Date of Hearing: February 8, 2017

ASSEMBLY COMMITTEE ON APPROPRIATIONS

Lorena Gonzalez Fletcher, Chair

AB 28 (Frazier) – As Introduced December 5, 2016

Policy Committee: Transporation Vote: 13 - 0

Urgency: Yes State Mandated Local Program: No Reimbursable: No

SUMMARY:

This bill re-enacts the California Department of Transportation's (Caltrans') authority, that expired on January 1, 2017, to waive its 11th Amendment right to sovereign immunity from lawsuits brought in federal court. The waiving of its sovereign immediately will allow Caltrans to indefinitely assume the role of the United States Department of Transportation (U.S. DOT) for National Environmental Policy Act (NEPA) decision making.

FISCAL EFFECT:

Because the 2016 Budget Act assumed the elimination of the January 1, 2017 sunset date, this bill will not result in any additional costs.

COMMENTS:

1) **Background.** Under federal law, transportation projects in California that use federal funds or require a federal permit are subject to environmental review under NEPA. The Federal Highway Administration (FHWA) has responsibility for reviewing and approving NEPA documents prepared for federal-aid highway projects proposed for construction in California. Some projects also require coordination with other federal agencies under the federal Endangered Species Act, the National Historic Preservation Act and the U.S. Department of Transportation (U.S. DOT) Act. The U.S. DOT assumes liability for the project in the event lawsuits are filed under NEPA.

Federal law designates California as one of the states eligible to assume the responsibilities of U.S. DOT (via FHWA) under NEPA. The responsibilities delegated to the state are subject to the same procedural and substantive requirements as if they were carried out by U.S. DOT. By accepting this authority, the state accepts the financial costs associated with this authority, as well as full liability for lawsuits filed under NEPA in federal court. The purpose of NEPA Assignment was to streamline the environmental review process and get projects delivered more quickly to the traveling public.

Because the NEPA Assignment has proven to successfully streamline the environmental process and has been shown to be cost effective, the Legislature has twice extended Caltrans' limited waiver of sovereign immunity, first with the passage of AB 2650 (Carter), Chapter 248, Statutes of 2008, and again with the passage of SB 892 (Carter), Chapter 482, Statutes of 2011. SB 892 extended the sunset for the limited waiver of sovereign immunity to January 1, 2017.

2) **Purpose.** AB 28 re-enacts the waiver without the inclusion of a sunset date. By excluding the sunset, Caltrans and FHWA will have continued assurance that there will be no program lapse in the future.

Analysis Prepared by: Pedro R. Reyes / APPR. /