
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 to participate in the
10 National Environmental Policy Act Assignment Program
11 under title 23 United States Code sections 326 and
12 327, similar to the Texas Department of Transportation
13 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; provided that for

16 the purposes of this subsection, the director of

17 transportation shall be authorized to exercise all the

18 powers vested in the board of land and natural

19 resources for functions subject to chapter 171;

20 provided further that if state lands, other than

21 public lands, under the control and management of



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

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

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

19 (2) Enter into one or more agreements, including memoranda
20 of understanding, with the United States Secretary of
21 Transportation related to:

- 1 (A) Designating categorical exclusions from federally
2 required environmental assessments or impact
3 statements for transportation projects as
4 provided by title 23 United States Code section
5 326; or
- 6 (B) The federal surface transportation project
7 delivery program for the delivery of
8 transportation projects, including highway,
9 railroad, public transportation, and multimodal
10 projects as provided by title 23 United States
11 Code section 327; and
- 12 (3) Adopt rules pursuant to chapter 91 to implement this
13 subsection and adopt relevant federal environmental
14 standards as the standards for this State for a
15 program described in this subsection.
- 16 (h) Except as provided below, sovereign immunity to suit
17 in federal court and from liability is waived and abolished with
18 regard to the compliance, discharge, or enforcement of a
19 responsibility assumed by the department of transportation under
20 subsection (g). The waiver under this subsection shall not
21 create liability for the department of transportation that

1 exceeds the liability created under title 23 United States Code
2 section 326 or 327 and shall only be valid 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 6. New statutory material is underscored.

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

18



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. (SD1)

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