



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 6, 2015

Hon. Jimmy Gomez, Chair
Assembly Appropriations Committee
State Capitol, Room 2114
Sacramento, California 95814

Subject: AB 825 (Rendon), as amended April 20, 2015 – Fiscal Impact Statement

Dear Assembly Member Gomez:

On behalf of the Judicial Council of California, I respectfully request that AB 825 be placed on the Assembly Suspense File for thorough consideration of the cost implications of the bill, if enacted, on California's trial and appellate courts.

AB 825 seeks to repeal the existing judicial review scheme that provides for review by the Courts of Appeal and Supreme Court of decisions by the Public Utilities Commission (commission or PUC), and replace it with a new scheme that would provide for exclusive venue in the San Francisco and Los Angeles superior courts for initial judicial review of written petitions seeking relief from an order of the commission.

Fiscal Impacts

If enacted, AB 825 will have significant fiscal impacts on the San Francisco and Los Angeles superior courts (the courts). Since the trial courts are not currently required to review PUC decisions, the number of filings for these two superior courts will increase, and the courts will be required to dedicate significant resources to hear and resolve these complex matters. Moreover, the new costs borne by these two courts to resolve PUC matters will be in addition to the costs currently incurred by the Courts of Appeal and the Supreme Court, which presumably will be responsible for conducting some form of appellate review of the decisions issued by the Los Angeles and San Francisco superior courts.

Based on a review of the current cases filed in the Court of Appeal asking for relief from decisions of the commission, the issues in dispute involve complex matters of fact and law, and may take a year or more to resolve. Although the language of the bill is unclear, it appears to contemplate the court conducting an evidentiary hearing in at least some of these cases, which does not occur under the current judicial review scheme. This unique feature of the legislation has the potential for significantly increasing the costs to the courts for handling these new cases.

Since the judicial review scheme proposed in AB 825 is new, we look to another large complex type of case as a guide for estimating the court costs and burdens. Cases brought under the California Environmental Quality Act (CEQA) are of comparable size and complexity to PUC cases. CEQA cases require an average of 108 hours of judicial officer time, and 432 hours of combined staff time supporting courtroom and back-office operations to manage the significant flow of paperwork, undertake appropriate research, organize files, and maintain voluminous documents. The time of the judicial officer, based on current salaries and including benefits and appropriate OE&E, is \$107 per hour. The time of the court staff, including in large measure staff attorneys who must conduct much of the initial review of the commission's record, as well as a number of court room and back officer clerks, works out to \$493 per hour. These people are responsible for the court's operations, and for managing and maintaining cases and case files. Together, combining the average hours required for a CEQA case and the hourly rates for the judge and staff complement, we estimate that a typical PUC case would cost \$224,532.¹

According to the statistical information provided by commission, since 2000 there has been an average of 9 writs of review filed annually in the Courts of Appeal.

¹ 108 hours of a judge's time at \$107 per hour is \$11,556. 432 research attorney, clerk, research and back office support hours at an average combined \$493 per hour is \$212,976. \$11,556 plus \$212,976 equals \$224,532.

Hon. Jimmy Gomez

May 6, 2015

Page 3

The estimated fiscal impacts on the Los Angeles and San Francisco superior courts if AB 825 is enacted range from \$2,020,788 if the annual average of 9 cases are filed (9 x \$224,532), to as much as \$4,715,172 (based on the high of 21 filings in 2002).

It is important to note, as discussed above, that the actual costs to the courts could be significantly higher if evidentiary hearings end up being required by the bill. These are ongoing annual costs that will rise and fall per number of filings (in the previous 15 years, the lowest number of filings of PUC writs in a year was 3 in 2011, and the high was 21 filings in 2002). It should also be noted that the above estimates are in addition to the likely costs that would be borne by the branch for filings seeking appellate review of the trial courts' decisions in the Courts of Appeals and the Supreme Court.

Please note that the information contained in this request does not constitute a position in favor of or against the proposed legislation by the Judicial Council, and sets forth only the considerations related to the fiscal burdens that would be faced by the superior courts and other judicial branch entities should the bill be enacted into law.

Please contact me if you have questions about the information contained in this letter.

Sincerely,



Andi Liebenbaum

Senior Governmental Affairs Analyst

AL/yc-s

cc: Members, Assembly Appropriations Committee
Hon. Anthony Rendon, Member of the Assembly
Ms. Jennifer Galehouse, Principal Consultant, Assembly Appropriations Committee
Mr. Allan Cooper, Senior Consultant, Assembly Republican Fiscal Office
Mr. Tom Clark, Counsel, Assembly Judiciary Committee
Mr. Paul Dress, Consultant, Assembly Republican Office of Policy
Ms. June Clark, Deputy Legislative Affairs Secretary, Office of the Governor
Ms. Tiffany Garcia, Budget Analyst, Department of Finance
Mr. Martin Hoshino, Administrative Director, Judicial Council of California



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 15, 2015

Hon. Jimmy Gomez, Chair
Assembly Appropriations Committee
State Capitol, Room 2114
Sacramento, California 95814

Subject: AB 825 (Rendon), as amended April 20, 2015 – REVISED Fiscal Impact Statement

Dear Assembly Member Gomez:

On behalf of the Judicial Council of California, please accept this revised fiscal estimate on the potential costs of AB 825 if enacted, on California's trial and appellate courts.

AB 825 seeks to repeal the existing judicial review scheme that provides for review by the Courts of Appeal and Supreme Court of decisions by the Public Utilities Commission (commission or PUC), and replace it with a new scheme that would provide for exclusive venue in the San Francisco and Los Angeles superior courts for initial judicial review of written petitions seeking relief from an order of the commission.

Fiscal Impacts

As stated in the previous fiscal letter, if enacted, AB 825 will have significant fiscal impacts on the San Francisco and Los Angeles superior courts (the courts). Since the trial courts are not currently required to review PUC decisions, the number of filings for these two superior courts will increase, and the courts will be required to dedicate significant resources to hear and resolve these complex matters. Moreover, the new costs borne by these two courts to resolve PUC matters will likely be in addition to the costs currently incurred by the Courts of Appeal and the

Supreme Court, which presumably will be responsible for conducting some form of appellate review of the decisions issued by the Los Angeles and San Francisco superior courts.

Based on a review of the current cases filed in the Courts of Appeal asking for relief from decisions of the commission, the issues in dispute involve complex matters of fact and law, and may take a year or more to resolve. Although the language of the bill is unclear, it appears to contemplate the court conducting an evidentiary hearing in at least some of these cases, which does not occur under the current judicial review scheme. This unique feature of the legislation has the potential for significantly increasing the costs to the courts for handling these new cases.

This revised estimate of court costs is based on another large complex type of case as a guide for estimating the court costs and burdens. Cases brought under the California Environmental Quality Act (CEQA) are of comparable size and complexity to PUC cases. For CEQA review in the appellate courts as provided in AB 900 (Stats. 2011, ch. 354), we estimated the costs of an average CEQA review in the appellate court would be \$100,000, which is primarily the time required of the appellate justices and staff attorneys. Although trial courts are organized differently, particularly in that there is only one judge and far fewer staff attorneys available, we believe that the time of the judicial officer as well as that of the staff attorney and other court personnel would result in costs similar to those of the appellate court for CEQA cases.

According to the statistical information provided by the commission, since 2000 there has been an average of 9 writs of review filed annually in the Courts of Appeal. By the terms of AB 825, these cases would be heard first in the Los Angeles and San Francisco superior courts.

The estimated fiscal impacts on the Los Angeles and San Francisco superior courts if AB 825 is enacted range from \$900,000 if the annual average of 9 cases are filed ($9 \times \$100,000$), to as much as \$2,100,000 (based on the high of 21 filings in 2002).

It is important to note, as discussed above, that the actual costs to the courts could be significantly higher if evidentiary hearings end up being required by the bill. Another factor that is likely to lead to even higher costs is the absence in AB 825 of constraints on the scope of review that are now applicable to review by the Courts of Appeal. If this absence reflects an intention to provide for a right to de novo review of PUC decisions, the number of petitions could be significantly higher than historical experience at the Courts of Appeal suggests. To put this point in context, we note that the PUC issued a total of 573 decisions in 2014 and, since 2000, it has considered an annual average of 59 rehearing applications.

The costs presented here are estimated annual costs that will rise and fall per number of filings (in the previous 15 years, the lowest number of filings of PUC writs in a year was 3 in 2011, and the high was 21 filings in 2002). It should also be noted that the estimates presented above are in

Hon. Jimmy Gomez

May 15, 2015

Page 3

addition to the likely costs that would be borne by the branch for filings seeking appellate review of the trial courts' decisions in the Courts of Appeal and the Supreme Court. With all this in mind, the number of challenges under this bill could vary widely and with little predictability.

Please note that the information contained in this request does not constitute a position in favor of or against the proposed legislation by the Judicial Council, and sets forth only the considerations related to the fiscal burdens that would be faced by the superior courts and other judicial branch entities should the bill be enacted into law.

Please contact me if you have questions about the information contained in this letter.

Sincerely,



Andi Liebenbaum

Senior Governmental Affairs Analyst

AL/yc-s

cc: Members, Assembly Appropriations Committee
Hon. Anthony Rendon, Member of the Assembly
Ms. Jennifer Galehouse, Principal Consultant, Assembly Appropriations Committee
Mr. Allan Cooper, Senior Consultant, Assembly Republican Fiscal Office
Mr. Tom Clark, Counsel, Assembly Judiciary Committee
Mr. Paul Dress, Consultant, Assembly Republican Office of Policy
Ms. Martha Guzman-Aceves, Deputy Legislative Affairs Secretary, Office of the Governor
Ms. Tiffany Garcia, Budget Analyst, Department of Finance
Mr. Martin Hoshino, Administrative Director, Judicial Council of California



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, 2015

Hon. Anthony Rendon
Member of the Assembly
State Capitol, Room 5136
Sacramento, California 95814

Dear Assembly Member Rendon:

The Judicial Council regrets to inform you of its oppose unless amended and funded position on AB 825, which would fundamentally change the process of judicial review of California Public Utility Commission (PUC) decisions by shifting review from the Courts of Appeal and Supreme Court to the Los Angeles and San Francisco superior courts. The Judicial Council's opposition, which is detailed below, is limited to the judicial review portion of the bill; the council takes no position on the remaining provisions in the measure, which are outside its purview.

As a preliminary matter, the Judicial Council notes that the existing judicial review process—the Calderon-Peace-MacBride Judicial Review Act of 1998 (SB 779, Stats. 1988, ch. 886)—which provides for review of PUC decisions in the Courts of Appeal and Supreme Court, was the product of a stakeholder process that involved the courts and all key stakeholder groups. This detailed statutory scheme has been in effect for 17 years, and there is an established body of case law interpreting and applying its provisions. While there have been a variety of legislative proposals over the years seeking to change some aspects of the current writ review process, none

of those proposals involved a wholesale repeal of the process that would replace it with review by the superior courts.

It is also important to note that the trial courts have suffered devastating cuts to their budgets over the last 5 years. Currently, 52 courthouses and 202 courtrooms remain closed due to funding shortages. Since fiscal year 2007–2008, trial court employee numbers are down by 19 percent, which amounts to nearly 4,000 lost jobs in the courts. The superior courts have never been responsible for reviewing PUC decisions, which are highly complex and time-consuming cases that often involve voluminous records. The council questions whether the superior courts, in light of their severe budget constraints and staffing shortages, are in a better position than the Courts of Appeal to handle these cases and provide the type of thorough and expeditious review you are seeking.

The Judicial Council is also concerned that replacing the longstanding PUC judicial review mechanism with an entirely new, unproven scheme, even if the missing procedural details discussed below were included, may be counterproductive, especially at the present time. In light of all of the challenges being faced today by the superior courts, the council believes that it may be unrealistic, as a practical matter, to expect that shifting these cases to the trial courts will have the salutary effects you desire for addressing the underlying controversies and problems involving the PUC that motivated this measure. Moreover, providing exclusive venue for these cases in the San Francisco and Los Angeles superior courts places an inordinate burden on those courts, and it borders on mandating the creation of specialty courts, which the council has historically opposed.

Notwithstanding the significant concerns discussed above, the Judicial Council notes that the judicial review provisions in the current version of AB 825 are confusing and fail to address the essential procedural details for how such cases would be handled. Among other things, the bill fails to specify the method for bringing the action, how to determine venue, the scope of review, the applicable rules or evidence, appearance rights, and how to handle requests for stays and suspensions. AB 825 also contains incomplete provisions governing exhaustion of administrative review and the process and timeline for transmission of the record. In addition, the bill creates an unprecedented and undefined process that would allow a party to submit additional evidence, which has the potential for significantly expanding the scope and length of such proceedings. AB 825 is also silent on what form of appellate review, if any, will be provided following the superior court's decision in these cases.

The Judicial Council appreciates your efforts to address the budgetary constraints faced by the superior courts by including a cost recovery mechanism in the bill. However, the recently added language in the current version of the bill fails to identify a source of funding. While we understand your intent to amend the bill further to make the PUC the funding source, this could

Hon. Anthony Rendon

May 27, 2015

Page 3

present a serious ethical problem for the courts since one of the parties appearing before the court would be funding the courts' costs of hearing the matter. Creating special funding mechanisms for particular case types, rather than adding a specific appropriation to cover the courts' costs of handling the new caseload required under the bill, is at odds with how our courts have traditionally been funded. This alternative approach to trial court funding also creates a troubling precedent, which has the potential for undermining equal access to justice by prioritizing favored case types for preferential treatment. For these reasons, the Judicial Council opposes the bill's cost reimbursement approach and instead requests that it be replaced with a specific appropriation that covers the courts' full costs of hearing these cases.

In conclusion, the Judicial Council opposes AB 825 unless the bill is amended to remove the exclusive venue provisions, add the missing procedural elements, and include a specific appropriation to fully fund the judicial officer and attendant staff resources necessary for the superior courts to handle the new caseload.

Sincerely,



Daniel Pone
Senior Attorney

DP/lmb

cc: Hon. Mark Stone, Member of the Assembly
Ms. Martha Guzman-Aceves, Deputy Legislative Secretary, Office of the Governor
Ms. Gabrielle Zeps, Special Assistant, Office of Assembly Speaker Toni Atkins
Ms. Jennifer Galehouse, Principal Consultant, Assembly Appropriations Committee
Mr. Allan Cooper, Senior Consultant, Assembly Republican Office of Policy and Budget
Mr. Tom Clark, Counsel, Assembly Judiciary Committee
Mr. Paul Dress, Consultant, Assembly Republican Office of Policy and Budget
Mr. Martin Hoshino, Administrative Director, Judicial Council of California