



JUDICIAL COUNCIL OF CALIFORNIA

GOVERNMENTAL AFFAIRS

520 Capitol Mall, Suite 600 • Sacramento, California 95814-3368
Telephone 916-323-3121 • Fax 916-323-4347 • TDD 415-865-4272

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

MARTIN HOSHINO
Administrative Director

CORY T. JASPERSON
Director, Governmental Affairs

September 7, 2017

Hon. Miguel Santiago
Member of Assembly
State Capitol, Room 6027
Sacramento, California 95814

Subject: AB 246 (Santiago) as amended September 6, 2017 - Oppose

Dear Assembly Member Santiago:

The Judicial Council regrets to inform you of its opposition to AB 246, as amended September 6, 2017, which would extend for two years the sunset on the expedited judicial review provisions in AB 900 (Stats. 2011, ch. 354) that apply to specified cases filed under the California Environmental Quality Act (CEQA). It is important to note that the Judicial Council's concerns regarding AB 246 are limited solely to the court impacts of the legislation, which are detailed below. The Judicial Council is not expressing any views on CEQA generally or the underlying merits of the projects that would be covered by this bill, as those issues are outside the council's purview.

As we noted with other recent bills that have sought to expand AB 900, requiring that a CEQA lawsuit challenging the additional projects that may be certified for this form of expedited judicial review, 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. 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 seems unlikely, that would leave only 95 days for proceedings in the Court of Appeal, which appears to be infeasible.¹

Third, if AB 246 is enacted, the expedited judicial review requirements for any additional projects that may be certified under AB 900 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 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 additional projects that may be covered by the bill's proposed expansion of AB 900 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 special type of case for such preferential treatment appears at odds with how our justice system has historically functioned.

For these reasons, the Judicial Council opposes AB 246.

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. Miguel Santiago
September 7, 2017
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Sincerely,

Mailed September 7, 2017

Daniel Pone
Attorney

DP/jh

cc: Hon. Susan Talamantes Eggman, Member of the Assembly
Members, Senate Environmental Quality Committee
Mr. Daniel Seeman, Deputy Legislative Affairs Secretary, Office of the Governor
Mr. Martin Hoshino, Administrative Director, Judicial Council of California
Ms. Joanne Roy, Consultant, Senate Environmental Quality Committee
Mr. Todd Moffitt, Consultant, Senate Republican Caucus
Mr. Lawrence Lingbloom, Chief Consultant, Assembly Natural Resources Committee
Mr. John Kennedy, Consultant, Assembly Republican Caucus



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Director, Governmental Affairs

September 8, 2017

Hon. Miguel Santiago
Member of Assembly
State Capitol, Room 6027
Sacramento, California 95814

Subject: AB 246 (Santiago), as amended September 7, 2017 - Oppose

Dear Assembly Member Santiago:

The Judicial Council regrets to inform you of its continued opposition to AB 246, as amended September 7, 2017, which would extend for two years the sunset on the expedited judicial review provisions in AB 900 (Stats. 2011, ch. 354) that apply to specified cases filed under the California Environmental Quality Act (CEQA). It is important to note that the Judicial Council's concerns regarding AB 246 are limited solely to the court impacts of the legislation, which are detailed below. The Judicial Council is not expressing any views on CEQA generally or the underlying merits of the projects that would be covered by this bill, as those issues are outside the council's purview.

As a preliminary matter, the Judicial Council appreciates the new amendments you agreed to in Section 4 of the bill, which add "to the extent feasible" language to the 270-day timeline and have the clock start running upon "the filing of the certified record of proceedings with the court." These changes provide the courts with some needed flexibility in attempting to comply with their obligations under AB 900. However, requiring that a CEQA lawsuit challenging the

additional projects that may be certified for this form of expedited judicial review, including any appeals therefrom, be resolved within 270 days remains problematic for a number of reasons.

First, 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. 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 seems unlikely, that would leave only 95 days for proceedings in the Court of Appeal, which appears to be infeasible.¹

Second, if AB 246 is enacted, the expedited judicial review requirements for any additional projects that may be certified under AB 900 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 judicial review approach would be even more pronounced in light of the ongoing fiscal limitations faced by the judicial branch.

Third, providing expedited judicial review for additional projects that may be covered by the bill's proposed expansion of AB 900 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 special type of case for such preferential treatment appears at odds with how our justice system has historically functioned.

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Hon. Miguel Santiago
September 8, 2017
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For these reasons, the Judicial Council must respectfully continue to oppose AB 246.

Sincerely,

Mailed September 8, 2017

Daniel Pone
Attorney

DP/jh

cc: Hon. Cathleen Galgiani, Member of the Senate
Members, Senate Environmental Quality Committee
Mr. Daniel Seeman, Deputy Legislative Affairs Secretary, Office of the Governor
Mr. Martin Hoshino, Administrative Director, Judicial Council of California
Ms. Joanne Roy, Consultant, Senate Environmental Quality Committee
Mr. Morgan Branch, Consultant, Senate Republican Office of Policy & Budget
Mr. Lawrence Lingbloom, Chief Consultant, Assembly Natural Resources Committee
Mr. John Kennedy, Consultant, Assembly Republican Caucus



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Administrative Director

CORY T. JASPERSON
Director, Governmental Affairs

September 8, 2017

Hon. Bob Weickowski, Chair
Senate Environmental Quality Committee
State Capitol, Room 4085
Sacramento, California 95814

Subject: AB 246 (Santiago), as amended September 7, 2017 - Oppose
Hearing: Senate Environmental Quality Committee – September 11, 2017

Dear Senator Weickowski:

The Judicial Council is opposed to AB 246, as amended September 7, 2017, which would extend for two years the sunset on the expedited judicial review provisions in AB 900 (Stats. 2011, ch. 354) that apply to specified cases filed under the California Environmental Quality Act (CEQA). It is important to note that the Judicial Council's concerns regarding AB 246 are limited solely to the court impacts of the legislation, which are detailed below. The Judicial Council is not expressing any views on CEQA generally or the underlying merits of the projects that would be covered by this bill, as those issues are outside the council's purview.

As a preliminary matter, the Judicial Council appreciates the new amendments agreed to by the author in Section 4 of the bill, which add "to the extent feasible" language to the 270-day timeline and have the clock start running upon "the filing of the certified record of proceedings with the court." These changes provide the courts with some needed flexibility in attempting to comply with their obligations under AB 900. However, requiring that a CEQA lawsuit challenging the additional projects that may be certified for this form of expedited judicial

review, including any appeals therefrom, be resolved within 270 days remains problematic for a number of reasons.

First, 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. 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 seems unlikely, that would leave only 95 days for proceedings in the Court of Appeal, which appears to be infeasible.¹

Second, if AB 246 is enacted, the expedited judicial review requirements for any additional projects that may be certified under AB 900 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 judicial review approach would be even more pronounced in light of the ongoing fiscal limitations faced by the judicial branch.

Third, providing expedited judicial review for additional projects that may be covered by the bill's proposed expansion of AB 900 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 special type of case for such preferential treatment appears at odds with how our justice system has historically functioned.

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Hon. Bob Wieckowski
September 8, 2017
Page 3

For these reasons, the Judicial Council must respectfully oppose AB 246.

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

Sincerely,

Mailed September 8, 2017

Cory T. Jaspersen
Director, Governmental Affairs

CTJ/DP/jh

cc: Members, Senate Environmental Quality Committee
Hon. Miguel Santiago, Member of the Assembly
Hon. Cathleen Galgiani, Member of the Assembly
Ms. Joanne Roy, Committee Counsel, Senate Environmental Quality Committee
Mr. Morgan Branch, Consultant, Senate Republican Office of Policy & Budget
Mr. Daniel Seeman, Deputy Legislative Affairs Secretary, Office of the Governor
Mr. Martin Hoshino, Administrative Director, Judicial Council of California



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MARTIN HOSHINO
Administrative Director

CORY T. JASPERSON
Director, Governmental Affairs

September 14, 2017

Hon. Cristina Garcia, Chair
Assembly Natural Resources Committee
State Capitol, Room 2013
Sacramento, California 95814

Subject: AB 246 (Santiago), as amended September 7, 2017 - Oppose

Dear Assembly Member Garcia:

The Judicial Council is opposed to AB 246, as amended September 7, 2017, which would extend for two years the sunset on the expedited judicial review provisions in AB 900 (Stats. 2011, ch. 354) that apply to specified cases filed under the California Environmental Quality Act (CEQA). It is important to note that the Judicial Council's concerns regarding AB 246 are limited solely to the court impacts of the legislation, which are detailed below. The Judicial Council is not expressing any views on CEQA generally or the underlying merits of the projects that would be covered by this bill, as those issues are outside the council's purview.

As a preliminary matter, the Judicial Council appreciates the recent amendments the author agreed to in Section 4 of the bill, which add "to the extent feasible" language to the 270-day timeline and have the clock start running upon "the filing of the certified record of proceedings with the court." These changes provide the courts with some needed flexibility in attempting to comply with their obligations under AB 900. However, requiring that a CEQA lawsuit challenging the additional projects that may be certified for this form of expedited judicial review, including any appeals therefrom, be resolved within 270 days remains problematic for a number of reasons.

First, 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. 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 seems unlikely, that would leave only 95 days for proceedings in the Court of Appeal, which appears to be infeasible.¹

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Third, providing expedited judicial review for additional projects that may be covered by the bill's proposed expansion of AB 900 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 special type of case for such preferential treatment appears at odds with how our justice system has historically functioned.

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Hon. Cristina Garcia
September 14, 2017
Page 3

For these reasons, the Judicial Council must respectfully oppose AB 246.

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

Sincerely,

Mailed September 14, 2017

Cory T. Jaspersen
Director, Governmental Affairs

CTJ/DP/jh

cc: Members, Assembly Natural Resources Committee
Hon. Miguel Santiago, Member of the Assembly
Hon. Cathleen Galgiani, Member of the Senate
Mr. Lawrence Lingbloom, Chief Consultant, Assembly Natural Resources Committee
Mr. John Kennedy, Consultant, Assembly Republican Caucus
Mr. Daniel Seeman, Deputy Legislative Affairs Secretary, Office of the Governor
Mr. Martin Hoshino, Administrative Director, Judicial Council of California



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Chief Justice of California
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MARTIN HOSHINO
Administrative Director

CORY T. JASPERSON
Director, Governmental Affairs

September 14, 2017

Hon. Ricardo Lara, Chair
Senate Appropriations Committee
State Capitol, Room 5050
Sacramento, California 95814

Subject: AB 246 (Santiago), as amended September 7, 2017 - Oppose

Dear Senator Lara:

The Judicial Council is opposed to AB 246, as amended September 7, 2017, which would extend for two years the sunset on the expedited judicial review provisions in AB 900 (Stats. 2011, ch. 354) that apply to specified cases filed under the California Environmental Quality Act (CEQA). It is important to note that the Judicial Council's concerns regarding AB 246 are limited solely to the court impacts of the legislation, which are detailed below. The Judicial Council is not expressing any views on CEQA generally or the underlying merits of the projects that would be covered by this bill, as those issues are outside the council's purview.

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Hon. Ricardo Lara
September 14, 2017
Page 3

For these reasons, the Judicial Council must respectfully oppose AB 246.

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

Sincerely,

Mailed September 14, 2017

Cory T. Jaspersen
Director, Governmental Affairs

CTJ/DP/jh

cc: Members, Senate Appropriations Committee
Hon. Miguel Santiago, Member of the Assembly
Hon. Cathleen Galgiani, Member of the Senate
Ms. Narisha Bonakdar, Consultant, Senate Appropriations Committee
Mr. Brett Michelin, Legislative Director, Senate Republican Caucus
Mr. Daniel Seeman, Deputy Legislative Affairs Secretary, Office of the Governor
Mr. Martin Hoshino, Administrative Director, Judicial Council of California