



METROPOLITAN
TRANSPORTATION
COMMISSION

Agenda Item 5d

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Memorandum

TO: Legislation Committee

DATE: May 6, 2011

FR: Executive Director

W. I. 1131

RE: AB 892 (Carter) — Federal Pilot Program: National Environmental Policy Act Delegation

Background

AB 892 would extend state authorization for the California Department of Transportation (Caltrans) to assume responsibility for approving environmental documents required by the National Environmental Policy Act (NEPA) until 2019. As a condition of taking this responsibility, the federal program requires that states permit the jurisdiction of the federal courts in any action related to the project's compliance with NEPA and waive their sovereign immunity pursuant to the Eleventh Amendment of the United States Constitution for this narrow purpose. While the Legislature provided the waiver in 2006 (AB 1039, Nuñez) and agreed to the jurisdiction of the federal courts in 2008 (AB 2650, Carter), these provisions are set to expire in 2012.

Recommendation: Support

Discussion

The NEPA Delegation Program was originally established in 2005 by the Safe, Accountable, Flexible, Efficient Transportation Equity Act (SAFETEA). It contained two elements:

- *Categorical Exemption (CE) Assignment Program.*
Allows states on an ongoing basis to determine if a transportation project qualifies for a CE, a relatively simple environmental review for projects without significant impacts. For these categorically excluded projects, Caltrans also assumed FHWA's responsibilities for coordination and consultation under other federal environmental laws such as the Endangered Species Act, Clean Water Act, and National Historic Preservation Act.
- *NEPA Delegation Pilot Program.*
Authorized five states the option of assuming all FHWA responsibility over NEPA in order to test whether this delegation could speed up the overall time frame without compromising the environmental review. This provision is set to expire in August 2012 but Caltrans is seeking its extension in the next federal bill. California is the only state participating in this pilot program.

According to the January 2011 report Caltrans submitted to the Legislature on this program, the department saved an average of 15 months on draft environmental assessments and 17 months on final environmental assessments after it assumed responsibility for NEPA. While only two draft Environmental Impact Studies were processed by the department since the pilot program began, they took four years less than the average time such reports took under FHWA.

In order to enable Caltrans to continue to deliver time savings for transportation projects subject to NEPA, we recommend a support position on AB 892.

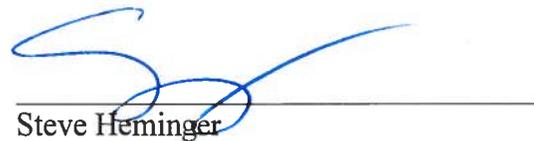
Known Positions

Support

- California Department of Transportation (Sponsor)
- Association of General Contractors
- Automobile Club of Southern California
- California State Association of Counties
- City of Selma
- City of Fowler
- League of California Cities
- Orange County Transportation Authority
- Professional Engineers in California Government
- San Diego Association of Governments
- Tulare County Association of Governments

Opposition

None



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