

AMENDED IN ASSEMBLY MARCH 16, 2016

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 1833

Introduced by Assembly Member Linder

February 9, 2016

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, of the Streets and Highways Code, relating to transportation.~~

LEGISLATIVE COUNSEL'S DIGEST

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

~~(1) The~~

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. The bill, by February 1, 2017, would require the department to establish a steering committee to advise the department in that regard.

~~(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

1 conservation easements as defined in Section 815.1 of the Civil
2 Code.

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

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

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

26 ~~SEC. 2. Section 820.1 of the Streets and Highways Code is~~
27 ~~amended to read:~~

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

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

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

1 ~~(d) The department shall, no later than January 1, 2016, submit~~
2 ~~a report to the Legislature that includes the following with respect~~
3 ~~to responsibilities assumed by the department pursuant to Section~~
4 ~~326 of, and subsection (a) of Section 327 of, Title 23 of the United~~
5 ~~States Code:~~

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

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

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

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

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

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

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

39 ~~(B) Administrative costs.~~

40 ~~(C) Litigation.~~

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

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

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

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