



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

May 17, 2021

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

Subject: Senate Bill 7 (Atkins) – Opposition

Dear Governor Newsom:

The Judicial Council regrets to inform you of its opposition to SB 7, which revives the authority of the Governor, through January 1, 2026, to certify a project pursuant to the Jobs and Economic Improvement Through Environmental Leadership Act of 2021 (Leadership Act). In addition to expressly stating that the Leadership Act shall require judicial review, including any appellate review, to be completed, to the extent feasible, within 270 days, the bill seeks to broaden the reach of the Leadership Act to include housing projects meeting certain conditions as projects eligible for certification.

It is important to note that our concerns regarding SB 7 are limited solely to the court impacts of this legislation, and that the Judicial Council is not expressing any views on the California Environmental Quality Act (CEQA) generally or the underlying merits of any potential projects that could be covered by the bill, as those issues are outside the council's purview.

The requirement in SB 7 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 "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 an expedited 270-day timeline for the review of potentially hundreds of housing projects, on top of existing CEQA calendar preferences, even with language that references “to the extent feasible,” is an arbitrary and unrealistically short timeframe for California’s trial courts to address all the issues each CEQA case is likely to present.

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

- *CEQA cases are complex and 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 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 appellate courts, which is impracticable.¹ 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 causes of action.* Providing expedited judicial review for the projects that may fall under SB 7 is even more unworkable in light of the common occurrence that CEQA cases involve ancillary motions, administrative review, other causes of action, 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 projects, other, non-CEQA procedures related to the same cases that would occur in non-CEQA courtrooms and administrative hearings cannot be concluded in that same timeframe. These ancillary hearings and procedures make the 270-day goal not feasible.
- *The courts are already experiencing significant civil backlogs as a result of the COVID-19 pandemic.* Given the impacts the COVID-19 pandemic has had on the courts, as discussed comprehensively at the February 23, 2021 joint hearing of the Assembly and Senate Judiciary Committees, placing CEQA cases at the front of the line 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

¹ 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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as wage theft cases, unlawful detainer and foreclosure cases, and other important cases on the courts' dockets, will take longer to decide.

For these reasons, the Judicial Council must respectfully oppose SB 7.

In addition, the council has studied the workload costs created by the expedited CEQA judicial review requirements and determined that trial and appellate courts expend a combined average of \$340,000 in workload costs on each case eligible for expedited judicial review. The council estimates SB 7 could have a fiscal impact on California's trial and appellate courts of between \$3.7 million and \$11.2 million annually through increased trial court workloads. This estimate range is based on construction permit data from the Department of Finance, which indicates over the past 5 pre-pandemic years (2014 to 2019) the state issued an average of 109,000 housing permits annually with an average growth rate of 3.5% per year. Given California's acute housing shortage and the demand for more housing, we believe it is reasonable to assume the 3.5% growth rate will continue in the future, resulting in the potential for approximately 113,000 permits to be issued in 2022. We believe it is reasonable to assume that at least 1% (or an estimated 1,100) of the 113,000 new housing unit projects may qualify as Leadership Act projects, making them eligible for expedited judicial review. While it is not possible to predict how many of these projects might face CEQA challenges, our estimate assumes that between 1% and 3% (somewhere in the range of 11 to 33) of the approximately 1,100 eligible projects may be challenged in court each year. Although we believe that the cost recovery in proposed section 21183(f) of the Public Resources Code would likely address the workload costs created by SB 7, we note that the branch would need additional expenditure and position authority for the additional staff that would be needed to address the increased workload resulting from the expedited judicial review.

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

Sincerely,

Sent May 17, 2021

Cory T. Jasperson
Director, Governmental Affairs

CTJ/KN/jh

cc: Hon. Toni Atkins, President pro Tempore, California State Senate
Ms. Jessica Devencenzi, Deputy Legislative Affairs Secretary, Office of the Governor
Mr. Martin Hoshino, Administrative Director, Judicial Council of California



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April 22, 2021

Hon. Luz M. Rivas, Chair
Assembly Natural Resources Committee
State Capitol, Room 2160
Sacramento, California 95814

Subject: Senate Bill 7 (Atkins), as amended February 18, 2021 – Oppose
Hearing: Assembly Natural Resources Committee – April 28, 2021

Dear Assembly Member Rivas:

The Judicial Council regrets to inform you of its opposition to SB 7. This bill revives the authority of the Governor, through January 1, 2026, to certify a project pursuant to the Jobs and Economic Improvement Through Environmental Leadership Act of 2021 (Leadership Act). In addition to expressly stating that the Leadership Act shall require judicial review, including any appellate review, to be completed, to the extent feasible, within 270 days, the bill seeks to broaden the reach of the Leadership Act to include housing projects meeting certain conditions as projects eligible for certification.

It is important to note that our concerns regarding SB 7 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 any potential projects that could be covered by the bill, as those issues are outside the council's purview.

The requirement in SB 7 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 "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 potentially hundreds of housing projects, on top of existing CEQA calendar preferences, even

with language that references “to the extent feasible,” is an arbitrary and unrealistically short timeframe for California’s trial courts to address all the issues each CEQA case is likely to present.

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

- *CEQA cases are complex and 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 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.¹ 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 causes of action.* Providing expedited judicial review for the projects that may fall under SB 7 is even more unworkable in light of the common occurrence that CEQA cases involve ancillary motions, administrative review, other causes of action, 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 projects, other, non-CEQA procedures related to the same cases that would occur in non-CEQA courtrooms and administrative hearings cannot be concluded in that same timeframe. These ancillary hearings and procedures make the 270-day goal not feasible.
- *The courts are already experiencing significant civil backlogs as a result of the COVID-19 pandemic.* Given the impacts the COVID-19 pandemic has had on the courts, as discussed comprehensively at the February 23, 2021 joint hearing of the Assembly and Senate Judiciary Committees, placing CEQA cases at the front of the line 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 Judicial Council opposes SB 7.

¹ 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.

Hon. Luz Rivas

April 22, 2021

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

Sincerely,

Sent April 22, 2021

Cory T. Jaspersen

Director, Governmental Affairs

CTJ/KN/jh

cc: Members, Assembly Natural Resources Committee
Hon. Toni Atkins, President pro Tempore, Member of the Senate
Mr. Lawrence Lingbloom, Chief Consultant, Assembly Natural Resources Committee
Ms. Jessica Devencenzi, Legislative Affairs Secretary, Office of the Governor
Mr. Martin Hoshino, Administrative Director, Judicial Council of California



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MARTIN HOSHINO
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Director, Governmental Affairs

March 18, 2021

Hon. Toni Atkins
President pro Tempore
Member of the Senate
State Capitol, Room 205
Sacramento, California 95814

Subject: SB 7 (Atkins), as amended February 18, 2021 – Oppose

Dear President pro Tempore Atkins:

The Judicial Council regrets to inform you of its opposition to SB 7. This bill revives the authority of the Governor, through January 1, 2026, to certify a project pursuant to the Jobs and Economic Improvement Through Environmental Leadership Act of 2021 (Leadership Act). In addition to expressly stating that the Leadership Act shall require judicial review, including any appellate review, to be completed, to the extent feasible, within 270 days, the bill seeks to broaden the reach of the Leadership Act to include housing projects meeting certain conditions as projects eligible for certification.

It is important to note that our concerns regarding SB 7 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 any potential projects that could be covered by the bill, as those issues are outside the council's purview. Additionally, the Judicial Council appreciates the amendments you have made to allow trial and appellate courts to recover costs associated with these cases.

The requirement in SB 7 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 potentially hundreds of housing projects, on top of existing CEQA calendar preferences, is an arbitrary and unrealistically short timeframe for California's trial courts to address all of the issues each CEQA case is likely to present. And, while the bill requires the 270-day review *to the extent feasible*, the 270-day timeline for review is facially not feasible and courts will be in the position of regularly being unable to meet it. While we appreciate this language for its attempt to build in flexibility for the courts; its presence alone does not compensate for the 270-day time frame.

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

- *CEQA cases are complex and 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 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.¹ 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 causes of action.* Providing expedited judicial review for the projects that may fall under SB 7 is even more unworkable in light of the common occurrence that CEQA cases involve ancillary motions, administrative review, other causes of action, 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 projects, other, non-CEQA procedures related to the same cases that would occur in non-CEQA courtrooms and administrative hearings cannot be concluded in that same timeframe. These ancillary hearings and procedures make the 270-day goal not feasible.
- *The courts are already experiencing significant civil backlogs as a result of the COVID-19 pandemic.* Given the impacts the COVID-19 pandemic has had on the courts, as discussed comprehensively at the February 23, 2021 joint hearing of the Assembly and Senate Judiciary Committees, placing CEQA cases at the front of the line means that

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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 Judicial Council opposes SB 7.

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

Sincerely,

Sent March 18, 2021

Kate Nitta
Attorney

KN/jh

cc: Ms. Jessica Devencenzi, Deputy Legislative Secretary, Office of the Governor
Mr. Martin Hoshino, Administrative Director, Judicial Council of California