



SUBJECT: STATE LEGISLATION

ACTION: APPROVE STAFF RECOMMENDATION ON STATE LEGISLATION

Metropolitan
Transportation
Authority
J.C.
One Gateway Plaza
Los Angeles, CA
90012-2952

RECOMMENDATION

Staff recommends the Board of Directors adopt the following position:

- SB 1828 (Burton) - Would expand CEQA review in relation to Native American sacred sites and prohibit the issuance of a permit for a project until that review is completed to the satisfaction of the affected native American group. **OPPOSE**

ISSUE

Staff has been reviewing several transportation-related bills. The attached analysis identifies a significant bill which staff believes the MTA Board of Directors should take a position. Additional measures are currently under review by staff and will be provided to the Board in subsequent meetings.

ATTACHMENT

Attachment: Legislative Analysis

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BILL: SB 1828

AUTHOR: STATE SENATOR JOHN BURTON
(D-SAN FRANCISCO)

SUBJECT: NATIVE AMERICAN SACRED SITES

STATUS: ASSEMBLY COMMITTEE ON APPROPRIATIONS
HEARING AUGUST 14, 2002

POSITION: OPPOSE

RECOMMENDATION

Staff recommends that the MTA Board of Directors adopt an oppose position on SB 1828.

PROVISIONS

Existing law, the California Environmental Quality Act (CEQA) outlines the process whereby the environmental impact of projects is to be identified and mitigated. Under this process the lead agency responsible for the project is required to evaluate a project's impact and develop mitigation measures according to State guidelines. These guidelines identify the specific areas of environmental impact that must be evaluated including a projects impact on cultural, historic or religious resources.

SB 1828 would expand CEQA review in relation to Native American sacred sites and prohibit the issuance of a permit for a project until that review is completed to the satisfaction of the affected Native American group.

Specifically SB 1828 would:

- Establish state legislative findings relating to the need to preserve Native American sacred sites.
- Specify that the CEQA guidelines require a finding that a project may have a significant impact if the project may adversely affect a Native American sacred site.
- Require the lead agency to notify any affected tribe and the Native American Heritage Commission if a project is within one mile of the exterior boundary of a Native American reservation or sacred site.
- Require that a permit may not be issued until the affected Native American tribe has been notified, the sacred site has been certified based on evidence in the tribal history, and, the Native American tribe has accepted mitigation measures.

IMPACT ANALYSIS

SB 1828 is a significant change to the CEQA process in that Native American tribes would be granted essential veto power over projects.

Under CEQA, a lead agency is responsible for identifying project impacts and appropriate mitigation measures. The lead agency is responsible for certification of that evaluation. In that process a number of potential project impacts are evaluated. While there may be a number of groups concerned with a project's potential impacts, none are currently required to accept mitigation measures prior to a permit being issued. By requiring the withholding of a permit until a Native American group is satisfied with mitigation measures, SB 1828 would grant essential veto power over projects to Native American groups.

SB 1828 is being offered in response to numerous high profile projects in which Native American groups claim that sacred sites would be impacted and feel that the project sponsors have not responded with adequate protections. Examples of such projects include the Glamis Gold Mine proposal in Imperial County and a proposal by Calpine Energy to build a geothermal plant near Medicine Lake in Siskiyou County. In each case, Native American groups have disagreed with the environmental assessment by the sponsors and the mitigation measures being offered.

In addition to the basic problem of veto power created by the bill, SB 1828 creates a number of practical pitfalls in the definitions of terms used. First a project must notify a Native American group that the project is within one mile of the tribes recognized land or a sacred site. Second, while the tribe's recognized land is clearly codified, a sacred site is less clearly defined. In fact, documentation of a sacred site is protected from public disclosure to protect the site from public disruption. A sacred site, therefore, may be specified if it has been passed down through oral history or lore. During the CEQA process any existing Native American group could make a claim that an area is a sacred site triggering the requirements of the bill.

Additionally, the definition of Native American groups to be notified is also problematic in that while many Native American groups are recognized by the Federal Government, a number of other tribes exist but may have less visibility or formal recognition. Any existing tribe who is not notified would be able to block a project based solely on the lack of notice. These tribes do not even have to have any designated land.

SB 1828 could potentially affect any project subject to CEQA. Staff is not aware of any MTA project which would affect any specific sacred sites. Rather the problem created by SB 1828 is the ability of a group to raise heretofore-unknown concerns and create significant obstacles to final approval of transportation projects.

Staff recognizes that the impact to sacred sites is of serious concern. Staff would suggest that rather than create a separate authority for one group in the CEQA process, that process should be

refined to provide enhanced review of impacts to sacred sites and increased participation by affected groups.

SB 1828 has very polarized and powerful opposition and support. Supporters of SB 1828 include an exhaustive list of Native American groups. Opponents include the state's major business organizations and a number of influential corporations. Senator Burton has made it clear that this is one his priority bills this year.

Public agencies are beginning to focus on the legislation. The County of San Diego has adopted an oppose position on the legislation and cites the existence of 28 Native American reservation and hundreds or thousands of sacred sites. The County of San Diego also has a Resource Protection Ordinance which requires the preservation not just mitigation of archaeological resources. The League of Cities has also adopted an oppose position on SB 1828.

Staff recommends that the Board of Directors adopt an oppose position on SB 1828.