

**ASSEMBLY BILL**

**No. 1833**

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**Introduced by Assembly Member Linder**

February 9, 2016

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An act to amend Section 820.1 of, and to add Article 2.5 (commencing with Section 800) to Chapter 4 of Division 1 of, the Streets and Highways Code, relating to transportation.

LEGISLATIVE COUNSEL'S DIGEST

AB 1833, as introduced, Linder. Transportation projects: environmental mitigation.

(1) The California Environmental Quality Act (CEQA) requires a lead agency to prepare, or cause to be prepared, and certify the completion of an environmental impact report on a project, as defined, that it proposes to carry out or approve that may have a significant effect on the environment, as defined, or to adopt a negative declaration if it finds that the project will not have that effect, subject to certain exceptions.

The bill would create the Advanced Mitigation Program in the Department of Transportation to implement environmental mitigation measures in advance of future transportation projects.

(2) Existing federal law requires the United States Secretary of Transportation to carry out a surface transportation project delivery 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, 2017, 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 the Department of Transportation assumed as a participant in this program.

This bill would delete the January 1, 2017, repeal date and thereby extend these provisions indefinitely.

(3) Existing federal law requires the United States Secretary of Transportation to select, from states already approved to assume the above-referenced federal responsibilities for environmental review and clearance of transportation projects, a maximum of 5 states to participate in a program under which states may conduct environmental reviews and make approvals for projects under state environmental laws and regulations rather than under the National Environmental Policy Act of 1969, subject to certain conditions, including the consent of participating states to the jurisdiction of the federal courts in these matters.

This bill would extend the consent of the State of California to the jurisdiction of the federal courts with regard to the compliance, discharge, or enforcement of the responsibilities the Department of Transportation may assume as a participant in this program.

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. Article 2.5 (commencing with Section 800) is  
2 added to Chapter 4 of Division 1 of the Streets and Highways  
3 Code, to read:

4  
5 Article 2.5. Advanced Mitigation Program

6  
7 800. (a) The Advanced Mitigation Program is hereby created  
8 in the department to accelerate project delivery and improve  
9 environmental outcomes of environmental mitigation for  
10 transportation infrastructure projects.

11 (b) For the purposes of this article, “advanced mitigation” means  
12 mitigation implemented before, and in anticipation of,  
13 environmental effects of future transportation projects. This  
14 program may utilize mitigation instruments including, but not  
15 limited to, mitigation banks, in lieu of fee programs, and  
16 conservation easements as defined in Section 815.1 of the Civil  
17 Code.

1 (c) The department shall track all implemented advanced  
2 mitigation projects to use as credits for environmental mitigation  
3 for state-sponsored transportation projects.

4 (d) The department may use advanced mitigation credits to  
5 fulfill mitigation requirements of any environmental law for a  
6 transportation project eligible for the State Transportation  
7 Improvement Program or the State Highway Operation and  
8 Protection Program.

9 (e) No later than February 1, 2017, the department shall establish  
10 an interagency transportation advanced mitigation steering  
11 committee consisting of the department and appropriate state and  
12 federal agencies to support the Advanced Mitigation Program so  
13 that advanced mitigation can be used as required mitigation for  
14 future transportation projects and provide improved environmental  
15 outcomes. The committee shall advise the department of  
16 opportunities to carry out advanced mitigation projects, provide  
17 the best available science, and actively participate in mitigation  
18 instrument reviews and approvals. The committee shall seek to  
19 develop streamlining opportunities, including those related to  
20 landscape scale mitigation planning, and alignment of federal and  
21 state regulations and procedures related to mitigation requirements  
22 and implementation. The committee shall also provide input on  
23 crediting, using, and tracking of advanced mitigation investments.

24 SEC. 2. Section 820.1 of the Streets and Highways Code is  
25 amended to read:

26 820.1. (a) The State of California consents to the jurisdiction  
27 of the federal courts with regard to the compliance, discharge, or  
28 enforcement of the responsibilities assumed by the department  
29 pursuant to Section 326 of, ~~and~~ subsection (a) of Section 327 of,  
30 *and Section 330 of*, Title 23 of the United States Code.

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

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

38 (d) The department shall, no later than January 1, 2016, submit  
39 a report to the Legislature that includes the ~~following~~: *following*  
40 *with respect to responsibilities assumed by the department pursuant*

1 to Section 326 of, and subsection (a) of Section 327 of, Title 23 of  
2 the United States Code:

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

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

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

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

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

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

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

36 (B) Administrative costs.

37 (C) Litigation.

38 (3) An explanation of all litigation initiated against the  
39 department for the responsibilities assumed pursuant to Section

1 326 of, subsection (a) of Section 327 of, Title 23 of the United  
2 States Code.

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

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

13 ~~(e) (1) This section shall remain in effect only until January 1,~~  
14 ~~2017, and as of that date is repealed, unless a later enacted statute,~~  
15 ~~that is enacted before January 1, 2017, deletes or extends that date.~~

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

20 (f)

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