

---

---

# A BILL FOR AN ACT

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.

8           The purpose of this Act is to:

- 9           (1) Authorize the department of transportation to  
10           participate in the National Environmental Policy Act  
11           assignment program under title 23 United States Code  
12           sections 326 and 327, similar to the Texas Department  
13           of Transportation authorizing statute; and  
14           (2) Provide a limited waiver of sovereign immunity to  
15           comply with federal requirements for participation in  
16           the program.



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

3 **"§26-19 Department of transportation.** (a) The department  
4 of transportation shall be headed by a single executive to be  
5 known as the director of transportation. The department shall  
6 establish, maintain, and operate transportation facilities of  
7 the State, including highways, airports, harbors, and any other  
8 transportation facilities and activities as may be authorized by  
9 law.

10 (b) The department shall plan, develop, promote, and  
11 coordinate various transportation systems management programs  
12 that shall include but not be limited to alternate work and  
13 school hours programs, bicycling programs, and ridesharing  
14 programs.

15 (c) The department shall develop and promote ridesharing  
16 programs that shall include but not be limited to carpool and  
17 vanpool programs, and may assist organizations interested in  
18 promoting similar programs, arrange for contracts with private  
19 organizations to manage and operate these programs, and assist  
20 in the formulation of ridesharing arrangements. Ridesharing



1 programs include informal arrangements in which two or more  
2 persons ride together in a motor vehicle.

3 (d) The functions and authority heretofore exercised by  
4 the department of public works with respect to highways are  
5 transferred to the department of transportation established by  
6 this chapter.

7 (e) On July 1, 1961, the Hawaii aeronautics commission,  
8 the board of harbor commissioners, and the highway commission  
9 shall be abolished and their remaining functions, duties, and  
10 powers shall be transferred to the department of transportation.

11 (f) Notwithstanding any law to the contrary, the  
12 department of transportation may:

13 (1) Acquire, or contract to acquire, by grant or purchase  
14 any real, personal, or mixed property or any interest  
15 therein for immediate or future use for the purposes  
16 of:

17 (A) Climate mitigation and adaptation;

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

19 (C) Transportation projects pursuant to section  
20 264-142;

21 (D) This section; or



1 (E) Title 15;

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

5 (3) Sell, assign, exchange, transfer, convey, lease or  
6 otherwise dispose of, or encumber any real, personal,  
7 or mixed property acquired pursuant to this  
8 subsection. Upon making a finding that it is  
9 necessary to acquire any real property for immediate  
10 or future use for the purposes of this section or  
11 title 15, the department of transportation may acquire  
12 the property by condemnation pursuant to chapter 101;  
13 provided that the property shall not thereafter be  
14 acquired for any other public use without the consent  
15 of the department of transportation;

16 provided that for the purposes of this subsection, the director  
17 of transportation shall be authorized to exercise all the powers  
18 vested in the board of land and natural resources for functions  
19 subject to chapter 171; provided further that if state lands,  
20 other than public lands, under the control and management of  
21 another department or agency are required by the department of



1 transportation for the purposes of this section or title 15, the  
2 department or agency having control and management of the  
3 required lands shall, upon a request by the department of  
4 transportation and with the approval of the governor, transfer  
5 title to or lease those lands to the department of  
6 transportation under terms and conditions as may be agreed to by  
7 the parties.

8 (g) The department of transportation may assume  
9 responsibilities of the United States Department of  
10 Transportation with respect to duties under the National  
11 Environmental Policy Act of 1969, Public Law 91-190, and with  
12 respect to duties under other federal environmental laws as they  
13 apply to designated transportation projects. The department of  
14 transportation may:

15 (1) Assume responsibilities under title 23 United States  
16 Code sections 326 and 327;  
17 (2) Enter into one or more agreements, including memoranda  
18 of understanding, with the United States Secretary of  
19 Transportation related to:  
20 (A) The designation of categorical exclusions from  
21 federally required environmental assessments or



1 impact statements for transportation projects as  
2 provided by title 23 United States Code section  
3 326; or

4 (B) The federal surface transportation project  
5 delivery program for the delivery of  
6 transportation projects, including highway,  
7 railroad, public transportation, and multimodal  
8 projects as provided by title 23 United States  
9 Code section 327; and

10 (3) Adopt rules pursuant to chapter 91 to implement this  
11 subsection and adopt relevant federal environmental  
12 standards as the standards for the State for a program  
13 described in this subsection.

14 (h) Except as provided in this subsection, sovereign  
15 immunity to suit in federal court and from liability is waived  
16 and abolished with regard to the compliance, discharge, or  
17 enforcement of a responsibility assumed by the department of  
18 transportation under subsection (g). The waiver under this  
19 subsection shall not create liability for the department of  
20 transportation that exceeds the liability created under title 23



1 United States Code section 326 or 327 and shall only be valid  
2 if:

3 (1) The department of transportation executes a memorandum  
4 of understanding with the United States Department of  
5 Transportation accepting the jurisdiction of the  
6 federal courts as required by title 23 United States  
7 Code sections 326(c) and 327(c);

8 (2) The act or omission that is the subject of the lawsuit  
9 arises out of compliance, discharge, or enforcement of  
10 responsibilities assumed by the department of  
11 transportation pursuant to title 23 United States Code  
12 sections 326 and 327; and

13 (3) The memorandum of understanding is in effect when the  
14 act or omission that is the subject of the federal  
15 lawsuit occurred."

16 SECTION 3. New statutory material is underscored.

17 SECTION 4. This Act shall take effect upon its approval.



**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 United States Code sections 326 and 327. (SD2)

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

