



JUDICIAL COUNCIL OF CALIFORNIA

GOVERNMENTAL AFFAIRS

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Chief Justice of California
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February 21, 2018

Hon. Steve Glazer
Member of the Senate
State Capitol, Room 5108
Sacramento, California 95814

Subject: SB 1340 (Glazer), as introduced February 16, 2018 - Oppose

Dear Senator Glazer:

The Judicial Council regrets to inform you of its opposition to SB 1340. This bill requires the Judicial Council, on or before July 1, 2019, to adopt a rule of court to establish procedures applicable to actions or proceedings brought pursuant to the California Environmental Quality Act (CEQA) seeking judicial review of an environmental impact report and approvals granted for a housing project. It requires the actions or proceedings, including any appeals therefrom, be resolved, to the extent feasible, within 270 days of certification of the record of proceedings.

SB 1340 also prohibits a court from staying or enjoining the siting, construction or operation of the housing project unless the court finds either of the following: (i) the continued construction or operation of the project presents an imminent threat to public health and safety; or (ii) the project 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 project unless the court stays or enjoins the construction or operation of the project. The bill specifies further that if the court finds that either of the above criteria is satisfied, the court shall only enjoin those specific activities associated with the project that present an imminent threat to public health and safety or that materially, permanently, and adversely affect unforeseen important Native American artifacts or unforeseen important historical, archaeological, or ecological values.

It is important to note that the Judicial Council's concerns regarding SB 1340 are limited solely to the court impacts of the legislation, and that the council is not expressing any views on CEQA generally or the underlying merits of the housing projects covered by the legislation, as those issues are outside the council's purview.

SB 1340's requirement that any CEQA lawsuit challenging a housing 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. It makes no sense to have something that occurs before the matter even comes to the courts start the courts' already limited time period to complete their work.

Second, the 270-day timeline will likely 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 follows the approach taken in SB 743 ([Steinberg] Stats, 2013, ch. 386), which places the initial judicial review in the superior court. However, 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 appears to be infeasible.¹

Third, the expedited judicial review for the housing projects covered by SB 1340 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 this particular case 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 judicial review approach would be even more pronounced in light of the ongoing fiscal limitations faced by the judicial branch.

Fourth, providing expedited judicial review for the housing projects covered by SB 1340 while other cases proceed under the usual civil procedure rules and timelines undermines equal access to justice. The courts are charged with dispensing equal access to justice for each and every case

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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on their dockets. Singling out this particular type of case for such preferential treatment appears at odds with how our justice system has historically functioned.

Finally, the provision in SB 1340 that significantly limits the forms of relief that the court may use in any action challenging the housing projects covered by this bill interferes with the inherent authority of a judicial officer and raises a serious separation of powers question.

For these reasons, the Judicial Council regrettably opposes SB 1340.

Sincerely,

Mailed February 21, 2018

Daniel Pone
Attorney

DP/jh

cc: Mr. Daniel Seeman, Deputy Legislative Affairs Secretary, Office of the Governor
Mr. Martin Hoshino, Administrative Director, Judicial Council of California
Ms. Rachel Machi Wagoner, Chief Consultant, Senate Environmental Quality Committee
Mr. Ken Alex, Executive Director, Governor's Office of Planning and Research



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March 22, 2018

Hon. Hannah-Beth Jackson, Chair
Senate Judiciary Committee
State Capitol, Room 2032
Sacramento, California 95814

Subject: SB 1340 (Glazer), as introduced February 16, 2018 – Oppose
Hearing: Senate Judiciary Committee – April 10, 2018

Dear Senator Jackson:

The Judicial Council is opposed to SB 1340. This bill requires the Judicial Council, on or before July 1, 2019, to adopt a rule of court to establish procedures applicable to actions or proceedings brought pursuant to the California Environmental Quality Act (CEQA) seeking judicial review of an environmental impact report and approvals granted for a housing project. It requires the actions or proceedings, including any appeals therefrom, be resolved, to the extent feasible, within 270 days of certification of the record of proceedings.

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or that materially, permanently, and adversely affect unforeseen important Native American artifacts or unforeseen important historical, archaeological, or ecological values.

It is important to note that the Judicial Council's concerns regarding SB 1340 are limited solely to the court impacts of the legislation, and that the council is not expressing any views on CEQA generally or the underlying merits of the housing projects covered by the legislation, as those issues are outside the council's purview.

SB 1340's requirement that any CEQA lawsuit challenging a housing 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. It makes no sense to have something that occurs before the matter even comes to the courts be the action that begins the courts' already limited time period to complete their work.

Second, the 270-day timeline will likely 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 follows the approach taken in SB 743 ([Steinberg] Stats, 2013, ch. 386), which places the initial judicial review in the superior court. However, 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 appears to be infeasible.¹

Third, the expedited judicial review for the housing projects covered by SB 1340 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 this particular case 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 judicial review approach would be even more pronounced in light of the ongoing fiscal limitations faced by the judicial branch.

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Fourth, providing expedited judicial review for the housing projects covered by SB 1340 while other cases proceed under the usual civil procedure rules and timelines 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 this particular type of case for such preferential treatment appears at odds with how our justice system has historically functioned.

Finally, the provision in SB 1340 that significantly limits the forms of relief that the court may use in any action challenging the housing projects covered by this bill interferes with the inherent authority of a judicial officer and raises a serious separation of powers question.

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

Sincerely,

Sent my mail March 23, 2018

Cory T. Jasperson
Director, Governmental Affairs

CTJ/DP/jh

cc: Mr. Daniel Seeman, Deputy Legislative Affairs Secretary, Office of the Governor
Mr. Martin Hoshino, Administrative Director, Judicial Council of California
Mr. Christian Kurpiewski, Counsel, Senate Judiciary Committee
Mr. Mike Petersen, Consultant, Senate Republican Caucus
Ms. Rachel Machi Wagoner, Chief Consultant, Senate Environmental Quality Committee
Mr. Ken Alex, Executive Director, Governor's Office of Planning and Research