



Judicial Council of California

ADMINISTRATIVE OFFICE OF THE COURTS

OFFICE OF GOVERNMENTAL AFFAIRS

770 L Street, Suite 700 • Sacramento, California 95814-3393
Telephone 916-323-3121 • Fax 916-323-4347 • TDD 415-865-4272

RONALD M. GEORGE
Chief Justice of California
Chair of the Judicial Council

WILLIAM C. VICKREY
Administrative Director of the Courts

RONALD G. OVERHOLT
Chief Deputy Director

KATHLEEN T. HOWARD
Director, Office of Governmental Affairs

August 12, 2005

Hon. Tom Torlakson
Member of the Senate
State Capitol, Room 2059
Sacramento, California 95814

Subject: SB 575 (Torlakson), as amended June 16, 2005 – Oppose

Dear Senator Torlakson:

The Judicial Council opposes SB575, which makes various changes to the exemptions and enforcement provisions of the Anti-NIMBY (Not in My Backyard) Law. As discussed below, the council's opposition is limited to the recently added calendar preference language in SB 575; we have no position on the remaining provisions in the bill.

The current version of the bill requires that actions to enforce its provisions "shall have precedence over all other civil actions and proceedings in the same manner and to the same extent as provided in subdivision (a) of Section 21167.1 of the Public Resources Code" (Proposed Govt. Code section 65589.5(m); p. 10, lines 4-7). Section 21167.1, subdivision (a), of the Public Resources Code, which establishes a calendar preference for actions under the California Environmental Quality Act (CEQA), provides:

In all actions or proceedings brought pursuant to [CEQA], including the hearing of an action or proceeding on appeal from a decision of a lower court, all courts in which the action or proceeding is pending shall give the action or proceeding preference over all other civil actions, in the matter of setting the action or proceeding for hearing or trial, and in hearing or trying the action or proceeding, so that the action or proceeding shall be quickly heard and determined. The court shall regulate the briefing schedule so that, to the extent feasible, the court shall commence hearings on an appeal within one year of the date of the filing of the appeal.

As noted above, the Judicial Council opposes SB 575 unless it is amended to delete the above calendar preference language. There are numerous calendar preferences and other case priorities throughout the codes, none of which provide guidance to the courts on how to reconcile the competing statutes. A recent staff memorandum from the California Law Revision Commission (CLRC) notes that the practice of giving multiple matters precedence over all other civil actions "creates an insoluble conundrum. Each of these statutes fails to take into account the existence of the other, similar statutes that also require a matter to take priority over 'all other civil actions.'" (CLRC, "Civil Discovery: Calendar Preference for Writ Review of a Discovery Ruling on an Issue Common to Consolidated Cases," Memorandum 2005-27 (June 28, 2005) p. 13.) The CLRC memo also observes that

As a logical issue, it is hard to understand how these matters that have priority over "all other civil actions" are supposed to interrelate with each other. How can each of them take priority over "all other civil actions"? If two such matters are pending before an appellate [or trial] court, which takes precedence? (CLRC Memo, p. 9.)

It is well established that courts have inherent power, as well as power under Code of Civil Procedure section 187, to adopt any suitable method of practice, both in ordinary actions and special proceedings, if the procedure is not specified in statute or rules adopted by the Judicial Council. (See *Citizens Utilities Co. v. Superior Court* (1963) 59 Cal.2d 805, 813.) The court's inherent authority includes discretion to grant a motion for calendar preference upon an appropriate showing. (See *Warren v. Schechter* (1997) 57 Cal.App.4th 1189, 1199.) Moreover, any party in litigation may apply to the court for preferential treatment in the handling of their case. Code of Civil Procedure 36, subdivision (e), provides that "[n]otwithstanding any other provision of law, the court may in its discretion grant a motion for preference served with the memorandum to set or the at-issue memorandum [i.e., case management statement] and accompanied by a showing of cause which satisfies the court that the interests of justice will be served by granting this preference." The Judicial Council believes that this approach appropriately allows the courts to grant preference in individual cases when the circumstances warrant such treatment, rather than the inflexible and unworkable across-the-board calendar preference approach contained in SB 575.

For these reasons, the Judicial Council opposes SB 575 unless it is amended to delete the calendar preference language. With this amendment, the council would remove its opposition and take no position on the bill. Please feel free to contact me if you have any questions.

Sincerely,



Daniel A. Pone
Senior Attorney

Hon. Tom Torlakson

August 12, 2005

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DP/lb

cc: Ms. Karen Pank, Deputy Legislative Secretary, Office of the Governor
Ms. Sue Blake, Assistant Director of Legislation, Office of Planning and Research
Mr. Mark Stivers, Consultant, Senate Committee on Transportation and Housing
Ms. Amanda Taylor, Counsel, Senate Judiciary Committee
Mr. Mike Petersen, Consultant, Senate Republican Office of Policy
Mr. Drew Liebert, Chief Counsel, Assembly Judiciary Committee
Mr. Mark Redmond, Consultant, Assembly Republican Office of Policy
Mr. J. Stacey Sullivan, Chief Consultant, Assembly Local Government Committee
Mr. Hugh Bower, Chief Consultant, Assembly Housing & Comm. Dev. Committee



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