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# A BILL FOR AN ACT

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RELATING TO TRANSPORTATION ENVIRONMENTAL REVIEW.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

1 SECTION 1. The legislature finds that enabling the  
2 department of transportation to assume certain federal  
3 environmental review responsibilities under the National  
4 Environmental Policy Act of 1969 for highway projects, as well  
5 as railroad, public transportation, or multimodal projects  
6 within the State, will streamline project delivery while  
7 maintaining environmental protections. This Act authorizes the  
8 department to participate in the National Environmental Policy  
9 Act Assignment Program under title 23 United States Code  
10 sections 326 and 327, similar to the Texas Department of  
11 Transportation authorizing statute, and provides a limited  
12 waiver of sovereign immunity to comply with federal requirements  
13 for participation in the Program.

14 SECTION 2. Section 26-19, Hawaii Revised Statutes, is  
15 amended to read as follows:

16 **"§26-19 Department of transportation.** (a) The department  
17 of transportation shall be headed by a single executive to be  
18 known as the director of transportation. The department shall

1 establish, maintain, and operate transportation facilities of  
2 the State, including highways, airports, harbors, and any other  
3 transportation facilities and activities as may be authorized by  
4 law.

5 (b) The department shall plan, develop, promote, and  
6 coordinate various transportation systems management programs  
7 that shall include but not be limited to alternate work and  
8 school hours programs, bicycling programs, and ridesharing  
9 programs.

10 (c) The department shall develop and promote ridesharing  
11 programs that shall include but not be limited to carpool and  
12 vanpool programs, and may assist organizations interested in  
13 promoting similar programs, arrange for contracts with private  
14 organizations to manage and operate these programs, and assist  
15 in the formulation of ridesharing arrangements. Ridesharing  
16 programs include informal arrangements in which two or more  
17 persons ride together in a motor vehicle.

18 (d) The functions and authority heretofore exercised by  
19 the department of public works with respect to highways are  
20 transferred to the department of transportation established by  
21 this chapter.

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5 (f) Notwithstanding any law to the contrary, the  
6 department of transportation may:

7 (1) Acquire, or contract to acquire, by grant or purchase  
8 any real, personal, or mixed property or any interest  
9 therein for immediate or future use for the purposes  
10 of:

11 (A) Climate mitigation and adaptation;

12 (B) Noise and visual buffer zones and barriers;

13 (C) Transportation projects pursuant to section 264-

14 142;

15 (D) This section; or

16 (E) Title 15:

17 (2) Own, hold, improve, and rehabilitate any real,  
18 personal, or mixed property acquired pursuant to this  
19 subsection; and

20 (3) Sell, assign, exchange, transfer, convey, lease or  
21 otherwise dispose of, or encumber any real, personal,  
22 or mixed property acquired pursuant to this

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1 subsection. Upon making a finding that it is  
2 necessary to acquire any real property for immediate  
3 or future use for the purposes of this section or  
4 title 15, the department of transportation may acquire  
5 the property by condemnation pursuant to chapter 101;  
6 provided that the property shall not thereafter be  
7 acquired for any other public use without the consent  
8 of the department of transportation; provided that for  
9 the purposes of this subsection, the director of  
10 transportation shall be authorized to exercise all the  
11 powers vested in the board of land and natural  
12 resources for functions subject to chapter 171;  
13 provided further that if state lands, other than  
14 public lands, under the control and management of  
15 another department or agency are required by the  
16 department of transportation for the purposes of this  
17 section or title 15, the department or agency having  
18 control and management of the required lands shall,  
19 upon a request by the department of transportation and  
20 with the approval of the governor, transfer title to  
21 or lease those lands to the department of

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1 transportation under terms and conditions as may be  
2 agreed to by the parties.

3 (g) The department may assume responsibilities of the  
4 United States Department of Transportation with respect to  
5 duties under the National Environmental Policy Act of 1969 (42  
6 U.S.C. §4321 et seq.) and with respect to duties under other  
7 federal environmental laws as they apply to designated  
8 transportation projects. The department may:

9 (1) Assume responsibilities under title 23 United States  
10 Code sections 326 and 327;  
11 (2) Enter into one or more agreements, including memoranda  
12 of understanding, with the United States Secretary of  
13 Transportation related to:  
14 (A) Designating categorical exclusions from federally  
15 required environmental assessments or impact  
16 statements for transportation projects as  
17 provided by title 23 United States Code section  
18 326; or  
19 (B) The federal surface transportation project  
20 delivery program for the delivery of  
21 transportation projects, including highway,  
22 railroad, public transportation, and multimodal

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1                   projects as provided by title 23 United States  
2                   Code section 327; and

3                   (3) Adopt rules pursuant to chapter 91 to implement this  
4                   subsection and adopt relevant federal environmental  
5                   standards as the standards for this State for a  
6                   program described in this subsection.

7                   (h) Except as provided below, sovereign immunity to suit  
8                   in federal court and from liability is waived and abolished with  
9                   regard to the compliance, discharge, or enforcement of a  
10                   responsibility assumed by the department under subsection (g).  
11                   The waiver under this subsection does not create liability for  
12                   the department that exceeds the liability created under title 23  
13                   United States Code section 326 or 327 and shall only be valid  
14                   if:

15                   (1) The department executes a memorandum of understanding  
16                   with the United States Department of Transportation  
17                   accepting the jurisdiction of the federal courts as  
18                   required by title 23 United States Code sections  
19                   326(c) and 327(c);

20                   (2) The act or omission that is the subject of the lawsuit  
21                   arises out of compliance, discharge, or enforcement of

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1           responsibilities assumed by the department pursuant to  
2           title 23 United States Code sections 326 and 327; and  
3           (3) The memorandum of understanding is in effect when the  
4           act or omission that is the subject of the federal  
5           lawsuit occurred."

6           SECTION 6. New statutory material is underscored.

7           SECTION 7. This Act shall take effect upon its approval.

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INTRODUCED BY:

M. M. Fiser

10           BY REQUEST

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**Report Title:**

DOT; National Environmental Policy Act; NEPA Assignment

**Description:**

Authorizes the Department of Transportation to assume responsibilities under the National Environmental Policy Act of 1969 for highway projects, as well as railroad, public transportation, or multimodal projects within the State, allowing streamlined environmental reviews. Provides a limited waiver of sovereign immunity to comply with federal requirements under 23 U.S.C. §§326 and 327.

*The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.*

**SB. NO. 3154**

JUSTIFICATION SHEET

DEPARTMENT: TRANSPORTATION

TITLE: A BILL FOR AN ACT RELATING TO TRANSPORTATION ENVIROMENTAL REVIEW.

PURPOSE: To authorize the Department to assume federal environmental review responsibilities under the National Environmental Policy Act of 1969 (NEPA) for highway projects, as well as railroad, public transportation, or multimodal projects within the State, streamlining project delivery while maintaining environmental protections, and to provide a limited waiver of sovereign immunity to comply with federal requirements under 23 U.S.C. §§326 and 327.

MEANS: Amend section 26-19, Hawaii Revised Statutes (HRS).

JUSTIFICATION: The NEPA Assignment Program, authorized under 23 U.S.C. §§326 and 327, allows state departments of transportation to assume federal environmental review responsibilities for highway projects, as well as railroad, public transportation, or multimodal projects within the State, reducing delays and improving efficiency in project delivery. States like Texas have successfully implemented this program, by achieving faster project approvals while complying with federal environmental standards. By amending section 26-19, HRS, the Department will gain authority to assume NEPA responsibilities, enter memoranda of understanding with the U.S. Department of Transportation, and adopt federal environmental standards as state standards. A limited waiver of sovereign immunity is included to meet federal requirements for judicial review, ensuring compliance with 23 U.S.C. §§326(b)(4) and 327(c)(3)(B). This will enhance the department's ability to deliver critical infrastructure projects,

such as highways, while maintaining environmental protections.

Impact on the public: The public will benefit from faster delivery of transportation infrastructure projects, such as highways, airports, and harbors, due to streamlined environmental reviews. This will reduce delays in addressing traffic congestion, improving safety, and enhancing connectivity across the State. Environmental protections will remain intact, as the Department will adhere to federal NEPA standards.

Impact on the department and other agencies: The Department will assume additional responsibilities for conducting environmental reviews, which may require staff training and process adjustments. However, this will reduce reliance on federal agencies, such as the Federal Highway Administration, for approvals, enabling greater control over project timelines. Other state agencies, such as the Department of Land and Natural Resources, may coordinate with the Department on environmental compliance but are not directly affected by the statutory change. The Department of the Attorney General will be required to defend any lawsuits arising from the Department's NEPA Assignment responsibilities and arising under federal law. As a result, the State could see an increase in litigation in areas of law that are not historically under its jurisdiction.

GENERAL FUND:

No direct impact on the general fund is anticipated. Any costs for training or program implementation will be absorbed within the Department's existing budget or funded through federal transportation grants.

**OTHER FUNDS:** Federal transportation funds may be used to support program implementation, including training and compliance activities, as permitted under 23 U.S.C. §§326 and 327.

**PPBS PROGRAM  
DESIGNATION:** TRN 595.

**OTHER AFFECTED  
AGENCIES:** None directly affected. The Department of Land and Natural Resources may collaborate on environmental compliance as needed.

**EFFECTIVE DATE:** Upon approval.