



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

May 27, 2016

Hon. Cathleen Galgiani
Member of the Senate
State Capitol, Room 2059
Sacramento, California 95814

Subject: SB 734 (Galgiani), as amended May 19, 2016 - Oppose

Dear Senator Galgiani:

The Judicial Council regrets to inform you of its opposition to SB 734, as amended May 19, 2016, which would extend for two years the sunset on the expedited judicial review provisions in AB 900 (Stats. 2011, ch. 354) that apply to specified cases filed under the California Environmental Quality Act (CEQA). It is important to note that the Judicial Council's concerns regarding SB 734 are limited solely to the court impacts of the legislation, which are detailed below. The Judicial Council is not expressing any views on CEQA generally or the underlying merits of the projects that would be covered by this bill, as those issues are outside the council's purview.

As we noted with other recent bills that have sought to expand AB 900, requiring that a CEQA lawsuit challenging the additional projects that may be certified for this form of expedited judicial review, 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. 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 seems unlikely, that would leave only 95 days for proceedings in the Court of Appeal, which appears to be infeasible.¹

Third, if SB 734 is enacted, the expedited judicial review requirements for any additional projects that may be certified under AB 900 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 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, 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 additional projects that may be covered by the bill's proposed expansion of AB 900 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 type of case for such preferential treatment appears at odds with how our justice system has historically functioned.

In addition to the above, the provision in AB 900 that significantly limits the forms of relief that the court may use in any action challenging such projects sets a troubling precedent by interfering with the inherent authority of a judicial officer, which in turn raises a serious separation of powers question.

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. Cathleen Galgiani

May 27, 2016

Page 3

For these reasons, the Judicial Council is opposed to SB 734.

Sincerely,

A handwritten signature in blue ink, appearing to read "Daniel Pone", is written over the word "Sincerely,".

Daniel Pone
Attorney

DAP/ml

cc: Mr. Daniel Seeman, Deputy Legislative Affairs Secretary, Office of the Governor
Mr. Martin Hoshino, Administrative Director, Judicial Council of California
Mr. Lawrence Lingbloom, Chief Consultant, Assembly Natural Resources Committee
Mr. John Kennedy, Consultant, Assembly Republican Caucus
Ms. Joanne Roy, Consultant, Senate Environmental Quality Committee
Mr. Todd Moffitt, Consultant, Senate Republican Caucus



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

June 13, 2016

Hon. Das Williams, Chair
Assembly Natural Resources Committee
State Capitol, Room 4005
Sacramento, California 95814

Subject: SB 734 (Galgiani), as amended May 19, 2016 – Oppose
Hearing: Assembly Natural Resources Committee – June 13, 2016

Dear Assembly Member Williams:

The Judicial Council is opposed to SB 734, as amended May 19, 2016, which would extend for two years the sunset on the expedited judicial review provisions in AB 900 (Stats. 2011, ch. 354) that apply to specified cases filed under the California Environmental Quality Act (CEQA). It is important to note that the Judicial Council's concerns regarding SB 734 are limited solely to the court impacts of the legislation, which are detailed below. The Judicial Council is not expressing any views on CEQA generally or the underlying merits of the projects that would be covered by this bill, as those issues are outside the council's purview.

As we noted with other recent bills that have sought to expand AB 900, requiring that a CEQA lawsuit challenging the additional projects that may be certified for this form of expedited judicial review, 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 is problematic to start the 270-day clock before the matter even comes to the courts further shortening an already limited time period to complete judicial review. 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. 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 seems unlikely, that would leave only 95 days for proceedings in the Court of Appeal, which appears to be infeasible.¹

Third, if SB 734 is enacted, the expedited judicial review requirements for any additional projects that may be certified under AB 900 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 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, 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.

For these reasons, the Judicial Council is opposed to SB 734.

Sincerely,



Cory Jaspersen
Director, Governmental Affairs

CTJ/DP/ka

cc: Members, Assembly Natural Resources Committee
Hon. Cathleen Galgiani, Member of the Assembly
Mr. Lawrence Lingbloom, Chief Consultant, Assembly Natural Resources Committee
Mr. John Kennedy, Consultant, Assembly Republican Caucus
Ms. Joanne Roy, Consultant, Senate Environmental Quality Committee
Mr. Todd Moffitt, Consultant, Senate Republican Caucus
Mr. Daniel Seeman, Deputy Legislative Affairs Secretary, Office of the Governor
Mr. Martin Hoshino, Administrative Director, Judicial Council of California

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.



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

August 15, 2016

Hon. Edmund G. Brown, Jr.
Governor of California
State Capitol, First Floor
Sacramento, California 95814

Subject: SB 734 (Galgiani), as amended June 21, 2016 – Oppose

Dear Governor Brown:

The Judicial Council is opposed to SB 734, which, among other things, would extend for two years the sunset on the expedited judicial review provisions in AB 900 (Stats. 2011, ch. 354) that apply to specified cases filed under the California Environmental Quality Act (CEQA). It is important to note that the Judicial Council's concerns regarding SB 734 are limited solely to the court impacts of the legislation, which are detailed below. The Judicial Council is not expressing any views on CEQA generally or the underlying merits of the projects that would be covered by this bill, as those issues are outside the council's purview.

As we noted with other recent bills that have sought to expand AB 900, requiring that a CEQA lawsuit challenging the additional projects that may be certified for this form of expedited judicial review, 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 is problematic to start the 270-day clock before the matter even comes to the courts further shortening an already limited time period to complete judicial review. 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. As was the case for initial review in the

Hon. Edmund G. Brown, Jr.

August 15, 2016

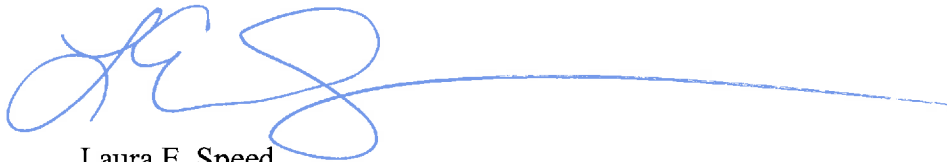
Page 2

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 seems unlikely, that would leave only 95 days for proceedings in the Court of Appeal, which appears to be infeasible.¹

Third, if SB 734 is enacted, the expedited judicial review requirements for any additional projects that may be certified under AB 900 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 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, 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.

For these reasons, the Judicial Council is opposed to SB 734.

Sincerely,



Laura E. Speed
Principal Manager, Governmental Affairs

LES/DP/ka

cc: Hon. Cathleen Galgiani, Member of the Assembly

Ms. Martha Guzman-Aceves, Deputy Legislative Affairs Secretary, Office of the Governor

Mr. Daniel Seeman, Deputy Legislative Affairs Secretary, Office of the Governor

Mr. Martin Hoshino, Administrative Director, Judicial Council of California

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.



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

August 9, 2016

Hon. Bob Wieckowski, Chair
Senate Environmental Quality Committee
State Capitol, Room 3086
Sacramento, California 95814

Subject: SB 734 (Galgiani), as amended June 21, 2016 – Oppose
Hearing: Senate Environmental Quality Committee – August 10, 2016

Dear Senator Wieckowski:

The Judicial Council is opposed to SB 734, which, among other things, would extend for two years the sunset on the expedited judicial review provisions in AB 900 (Stats. 2011, ch. 354) that apply to specified cases filed under the California Environmental Quality Act (CEQA). It is important to note that the Judicial Council's concerns regarding SB 734 are limited solely to the court impacts of the legislation, which are detailed below. The Judicial Council is not expressing any views on CEQA generally or the underlying merits of the projects that would be covered by this bill, as those issues are outside the council's purview.

As we noted with other recent bills that have sought to expand AB 900, requiring that a CEQA lawsuit challenging the additional projects that may be certified for this form of expedited judicial review, 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 is problematic to start the 270-day clock before the matter even comes to the courts further shortening an already limited time period to complete judicial review. 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

Hon. Bob Wieckowski

August 9, 2016

Page 2

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, 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 seems unlikely, that would leave only 95 days for proceedings in the Court of Appeal, which appears to be infeasible.¹

Third, if SB 734 is enacted, the expedited judicial review requirements for any additional projects that may be certified under AB 900 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 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, 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.

For these reasons, the Judicial Council is opposed to SB 734.

Sincerely,



Cory Jasperson
Director, Governmental Affairs

CTJ/DP/ka

cc: Members, Senate Environmental Quality Committee

Hon. Cathleen Galgiani, Member of the Assembly

Ms. Joanne Roy, Consultant, Senate Environmental Quality Committee

Mr. Todd Moffitt, Consultant, Senate Republican Caucus

Mr. Daniel Seeman, Deputy Legislative Affairs Secretary, Office of the Governor

Mr. Martin Hoshino, Administrative Director, Judicial Council of California

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.