

**SB**

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STATE OF ALASKA  
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February 7, 2006

The Honorable Ben Stevens  
President of the Senate  
Alaska State Legislature  
State Capitol, Room 111  
Juneau, AK 99801-1182

Dear President Stevens:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill that would authorize the Alaska Department of Transportation and Public Facilities to assume certain federal programmatic and environmental responsibilities as provided for by the United States Congress in the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU), P.L. 109-59. A prerequisite to assumption of the duties is that the State of Alaska agree to a waiver of immunity to suit in federal court for those duties specifically assumed from the United States Department of Transportation.

Under the recent SAFETEA-LU amendments, the State of Alaska is one of only five named states with the opportunity to participate in a so-called "pilot program" for assumption of duties and responsibilities under 23 U.S.C. 327 (National Environmental Policy Act of 1969). This bill provides a unique opportunity for the State of Alaska to have more direct involvement, and control, in the planning and decision-making process involved with many public projects.

I urge your prompt and favorable action on this measure.

Sincerely yours,

Frank H. Murkowski  
Governor

Enclosure

COMMITTEE COPY

## 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 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 its 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 expects 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, 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 program 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.