



## JUDICIAL COUNCIL OF CALIFORNIA

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TANI G. CANTIL-SAKAUYE  
*Chief Justice of California*  
*Chair of the Judicial Council*

MARTIN HOSHINO  
*Administrative Director*

CORY T. JASPERSON  
*Director, Governmental Affairs*

September 11, 2020

Hon. Gavin Newsom  
Governor of California  
State Capitol, First Floor  
Sacramento, California 95814

Subject: Senate Bill 757 (Allen) – Request for Veto

Dear Governor Newsom:

The Judicial Council regretfully must request a veto on SB 757 because, by including the fixed guideway projects in the Jobs and Economic Improvement Through Environmental Leadership Act of 2011 (hereafter Leadership Act; see Section 21178 *et seq* of the Public Resources) it necessarily includes a 270-day expedited judicial review provision (see PRC § 21185).

It is important to note that our concerns regarding SB 757 are limited solely to the court impacts of this legislation and is not an expression of any views on CEQA generally or the underlying merits of the potential projects that could be covered by the bill, as those issues are outside the council's purview.

The requirement that all CEQA lawsuits challenging any of the proposed Leadership Act projects, including any appeals therefrom, be resolved, to the extent feasible, within 270 business days is problematic. CEQA actions are already entitled under current law to calendar preference "over all other civil actions" pursuant to section 21167.1(a) of the Public Resources Code in both the superior courts and the Courts of Appeal. Imposing a 270-day timeline for the review of the fixed guideway projects in SB 757, on top of existing CEQA calendar preferences, is an arbitrary and unrealistically short timeframe for the courts to address all of the issues each CEQA case is

likely to present. It is important to note that no specific projects have been identified under the proposed law, but large infrastructure projects typically implicate substantial CEQA review.

There are several reasons why the 270-day expedited judicial review timeframe is not feasible.

- *CEQA cases are complicated and lengthy even if they are not delayed at the request of the parties.* Under normal circumstances and assuming the most fluid of cases in which no extensions of time are requested or granted, CEQA cases take, on average, an estimated six months to get to hearing. So, even if the court was able to issue its decision within six months, that would leave only three months for proceedings in the court of appeal, which is impracticable.<sup>1</sup> And, of course, it is likely that one or more parties will request, if not stipulate to, continuances, delays, or other procedural extensions. Given these common requests and stipulated delays, a 270-day timeframe is not feasible.
- *Active CEQA cases often include ancillary administrative and non-CEQA judicial elements.* Providing 270-day expedited judicial review for these potential cases is even more unworkable in light of the common need of the parties to address ancillary motions or cases, specifically non-CEQA causes of action and/or separate lawsuits relating to the project. These actions proceed under administrative (local governmental) and normal civil procedure (non-CEQA) timelines, often requiring a temporary stay or delay in the CEQA case. In other words, even if CEQA-specific procedures could be limited to 270 days, other, non-CEQA procedures and causes of action related to the same projects that would occur in non-CEQA courtrooms and administrative hearings cannot be concluded in that same timeframe.
- *The courts anticipate significant pandemic-related litigation in the coming years.* The COVID-19 pandemic is impacting all social and government systems, including the courts. Moving SB 757's CEQA cases to the front of the line in Los Angeles over the next decade will 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 particular CEQA cases has the practical effect of pushing other cases on the courts' dockets to the back of the line. Without additional funding and resources, 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, as well as wage theft cases, unlawful detainer and foreclosure cases, and other important cases, will take longer to decide.

The council has studied the workload costs created by expedited CEQA judicial review requirements and determined that trial and appellate courts expend a combined average of

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<sup>1</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.

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\$340,000 in workload costs on each case eligible for expedited judicial review. While no specific projects are listed in the bill, based on the four (4) transit projects that the Los Angeles Metropolitan Transportation Authority, the bill's sponsor, has identified as priority projects for which expedited judicial review would apply, the estimated fiscal impact is \$1.4 million. This estimate could increase, however, as the provisions of SB 757 apply to transit projects statewide which may lead transit agencies to adjust their projects in the future to meet the bill's eligibility requirements. Finally, we note that new unfunded workload to the courts could result in delays of court services, prioritization of court cases, and may impact access to justice.

For these reasons, the Judicial Council requests your veto of SB 757.

Should you have any questions or require additional information, please contact Mark Neuburger at 916-323-3121.

Sincerely,

*Sent September 11, 2020*

Cory T. Jaspersen  
Director, Governmental Affairs

CTJ/AL/yc-s

cc: Hon. Ben Allen, Member of the Senate  
Mr. Anthony Williams, Legislative Affairs Secretary, Office of the Governor  
Mr. Martin Hoshino, Administrative Director, Judicial Council of California



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July 31, 2020

Hon. Laura Friedman, Chair  
Assembly Natural Resources Committee  
State Capitol, Room 2137  
Sacramento, California 95814

Subject: Senate Bill 757 (Allen), as amended July 27, 2020 – Oppose unless amended  
Hearing: Assembly Natural Resources Committee – August 6, 2020

Dear Assembly Member Friedman:

The Judicial Council regrettably must oppose SB 757 unless amended to extend the rule-making deadline to January 1, 2022, and to remove the 270-day expedited review provision. This bill, among other things, requires actions or proceedings related to the Twenty Eight by '28 pillar projects seeking judicial review pursuant to CEQA or the granting of project approvals, including any appeals therefrom, to be resolved, to the extent feasible, within 270 days of the filing of the certified record of proceedings. It also requires the Judicial Council, on or before July 1, 2021, to amend the California Rules of Court, as necessary, to implement this subdivision.

It is important to note that our concerns regarding SB 757 are limited solely to the court impacts of this legislation, and that the Judicial Council is not expressing any views on CEQA generally or the underlying merits of the potential projects that could be covered by the bill, as those issues are outside the council's purview.

Beginning with the rule-making provision, we request a one-year extension for implementation of any legislation that directs the Judicial Council to amend or draft new rules of court. This extension ensures that the council may faithfully undertake the months-long internal and external/public review and comment processes required for the adoption of new or modified rules of court. In the case of SB 757, the proposed July 1, 2021 deadline for enacting rules to

implement the proposed projects is not achievable. We respectfully request an implementation date of January 1, 2022.

SB 757's requirement that all CEQA lawsuits challenging any of the proposed projects that could be covered by the bill, including any appeals therefrom, be resolved within 270 days is problematic as CEQA actions are already entitled under current law to calendar preference pursuant to section 21167.1(a) of the Public Resources Code in both the superior courts and the Courts of Appeal. Imposing a 270-day timeline for the review of the Twenty Eight by '28 Pillar Projects, on top of existing CEQA calendar preferences, is an arbitrary and unrealistically short timeframe for the trial court in Los Angeles to address all of the issues each CEQA case is likely to present. It is important to note that many of the projects have yet to be identified, but the sponsor is the Metropolitan Transportation Authority which implicates substantial CEQA review.

There are several reasons why the 270-day expedited judicial review time frame is not feasible.

- *CEQA cases are complicated and lengthy even if they are not delayed at the request of the parties.* Under normal circumstances and assuming the most fluid of cases in which no extensions of time are requested or granted, CEQA cases take, on average, an estimated six months to get to hearing. So, even if the court was able to issue its decision within six months, that would leave only three months for proceedings in the court of appeal, which is impracticable.<sup>1</sup> And, of course, it is more than likely that one or more parties will request, if not stipulate to, continuances, delays, or other procedural extensions. Given these common requests and stipulated delays, a 270-day timeframe is unrealistic.
- *Active CEQA cases often include ancillary administrative and non-CEQA judicial elements.* Providing 270-day expedited judicial review for these potential cases is even more unworkable in light of the common need of the parties to address ancillary motions or cases, specifically non-CEQA causes of action and/or separate lawsuits relating to the project. These actions proceed under administrative (local governmental) and normal civil procedure (non-CEQA courtroom) timelines, often requiring a temporary stay or delay in the CEQA case. In other words, even if CEQA-specific procedures could be limited to 270 days, other, non-CEQA procedures and causes of action related to the same projects that would occur in non-CEQA courtrooms and administrative hearings cannot be concluded in that same timeframe.
- *The courts anticipate significant pandemic-related litigation in the coming years.* The COVID-19 pandemic is impacting all social and government systems, including the courts. Moving CEQA cases to the front of the line in Los Angeles over the next decade

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<sup>1</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.

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will 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 particular CEQA 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, as well as wage theft cases, unlawful detainer and foreclosures cases, and other important cases on the courts' dockets, will take longer to decide.

For these reasons, the council regrettably opposes SB 757 unless amended.

Should you have any questions or require additional information, please contact Andi Liebenbaum at 916-323-3121.

Sincerely,

*Mailed July 31, 2020*

Cory T. Jaspersen  
Director, Governmental Affairs

CTJ/AL/yc-s

cc: Members, Assembly Natural Resources Committee  
Hon. Ben Allen, Member of the Senate  
Hon. Toni G. Atkins, President pro Tempore, Member of the Senate  
Mr. Andrew Antwih, Los Angeles County Metropolitan Transportation Authority  
Mr. Lawrence Lingbloom, Chief Consultant, Senate Natural Resources Committee  
Ms. Kirstin Kolpitke, Consultant, Assembly Republican Office of Policy  
Ms. Jessica Devencenzi, Legislative Affairs Secretary, Office of the Governor  
Mr. Martin Hoshino, Administrative Director, Judicial Council of California



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July 31, 2020

Hon. Ben Allen  
Member of the Senate  
State Capitol, Room 4076  
Sacramento, California 95814

Subject: Senate Bill 757 (Allen), as amended July 27, 2020 – Oppose unless amended  
Hearing: Assembly Natural Resources Committee – August 6, 2020

Dear Senator Allen:

The Judicial Council regrettably must oppose SB 757 unless amended to extend the rule-making deadline to January 1, 2022, and to remove the 270-day expedited review provision. This bill, among other things, requires actions or proceedings related to the Twenty Eight by '28 pillar projects seeking judicial review pursuant to CEQA or the granting of project approvals, including any appeals therefrom, to be resolved, to the extent feasible, within 270 days of the filing of the certified record of proceedings. It also requires the Judicial Council, on or before July 1, 2021, to amend the California Rules of Court, as necessary, to implement this subdivision.

Beginning with the rule-making provision, the Judicial Council requests a one-year delay in the implementation of any legislation that directs the council to amend or draft new rules of court. This delay ensures that the council may faithfully undertake the months-long internal and external/public review and feedback processes required for the adoption of new or modified rules of court. In the case of SB 757, the proposed July 1, 2021 deadline for enacting rules to implement the proposed projects is simply not achievable (July literally falls about half-way

through the council's annual timeline for rule-making). We respectfully request a delay, to January 1, 2022, to amend the California Rules of Court to implement the proposed subdivision.

The imposition of a 270-day timeline for the review of the Twenty Eight by '28 Pillar Projects, on top of existing calendar preferences that exist in CEQA cases, is an unrealistically short timeframe for the trial court in Los Angeles to address all of the issues each of the 28 CEQA cases is likely to present, especially related to transportation infrastructure projects, even with language that references "to the extent feasible." It is important to note that many of the projects have yet to be identified.

There are several reasons why the time frame is, from the outset, not feasible.

- *CEQA cases are time-consuming.* Under normal circumstances and assuming the unrealistic context in which no extensions of time are requested or granted for any aspect of a CEQA case, CEQA cases take, on average, an estimated six months to get to hearing, much less to a decision. So, even if the court was able to issue its decision within six months (approximately 180 days), that would leave only three months (the remaining 90 days) for proceedings in the court of appeal, which is impracticable.<sup>1</sup> And, of course, it is more than likely that one or more parties will request, if not stipulate to, continuances, delays, or other procedural extensions. Given these common requests and stipulated delays, a 270-day timeframe is not feasible.
- *Active CEQA cases often include ancillary administrative and non-CEQA judicial actions.* Providing expedited judicial review for the 28 proposed projects anticipated by SB 757 is even more unworkable in light of the common occurrence that CEQA cases involve ancillary motions, administrative review, and other civil actions and appeals in the middle of the CEQA action. These actions proceed under administrative (local governmental) and civil procedure (non-CEQA courtroom) timelines, often resulting in temporary stays or delays in the principal CEQA action. In other words, even if CEQA-specific procedures could be limited to 270 days for one or more of the 28 projects, other, non-CEQA procedures related to the same cases that would occur in non-CEQA courtrooms and administrative hearing venues cannot be concluded in that same timeframe. These ancillary hearings and procedures make the 270-day goal not feasible.
- *The courts anticipate significant pandemic-related litigation in the coming years.* The COVID-19 pandemic is impacting all social and government systems, including the courts. As tenants and landlords, employees and employers, and many others turn to the courts to understand and uphold their rights in litigation related to evictions, foreclosures, injuries, damages, and more, it is critical that judicial officers be available to hear such cases in a timely and expeditious manner. Using current CEQA legislation to tie the

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<sup>1</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.



hands of judicial officers in Los Angeles over the next decade by requiring that judges place CEQA cases at the front of the line not only infringes on the constitutional authority and independence of the court and its presiding judge to properly allocate judicial and staff resources, it also negatively impacts tens of thousands of Californians. This bill—in fact all project-specific CEQA bills that require the 270-day expedited review— would frustrate access to justice by placing complex CEQA cases ahead of unlawful detainer and foreclosure actions.

With the opposition articulated here, the Judicial Council does not opine on the merits, value, or importance of the 28 projects. We only point out that an expedited review “to the extent feasible” is patently not feasible in light of the concerns presented above, and made irreconcilable given the anticipated COVID-19 litigation that the Legislature and courts are anticipating. This, on top of the typical court caseload that includes cases with their own statutorily mandated calendar preferences, such as juvenile cases, criminal cases, and civil cases in which a party is at risk of dying, suggests that the 270-day provision should be amended out of the bill.

For these reasons, the council regrettably opposes SB 757 unless amended.

Should you have any questions or require additional information, please contact me at 916-323-3121.

Sincerely,



Andi Liebenbaum  
Attorney

AL/yc-s

cc: Mr. Andrew Antwih, Los Angeles County Metropolitan Transportation Authority  
Ms. Jessica Devencenzi, Deputy Legislative Secretary, Office of the Governor  
Mr. Martin Hoshino, Administrative Director, Judicial Council of California