
A BILL FOR AN ACT

RELATING TO PRIVATE ROADS.

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

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PART I

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

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

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1 is not owned by a governmental agency. This creates
2 difficulties for members of the public and government agencies
3 when individuals report repair or maintenance issues.

4 The legislature also finds that while counties have
5 policies and procedures to assist owners with the repair and
6 maintenance of private roads, these policies and procedures are
7 only applicable when the county can determine or locate the
8 actual owner of the road. Additionally, the owners of private
9 roads may seek government assistance because they may not have
10 the expertise, equipment, or ability to coordinate services
11 necessary to address road ownership and maintenance issues.

12 Finally, the legislature finds that the cost to bring many
13 of these private roads up to code is very high and should not be
14 borne solely by the counties.

15 The purpose of this Act is to provide a means to resolve
16 the situation by, among other things:

17 (1) Establishing a temporary roads commission within the
18 department of transportation to, among other things,
19 determine ownership of each private road and road in
20 limbo, advise the appropriate legislative body of the
21 determination of ownership of the private road or road



- 1 in limbo, and recommend action to the appropriate
2 legislative body, including the initiation of
3 condemnation proceedings as appropriate;
- 4 (2) Expanding the State and counties' authority to condemn
5 public roads;
- 6 (3) Allowing private owners of roadways to petition the
7 mayor of the county in which the roadway is located to
8 begin condemnation proceedings if certain conditions
9 are met;
- 10 (4) Exempting roads meeting county construction standards
11 at the time of construction and completion from having
12 to meet county construction standards in place at the
13 time of transfer to the county;
- 14 (5) Exempting the State or county from requirements to
15 maintain or improve roads taken by condemnation; and
- 16 (6) Appropriating funds for road repair work, including
17 resurfacing, flood mitigation, and installation of
18 drainage infrastructure to certain roads.

19 PART II

20 SECTION 2. (a) There is established a roads commission
21 within the department of transportation for administrative



1 purposes, which shall consist of the following members, or their
2 designees:

- 3 (1) The mayor of each county;
- 4 (2) The director of transportation;
- 5 (3) The director of a county transportation department,
6 appointed by the Hawaii council of mayors and
7 confirmed by the Hawaii state association of counties;
- 8 (4) The director of planning from a county, appointed by
9 the Hawaii council of mayors and confirmed by the
10 Hawaii state association of counties;
- 11 (5) Two members of the public, with expertise in civil
12 engineering, city planning, construction, easements
13 and acquisitions, condemnation, real property title
14 research, compliance with the Americans with
15 Disabilities Act, or environmental regulations,
16 appointed by the governor;
- 17 (6) Two members of the public, with expertise in civil
18 engineering, city planning, construction, easements
19 and acquisitions, condemnation, real property title
20 research, compliance with the Americans with
21 Disabilities Act, or environmental regulations,



1 appointed by the speaker of the house of
2 representatives; and

3 (7) Two members of the public with expertise in civil
4 engineering, city planning, construction, easements
5 and acquisitions, condemnation, real property title
6 research, compliance with the Americans with
7 Disabilities Act, or environmental regulations,
8 appointed by the president of the senate.

9 (b) Any vacancy occurring in the membership of the
10 commission shall be filled in the same manner as the original
11 appointments.

12 (c) The chair and vice chair of the commission shall be
13 selected by a majority of the members of the commission.

14 (d) A simple majority shall constitute a quorum whose
15 affirmative vote shall be necessary for all actions of the
16 commission.

17 (e) Members of the commission shall serve without
18 compensation but shall be reimbursed for necessary expenses,
19 including travel expenses, incurred in the performance of their
20 duties under this section.



1 (f) All members of the commission shall be immune from
2 civil liability for any act done in connection with the
3 performance of their duties as provided in section 26-35.5,
4 Hawaii Revised Statutes.

5 (g) The commission shall:

6 (1) Review all previous studies on disputes regarding
7 private roads and roads in limbo;

8 (2) Conduct an inventory and analysis of all private roads
9 and all roads in limbo in the State;

10 (3) Determine the ownership of each private road and each
11 road in limbo;

12 (4) Develop rules to determine the protocol of resolution
13 for those roads where ownership continues to be in
14 question;

15 (5) Implement developed protocols of resolution and settle
16 ownership of roads in limbo and private roads; and

17 (6) Advise the appropriate legislative body of its
18 determination of ownership of the private road or road
19 in limbo, and recommend action to the appropriate
20 legislative body, including the initiation of
21 condemnation proceedings as appropriate.



1 In fulfilling its responsibilities, the commission shall
2 consult and seek advice from any department, agency, or
3 organization the commission deems appropriate.

4 (h) The commission may:

5 (1) Sue and be sued;

6 (2) Have a seal and alter the same at its pleasure;

7 (3) Adopt rules under chapter 91 necessary to effectuate
8 this section;

9 (4) Obtain federal or private funding for the upgrading,
10 repair, and maintenance of private roads or roads in
11 limbo and distribute the funding to the appropriate
12 legislative body;

13 (5) Make and execute contracts and all other instruments
14 necessary or convenient for the exercise of its powers
15 under this section;

16 (6) Carry out surveys, research, and investigations with
17 respect to the ownership of private roads and roads in
18 limbo in the State; and

19 (7) Direct, subpoena, or examine under oath all persons
20 whose testimony may be required to determine ownership
21 of a private road or road in limbo.



1 (i) The commission shall submit a report of its findings
2 and recommendations, including any proposed legislation, to the
3 legislature no later than twenty days prior to the convening of
4 the regular session of 2018.

5 (j) No member shall be made subject to chapter 84, Hawaii
6 Revised Statutes, solely because of that member's participation
7 as a member of the commission.

8 (k) Whenever used in this section, unless a different
9 meaning appears from the context:

10 "Road in limbo" means a road whose ownership is in dispute
11 between the State and the county in which the road is located.

12 (l) The commission shall cease to exist on June 30, 2018.

13 PART III

14 SECTION 3. Section 264-1, Hawaii Revised Statutes, is
15 amended to read as follows:

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

21 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~~] condemned to the public use, are declared to be
3 public highways 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, 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.]; provided that any private
19 owner of a highway, road, alley, street, way, lane,
20 bikeway, bridge, or trail may petition the mayor of
21 the county in which the highway, road, alley, street,



1 way, lane, bikeway, bridge, or county trail is located
2 to initiate condemnation proceedings if the highway,
3 road, alley, street, way, lane, bikeway, bridge, or
4 trail is part of a public road, ownership has not been
5 exercised by limiting use or access, or the county has
6 provided some form of maintenance to the highway,
7 road, alley, street, way, lane, bikeway, bridge, or
8 trail in the interest of the public.

9 In every case where the road, alley, street, bikeway, way, lane,
10 trail, bridge, or highway is constructed and completed as
11 required by any ordinance of the county or any rule, regulation,
12 or resolution thereof having the effect of law [~~the legislative~~
13 ~~body of the county shall accept the dedication or surrender of~~
14 ~~the same without exercise of discretion.~~] at the time of
15 construction and completion, the road, alley, street, bikeway,
16 way, lane, trail, bridge, or highway shall be exempt from
17 meeting the construction standards in place at the time of
18 transfer to the county.

19 (d) If a privately owned highway, road, alley, street,
20 way, lane, bikeway, bridge, or trail is deemed to have been
21 condemned to the State or county pursuant to subsection (c) (2),



1 the State or county shall be exempt from any state laws or rules
2 adopted pursuant thereto that would require the State or county
3 to perform construction, reconstruction, preservation,
4 resurfacing, restoration, or rehabilitation upon it.

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

11 PART IV

12 SECTION 4. There is appropriated out of the general
13 revenues of the State of Hawaii the sum of \$ or so much
14 thereof as may be necessary for fiscal year 2016-2017 for repair
15 work, including flood mitigation and installation of drainage
16 infrastructure, and resurfacing as follows:

17 (1) \$ for Kalani Street on Oahu, from Puuhale Road
18 to Kalihi Street;

19 (2) \$ for Auld Lane on Oahu;

20 (3) \$ for Rawlins Lane on Oahu;



1 (4) \$ for Eighteenth Avenue on Oahu, from Harding
2 Avenue to Kilauea Avenue; and

3 (5) \$ for Kalakaua Avenue on Oahu, between Poni
4 Moi Road and Coconut Avenue.

5 The sum appropriated shall be expended by the city and
6 county of Honolulu for the purposes of this Act.

7 PART V

8 SECTION 5. Statutory material to be repealed is bracketed
9 and stricken. New statutory material is underscored.

10 SECTION 6. If any provision of this Act, or the
11 application thereof to any person or circumstance, is held
12 invalid, the invalidity does not affect other provisions or
13 applications of the Act that can be given effect without the
14 invalid provision or application, and to this end the provisions
15 of this Act are severable.

16 SECTION 7. This Act shall take effect on July 1, 2050;
17 provided that section 2 shall be repealed on June 30, 2018.

Report Title:

Private Roads; Repair and Maintenance; Appropriation

Description:

Establishes a temporary roads commission to make recommendations on the disposition of private roads and roads in limbo. Authorizes the State or a county to obtain ownership over a road by condemnation pursuant to the power of eminent domain. Exempts a county from having to modify a road to meet current construction standards if the road was built according to standards in place at the time of construction and completion. Allows for private road owners to petition the mayor to begin condemnation proceedings if certain requirements are met. Exempts the State and counties from maintaining or improving condemned roads. Appropriates funds for the repair and improvement of certain roads. (SB2372 HD1)

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