



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 12, 2019

Hon. Laura Friedman
Chair, Assembly Natural Resources Committee
State Capitol, Room 2137
Sacramento, California 95814

Subject: AB 281 (Frazier), as amended March 21, 2019 – Oppose
Hearing: Assembly Natural Resources Committee—April 22, 2019

Dear Assembly Member Friedman:

The Judicial Council regrets to inform you of its opposition to AB 281. This bill requires the Judicial Council, on or before September 1, 2020, to adopt rules of court to establish procedures applicable to actions or proceedings brought pursuant to the California Environmental Quality Act (CEQA) seeking judicial review of environmental review documents and approvals granted for certain fire hardening projects¹. It requires these actions or proceedings, including any appeals therefrom, to be resolved, to the extent feasible, within 270 days of the filing of the certified record of proceedings with the court.

It is important to note that the Judicial Council's concerns regarding AB 281 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 fire hardening projects covered by the legislation, as those issues are outside the council's purview.

¹ The bill defines a "fire hardening project" to mean "a project for the replacement or relocation of electric distribution or transmission lines in high fire threat districts, as determined by the Public Utilities Commission, to reduce the risk of wildfire posed by the electric distribution or transmission lines." (Sec. 2, proposed Public Resources Code section 21168.6.13(a)(2).)

Hon. Laura Friedman

April 12, 2019

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AB 281's requirement that any CEQA lawsuit challenging specified fire hardening projects, including any appeals therefrom, be resolved within 270 days is problematic for a number of reasons. First, CEQA actions are already entitled under current law to calendar preference in both the superior courts and the Courts of Appeal. Imposing a 270-day timeline on top of the existing preference is arbitrary and likely to be unworkable in practice.

Second, the expedited judicial review for all of the projects covered by AB 281 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 type of 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.

Finally, providing expedited judicial review for all of the projects covered by AB 281 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 is fundamentally at odds with how our justice system has historically functioned.

For these reasons, the Judicial Council opposes AB 281.

Sincerely,

Mailed April 12, 2019

Cory T. Jasperson

Director

Judicial Council Governmental Affairs

CJ/DP/jh

cc: Members, Assembly Natural Resources Committee
Hon. Jim Frazier, Member of the Assembly
Ms. Rachel Wagoner, Deputy Legislative Affairs Secretary, Office of the Governor
Mr. Lawrence Lingbloom, Chief Consultant, Assembly Natural Resources Committee
Ms. Katie Sperla, Policy Consultant, Assembly Republican Office of Policy
Mr. Martin Hoshino, Administrative Director, Judicial Council of California



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TANI G. CANTIL-SAKAUYE
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MARTIN HOSHINO
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Director, Governmental Affairs

March 25, 2019

Hon. Jim Frazier
Member of the Assembly
State Capitol, Room 3091
Sacramento, California 95814

Subject: AB 281 (Frazier), as amended March 21, 2019 - Oppose

Dear Assembly Member Frazier:

The Judicial Council regrets to inform you of its opposition to AB 281. This bill requires the Judicial Council, on or before September 1, 2020, to adopt rules of court to establish procedures applicable to actions or proceedings brought pursuant to the California Environmental Quality Act (CEQA) seeking judicial review of environmental review documents and approvals granted for certain fire hardening projects¹. It requires these actions or proceedings, including any appeals therefrom, to be resolved, to the extent feasible, within 270 days of the filing of the certified record of proceedings with the court.

It is important to note that the Judicial Council's concerns regarding AB 281 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 fire hardening projects covered by the legislation, as those issues are outside the council's purview.

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AB 281's requirement that any CEQA lawsuit challenging specified fire hardening projects, including any appeals therefrom, be resolved within 270 days is problematic for a number of reasons. First, CEQA actions are already entitled under current law to calendar preference in both the superior courts and the Courts of Appeal. Imposing a 270-day timeline on top of the existing preference is arbitrary and likely to be unworkable in practice.

Second, the expedited judicial review for all of the projects covered by AB 281 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 type of 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.

Finally, providing expedited judicial review for all of the projects covered by AB 281 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 is fundamentally at odds with how our justice system has historically functioned.

For these reasons, the Judicial Council opposes AB 281.

Sincerely,

Mailed March 25, 2019

Daniel Pone
Attorney

DP/jh

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