

1 **TRANSPORTATION PROJECT AMENDMENTS**

2 2015 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: V. Lowry Snow**

5 Senate Sponsor: _____

7 **LONG TITLE**

8 **General Description:**

9 This bill modifies the Transportation Code by amending provisions relating to
10 participation in a federal program assuming responsibility for environmental review of
11 highway projects.

12 **Highlighted Provisions:**

13 This bill:

14 ▶ authorizes the Department of Transportation to assume federal responsibilities with
15 respect to one or more highway projects within the state under the National
16 Environmental Policy Act of 1969 for environmental review, consultation, or other
17 action required under any federal environmental law pertaining to the review or
18 approval of a specific highway project;

19 ▶ requires the state to waive its immunity under the Eleventh Amendment to the
20 United States Constitution and consent to suit in a federal court for lawsuits arising
21 out of the department's compliance, discharge, or enforcement of the assumed
22 responsibilities;

23 ▶ requires the executive director of the Department of Transportation to execute a
24 memorandum of understanding with the United States Department of
25 Transportation accepting the jurisdiction of the federal courts for acts or omissions
26 that relate to compliance, discharge, or enforcement of responsibilities assumed by
27 the department; and



28 ▶ makes technical corrections.

29 **Money Appropriated in this Bill:**

30 None

31 **Other Special Clauses:**

32 None

33 **Utah Code Sections Affected:**

34 AMENDS:

35 72-1-207, as last amended by Laws of Utah 2007, Chapter 333

36 72-6-120, as last amended by Laws of Utah 2008, Chapter 382



38 *Be it enacted by the Legislature of the state of Utah:*

39 Section 1. Section 72-1-207 is amended to read:

40 **72-1-207. Department may sue and be sued -- Legal adviser of department --**

41 **Partial waiver of Eleventh Amendment immunity.**

42 (1) The department may sue, and it may be sued only on written contracts made by it or
43 under its authority.

44 (2) The department may sue in the name of the state.

45 (3) In all matters requiring legal advice in the performance of its duties and in the
46 prosecution or defense of any action growing out of the performance of its duties, the attorney
47 general is the legal adviser of the commission, and the department, and shall perform any and
48 all legal services required by the commission and the department without other compensation
49 than his salary.

50 (4) Upon request of the department, the attorney general shall aid in any investigation,
51 hearing, or trial under the provisions of Chapter 9, Motor Carrier Safety Act, and institute and
52 prosecute actions or proceedings for the enforcement of the provisions of the Constitution and
53 statutes of this state or any rule or order of the department affecting motor carriers of persons
54 and property.

55 (5) (a) The state waives its immunity under the 11th Amendment of the United States
56 Constitution and consents to suit in a federal court for lawsuits arising out of the department's
57 compliance, discharge, or enforcement of responsibilities assumed pursuant to 23 U.S.C. [~~Sec.~~
58 Secs. 326 and 327.

- 59 (b) The waiver of immunity under this Subsection (5) is valid only if:
- 60 (i) the executive director or the executive director's designee executes a memorandum
- 61 of understanding with the United States Department of Transportation accepting the
- 62 jurisdiction of the federal courts as required by 23 U.S.C. [~~Sec.~~] Secs. 326(c) and 327(c);
- 63 (ii) before execution of the memorandum of understanding under Subsection (5)(b)(i),
- 64 the attorney general has issued an opinion letter to the executive director and the administrator
- 65 of the Federal Highway Administration that the memorandum of understanding and the waiver
- 66 of immunity are valid and binding upon the state;
- 67 (iii) the act or omission that is the subject of the lawsuit arises out of or relates to
- 68 compliance, discharge, or enforcement of responsibilities assumed by the department pursuant
- 69 to 23 U.S.C. [~~Sec.~~] Secs. 326 and 327; and
- 70 (iv) the memorandum of understanding is in effect when the act or omission that is the
- 71 subject of the federal lawsuit occurred.

72 Section 2. Section **72-6-120** is amended to read:

73 **72-6-120. Department authorized to participate in federal program assuming**

74 **responsibility for environmental review of highway projects -- Rulemaking authority.**

75 (1) The department may:

76 (a) assume responsibilities under 23 U.S.C. Sec. 326 for:

77 (i) determining whether state highway design and construction projects are

78 categorically excluded from requirements for environmental assessments or environmental

79 impact statements; and

80 (ii) environmental review, consultation, or other actions required under federal law for

81 categorically excluded projects;

82 (b) assume responsibilities under 23 U.S.C. Sec. 327 with respect to one or more

83 highway projects within the state under the National Environmental Policy Act of 1969 for

84 environmental review, consultation, or other action required under any federal environmental

85 law pertaining to the review or approval of a specific highway project;

86 [~~(b)~~] (c) enter one or more memoranda of understanding with the United States

87 Department of Transportation related to federal highway programs as provided in 23 U.S.C.

88 [~~Sec.~~] Secs. 326 and 327 subject to the requirements of Subsection 72-1-207(5);

89 [~~(c)~~] (d) accept, receive, and administer grants, other money, or gifts from public and

90 private agencies, including the federal government, for the purpose of carrying out the
91 programs authorized under this section; and

92 ~~(d)~~ (e) cooperate with the federal government in implementing this section and any
93 memorandum of understanding entered into under Subsection 72-1-207(5).

94 (2) Notwithstanding any other provision of law, in implementing a program under this
95 section that is approved by the United States Department of Transportation, the department is
96 authorized to:

97 (a) perform or conduct any of the activities described in a memorandum of
98 understanding entered into under Subsection 72-1-207(5);

99 (b) take actions necessary to implement the program; and

100 (c) adopt relevant federal environmental standards as the standards for this state for
101 categorically excluded projects.

102 (3) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
103 department may makes rules to implement the provisions of this section.

Legislative Review Note
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Office of Legislative Research and General Counsel