

## 1 VIRGINIA ACTS OF ASSEMBLY — CHAPTER

2 *An Act to amend the Code of Virginia by adding a section numbered 33.2-228.1, relating to Commissioner of*  
 3 *Highways; certain agreements with the U.S. Department of Transportation; National Environmental*  
 4 *Policy Act.*

5 [H 411]

6 Approved

7 **Be it enacted by the General Assembly of Virginia:**8 **1. That the Code of Virginia is amended by adding a section numbered 33.2-228.1 as follows:**

9 **§ 33.2-228.1. *Agreements between Commissioner of Highways and U.S. Department of Transportation;***  
 10 ***National Environmental Policy Act.***

11 *A. The Commissioner of Highways may enter into agreements and cooperate with the U.S. Department of*  
 12 *Transportation, or any other appropriate federal agency, pursuant to 23 U.S.C. §§ 326 and 327, regarding*  
 13 *state assumption of responsibility for categorical exclusions and the Surface Transportation Project Delivery*  
 14 *Program for a term of five years. Pursuant to such an agreement, the Department may assume certain*  
 15 *responsibilities of the U.S. Secretary of Transportation and take any other actions required by any such*  
 16 *agreements or as authorized by 23 U.S.C. §§ 326 and 327, including adopting any rules or regulations and*  
 17 *making expenditures of money in connection with responsibilities assumed under such agreements.*

18 *B. Subject to the limitations of subsection C, the Commonwealth hereby waives its immunity from civil*  
 19 *suit in a federal court under the Eleventh Amendment to the Constitution of the United States and consents to*  
 20 *the exclusive jurisdiction of the federal courts over any civil action solely with regard to the compliance,*  
 21 *discharge, or enforcement of the responsibilities assumed under agreements authorized by subsection A in*  
 22 *accordance with the same legal standards and requirements as would be applicable to a suit against the U.S.*  
 23 *Secretary of Transportation arising out of the responsibilities assumed under the agreement.*

24 *C. The waiver of immunity under subsection B is valid only if (i) the Commissioner of Highways has*  
 25 *executed an agreement with the U.S. Department of Transportation pursuant to 23 U.S.C. § 326 or 327, (ii)*  
 26 *the act or omission that is the subject of the lawsuit arises out of the discharge of responsibilities assumed by*  
 27 *the Department pursuant to 23 U.S.C. § 326 or 327, and (iii) the agreement is in effect when the act or*  
 28 *omission that is the subject of the lawsuit occurs.*

29 **2. That the Department of Transportation shall make any revisions to its National Environmental**  
 30 **Policy Act (NEPA) Program Manual as may be necessary from time to time to implement the**  
 31 **provisions of this act and shall post any proposed revisions to the NEPA Program Manual, excluding**  
 32 **administrative changes, on the Department of Transportation's website for public comment for a**  
 33 **period of 30 days that shall begin at least 45 days prior to the intended effective date of any such**  
 34 **revisions.**

35 **3. That the provisions of this act shall expire five years after the date on which the first agreement is**  
 36 **entered into pursuant to the first enactment of this act unless the General Assembly reenacts this act or**  
 37 **enacts similar legislation authorizing the Commissioner of Highways to enter into a subsequent**  
 38 **agreement for a period of up to five years. The Commissioner of Highways shall, upon entering into an**  
 39 **agreement pursuant to this act, notify the chair of the Virginia Code Commission in writing of the date**  
 40 **on which he has entered into such agreement.**