



February 21, 2019

To: Legislative and Communications Committee
From: Darrell E. Johnson, Chief Executive Officer
Subject: State Legislative Status Report

Overview

A support position is recommended on a bill related to the delegation of federal environmental review authority under the National Environmental Protection Act.

Recommendation

Adopt a SUPPORT position on AB 252 (Daly, D-Anaheim) which would allow California to continue to perform federal environmental responsibilities for highway projects under the National Environmental Policy Act indefinitely.

Discussion

AB 252 (Daly, D-Anaheim): Department of Transportation: Environmental Review Process: Federal Program

AB 252 (Daly, D-Anaheim) would allow the California Department of Transportation (Caltrans) to assume, indefinitely, the role of the U.S. Department of Transportation in National Environmental Policy Act (NEPA) decisions and approvals. Specifically, AB 252 would continue to provide Caltrans with a limited waiver of sovereign immunity under the 11th Amendment of the U.S. Constitution, so that the State may assume the responsibility and liability for its NEPA authority, as is required when accepting NEPA delegation.

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. 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 recent enabling legislation, AB 28 (Chapter 4, Statutes of 2017), which provided the limited waiver of sovereign immunity, contains a sunset provision of January 1, 2020. As such, Caltrans would not be able to perform NEPA review responsibilities starting on January 1, 2020, unless a new waiver of sovereign immunity is approved by the legislature.

If NEPA delegation authority is not extended, numerous locally-funded Orange County Transportation Authority (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 \$1.07 billion in infrastructure investments planned over the next decade could be delayed if NEPA delegation is allowed to expire indefinitely. 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.

The text of AB 252 and a comprehensive analysis of the legislation are included as Attachment A. A support position on AB 252 is consistent with OCTA's 2019-2020 State Legislative Platform principle to "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."

Summary

A support position is recommended on a bill related to the environmental review of transportation projects.

Attachments

- A. AB 252 (Daly, D-Anaheim) Bill Analysis with Bill Language
- B. Orange County Transportation Authority Legislative Matrix

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