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# A BILL FOR AN ACT

RELATING TO LIABILITY.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

1           SECTION 1. Section 264-20, Hawaii Revised Statutes, is  
2 amended to read as follows:

3           "~~§~~264-20~~§~~ **Flexibility in highway design; liability of**  
4 **State, counties, and public utilities.** (a) If a highway,  
5 including any bridge, principal and minor arterial road,  
6 collector and local road, or street, requires new construction,  
7 reconstruction, preservation, resurfacing (except for  
8 maintenance surfacing), restoration, or rehabilitation, the  
9 department of transportation with regard to a state highway, or  
10 a county with regard to a county highway, may select or apply  
11 flexible highway design guidelines consistent with practices  
12 used by the Federal Highway Administration and the American  
13 Association of State Highway and Transportation Officials.  
14 Flexibility in highway design shall consider, among other  
15 factors:

- 16           (1) Safety, durability, and economy of maintenance;  
17           (2) The constructed and natural environment of the area;



- 1 (3) Community development plans and relevant county
- 2 ordinances;
- 3 (4) Sites listed on the State or National Register of
- 4 Historic Places;
- 5 (5) The environmental, scenic, aesthetic, historic,
- 6 community, and preservation impacts of the activity;
- 7 (6) Access for other modes of transportation, including
- 8 but not limited to bicycle and pedestrian
- 9 transportation;
- 10 (7) Access to and integration of sites deemed culturally
- 11 and historically significant to the communities
- 12 affected;
- 13 (8) Acceptable engineering practices and standards; and
- 14 (9) Safety studies and other pertinent research.
- 15 (b) Any other law to the contrary notwithstanding, [~~the~~
- 16 ~~following parties shall be immune from liability for personal~~
- 17 ~~injury, death, or property damage in any accident arising out of~~
- 18 ~~the decision to elect] any decision by the State, the department~~
- 19 of transportation, a county, or any officers, employees, or
- 20 agents of the State, the department of transportation, or a
- 21 county to select or apply flexibility in highway design pursuant
- 22 to this section and consistent with the practices used by the



1 Federal Highway Administration and the American Association of  
2 State Highway and Transportation Officials[+] shall not give  
3 rise to a cause of action or claim against:

4 (1) The State;

5 (2) The department of transportation;

6 (3) The counties;

7 (4) Any public utility regulated under chapter 269 that  
8 places its facilities within the highway right of way;  
9 or

10 (5) Any officer, employee, or agent of an entity listed in  
11 paragraphs (1) to (4).

12 (c) The [~~immunity from~~] exception to liability provided in  
13 subsection (b) applies only to the decision to select or apply  
14 flexibility in highway design pursuant to this section and does  
15 not extend to design, construction, repair, correction, or  
16 maintenance inconsistent with subsection (a)."

17 SECTION 2. Statutory material to be repealed is bracketed  
18 and stricken. New statutory material is underscored.

19 SECTION 3. This Act shall take effect on July 1, 2006.

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INTRODUCED BY:

*Neumaine Snout*

*[Signature]*

*[Signature]*

**Report Title:**

Highways; Flexible Design; Liability Immunity

**Description:**

Clarifies that any decision of the State, the department of transportation, the counties, or any officer, employee, or agent thereof, to select or apply flexible highway design shall not give rise to a cause of action or claim against them.

