



**Judicial Council of California**  
ADMINISTRATIVE OFFICE OF THE COURTS

OFFICE OF GOVERNMENTAL AFFAIRS  
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*

STEVEN JAHR  
*Administrative Director of the Courts*

CORY T. JASPERSON  
*Director, Office of Governmental Affairs*

March 12, 2013

Hon. Ellen Corbett  
Member of the Senate  
State Capitol, Room 313  
Sacramento, California 95814

Subject: SB 123 (Corbett), as introduced—Oppose

Dear Senator Corbett:

The Judicial Council regrets to inform you of its opposition to SB 123, which, among other things, would require the presiding judge of each superior court to establish an environmental and land-use division within the court to process civil proceedings brought pursuant to the California Environmental Quality Act (CEQA) or in specified subject areas, including air quality, biological resources, climate change, hazards and hazardous materials, land use planning, and water quality.

The council has a long history of opposing bills that mandate the creation of specialty courts, including most recently tax courts and business courts. Courts need to have flexibility to manage their own calendars, especially now with the significant budget reductions courts are struggling to manage with staff layoffs, reductions in services and hours of operation, and insufficient judicial resources. Moreover, in the absence of a specific appropriation, SB 123 could have the unintended effect of taking away resources from other important cases.

The Judicial Council also believes that SB 123 is not needed in light of the statutory calendar preference already provided to CEQA cases, and the existing mandate that courts in counties with a population over 200,000 have one or more dedicated CEQA judges who have received specialized training in this area of the law. In addition, some of the legislative findings and declarations in the bill raise troubling implications about the competence and potential bias of judicial decision-makers under the current system, which we believe to be unrepresentative of California's CEQA judges. Notwithstanding the

laudable goals of this legislation, mandating the creation of new environmental and land-use divisions in each superior court in the absence of any compelling empirical evidence that the current system for handling these cases is broken seems, in the council's view, to be unwarranted.

For these reasons, the Judicial Council opposes the current version of SB 123. As always, we would be happy to work with you and your staff on alternative approaches to addressing your underlying concerns that are more workable for the courts.

Sincerely,

A handwritten signature in black ink, appearing to read "Daniel Pone". The signature is fluid and cursive, with the first name "Daniel" and last name "Pone" clearly distinguishable.

Daniel Pone  
Senior Attorney

DP/yc

cc: Ms. June Clark, Deputy Legislative Secretary, Office of the Governor  
Mr. Ken Alex, Director, Governor's Office of Planning and Research



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April 11, 2013

Hon. Noreen Evans, Chair  
Senate Judiciary Committee  
State Capitol, Room 4085  
Sacramento, California 95814

Subject: SB 123 (Corbett), as amended April 4, 2013 - Oppose  
Hearing: Senate Judiciary Committee – April 16, 2013

Dear Senator Evans:

The Judicial Council regrets to inform you of its opposition to SB 123. This bill, among other things, requires the council to direct the creation of an environmental and land use division “within two or more superior courts within each of the appellate districts of the state” (i.e., a minimum of 12 new divisions) to process all civil proceedings brought pursuant to the California Environmental Quality Act (CEQA) or in specified subject areas, including air quality, biological resources, climate change, hazards and hazardous materials, land use planning, and water quality. SB 123 also requires the Judicial Council, by rule of court, to: (a) identify statutes in those specified areas that would be within the jurisdiction of the new environmental and land use court divisions; and (b) establish appropriate standards and protocols for the environmental and land use court divisions to accomplish the objectives of consistency, expediency, and expertise, including educational requirements and other qualifications for specialized judges assigned to the divisions.

The Judicial Council has a long history of opposition to bills that mandate the creation of specialty courts, including most recently tax courts and business courts. Courts need to have flexibility to manage their own calendars, especially in the current budget climate when courts are struggling under severe budget reductions to operate with staff layoffs, reductions in services and hours of operation, and insufficient judicial resources. Shifting the caseload from the 58 superior courts to as few as 12 courts would provide some limited relief to the non-designated courts. However, the overall caseload would remain the same, and would have to be absorbed by the courts with the new designated environmental

Hon. Noreen Evans

April 11, 2013

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and land use divisions. Requiring these already overly stressed courts to dedicate limited staff and judicial resources to these cases at this time would further tie their hands and limit their ability to manage their workload in what they believe to be the most effective and efficient manner. Notwithstanding the laudable goals of this legislation, in the absence of a specific appropriation, SB 123 could have the unintended effect of taking away resources from other equally important cases.

In addition, it is unclear whether SB 123 is needed in light of the statutory calendar preference provided to CEQA cases already, and the existing mandate that courts in counties with a population over 200,000 are required to have one or more dedicated CEQA judges who have received specialized training in this area of the law. Moreover, the bill is fundamentally at odds with how our state's trial court system has historically been structured. Depriving parties of the ability to have their cases heard locally would establish a troubling precedent, especially in the absence of any compelling empirical evidence that the current system for handling these cases is broken.

For all of these reasons, the Judicial Council opposes the current version of SB 123. As always, we would be happy to work with the author and her staff, as well as the committee's counsel, on alternative approaches to addressing the underlying concerns that are more workable for the courts.

Sincerely,

A handwritten signature in black ink, appearing to read "Daniel Pone", with a stylized, cursive script.

Daniel Pone  
Senior Attorney

DP/yc

cc: Members, Senate Judiciary Committee  
Hon. Ellen Corbett, Member of the Senate  
Mr. Benjamin Palmer, Chief Counsel, Senate Judiciary Committee  
Ms. June Clark, Deputy Legislative Secretary, Office of the Governor  
Mr. Mike Petersen, Consultant, Senate Republican Office of Policy



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May 8, 2013

Hon. Kevin de León, Chair  
Senate Appropriations Committee  
State Capitol, Room 5108  
Sacramento, California 95814

Subject: SB 123 (Corbett), as amended May 2, 2013 - Oppose  
Hearing: Senate Appropriations Committee – May 13, 2013

Dear Senator de León:

The Judicial Council regrets to inform you of its opposition to SB 123. This bill, among other things, requires the council to direct the creation of an environmental and land use division “within two or more superior courts within each of the appellate districts of the state” (i.e., a minimum of 12 new divisions) to process all civil proceedings brought pursuant to the California Environmental Quality Act (CEQA) or in specified subject areas, including air quality, biological resources, climate change, hazards and hazardous materials, land use planning, and water quality. SB 123 also requires the Judicial Council, by rule of court, to: (a) identify statutes in those specified areas that would be within the jurisdiction of the new environmental and land use court divisions; and (b) establish appropriate standards and protocols for the environmental and land use court divisions to accomplish the objectives of consistency, expediency, and expertise, including educational requirements and other qualifications for specialized judges assigned to the divisions.

The Judicial Council has a long history of opposition to bills that mandate the creation of specialty courts, including most recently tax courts and business courts. Courts need to have flexibility to manage their own calendars, especially in the current budget climate when courts are struggling under severe budget reductions to operate with staff layoffs, reductions in services and hours of operation, and insufficient judicial resources. Shifting the caseload from the 58 superior courts to as few as 12 courts would provide some limited relief to the non-designated courts. However, the overall caseload would remain the same, and would have to be absorbed by the courts with the new designated environmental

Hon. Kevin de León

May 8, 2013

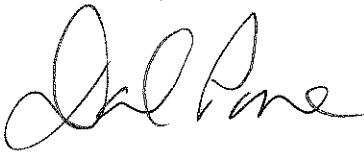
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and land use divisions. Requiring these already overly stressed courts to dedicate limited staff and judicial resources to these cases at this time would further tie their hands and limit their ability to manage their workload in what they believe to be the most effective and efficient manner. Notwithstanding the laudable goals of this legislation, SB 123 could have the unintended effect of taking away resources from other equally important cases.

In addition, it is unclear whether SB 123 is needed in light of the statutory calendar preference provided to CEQA cases already, and the existing mandate that courts in counties with a population over 200,000 are required to have one or more dedicated CEQA judges who have received specialized training in this area of the law. Moreover, the bill is fundamentally at odds with how our state's trial court system has historically been structured. Depriving parties of the ability to have their cases heard locally would establish a troubling precedent, especially in the absence of any compelling empirical evidence that the current system for handling these cases is broken.

For all of these reasons, the Judicial Council opposes the current version of SB 123. As always, we would be happy to work with the author and her staff, as well as the committee's counsel, on alternative approaches to addressing the underlying concerns that are more workable for the courts.

Sincerely,

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Daniel Pone  
Senior Attorney

DP/yc

cc: Members, Senate Appropriations Committee  
Hon. Ellen Corbett, Member of the Senate  
Ms. Jolie Onodera, Consultant, Senate Appropriations Committee  
Ms. June Clark, Deputy Legislative Secretary, Office of the Governor  
Mr. Matt Osterli, Fiscal Consultant, Senate Republican Fiscal Office



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May 8, 2013

Hon. Kevin de León, Chair  
Senate Appropriations Committee  
State Capitol, Room 5108  
Sacramento, California 95814

Subject: SB 123 (Corbett), as amended May 2, 2013 – Fiscal Impact Statement  
Hearing: Senate Appropriations Committee – May 13, 2013

Dear Senator de León:

SB 123 directs the Judicial Council to create an environmental and land use division in a minimum of two superior courts within each of the six appellate districts of the state to hear all civil proceedings related to the California Environmental Quality Act (CEQA), air quality, biological resources, climate change, hazards and hazardous materials, land use planning, and water quality.

CEQA, land use and environmental law suits are currently filed in all 58 superior courts in California. Public Resources Code section 21167.1(a) provides that such cases be given calendar preference in order to expedite hearings and move the cases toward prompt resolution. Public Resources Code section 21167.1(b) requires the superior courts in counties with a population of more than 200,000 to designate one or more judges to develop expertise in CEQA and related land use and environmental laws so that those judges will be able to hear and quickly resolve such cases. Currently, 28 of California's 58 superior courts meet this requirement.

Fiscal Impacts

*New Judicial Officers Needed:* SB 123 would condense all CEQA, land use and other specified environmental cases into a minimum of 12 new CEQA and Land Use Courts, and require that those courts develop and maintain expertise to hear and resolve these cases. This funneling of cases, which, per the terms of SB 123, still could be filed in any court in California and then

transferred to an environmental and land use court, would put pressure on 12 courts to hear a caseload currently managed by 58 courts. According to a recent analysis by the Senate Environmental Quality Committee on another CEQA bill, there are approximately 200 CEQA cases filed each year; the number of land use and other environmental case filings that would be covered by SB 123 is not known. CEQA judges across the state report that there is no such thing as “an average” CEQA case for use in determining the amount of time, and ultimately the number of judicial officers, needed to process these cases. Simple but infrequent CEQA cases typically require 10 to 20 hours of judicial officer time, and 20 to 40 hours of staff attorney time. Several courts reported that it is not unusual for CEQA cases to take 80 to 100 hours or more of judicial officer time, with an equal or greater number of hours of staff attorney time, due to the complexity of the underlying subject matter and voluminous records. On the high end of the spectrum, there are a number of CEQA cases annually that are extremely complex, continue for years, and may require 500+ hours of time from the judicial officers and one or more staff attorneys. These cases often include multiple volumes of technical reports, studies and other paperwork that can number into the thousands or even up to a million or more pages. As a result, it is very difficult to estimate the precise burdens the 12 new environmental and land use courts will face. Given the tremendous range of complexity of CEQA cases, and taking into consideration the statewide caseload that would be condensed into 12 specialty courts, there will be a need for additional judges and their full complement of staff attorneys and clerks. For the purposes of our calculations, we estimate that there are no more than three of the most complex CEQA cases each year (3 cases X 500 hours = 1500 hours each year), and ten times that number of the relatively “simple” CEQA cases (30 cases X 10 hours = 300 hours each year), leaving 167 annual CEQA cases requiring 80 or more hours of judicial officer time (167 cases X 80 hours = 13,360 hours each year). Using the standard judicial work year of 1720 hours (215 days at 8 hours per day), California would need nearly 9 full-time dedicated judges to handle this specialized caseload under SB 123.

Recognizing that there are already a number of judges in California’s larger courts (serving populations of over 200,000) with specialized CEQA training, the question may be posed as to why these judges can’t be relocated to handle the cases in the new environmental and land use court divisions. There are two overarching reasons. First, judges cannot simply be relocated from the court for which they were appointed or elected to another court where the new special divisions will be located. Second, the designated judges that have specialized CEQA training also have broader calendar responsibilities; removing them would necessitate the appointment of a new judicial officer to cover their workload or shift the workload onto existing judicial officers who are already overworked given the ongoing statewide shortage of judgeships. Therefore, for purposes of this analysis, we conservatively estimate the need for a minimum of six new judgeships to accommodate the requirements of SB 123.

The annual cost for a new judgeship is \$1.19 million, including wages, benefits and operating expenses and equipment (OE&E) for the judge as well as staff including research attorney, judicial/legal secretary, and court reporters. If we estimate .5 new judicial officers for each of the new courts required by the bill (12), the costs are \$7.14 million annually (.5 judges X 12 Environmental and Land Use Courts X \$1.19 million). Start-up/first year costs of these six



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positions (.5 judges X 12 courts) will be more than double the ongoing annual costs as a result of the one-time costs associated with facilities and the start-up costs for OE&E.

*Judicial Officer Education:* SB 123 requires that the Judicial Council establish “appropriate standards and protocols...including educational requirements and other qualifications for specialized judges assigned to the [environmental and land use court] division.” The council’s Center for Judiciary Education and Research, using the curriculum development costs for its current CEQA education program as a model, calculates that the land use and environmental training components of SB 123 could cost the branch \$2.4 million in first-time educational program development costs (not including costs associated with updating the curriculum) per subject area (\$406,000 for curriculum development in the areas of air quality, biological resources, climate change, hazards and hazardous materials, land use planning, and water quality), and \$55,000 each year for educational program delivery (to satisfy requirements for continuing judicial education).

*Rules of Court and Forms:* The changes required by SB 123 will necessitate the adoption of as many as 12 new rules of court and 7 new forms. Taking into consideration the staff that are involved in the rule and form process, we estimate a total staff investment of 1158 hours, at an estimated total cost of \$76,616. Additional expenses, for translation of forms into Chinese, Korean, Spanish, and Vietnamese, are estimated at \$22,610. Combined, we estimate the one-time costs of new rules of court and forms related to the implementation of SB 123 to be \$99,226. Please note that this cost estimate does not include the time of committee members, commentators, court staff, or others who contribute to the development and review process.

*Statutory Research to Establish Jurisdiction:* SB 123 also requires the Judicial Council to identify the statutes within the stated subject areas (CEQA, air quality, biological resources, climate change, hazards and hazardous materials, land use planning, and water quality) that will be within the jurisdiction of the new environmental and land use court divisions. We have not yet estimated a cost for the research time necessary to meet this mandate, but anticipate that it could be significant.

Please contact me at 916-323-3121 or [andi.liebenbaum@jud.ca.gov](mailto:andi.liebenbaum@jud.ca.gov) if you would like further information or have any questions about the fiscal impact of this legislation on the judicial branch.

Sincerely,



Andi Liebenbaum

Senior Governmental Affairs Analyst

Hon Kevin de León

May 8, 2013

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AL/yc-s

cc: Members, Senate Appropriations Committee

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Ms. Jolie Onodera, Consultant, Senate Appropriations Committee

Mr. Matt Osterli, Fiscal Consultant, Senate Republican Fiscal Office

Mr. Benjamin Palmer, Chief Counsel, Senate Judiciary Committee

Mr. Mike Petersen, Consultant, Senate Republican Office of Policy

Ms. June Clark, Deputy Legislative Affairs Secretary, Office of the Governor

Ms. Madelynn McClain, Budget Analyst, Department of Finance

Mr. Daniel Pone, Senior Attorney, AOC Office of Governmental Affairs