

Assembly Bill No. 892

CHAPTER 482

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

[Approved by Governor October 5, 2011. Filed with
Secretary of State October 6, 2011.]

LEGISLATIVE COUNSEL'S DIGEST

AB 892, 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 requires the department to submit a report to the Legislature regarding state and federal environmental review. Existing law requires the report to be submitted no later than January 1, 2009, and again, no later than January 1, 2011.

This bill would, instead, require the report to be submitted no later than January 1, 2016.

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 and extend the operation of these provisions until January 1, 2017. The bill would provide that the state shall remain liable for any decisions made or responsibilities assumed prior to repeal of these provisions under applicable federal statutes of limitation for filing citizens' suits in federal courts.

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

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

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

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

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

(d) The department shall, no later than January 1, 2016, submit a report to the Legislature that includes the following:

(1) A comparative analysis of the environmental review process under the National Environmental Policy Act (Chapter 55 (commencing with Section 4321) of Title 42 of the United States Code) for the 30 projects, excluding those projects categorically excluded from environmental review, undertaken immediately preceding the enactment of this section that involved the Federal Highway Administration and the environmental review process for all projects, excluding those projects categorically excluded from environmental review, undertaken following the enactment of this section that did not involve the Federal Highway Administration. This analysis shall include department- and local agency-sponsored projects, and shall address the following:

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

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

(C) The time saved in the environmental review process for projects undertaken following the enactment of this section in comparison to the review process for projects undertaken prior to the enactment of this section, and the points in the review process when time was saved.

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

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

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

(B) Administrative costs.

(C) Litigation.

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

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

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

(e) (1) This section shall remain in effect only until January 1, 2017, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2017, deletes or extends that date.

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

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