

**HB**

**434**

## NEPA Delegation Pilot Fact Sheet

SAFETEA-LU includes a NEPA delegation pilot program for five states – Alaska, California, Oklahoma, Ohio, and Texas. Under the program, the five states are eligible to apply for delegation of the Secretary of Transportation's (Secretary) NEPA responsibilities for one or more highway projects within the state. The state may also apply for delegation of some or all of the Secretary's review and consultation responsibilities under other Federal environmental laws. The scope of delegation will be determined through application to the Secretary and execution of a Memorandum of Understanding (MOU).

### Time Frame:

- Duration of the pilot program is six years from enactment of SAFETEA-LU. Unless extended by statute, the pilot terminates on August 10, 2011.
- The Secretary is required to promulgate regulations to establish delegation application requirements. Rulemaking is required to be complete within 270 days of the Act. Rulemaking is currently behind schedule.
- The State may not submit its application until:
  - Rulemaking is complete, and
  - The State must advertise the application and solicit public comment.
- After application is accepted, the State and Secretary will enter into an MOU.
- Once the MOU is executed, delegation may proceed.

### Delegation Options:

- NEPA delegation is limited to highway projects. The term includes roads, streets, and parkways, rights-of-way, bridges, and protective structures.
  - NEPA delegation may be programmatic, or for specific, identified projects. The State has broad latitude to determine the FHWA environmental responsibilities it would like to assume (i.e. Ces, Eas, EISs, Section 4(f)).
- The State intends to request delegation for all of the Secretary's environmental review and consultation responsibilities under other Federal environmental laws (examples include Section 106 of the National Historic Preservation Act, and Section 7 of the Endangered Species Act).
- NEPA delegation is limited to environmental decision-making. It does not extend to engineering decisions.

#### Requirements and Responsibilities:

- Under delegation, the State would assume sole responsibility and liability for its NEPA actions and decisions and would be subject to Federal court jurisdiction. To receive delegation, the State is required to waive its 11<sup>th</sup> Amendment sovereign immunity from suits in Federal court for its decisions under NEPA.
- The State will be required to comply with all applicable Federal laws, Executive Orders, regulations, policies and guidance for the responsibilities it assumes.
- The State's delegation programs will be audited, twice annually for the first two years, annually thereafter. The audits will be available for public comment.
- The Secretary is required to submit an annual report to Congress on the pilot program.
- The Secretary may terminate any state's participation in the pilot program at any time for cause.

# FISCAL NOTE

**STATE OF ALASKA**  
**2006 LEGISLATIVE SESSION**

Fiscal Note Number: 2  
 Bill Version: HB 434  
 (H) Publish Date: 2/8/06

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: DOT&PF  
 Title: NEPA Pilot Project RDU: Design, Engineering, Construction  
 Component: Statewide Design & Eng Svcs  
 Sponsor: \_\_\_\_\_ Component No.: 2357  
 Requester: Governor

**Expenditures/Revenues** (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012
Personal Services	422.7	422.7	422.7	422.7	422.7	
Travel	50.0	50.0	50.0	50.0	50.0	
Contractual	154.7	154.7	154.7	154.7	154.7	
Supplies	20.0	10.0	10.0	10.0	10.0	
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>647.4</b>	<b>637.4</b>	<b>637.4</b>	<b>637.4</b>	<b>637.4</b>	<b>0.0</b>

<b>CAPITAL EXPENDITURES</b>						
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<b>CHANGE IN REVENUES ( )</b>						
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**FUND SOURCE** (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1061 CIP Rcpts	647.4	637.4	637.4	637.4	637.4	
Other (Specify Type--Do not abbreviate)						
<b>TOTAL</b>	<b>647.4</b>	<b>637.4</b>	<b>637.4</b>	<b>637.4</b>	<b>637.4</b>	<b>0.0</b>

Estimate of any current year (FY2006) cost: 0.0

Mark this box (X) if funding for this bill is included in the Governor's FY 2007 budget proposal:

**POSITIONS**

Full-time	4	4	4	4	4	
Part-time						
Temporary						

**ANALYSIS:** (Attach a separate page if necessary)

Under Section 6005 of SAFETEA-LU, the State of Alaska may assume the responsibilities of the Federal Highway Administration (FHWA) under the National Environmental Policy Act of 1969. Specifically, the FHWA may assign, with some exceptions, all or part of their responsibilities for environmental review, consultation, approvals or other actions required under any federal environmental law pertaining to the review and approval of federally funded projects. For the State to assume these obligations 1) DOT/PF requires two positions to fulfill the role of performing federal actions such as reviewing and approving federal environmental documents, 4(f) statements and environmental document re-evaluations (2 positions at range 24C and 2 positions at range 21C plus support costs), 2) the Attorney General's office requires one position to perform required legal sufficiency reviews of environmental documents (provided through a reimbursable services agreement (RSA)). Federal authorization for this pilot program expires in FY2011.

Prepared by: Nancy Slagle, Director  
 Division: Administrative Services  
 Approved by: Mike Barton  
 Agency: DOT&PF

Phone: 465-3911  
 Date/Time: 12/30/05 9:00am  
 Date: 12/30/05

# FISCAL NOTE

**STATE OF ALASKA**  
**2006 LEGISLATIVE SESSION**

Fiscal Note Number: 1  
 Bill Version: HB 434  
 (H) Publish Date: 2/8/06

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: DEC  
 Title NEPA Pilot Program RDU \_\_\_\_\_  
 Component \_\_\_\_\_  
 Sponsor Rules Committee  
 Requester Governor Component No. \_\_\_\_\_

**Expenditures/Revenues (Thousands of Dollars)**

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

<b>CAPITAL EXPENDITURES</b>						
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<b>CHANGE IN REVENUES ( )</b>						
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**FUND SOURCE (Thousands of Dollars)**

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

Estimate of any current year (FY2006) cost: 0.0  
 Mark this box (X) if funding for this bill is included in the Governor's FY 2007 budget proposal:

**POSITIONS**

Full-time						
Part-time						
Temporary						

**ANALYSIS:** (Attach a separate page if necessary)

Prepared by: Molly Hicks Phone 465-5065  
 Division: Office of the Commissioner Date/Time 12/21/2005 9:12am  
 Approved by: Kurt Fredriksson Date 12/21/05 10:02am  
 Agency: Department of Environmental Conservation