

Date of Hearing: March 11, 2019

ASSEMBLY COMMITTEE ON TRANSPORTATION  
Jim Frazier, Chair  
AB 252 (Daly) – As Introduced January 23, 2019

**SUBJECT:** Department of Transportation: environmental review process: federal program

**SUMMARY:** Removes the sunset for the California Department of Transportation's (Caltrans') authority to waive its 11th Amendment right to sovereign immunity from lawsuits brought in federal court so that it can continue, indefinitely, to assume the role of the United States Department of Transportation (U.S. DOT) for National Environmental Policy Act (NEPA) decision making.

**EXISTING LAW:**

- 1) Specifies that Caltrans has full possession and control of state highways.
- 2) Establishes the NEPA Assignment program, under federal law, wherein states may assume federal responsibilities for NEPA actions as long as the states also assume associated risks, including responding to citizen lawsuits filed in federal court.
- 3) Authorizes Caltrans, until January 1, 2020, to waive the state's 11th Amendment sovereign immunity right and to consent to the jurisdiction of the federal court when sued by any person seeking to enforce rights pursuant to the NEPA Assignment program.

**FISCAL EFFECT:** Unknown

**COMMENTS:** In 2005, the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) established a Surface Transportation Project Delivery Pilot Program (later called the NEPA Assignment). This pilot program designated California as one of five states eligible to participate in a multi-year program that delegates responsibilities of U.S. DOT and the United States Federal Highway Administration (FHWA) under NEPA to the states. States participating in the program would be subject to the same procedural and substantive requirements as if the NEPA requirement were carried out by U.S. DOT. The delegation of this authority to the state made Caltrans the lead agency for environmental reviews for projects subject to NEPA. To participate in NEPA Assignment, states were required to accept the financial costs associated with the delegated authority, as well as full liability for lawsuits filed under NEPA in federal court. Therefore, in order to participate, states were required to obtain a limited waiver of their 11th Amendment sovereign immunity, thereby allowing them to be sued in federal court and providing them the ability to defend against claims that may be brought against the NEPA document. The purpose of NEPA Assignment was to streamline the environmental review process and get projects delivered more quickly to the traveling public.

In 2006, the Legislature passed AB 1039 (Núñez), Chapter 31, Statutes of 2006, which, among other things, granted the necessary limited waiver of sovereign immunity to Caltrans until January 1, 2009. AB 1039 also required Caltrans to report to the Legislature with information regarding the cost and benefit to the state. With the waiver in place, Caltrans spent nearly two years working with FHWA to craft a memorandum of understanding (MOU) to participate in

NEPA Assignment. The MOU was completed and Caltrans undertook NEPA decision making on July 1, 2007.

According to Caltrans, NEPA Assignment has been shown to significantly reduce environmental document processing times and to greatly accelerate transportation project delivery. For example, Caltrans reports that under NEPA Assignment, there has been a median time savings of 10.7 months in approving draft Environmental Assessment (EA) documents and 11.5 months for final EAs. It also reports a nearly 23-month time savings in finalizing draft Environmental Impact Statements (EISs).

Because the NEPA Assignment has proven to successfully streamline the environmental process and has been shown to be cost effective, the Legislature has extended Caltrans' limited waiver of sovereign immunity many times, most recently by AB 28 (Frazier) of 2017. AB 28 passed on a unanimous, bipartisan vote from both the Assembly and the Senate, though the Senate amended the bill to include the current sunset date of 2020. This bill eliminates the sunset date, allowing California to continue to enjoy the benefits of the successful program without the threat of losing the program in the future.

According to the author, he introduced this bill because he believes that, by removing the sunset on this program, this bill will save time and money for Caltrans projects.

According to the City of San Diego, the ability for Caltrans to sign and approve NEPA documents for local federally-funded projects has been crucial to the overall success and implementation of local transportation projects. Writing in support, the City of San Diego argues that eliminating the sunset on a proven and efficient program enables them to deliver transportation projects faster and therefore cheaper.

#### **REGISTERED SUPPORT / OPPOSITION:**

##### **Support**

California Association of Council of Governments  
California State Association of Counties  
City of San Diego  
Self-Help Counties Coalition (Sponsor)

##### **Opposition**

None received.

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