

1 **DEPARTMENT OF TRANSPORTATION**
2 **PROJECTS - CATEGORICALLY EXCLUDED**
3 **ENVIRONMENTAL PROJECTS**

4 2007 GENERAL SESSION

5 STATE OF UTAH

6 **Chief Sponsor: Stephen H. Urquhart**

7 Senate Sponsor: Gregory S. Bell

8
9 **LONG TITLE**

10 **General Description:**

11 This bill modifies the Transportation Code by amending provisions relating to
12 implementing certain federal highway programs.

13 **Highlighted Provisions:**

14 This bill:

15 ▶ authorizes the department to assume responsibility for:

16 • determining whether state highway design or construction projects are
17 categorically excluded from requirements for environmental assessments or
18 environmental impact statements; and
19 • environmental review, consultation, or other actions required under federal law
20 for categorically excluded projects;

21 ▶ authorizes the waiver of the state's immunity under the 11th Amendment of the
22 United States Constitution if:

23 • the executive director executes a memorandum of understanding with the
24 United States Department of Transportation accepting jurisdiction of the federal
25 courts for certain responsibilities that the Department of Transportation has
26 assumed;

27 • the attorney general has issued an opinion letter finding that the memorandum



28 of understanding is valid and binding on the state; and

29 • the act or omission that is the subject of the lawsuit arises out of or relates to
30 compliance, discharge, or enforcement of responsibilities assumed by the
31 Department of Transportation; and

32 ▶ grants the Department of Transportation rulemaking authority to implement the
33 program.

34 **Monies Appropriated in this Bill:**

35 None

36 **Other Special Clauses:**

37 None

38 **Utah Code Sections Affected:**

39 AMENDS:

40 **72-1-207**, as renumbered and amended by Chapter 270, Laws of Utah 1998

41 ENACTS:

42 **72-6-120**, Utah Code Annotated 1953



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

45 Section 1. Section **72-1-207** is amended to read:

46 **72-1-207. Department may sue and be sued -- Legal adviser of department --**
47 **Partial waiver of 11th Amendment immunity.**

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

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

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

56 (4) Upon request of the department, the attorney general shall aid in any investigation,
57 hearing, or trial under the provisions of Chapter 9, Motor Carrier Safety Act, and institute and
58 prosecute actions or proceedings for the enforcement of the provisions of the Constitution and

59 statutes of this state or any rule or order of the department affecting motor carriers of persons
60 and property.

61 (5) (a) The state waives its immunity under the 11th Amendment of the United States
62 Constitution and consents to suit in a federal court for lawsuits arising out of the department's
63 compliance, discharge, or enforcement of responsibilities assumed pursuant to 23 U.S.C. Sec.
64 326.

65 (b) The waiver of immunity under this Subsection (5) is valid only if:

66 (i) the executive director or the executive director's designee executes a memorandum
67 of understanding with the United States Department of Transportation accepting the
68 jurisdiction of the federal courts as required by 23 U.S.C. Sec. 326(c);

69 (ii) before execution of the memorandum of understanding under Subsection (5)(b)(i),
70 the attorney general has issued an opinion letter to the executive director and the administrator
71 of the Federal Highway Administration that the memorandum of understanding and the waiver
72 of immunity are valid and binding upon the state;

73 (iii) the act or omission that is the subject of the lawsuit arises out of or relates to
74 compliance, discharge, or enforcement of responsibilities assumed by the department pursuant
75 to 23 U.S.C. Sec. 326; and

76 (iv) the memorandum of understanding is in effect when the act or omission that is the
77 subject of the federal lawsuit occurred.

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

79 **72-6-120. Department authorized to participate in federal program assuming**
80 **responsibility for environmental review of categorically excluded projects -- Rulemaking**
81 **authority.**

82 (1) The department may:

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

84 (i) determining whether state highway design and construction projects are
85 categorically excluded from requirements for environmental assessments or environmental
86 impact statements; and

87 (ii) environmental review, consultation, or other actions required under federal law for
88 categorically excluded projects;

89 (b) enter one or more memoranda of understanding with the United States Department

90 of Transportation related to federal highway programs as provided in 23 U.S.C. Sec. 326
91 subject to the requirements of Subsection 72-1-207(5);

92 (c) accept, receive, and administer grants, other money, or gifts from public and private
93 agencies, including the federal government, for the purpose of carrying out the programs
94 authorized under this section; and

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

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

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

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

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

105 (3) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the
106 department may makes rules to implement the provisions of this section.

Legislative Review Note

as of 1-17-07 10:36 AM

Office of Legislative Research and General Counsel