



Judicial Council of California

520 Capitol Mall, Suite 600 · Sacramento, California 95814-4717

Telephone 916-323-3121 · Fax 916-323-4347

PATRICIA GUERRERO

*Chief Justice of California
Chair of the Judicial Council*

MILLICENT TIDWELL

Acting Administrative Director

March 20, 2023

Hon. Brian Dahle
Senator, 1st District
1021 O Street, Ste 7230
Sacramento, California 95814

Subject: Senate Bill 239 (Dahle), as introduced – Oppose unless amended

Dear Senator Dahle:

The Judicial Council regrettably must oppose SB 239 unless amended to remove the 365-day expedited review provision and to remove the related rulemaking requirement. This bill, among other things, requires, until January 1, 2030, that an action or proceeding to attack, set aside, void, or annul a determination, finding, or decision of the lead agency certifying the EIR for a commercial, housing, or public works project, as defined, that addresses longstanding critical needs in the project area or the granting of project approvals on the grounds of noncompliance with CEQA, to the extent feasible, be resolved within 365 days of the filing of the record of proceedings. It also requires the Judicial Council to adopt a rule of court to implement this provision.

It is important to note that our concerns are limited solely to the court impacts of this legislation. The Judicial Council does not express any views on CEQA generally or the underlying merits of any potential projects that may be covered by SB 239, as those issues are beyond the council's purview.

The requirement in SB 239 that all CEQA lawsuits challenging certification of any of the proposed projects that could be covered by the bill, including any appeals therefrom, be resolved within 365 business days is problematic. CEQA actions are already entitled under current law to calendar preference "over all other civil actions" in both the superior courts and the Courts of Appeal pursuant to section 21167.1(a) of the Public Resources Code. Imposing a 365-day timeline for the review of a potentially large number of commercial, housing, or public works projects, on top of existing CEQA calendar preferences, even with language that references "to the extent feasible," and even if standing is limited to the Attorney General, 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 the remaining six months for proceedings in the court of appeal, which is impracticable. 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. This remains the case even if the law prohibits bringing CEQA cases for “nonenvironmental purposes,” as SB 239 proposes; any such determination may be appealed. Given these common requests and stipulated delays, and the likelihood of an appeal, a 365-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 239 is also unworkable given the reality 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 365 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 365-day goal infeasible.
- *Expediting CEQA cases means further delays for other cases.* 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 foreclosure cases, and other important cases on the courts’ dockets, will take longer to decide.

For these reasons, the Judicial Council opposes SB 239, unless amended, to remove the 365-day expedited review provision and the related rulemaking requirement.

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

Sincerely,

Sent March 20, 2023

Aviva Simon
Attorney

AS/jh

cc: Ms. Jessica Devencenzi, Deputy Legislative Secretary, Office of the Governor
Ms. Millicent Tidwell, Acting Administrative Director, Judicial Council of California
Ms. Shelley Curran, Chief Policy & Research Officer, Judicial Council of California