
A BILL FOR AN ACT

RELATING TO TRANSPORTATION.

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 these roads are often used by, and are of
16 benefit to, the public, the public does not realize that the
17 road 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 further 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 resolve
12 jurisdictional questions regarding road ownership.

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 roads,
16 highways, alleys, streets, ways, lanes, bikeways, bridges, and
17 all 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 in the State, opened, laid out, or



1 built by private parties and dedicated or [~~surrendered~~]
2 condemned to the public use, are declared to be public highways
3 or public trails as follows:

4 (1) Dedication of public highways, roads, alleys, streets,
5 ways, lanes, bikeways, bridges, or trails shall be by
6 deed of conveyance naming the State as grantee in the
7 case of a state highway, road, alley, street, way,
8 lane, bikeway, bridge, or trail and naming the county
9 as grantee in the case of a county highway, road,
10 alley, street, way, lane, bikeway, bridge, or trail.

11 The deed of conveyance shall be delivered to and
12 accepted by the director of transportation in the case
13 of a state highway, road, alley, street, way, lane,
14 bikeway, or bridge, or the board of land and natural
15 resources in the case of a state trail. In the case
16 of a county highway, road, alley, street, way, lane,
17 bikeway, bridge, or county trail, the deed shall be
18 delivered to and accepted by the legislative body of a
19 county[-]; provided that in every case where the
20 highway, road, alley, street, way, lane, bikeway,
21 bridge, or county trail is constructed and completed



1 as required by any ordinance of the county or any
2 rule, regulation, or resolution thereof having the
3 effect of law, the legislative body of the county
4 shall accept the dedication of the same without
5 exercise of discretion.

6 (2) ~~[Surrender]~~ Condemnation of public highways, roads,
7 alleys, streets, ways, lanes, bikeways, bridges, or
8 trails shall be deemed to have taken place ~~[if no act~~
9 ~~of ownership by the owner of the road, alley, street,~~
10 ~~bikeway, way, lane, trail, or bridge has been~~
11 ~~exercised for five years]~~ if the state or county
12 initiates condemnation proceedings pursuant to chapter
13 101 to acquire the public highway, road, alley,
14 street, way, lane, bikeway, bridge, or trail [and
15 ~~when, in the case of a county highway, in addition~~
16 ~~thereto, the legislative body of the county has,~~
17 ~~thereafter, by a resolution, adopted the same as a~~
18 ~~county highway or trail.~~

19 ~~In every case where the road, alley, street, bikeway, way, lane,~~
20 ~~trail, bridge, or highway is constructed and completed as~~
21 ~~required by any ordinance of the county or any rule, regulation,~~



1 ~~or resolution thereof having the effect of law, the legislative~~
2 ~~body of the county shall accept the dedication or surrender of~~
3 ~~the same without exercise of discretion].~~

4 (d) If a privately owned highway, road, alley, street,
5 way, lane, bikeway, bridge, or trail is deemed to have been
6 condemned by the State or county pursuant to paragraph (c) (2),
7 the State or county shall be exempt from any state laws or rules
8 adopted pursuant thereto that would require the State or county
9 to perform construction, reconstruction, preservation,
10 resurfacing, restoration, or rehabilitation upon it.

11 (e) For purposes of this section, if a privately owned
12 highway, road, alley, street, way, lane, bikeway, bridge, or
13 trail complied with construction codes at the time of
14 construction, then upon transfer of that privately owned
15 highway, road, alley, street, way, lane, bikeway, bridge, or
16 trail to a county, the county which accepts the transfer shall
17 not be required to do any construction, renovation, or repair to
18 bring the privately owned highway, road, alley, street, way,
19 lane, bikeway, bridge, or trail up to any construction code
20 existing at the time of transfer.



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 SECTION 3. (a) There is established a commission on
 8 remnant private roads, to be under the department of
 9 transportation for administrative purposes only, to identify all
 10 roads by street address and tax map key number located in the
 11 State and in each county that are deemed to be remnant private
 12 roads.

13 (b) The following shall be members of the commission on
 14 remnant private roads:

15 (1) Two members of the senate to be appointed by the
 16 president of the senate;

17 (2) Two members of the house of representatives to be
 18 appointed by the speaker of the house of
 19 representatives;

20 (3) The director of transportation or the director's
 21 designee;



1 (4) The mayor of each county or each mayor's designee; and
2 (5) One director of a county department in charge of
3 transportation, to be mutually selected by all the
4 county mayors.

5 (c) The remnant private roads identified by the commission
6 pursuant to subsection (a) shall be assigned ownership by the
7 commission to the State or a county; provided that the
8 assignment shall be deemed to be a transfer of ownership of that
9 remnant private road to the State or county, as applicable;
10 provided further that the State or county, as the case may be,
11 receiving ownership of that remnant private road shall establish
12 administrative procedures to legally effectuate the transfer of
13 title to the State or county, as applicable.

14 (d) The commission on remnant private roads shall report
15 to the legislature no later than twenty days prior to the
16 convening of the regular session of 2018 identifying the private
17 remnant roads pursuant to subsection (a).

18 (e) As used in this section, "remnant private road" means
19 a road that is privately owned, without the exercise of
20 ownership, that is used by the public as though it is a public
21 road.

1 (f) The commission on remnant private roads shall cease to
2 exist on June 30, 2018.

3 SECTION 4. Statutory material to be repealed is bracketed
4 and stricken. New statutory material is underscored.

5 SECTION 5. This Act shall take effect on July 1, 2030.



Report Title:

Private Roads; Repair and Maintenance

Description:

Authorizes the State or a county to obtain ownership over a road by condemnation pursuant to the State's powers of eminent domain. Exempts the State and counties from maintaining or improving condemned roads. Clarifies that if a privately owned highway, road, alley, street, way, lane, bikeway, bridge, or trail complied with construction codes at the time of construction, then upon transfer of that privately owned highway, road, alley, street, way, lane, bikeway, bridge, or trail to a county, the county which accepts the transfer shall not be required to do any construction, renovation, or repair to bring the privately owned highway, road, alley, street, way, lane, bikeway, bridge, or trail up to any construction code existing at the time of transfer. Creates a commission on remnant private roads to identify all roads by street address and tax map key number located in the State and in each county. Assigns, in the discretion of the commission, ownership of identified remnant private roads to the State or county. Effective 7/1/2030. (SD1)

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