



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

OFFICE OF GOVERNMENTAL AFFAIRS  
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*Chief Justice of California*  
*Chair of the Judicial Council*

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*Administrative Director of the Courts*

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*Director, Office of Governmental Affairs*

September 9, 2013

Hon. Darrell Steinberg  
President Pro Tempore of the Senate  
State Capitol, Room 205  
Sacramento, California 95814

Subject: SB 743 (Steinberg), as amended September 6, 2013 - Oppose

Dear Senator Steinberg:

The Judicial Council regrets to inform you of its opposition to SB 743. The bill requires the Judicial Council, on or before July 1, 2014, to adopt a rule of court to establish procedures applicable to certain lawsuits seeking review of a public agency's action in certifying an environmental impact report and in granting project approvals for a downtown arena project in the City of Sacramento. The bill directs that the procedures established by the rule require that actions or proceedings, including any appeals therefrom, be resolved, to the extent feasible, within 270 days of the certification of the record of proceedings. SB 743 would also amend the recently-enacted expedited judicial review procedures in AB 900 (Stats. 2011, ch. 354) by requiring the council to adopt a parallel rule of court, under the same deadline, which applies the same 270-day timeline for the courts to resolve lawsuits challenging projects that have been certified pursuant to the AB 900 process. It is important to note that the Judicial Council's concerns regarding SB 743 are limited solely to the court impacts of the legislation, and that the council is not expressing any views on CEQA generally or the job creation goals of the legislation, as those issues are outside the council's purview.

The Judicial Council did not take a position on AB 900 in 2011 because of the speed with which that bill moved through the legislative process. A variety of concerns about its expedited judicial review process were conveyed informally to the Legislature, a number of which were addressed at the time. Significant

concerns remain<sup>1</sup>, however, some of which were identified more fully during the council's rulemaking process after AB 900 was enacted.

The bill's requirement that any lawsuit challenging either the downtown arena project or an AB 900-certified 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 under the current version of SB 743, 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. In the council's view, it makes no sense to make something that occurs before the matter even comes to the courts start the courts' already limited time period to complete their work.

Second, while the Judicial Council very much appreciates the inclusion of the "to the extent feasible" language, the 270-day timeline will 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 would shift the initial review to the superior court. 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 the council strongly believes to be infeasible.<sup>2</sup>

Third, SB 743's expedited judicial review for all of the potential projects covered by the bill 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

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<sup>1</sup> AB 900 currently requires the Judicial Council to conduct a study and "report to the Legislature, on or before January 1, 2015, on the effects of [the bill], which shall include, but not be limited to, a description of the benefits, costs, and detriments of the certification of leadership projects pursuant to this chapter." (See Public Resources Code section 21189.2.) The author and his staff have acknowledged that this study language was inadvertently written too broadly, and indicated their intent to pursue clean-up legislation that would make clear that its focus is limited to the impacts on the administration of justice. Such cleanup language was included in the author's SB 52 of 2012, but that measure was not enacted, and it is not contained in the current version of SB 743. Should this bill move forward, the council respectfully requests that it include clarifying amendments to both narrow the scope of the study and extend the deadline for its completion to January 1, 2017, consistent with the other new proposed deadlines in the measure.

<sup>2</sup> 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 review approach would be even more pronounced in light of the dire fiscal straits faced by the judicial branch.

Fourth, providing expedited judicial review for the select projects covered by SB 743 while other cases proceed under the usual civil procedure rules and timelines, in the council's view, 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 these special categories of cases for such preferential treatment appears at odds with how our justice system has historically functioned.

In addition to the above, the council questions the propriety of the provision in SB 743 that requires it to adopt a special set of court rules that will only apply to one potential lawsuit filed in Sacramento County. Furthermore, the provision in the bill that significantly limits the forms of relief that the court may use in any action challenging the downtown arena project<sup>3</sup> interferes with the inherent authority of a judicial officer and raises a serious separation of powers question.

For all of these reasons, the Judicial Council must respectfully oppose SB 743.

Sincerely,



Daniel Pone  
Senior Attorney

DP/nco

cc: Hon. Ted Gaines, Member of the Senate  
Hon. Cathleen Galgiani, Member of the Senate  
Hon. Jim Nielsen, Member of the Senate  
Hon. Lois Wolk, Member of the Senate  
Hon. Ken Cooley, Member of the Assembly  
Hon. Roger Dickinson, Member of the Assembly  
Hon. Dan Logue, Member of the Assembly  
Hon. Richard Pan, Member of the Assembly  
Members, Assembly Natural Resources Committee  
Members, Senate Environmental Quality Committee  
Members, Assembly Judiciary Committee  
Members, Senate Judiciary Committee

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<sup>3</sup> See Proposed Public Resources section 21168.6.6(h)(1)(A)(i),(ii)[which provides that the court shall not stay or enjoin the construction or operation of the downtown arena unless the court finds either that its continued construction or operation "presents an imminent threat to the public health and safety" or the 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 downtown arena unless the court stays or enjoins the construction or operation of the downtown arena."]

Ms. Kathryn Dresslar, Chief of Staff, Office of Senate President Pro Tempore Darrell Steinberg  
Mr. Kip Lipper, Chief Policy Advisor for Energy and the Environment, Office of Senate President Pro Tempore Darrell Steinberg  
Mr. Anthony Williams, Policy Director, Office of Senate President Pro Tempore Darrell Steinberg  
Ms. Margie Estrada, Policy Consultant, Office of Senate President Pro Tempore Darrell Steinberg  
Ms. June Clark, Deputy Legislative Affairs Secretary, Office of the Governor  
Mr. Ken Alex, Director, Office of Planning and Research  
Ms. Fredericka McGee, General Counsel, Office of Assembly Speaker John A. Pérez  
Mr. Panama Bartholomy, Special Assistant on Environmental Policy, Office of Assembly Speaker John A. Pérez  
Mr. Lawrence Lingbloom, Chief Consultant, Assembly Natural Resources Committee  
Mr. John Kennedy, Consultant, Assembly Republican Office of Policy  
Mr. Drew Liebert, Chief Counsel, Assembly Judiciary Committee  
Mr. Paul Dress, Consultant, Assembly Republican Caucus  
Ms. Joanne Roy, Consultant, Senate Environmental Quality Committee  
Mr. Lance Christensen, Consultant, Senate Republican Office of Policy  
Mr. Benjamin Palmer, Chief Counsel, Senate Judiciary Committee  
Mr. Mike Petersen, Consultant, Senate Republican Office of Policy



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Director, Office of Governmental Affairs

September 12, 2013

Hon. Darrell Steinberg  
President Pro Tempore of the Senate  
State Capitol, Room 205  
Sacramento, California 95814

Subject: SB 743 (Steinberg), *as proposed to be amended* - Oppose

Dear Senator Steinberg:

The Judicial Council regrets to inform you of its continued opposition to SB 743, as proposed to be amended (based on amendments taken or described in the September 11, 2013 hearing in the Assembly Local Government Committee). The bill requires the Judicial Council, on or before July 1, 2014, to adopt a rule of court to establish procedures applicable to certain lawsuits seeking review of a public agency's action in certifying an environmental impact report and in granting project approvals for a downtown arena project in the City of Sacramento. The new version of the bill, which is not yet in print, directs that the procedures established by the rule require that actions or proceedings, including any appeals therefrom, be resolved within 270 days of the certification of the record of proceedings.<sup>1</sup> SB 743, as proposed to be amended, would also amend the recently-enacted expedited judicial review procedures in AB 900 (Stats. 2011, ch. 354) by requiring the council to adopt a parallel rule of court, under the same deadline, which applies the same 270-day timeline for the courts to resolve lawsuits challenging projects that have been certified pursuant to the AB 900 process. It is important to note that the Judicial Council's concerns regarding SB 743 are limited solely to the court impacts of the legislation, and that the council is not expressing any views on CEQA generally or the job creation goals of the legislation, as those issues are outside the council's purview.

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<sup>1</sup> Based on communications from staff, it is the council's understanding that the prior language in the bill that included "to the extent feasible" for the 270-day timelines is being removed from the measure.

The Judicial Council did not take a position on AB 900 in 2011 because of the speed with which that bill moved through the legislative process. A variety of concerns about its expedited judicial review process were conveyed informally to the Legislature, a number of which were addressed at the time. Significant concerns remain<sup>2</sup>, however, some of which were identified more fully during the council's rulemaking process after AB 900 was enacted.

The bill's requirement that any lawsuit challenging either the downtown arena project or an AB 900-certified 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 under the current version of SB 743, 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. In the council's view, it makes no sense to make something that occurs before the matter even comes to the courts start the courts' already limited time period to complete their work.

Second, the Judicial Council strongly believes that the 270-day timeline will 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 would shift the initial review to the superior court. 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 the council believes to be infeasible.<sup>3</sup>

Third, SB 743's expedited judicial review for all of the potential projects covered by the bill 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

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<sup>2</sup> AB 900 currently requires the Judicial Council to conduct a study and "report to the Legislature, on or before January 1, 2015, on the effects of [the bill], which shall include, but not be limited to, a description of the benefits, costs, and detriments of the certification of leadership projects pursuant to this chapter." (See Public Resources Code section 21189.2.) The author and his staff have acknowledged that this study language was inadvertently written too broadly, and indicated their intent to pursue clean-up legislation that would make clear that its focus is limited to the impacts on the administration of justice. Such cleanup language was included in the author's SB 52 of 2012, but that measure was not enacted, and it is not contained in the current version of SB 743. Should this bill move forward, the council respectfully requests that it include clarifying amendments to both narrow the scope of the study and extend the deadline for its completion to January 1, 2017, consistent with the other new proposed deadlines in the measure.

<sup>3</sup> 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.

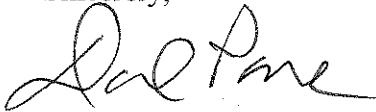
cases, including cases that have statutorily mandated calendar preferences, such as juvenile cases, criminal cases, and civil cases in which a party is at risk of dying, will take longer to decide. Moreover, delays in the administration of justice that would likely result from any expansion of this expedited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

Fourth, providing expedited judicial review for the select projects covered by SB 743 while other cases proceed under the usual civil procedure rules and timelines, in the council's view, 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 these special categories of cases for such preferential treatment appears at odds with how our justice system has historically functioned.

In addition to the above, the council questions the propriety of the provision in SB 743 that requires it to adopt a special set of court rules that will only apply to one potential lawsuit filed in Sacramento County. Furthermore, the provision in the bill that significantly limits the forms of relief that the court may use in any action challenging the downtown arena project<sup>4</sup> interferes with the inherent authority of a judicial officer and raises a serious separation of powers question.

For all of these reasons, the Judicial Council must respectfully oppose SB 743.

Sincerely,



Daniel Pone  
Senior Attorney

DP/nco

cc: Hon. Ted Gaines, Member of the Senate  
Hon. Cathleen Galgiani, Member of the Senate  
Hon. Jim Nielsen, Member of the Senate  
Hon. Lois Wolk, Member of the Senate  
Hon. Ken Cooley, Member of the Assembly  
Hon. Roger Dickinson, Member of the Assembly  
Hon. Dan Logue, Member of the Assembly  
Hon. Richard Pan, Member of the Assembly  
Members, Assembly Natural Resources Committee

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<sup>4</sup> See Proposed Public Resources section 21168.6.6(h)(1)(A)(i),(ii)[which provides that the court shall not stay or enjoin the construction or operation of the downtown arena unless the court finds either that its continued construction or operation "presents an imminent threat to the public health and safety" or the 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 downtown arena unless the court stays or enjoins the construction or operation of the downtown arena."]

Members, Assembly Local Government Committee  
Members, Senate Environmental Quality Committee  
Members, Assembly Judiciary Committee  
Members, Senate Judiciary Committee  
Ms. Kathryn Dresslar, Chief of Staff, Office of Senate President Pro Tempore Darrell Steinberg  
Mr. Kip Lipper, Chief Policy Advisor for Energy and the Environment, Office of Senate President Pro Tempore Darrell Steinberg  
Mr. Anthony Williams, Policy Director, Office of Senate President Pro Tempore Darrell Steinberg  
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Mr. John Kennedy, Consultant, Assembly Republican Office of Policy  
Ms. Debbie Michel, Chief Consultant, Assembly Local Government Committee  
Mr. William Weber, Consultant, Assembly Republican Office of Policy  
Mr. Drew Liebert, Chief Counsel, Assembly Judiciary Committee  
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*Director, Office of Governmental Affairs*

September 17, 2013

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

Subject: SB 743 (Steinberg) – Opposition

Dear Governor Brown:

The Judicial Council regrets to inform you of its opposition to SB 743, as amended September 12, 2013. The bill requires the Judicial Council, on or before July 1, 2014, to adopt a rule of court to establish procedures applicable to certain lawsuits seeking review of a public agency's action in certifying an environmental impact report and in granting project approvals for a downtown arena project in the City of Sacramento. The bill directs that the procedures established by the rule require that actions or proceedings, including any appeals therefrom, be resolved, to the extent feasible, within 270 days of the certification of the record of proceedings. SB 743 also amends the recently-enacted expedited judicial review procedures in AB 900 (Stats. 2011, ch. 354) by requiring the council to adopt a parallel rule of court, under the same deadline, which applies the same 270-day timeline<sup>1</sup> for the courts to resolve lawsuits challenging projects that have been certified pursuant to the AB 900 process. It is important to note that the Judicial

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<sup>1</sup> Notably, the final version of the bill that passed the Legislature struck the "to the extent feasible" language from the timeline that applies to projects covered by the AB 900 process (see proposed Public Resources Code section 21185). The removal of this language further exacerbates the council's concerns, as described below in the body of the letter, about the unworkability of the ultimate timeline contained in the measure, especially as it pertains to lawsuits that may be brought under the amended AB 900 process.

Council's concerns regarding SB 743 are limited solely to the court impacts of the legislation, and that the council is not expressing any views on CEQA generally or the job creation goals of the legislation, as those issues are outside the council's purview.

The Judicial Council did not take a position on AB 900 in 2011 because of the speed with which that bill moved through the legislative process. A variety of concerns about its expedited judicial review process were conveyed informally to the Legislature, a number of which were addressed at the time. Significant concerns remain, however, some of which were identified more fully during the council's rulemaking process after AB 900 was enacted.

The bill's requirement that any lawsuit challenging either the downtown arena project or an AB 900-certified 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. In the council's view, it makes no sense to make something that occurs before the matter even comes to the courts start the courts' already limited time period to complete their work.

Second, the Judicial Council strongly believes that the 270-day timeline will 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 would shift the initial review to the superior court. 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 the council believes to be infeasible.<sup>2</sup>

Third, SB 743's expedited judicial review for all of the potential projects covered by the bill 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

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<sup>2</sup> 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.

from any expansion of this expedited judicial review approach would be even more pronounced in light of the dire fiscal straits faced by the judicial branch.

Fourth, providing expedited judicial review for the select projects covered by SB 743 while other cases proceed under the usual civil procedure rules and timelines, in the council's view, 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 these special categories of cases for such preferential treatment appears at odds with how our justice system has historically functioned.

In addition to the above, the council questions the propriety of the provision in SB 743 that requires it to adopt a special set of court rules that will only apply to one potential lawsuit filed in Sacramento County. (See proposed Public Resources Code section 21168.6.6(d).) Furthermore, the provision in the bill that significantly limits the forms of relief that the court may use in any action challenging the downtown arena project<sup>3</sup> interferes with the inherent authority of a judicial officer and raises a serious separation of powers question.

For all of these reasons, the Judicial Council must respectfully oppose SB 743.

Sincerely,



Daniel Pone  
Senior Attorney

DP/nco

cc: Hon. Darrell Steinberg, President Pro Tempore of the Senate  
Ms. Martha Guzman-Aceves, Deputy Legislative Affairs Secretary, Office of the Governor

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<sup>3</sup> See proposed Public Resources Code section 21168.6.6(h)(1)(A)(i),(ii)[which provides that the court shall not stay or enjoin the construction or operation of the downtown arena unless the court finds either that its continued construction or operation "presents an imminent threat to the public health and safety" or the 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 downtown arena unless the court stays or enjoins the construction or operation of the downtown arena."]