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# 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 Hawaii  
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 authorize the department to  
9 participate in the National Environmental Policy Act Assignment  
10 Program under title 23 United States Code sections 326 and 327,  
11 similar to the Texas Department of Transportation authorizing  
12 statute, and provide a limited waiver of sovereign immunity to  
13 comply with federal requirements for participation in the  
14 program.

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



1       **"§26-19 Department of transportation.** (a) The department  
2 of transportation shall be headed by a single executive to be  
3 known as the director of transportation. The department shall  
4 establish, maintain, and operate transportation facilities of  
5 the State, including highways, airports, harbors, and any other  
6 transportation facilities and activities as may be authorized by  
7 law.

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

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



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

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

9 (f) Notwithstanding any law to the contrary, the  
10 department of transportation may:

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

15 (A) Climate mitigation and adaptation;

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

17 (C) Transportation projects pursuant to section 264-  
18 142;

19 (D) This section; or

20 (E) Title 15;



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

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

15 provided that for the purposes of this subsection, the director  
16 of transportation shall be authorized to exercise all the powers  
17 vested in the board of land and natural resources for functions  
18 subject to chapter 171; provided further that if state lands,  
19 other than public lands, under the control and management of  
20 another department or agency are required by the department of  
21 transportation for the purposes of this section or title 15, the



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

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

13 (1) Assume responsibilities under title 23 United States  
14 Code sections 326 and 327;

15 (2) Enter into one or more agreements, including memoranda  
16 of understanding, with the United States Secretary of  
17 Transportation related to:

18 (A) Designating categorical exclusions from federally  
19 required environmental assessments or impact  
20 statements for transportation projects as



provided by title 23 United States Code section  
326; or

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

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

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



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

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

10      (3) The memorandum of understanding is in effect when the  
11      act or omission that is the subject of the federal  
12      lawsuit occurred."

13      SECTION 3. New statutory material is underscored.

14      SECTION 4. This Act shall take effect on July 1, 3000.



**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. Effective 7/1/3000. (HD1)

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

