

**BILL:** AB 252 (Daly, D-Anaheim)

**SUBJECT:** AB 252 would allow California to continue to perform federal environmental responsibilities for highway projects under the National Environmental Policy Act indefinitely.

**STATUS:** Introduced January 23, 2019

**SUMMARY AS OF January 23, 2019:**

AB 252 (Daly, D-Anaheim) would continue to provide the California Department of Transportation (Caltrans) with a limited waiver of sovereign immunity under the 11th Amendment of the U.S. Constitution, which would allow Caltrans to assume, indefinitely, the role of the U.S. Department of Transportation (U.S. DOT) in National Environmental Policy Act (NEPA) decisions and approvals. As a result, California would be required to continue to accept the financial costs associated with the delegated NEPA authority for surface transportation projects, as well as full liability for lawsuits filed under NEPA in federal court. In keeping Caltrans as the lead agency for environmental reviews under NEPA, AB 252 would also subject the State to the same procedural and substantive requirements that the U.S. DOT would otherwise be responsible for.

**EFFECTS ON ORANGE COUNTY:**

Initially provided under the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users, the federal delegation of NEPA authority to the State has been a success in expediting the environmental review of transportation projects. Since the authority was delegated to the State in 2007, Caltrans and local agencies have been able to advance and deliver projects that could have been delayed, had those projects been subject to the traditional federally-led NEPA review process. With NEPA delegation, substantial time savings has been achieved for numerous areas of the NEPA environmental review process, including Section 7 Biological Assessments/Biological Opinions, draft environmental assessments, and Findings of No Significant Impact determinations. As a result, the time savings provided with NEPA delegation has led to reduced project costs and the expedited start of project construction activities.

However, the most recent enabling legislation, AB 28 (Chapter 4, Statutes of 2017), which provided the limited waiver of sovereign immunity, and was supported by the Orange County Transportation Authority (OCTA), contains a sunset provision of January 1, 2020. As such, Caltrans would be unable to do NEPA review responsibilities starting on January 1, 2020, unless it receives a new waiver of sovereign immunity from the legislature.

If NEPA delegation authority is not extended, numerous locally-funded OCTA projects that are subject to the traditional NEPA review process could be delayed resulting in cost increases. These projects include improvements to major arterials and numerous freeways in Orange County, including State Route 91, State Route 57, State Route 55,

and Interstate 5. In total, it is estimated that approximately \$1.170 billion in infrastructure investments planned over the next decade could be delayed if NEPA delegation is allowed to expire. These delays could be compounded further if the U.S. Federal Highway Administration lacks the necessary staff to adequately and readily assume the NEPA responsibilities.

A support position on AB 252 is consistent with the principle included in the OCTA 2019-2020 State Legislative Platform that states, "Support legislation to streamline the environmental review and permitting processes for transportation projects and programs to avoid potentially duplicative and unnecessary analysis, while still maintaining traditional environmental protections."

**OCTA POSITION:**

Staff recommends: SUPPORT

**ASSEMBLY BILL**

**No. 252**

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**Introduced by Assembly Members Daly and Frazier**

January 23, 2019

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An act to amend Section 820.1 of the Streets and Highways Code, relating to transportation.

LEGISLATIVE COUNSEL'S DIGEST

AB 252, as introduced, Daly. Department of Transportation: environmental review process: federal program.

Existing law gives the Department of Transportation full possession and control of the state highway system. Existing federal law requires the United States Secretary of Transportation to carry out a surface transportation project delivery program, under which the participating states may assume certain responsibilities for environmental review and clearance of transportation projects that would otherwise be the responsibility of the federal government. Existing law, until January 1, 2020, provides that the State of California consents to the jurisdiction of the federal courts with regard to the compliance, discharge, or enforcement of the responsibilities it assumed as a participant in the program.

This bill would extend the operation of these provisions indefinitely.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1     SECTION 1. Section 820.1 of the Streets and Highways Code  
2     is amended to read:

1     820.1. (a) The State of California consents to the jurisdiction  
2 of the federal courts with regard to the compliance, discharge, or  
3 enforcement of the responsibilities assumed by the department  
4 pursuant to Section 326 of, and subsection (a) of Section 327 of,  
5 Title 23 of the United States Code.

6     (b) In any action brought pursuant to the federal laws described  
7 in subdivision (a), no immunity from suit may be asserted by the  
8 department pursuant to the Eleventh Amendment to the United  
9 States Constitution, and any immunity is hereby waived.

10    (c) The department shall not delegate any of its responsibilities  
11 assumed pursuant to the federal laws described in subdivision (a)  
12 to any political subdivision of the state or its instrumentalities.

13    (d) This section does not affect the obligation of the department  
14 to comply with state and federal law.

15    ~~(e) This section shall remain in effect only until January 1, 2020,~~  
16 ~~and as of that date is repealed.~~