

VIRGINIA ACTS OF ASSEMBLY - 2026 SESSION

CHAPTER 133

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

[H 411]

Approved April 6, 2026

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding a section numbered 33.2-228.1 as follows:

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

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

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

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

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

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