities associated with the stadium that present an imminent threat to public health and safety or that materially, permanently, and adversely affect unforeseen important Native American artifacts or unforeseen important historical, archaeological, or ecological values.

It is important to note that the Judicial Council's concerns regarding AB 1298 are limited solely to the court impacts of the legislation, and that the council is not expressing any views on CEQA generally or the underlying merits of the project covered by the legislation, as those issues are outside the council's purview.

AB 1298's requirement that any CEQA lawsuit challenging the City of Carson entertainment and sports center project, including any appeals therefrom, be resolved within 270 days is problematic for a number of reasons. First, the timeline is triggered by *the certification of the record*, which is an action that takes place *before* the court has any jurisdiction or control over the proceedings. This means that the extremely tight 270-day period in which the trial court and Court of Appeal must issue their respective decisions on an action could—and likely would—begin weeks before the lawsuit is even filed. It makes no sense to have something that occurs before the matter even comes to the courts start the courts' already limited time period to complete their work.

Second, the 270-day timeline will likely be unworkable in practice. During the council's development process for the rules to implement AB 900, it became clear that 175 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. This bill follows the approach taken in SB 743, which places the initial judicial review in the superior court. However, 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, it appears that it will take about 175 days just to get to hearing in the superior court, much less to issue a decision, in the majority of these cases. Even if the superior court were able to issue its decision within 175 days, which is highly unlikely, that would leave only 95 days for proceedings in the Court of Appeal, which appears to be infeasible.[2]

Third, the expedited judicial review for the stadium project covered by AB 1298 will likely have an adverse impact on other cases. Like other types of calendar preferences, which the Judicial Council has historically opposed, setting an extremely tight timeline for deciding this case 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

[2] 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.

as juvenile cases, criminal cases, and civil cases in which a party is at risk of dying, will take longer to decide. Moreover, delays in the administration of justice that would likely result from any expansion of this expedited judicial review approach would be even more pronounced in light of the ongoing fiscal limitations faced by the judicial branch.

Fourth, providing expedited judicial review for the project covered by AB 1298 while other cases proceed under the usual civil procedure rules and timelines undermines equal access to justice. The courts are charged with dispensing equal access to justice for each and every case on their dockets. Singling out this special case for such preferential treatment appears at odds with how our justice system has historically functioned.

Finally, the provision in AB 1298 that significantly limits the forms of relief that the court may use in any action challenging the project covered by this bill interferes with the inherent authority of a judicial officer and raises a serious separation of powers question.

For these reasons, the Judicial Council opposes AB 1298

Sincerely,

Daniel Pone
Senior Attorney

DP/lmb
cc: Ms. June Clark, Deputy Legislative Affairs Secretary, Office of the Governor
Ms. Martha Guzman-Acevez, Deputy Legislative Affairs Secretary, Office of the Governor
Mr. Lawrence Lingbloom, Principal Consultant, Assembly Natural Resources Committee
Mr. John Kennedy, Consultant, Assembly Republican Caucus