

ASSEMBLY BILL

No. 892

Introduced by Assembly Member Carter

February 17, 2011

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

LEGISLATIVE COUNSEL'S DIGEST

AB 892, as introduced, Carter. Department of Transportation: environmental review process: federal pilot 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 pilot program, under which the participating states 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, 2012, 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 pilot program.

This bill would delete this repeal date, thereby extending 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:

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

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

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

15 (d) The department shall, no later than January 1, 2009, and
16 again, no later than January 1, 2011, submit a report to the
17 Legislature that includes the following:

18 (1) A comparative analysis of the environmental review process
19 under the National Environmental Policy Act (Chapter 55
20 (commencing with Section 4321) of Title 42 of the United States
21 Code) for the 30 projects, excluding those projects categorically
22 excluded from environmental review, undertaken immediately
23 preceding the enactment of this section that involved the Federal
24 Highway Administration and the environmental review process
25 for all projects, excluding those projects categorically excluded
26 from environmental review, undertaken following the enactment
27 of this section that did not involve the Federal Highway
28 Administration. This analysis should address the following:

29 (A) For each project included in the analysis, the environmental
30 review process under the National Environmental Policy Act,
31 including which state and federal agencies reviewed the
32 environmental documents and the amount of time the documents
33 were reviewed by each agency, shall be described.

34 (B) The points in the environmental review process under the
35 National Environmental Policy Act when project delays occurred
36 and the nature of the delays.

37 (C) The time saved in the environmental review process for
38 projects undertaken following the enactment of this section in

1 comparison to the review process for projects undertaken prior to
2 the enactment of this section. The points in the review process
3 when time was saved.

4 (D) The circumstances when the Federal Highway
5 Administration hindered and facilitated project delivery.

6 (2) All financial costs incurred by the department to assume the
7 responsibilities pursuant to Section 326 of, and subsection (a) of
8 Section 327 of, Title 23 of the United States Code, including, but
9 not limited to, the following:

10 (A) Personnel to conduct and review environmental documents
11 and to manage litigation.

12 (B) Administrative costs.

13 (C) Litigation.

14 (3) An explanation of all litigation initiated against the
15 department for the responsibilities assumed pursuant to Section
16 326 of, and subsection (a) of Section 327 of, Title 23 of the United
17 States Code.

18 (4) A comparison of all costs and benefits of assuming these
19 responsibilities.

20 (5) An assessment of overall project delivery time from the time
21 environmental studies begin to the time the project is ready to
22 advertise for construction, including the time required for each
23 project phase and distinguishing between different types of
24 environmental documents and between projects on the state
25 highway system and local assistance projects. The department may
26 also include other variables that it determines may be useful in the
27 assessment.

28 ~~(e) (1) This section shall remain in effect only until January 1,~~
29 ~~2012, and as of that date is repealed, unless a later enacted statute,~~
30 ~~that is enacted before January 1, 2012, deletes or extends that date.~~

31 ~~(2) The state shall remain liable for any decisions made or~~
32 ~~responsibilities assumed and exercised, prior to the repeal of this~~
33 ~~section under this subdivision, pursuant to applicable federal~~
34 ~~statutes of limitation for filing citizens' suits in federal court.~~

35 (f)

36 (e) Nothing in this section affects the obligation of the
37 department to comply with state and federal law.

O