

Date: April 6, 2006
Committee Meeting Date: April 20, 2006
Board Meeting Date: May 4, 2006
ACTION X DISCUSSION INFO

BOARD MEMORANDUM

TO: Administration and Finance Committee
Santa Clara Valley Transportation Authority
Board of Directors

THROUGH: Michael T Burns
General Manager

FROM: Kurt Evans
Government Affairs Manager

SUBJECT: State Legislative Positions: SB 1812 (Runner)

RECOMMENDATION:

Adopt a support position for SB 1812 (Runner), which would permit Caltrans to participate in a federal pilot program that allows certain states to assume the responsibilities of the Federal Highway Administration (FHWA) under the National Environmental Policy Act (NEPA) for a limited period of time to see if this approach would speed up the delivery of capital improvement projects on the state highway system without a lessening of environmental protection. Specifically, the bill authorizes Caltrans to consent to the jurisdiction of the federal courts with regard to the assumption of FHWA's responsibilities under NEPA and waives the state's Eleventh Amendment protection against lawsuits brought in federal court for as long as Caltrans participates in the pilot program. SB 1812 has a two-year sunset.

BACKGROUND

Under federal law, transportation projects in California that: (a) use federal funds; (b) require a federal permit; (c) are proposed to be built on federal land; or (d) are jointly undertaken by a federal agency are subject to environmental review under NEPA. FHWA, on behalf of the U.S. Department of Transportation, is responsible for reviewing and approving NEPA documents prepared for federal-aid highway projects proposed for construction in California. The U.S. Department of Transportation assumes liability for the project in the event lawsuits are filed under NEPA.

Caltrans has been administratively delegated the authority for categorical exclusion decision-making under NEPA since 1990. Categorical exclusion decisions are determinations that a project falls within a particular category that has been pre-determined to be unlikely to cause negative environmental impacts and, thus, is exempt from federal environmental review. Examples of categories of projects that may be exempted from federal environmental review include adding shoulders or guardrails to roadways, constructing pedestrian or bicycle facilities, and road resurfacing. It is the simplest environmental approval. Under this administrative delegation to Caltrans, FHWA retained the liability for legal challenges filed under NEPA.

If the project cannot be categorically excluded from review, then an Environmental Assessment is conducted to determine whether the project will have a significant environmental impact. If there is a Finding of No Significant Impact (FONSI), then there is no further environmental review required. If there is a finding of significant impact, then a more thorough Environmental Impact Statement must be developed.

Caltrans currently prepares documents for Environmental Assessments and Environmental Impact Statements under NEPA for federal-aid highway projects in California. After draft NEPA documents are completed by Caltrans, they are transmitted to FHWA for review and approval. FHWA is required to comment on the draft documents within 30 days of receiving them. If FHWA returns a document with comments, then Caltrans must respond to the comments and re-submit a final document, which FHWA has 30 days to approve.

The most recent federal surface transportation authorization act—the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU)—established the Surface Transportation Project Delivery Pilot Program. Under this program, California is designated as one of five states that are eligible to apply to participate in a six-year pilot program that delegates to the state the responsibilities of FHWA under NEPA. The responsibilities delegated to the state would still be subject to the same procedural and substantive requirements as if they were carried out by FHWA. By accepting this authority, the state must also accept the financial costs associated with this authority, as well as full liability for lawsuits filed under NEPA in federal court.

To be selected to participate in the pilot program, a state must enter into a “written agreement” with the U.S. Department of Transportation. Under this agreement, the state must: (a) consent to accept the jurisdiction of the federal courts for the “compliance, discharge, and enforcement of any responsibility assumed by the state;” and (b) certify that state laws are in effect that authorize the state to meet this requirement. The intent of SB 1812 is to make the necessary statutory changes to meet that requirement and to allow Caltrans to apply to participate in the pilot program, but only for a two-year period.

DISCUSSION:

It makes sense for California, as one of the five designated states, to participate in the pilot program to see if the assumption of FHWA’s responsibilities under NEPA by Caltrans

would speed up the delivery of capital improvement projects on the state highway system without a lessening of environmental protection. There may be some direct benefit to VTA in this regard, given that we oftentimes manage state highway capital improvement projects in Santa Clara County on behalf of Caltrans. Under current law, Caltrans acts as a “middle man” between FHWA and VTA for such projects. By allowing Caltrans to take on FHWA’s role under NEPA, one layer of bureaucracy would be removed, thereby speeding up the process. For more complex environmental approvals (Environmental Assessments and Environmental Impact Statements), Caltrans estimates a potential savings of 120-180 days per project.

ALTERNATIVES:

The Board of Directors could decide to oppose SB 1812 or to take no position on this bill at this time.

FISCAL IMPACT:

There is no immediate fiscal impact associated with this recommendation.

Prepared by: Kurt Evans, Government Affairs Manager