



JUDICIAL COUNCIL OF CALIFORNIA

GOVERNMENTAL AFFAIRS

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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

April 22, 2021

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

Subject: AB 1277 (Rubio), as amended April 19, 2021 – Oppose unless amended

Dear Assembly Member Rivas:

The Judicial Council regrettably must oppose AB 1277 unless amended to extend the rule-making deadline to January 1, 2023, and to remove the 270-business day expedited review provision. This bill, among other things, requires actions or proceedings related to the student development housing projects, as defined, 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 business days of the filing of the certified record of proceedings. It also requires the Judicial Council, on or before July 1, 2022, to amend the California Rules of Court, as necessary, to implement this subdivision.

It is important to note that our concerns 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 may be covered by AB 1277, as those issues are outside the council's purview.

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 AB 1277, the proposed July 1, 2022 deadline for enacting rules to implement the proposed projects is simply not achievable as it does not allow for the

development of the rules and public review process necessary to vet the rules. We respectfully request a delay to January 1, 2023 to amend the California Rules of Court to implement the proposed subdivision.

The requirement in AB 1277 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 business 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 a large number of student housing development 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 of the issues each CEQA case is likely to present.

There are several reasons why the time frame is, from the outset, 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 AB 1277 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.

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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- *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 council regretfully opposes AB 1277 unless amended.

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. Blanca Rubio, Member of the Assembly

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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Director, Governmental Affairs

April 8, 2021

Hon. Blanca Rubio
Member of the Assembly
State Capitol, Room 5175
Sacramento, California 95814

Subject: Assembly Bill 1277 (Rubio), as introduced – Oppose unless amended

Dear Assembly Member Rubio:

The Judicial Council regretfully must oppose AB 1277 unless amended to extend the rule-making deadline to January 1, 2023, and to remove the 270-business day expedited review provision. This bill, among other things, requires actions or proceedings related to the student development housing projects, as defined, 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 business days of the filing of the certified record of proceedings. It also requires the Judicial Council, on or before July 1, 2022, to amend the California Rules of Court, as necessary, to implement this subdivision.

It is important to note that our concerns 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 may be covered by AB 1277, as those issues are outside the council's purview.

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 AB 1277, the proposed July 1, 2022 deadline for enacting rules to implement the proposed projects is simply not achievable as it does not allow for the development of the rules and public review process necessary to vet the rules. We respectfully request a delay to January 1, 2023 to amend the California Rules of Court to implement the proposed subdivision.

The requirement in AB 1277 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 business 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 a large number of student housing development 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 of the issues each CEQA case is likely to present.

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

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Sincerely,

Sent April 8, 2021

Kate Nitta
Attorney

KN/jh

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