
A BILL FOR AN ACT

RELATING TO PRIVATE ROADS.

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

1 SECTION 1. The legislature finds that while federal,
2 state, and county agencies maintain jurisdiction over, and are
3 responsible for, the repair and maintenance of the majority of
4 highways, streets, and roads throughout Hawaii, there are
5 numerous roads throughout the State that are privately owned, or
6 whose ownership has been called into question. In many cases,
7 these private roads are remnants of a road, or a small portion
8 of a larger public road, with disputed ownership for various
9 reasons. This has resulted in questions regarding who is
10 responsible for the repair and maintenance of these roads, many
11 of which are regularly used for vehicular traffic.

12 The legislature further finds that since these private
13 roads are not owned by a governmental entity, or their ownership
14 is being disputed, they often do not receive proper repair and
15 maintenance. Although often these roads are used by and are of
16 benefit to the public, the public does not realize that the road
17 is not owned by a governmental agency. This creates



1 difficulties for members of the public and government agencies
2 when individuals report repair or maintenance issues.

3 The legislature also finds that while counties have
4 policies and procedures to assist owners with the repair and
5 maintenance of private roads, these policies and procedures are
6 only applicable when the county can determine or locate the
7 actual owner of the road. Additionally, the owners of private
8 roads may seek government assistance because they rarely have
9 the expertise, equipment, or ability to coordinate services
10 necessary to address road ownership and maintenance issues.

11 The purpose of this Act is to provide a means to repair and
12 maintain private roads.

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

15 "**§264-1 Public highways and trails.** (a) All highways,
16 roads, alleys, streets, ways, lanes, bikeways, bridges, and all
17 other real property highway related interests in the State,
18 opened, laid out, subdivided, consolidated, and acquired and
19 built by the government are declared to be public highways.
20 Public highways are of two types:



1 (1) State highways, which are those lands, interests, or
 2 other real property rights, as defined above, having
 3 an alignment or possession of a real property highway
 4 related interest as established by law, subdivided and
 5 acquired in accordance with policies and procedures of
 6 the department of transportation, separate and exempt
 7 from any county subdivision ordinances, and all those
 8 under the jurisdiction of the department of
 9 transportation; and

10 (2) County highways, which are all other public highways.

11 (b) All trails, and other nonvehicular rights-of-way in
 12 the State declared to be public rights-of-ways by the Highways
 13 Act of 1892, or opened, laid out, or built by the government or
 14 otherwise created or vested as nonvehicular public rights-of-way
 15 at any time thereafter, or in the future, are declared to be
 16 public trails. A public trail is under the jurisdiction of the
 17 state board of land and natural resources unless it was created
 18 by or dedicated to a particular county, in which case it shall
 19 be under the jurisdiction of that county.

20 (c) All highways, roads, alleys, streets, ways, lanes,
 21 [~~trails,~~] bikeways, [~~and~~] bridges, and trails in the State,



1 opened, laid out, or built by private parties and dedicated or
2 surrendered to the public use, are declared to be public
3 highways or public trails as follows:

4 (1) Dedication of public highways or trails shall be by
5 deed of conveyance naming the State as grantee in the
6 case of a state highway or trail and naming the county
7 as grantee in the case of a county highway or trail.
8 The deed of conveyance shall be delivered to and
9 accepted by the director of transportation in the case
10 of a state highway or the board of land and natural
11 resources in the case of a state trail. In the case
12 of a county highway or county trail, the deed shall be
13 delivered to and accepted by the legislative body of a
14 county.

15 (2) Surrender of public highways or trails shall be deemed
16 to have taken place if no act of ownership by the
17 owner of the highway, road, alley, street, [~~bikeway,~~]
18 way, lane, [~~trail, or~~] bikeway, bridge, or trail has
19 been exercised for five years and when, in the case of
20 a county highway, in addition thereto, the legislative



1 body of the county has, thereafter, by a resolution,
2 adopted the same as a county highway or trail.

3 (d) In every case where the highway, road, alley, street,
4 ~~[bikeway,]~~ way, lane, ~~[trail,]~~ bikeway, bridge, or [highway]
5 trail is [constructed]:

6 (1) Constructed and completed as required by any ordinance
7 of the county or any rule, regulation, or resolution
8 thereof having the effect of law[7]; or

9 (2) Is used by the public without restriction and has a
10 history of maintenance by the county or the State,
11 the legislative body of the county shall accept the dedication
12 or surrender of the same without exercise of discretion.

13 (e) If a privately owned highway, road, alley, street,
14 way, lane, bikeway, bridge, or trail is deemed to have been
15 surrendered to the county pursuant to subsection (c) or (d), the
16 county shall be responsible for performing construction,
17 reconstruction, preservation, resurfacing, restoration, and
18 rehabilitation upon the highway, road, alley, street, way, lane,
19 bikeway, bridge, or trail pursuant to all state laws and rules
20 applicable to the public highway or public trail.



1 [~~(d)~~] (f) All county public highways and trails once
2 established shall continue until vacated, closed, abandoned, or
3 discontinued by a resolution of the legislative body of the
4 county wherein the county highway or trail lies. All state
5 trails once established shall continue until lawfully disposed
6 of pursuant to the requirements of chapter 171.

7 (g) For purposes of the section, "privately owned highway,
8 road, alley, street, way, lane, bikeway, bridge, or trail" means
9 any highway, road, alley, street, way, lane, bikeway, bridge, or
10 trail that is not owned by the State or any county, but has been
11 maintained or repaired by the county at any time after June 30,
12 1995."

13 SECTION 3. Statutory material to be repealed is bracketed
14 and stricken. New statutory material is underscored.

15 SECTION 4. This Act shall take effect upon its approval.



Report Title:

Private Roads; Repair and Maintenance

Description:

Requires the counties to repair and maintain private roads that have been previously maintained by the county and surrendered to the county after the absence of any act of private ownership over the road for five years. Requires the legislative body of a county to accept the dedication or surrender of a private road in cases where the private road is used by the public without restriction and has a history of being maintained by the county or State. (HB1408 HD1)

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