

EXECUTIVE ORDER NO. 17-04
(State Safety Oversight Agency and Authorities)

WHEREAS, Chapter 53 of title 49 United States Code, authorizes the United States Secretary of Transportation to make grants to states for purposes including but not limited to capital projects and operational assistance for public transportation systems; and

WHEREAS, Chapter 53 of title 49 United States Code section 5329 "Public Transportation Safety Program" authorizes the United States Secretary of Transportation to create and implement regulations to improve the safety of all public transportation systems that receive funding under chapter 53 of title 49; and

WHEREAS, Chapter 53 of title 49 United States Code section 5329(e), entitled "State safety oversight program," requires a state with rail fixed guideway public transportation system(s) not subject to regulation by the Federal Railroad Administration, including systems in the engineering or construction phase of development, "assume responsibility for overseeing rail fixed guideway public transportation safety" through a designated State Safety Oversight Agency (SSOA); and

WHEREAS, the federal regulations implementing title 49 United States Code section 5329 as set forth in title 49 Code of Federal Regulations part 674.13, require the designated SSOA be dissociated legally and financially from the rail fixed guideway transit system it is obliged to oversee, and has the authority to review, approve, oversee, investigate and enforce the federal rules and regulations set forth for a rail fixed guideway public transportation systems, as required by Chapter 53 of title 49 United States Code section 5329; and

WHEREAS, the SSOA at least once per year reports the status of the safety of each rail fixed guideway public transportation system to the Governor, the Federal Transit Administration (FTA) and the

board of directors, or equivalent entity, of the rail fixed guideway public transportation system; and

WHEREAS, the federal regulations implementing title 49 United States Code section 5329 as set forth in title 49 Code of Federal Regulations part 674.19, "Certification of a State Safety Oversight Program" requires the FTA Administrator make a determination and certify that a State's SSO Program meets the requirements of title 49 United States Code section 5329(e) and is adequate to promote the purposes of the title 49 United States Code section 5329 "including, but not limited to, the National Public Transportation Safety Plan, Public Transportation Safety Certification Training Program, and Public Transportation Agency Safety Plans"; and

WHEREAS, the federal regulations implementing title 49 United States Code section 5329 as set forth in title 49 Code of Federal Regulations part 674.19(c), provides that when State's SSO program is unable to modify its SSO program to merit the FTA Administrator issuance of a certification, the FTA Administrator may impose financial penalties which may include, withholding of up to five percent of the title 49 United States Code section 5307 Urbanized Area formula funds appropriated for use in the State until such time as the SSO program can be certified.; and

WHEREAS, section 29-13, Hawaii Revised Statutes, provides that the Governor "may accept, on behalf of the State, the provisions of any act of Congress making grants or allotments of federal-aid moneys available for expenditure in the State"; and

WHEREAS, section 29-14, Hawaii Revised Statutes, authorizes the Governor, as an officer of the State of Hawaii, to "accept and receive on behalf of the State, and receipt for, any and all grants or allotments of federal-aid moneys made available to the State by or pursuant to an act of Congress, and enter into or make such plan, agreement, or other arrangement with the agency designated by the act of Congress as is necessary to carry out the purposes of the Act"; and

WHEREAS, failure to designate a state oversight agency and be certified by the FTA Administrator as required by title 49 United States Code section 5329(e) and Title 49 Code of Federal Regulations Part 674, may result in the loss of five percent of the Title 49 United States Code section 5307 Urbanized Area formula grants appropriated for use in the State of Hawaii.

NOW, THEREFORE, I, David Y. Ige, Governor of the State of Hawaii, pursuant to the provisions of Sections 29-13 and 29-14, Hawaii Revised Statutes, do hereby order and direct:

A. That the State Department of Transportation is hereby designated as the State of Hawaii State Safety Oversight Agency pursuant to 49 United States Code section 5329(e)(4) and any reauthorizations of or amendments to those sections concerning its oversight of the safety of fixed guideway public transportation system(s);

B. That the State Department of Transportation shall adopt and enforce the provisions of the FTA's regulations regarding safety oversight of rail fixed guideway public transportation systems in the State of Hawaii, to protect and promote public safety, and welfare, including safety oversight of the aspects of the rail fixed guideway system that are not regulated by the Federal Railroad Administration;

C. That the State Department of Transportation shall have the following powers and duties to the extent necessary to fulfill its obligations under federal law:

1. Assume the responsibilities for overseeing rail fixed guideway public transportation safety for those fixed guideway public transportation systems not governed by the Federal Railroad Administration.

2. Develop a State Safety Oversight Program compliant with title 49 United States Code section 5329 and any reauthorizations of or amendments to those sections concerning its oversight of the safety of fixed guideway public transportation system.

3. Audit operators of fixed guideway rail systems receiving federal funds, for compliance with federal and state laws regarding the safety of fixed guideway rail systems and compliance with public transportation agency safety plans adopted by a specific operator pursuant to Title 49 United States Code section 5329(d) and any reauthorization of or amendments to this section concerning its oversight of the safety plans for fixed guideway public transportation systems.

4. Develop in consultation with the FTA, an appropriate staffing level for the State Safety Oversight Agency commensurate with the number, size, and complexity of rail fixed guideway public transportation systems in the State of Hawaii.

5. Achieve and maintain compliance with the FTA's public transportation safety certification training program for federal and state employees promulgated in rules and regulation resulting from title 49 United States Code Section 5329 and any reauthorizations of or amendments to those sections concerning its oversight of safety of fixed guideway public transportation systems.

6. Issue safety directives to fixed guideway public transportation providers requiring investigation and corrective action for real or potential safety risks that may compromise public or employee safety.

7. Issue emergency safety orders to fixed guideway public transportation providers requiring immediate safety mitigations up to and including removal of fixed guideway public transportation system vehicles or equipment from service.

D. That the State Department of Transportation shall terminate all financial assistance agreements with rail fixed guideway public transportation systems in the State of Hawaii on or before April 15, 2019, and are hereby restricted from entering into any new financial assistance agreements with current or future rail fixed guideway public transportation systems, to achieve financial independence from rail fixed

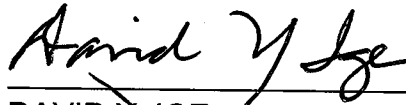
guideway public transportation agencies within the State of Hawaii's jurisdiction,

E. That the rail fixed guideway transit systems not regulated by the Federal Railroad Administration and operating within the State of Hawaii shall comply with the State Department of Transportation's standards, rules, directives and requirements regarding rail fixed guideway public transportation systems; and

F. That this Executive Order shall take effect immediately.

IN WITNESS WHEREOF, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Hawaii.

DONE at the state Capital, Honolulu,
State of Hawaii, this 10th day of
August, 2017.



DAVID Y. IGE
Governor of Hawaii

APPROVED AS TO FORM:



DOUGLAS S. CHIN
Attorney General