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# 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, whose ownership is disputed 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 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 resolve  
12 the situation by requiring a county to accept public highways  
13 and trails even if nonconforming, where there has been no act of  
14 ownership within the past five years or a county has undertaken  
15 repair and maintenance, and by exempting a county from  
16 requirements to maintain or improve surrendered highways and  
17 trails and from liability for not maintaining or improving them.

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

20       "**§264-1 Public highways and trails.** (a) All highways,  
21 roads, alleys, streets, ways, lanes, bikeways, bridges, and all



1 other real property highway related interests in the State,  
2 opened, laid out, subdivided, consolidated, and acquired and  
3 built by the government are declared to be public highways.

4 Public highways are of two types:

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

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

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



1 by or dedicated to a particular county, in which case it shall  
2 be under the jurisdiction of that county.

3 (c) All highways, roads, alleys, streets, ways, lanes,  
4 [~~trails,~~] bikeways, [and] bridges, and trails in the State,  
5 opened, laid out, or built by private parties and dedicated or  
6 surrendered to the public use, are declared to be public  
7 highways or public trails as follows:

8 (1) Dedication of public highways, roads, alleys, streets,  
9 ways, lanes, bikeways, bridges, or trails shall be by  
10 deed of conveyance naming the State as grantee in the  
11 case of a state highway, road, alley, street, way,  
12 lane, bikeway, bridge, or trail and naming the county  
13 as grantee in the case of a county highway, road,  
14 alley, street, way, lane, bikeway, bridge, or trail.  
15 The deed of conveyance shall be delivered to and  
16 accepted by the director of transportation in the case  
17 of a state highway, road, alley, street, way, lane,  
18 bikeway, bridge, or the board of land and natural  
19 resources in the case of a state trail. In the case  
20 of a county highway, road, alley, street, way, lane,  
21 bikeway, bridge, or [county] trail, the deed shall be



1 delivered to and accepted by the legislative body of a  
2 county[-]; and

3 (2) Notwithstanding legal ownership, [Surrender] surrender  
4 of public highways, roads, alleys, streets, ways,  
5 lanes, bikeways, bridges, or trails shall be deemed to  
6 have taken place if [nø]:

7 (A) No act of ownership by the owner of the highway,  
8 road, alley, street, [bikeway,] way, lane,  
9 [~~trail, or~~] bikeway, bridge, or trail has been  
10 exercised for five years [and when, in the case  
11 of a county highway, in addition thereto, the  
12 legislative body of the county has, thereafter,  
13 by a resolution, adopted the same as a county  
14 highway or trail.]; or

15 (B) A county undertakes repair and maintenance on a  
16 highway, road, alley, street, way, lane, bikeway,  
17 bridge, or trail pursuant to a county maintenance  
18 and repair program, that highway, road, alley,  
19 street, way, lane, bikeway, bridge, or trail;

20 ~~In every case where the road, alley, street, bikeway, way, lane,~~  
21 ~~trail, bridge, or highway is constructed and completed as~~



1 ~~required by any ordinance of the county or any rule, regulation,~~  
2 ~~or resolution thereof having the effect of law, the legislative~~  
3 ~~body of the county shall accept the dedication or surrender of~~  
4 ~~the same without exercise of discretion.] provided that driving~~

5 on the private highway, road, alley, street, way, lane, bikeway,  
6 bridge, or trail shall not, on its own, constitute an act of  
7 ownership. The county shall accept without exercise of  
8 discretion all surrendered highways, roads, alleys, streets,  
9 ways, lanes, bikeways, bridges, or trails, except where the  
10 State has notified the county within thirty days of the  
11 surrender that it will accept the surrendered highway, road,  
12 alley, street, way, lane, bikeway, bridge, or trail. Any  
13 occupant or owner of abutting land may notify the county of a  
14 highway, road, alley, street, way, lane, bikeway, bridge, or  
15 trail that the resident or landowner believes qualifies for  
16 surrender under this subsection. Following receipt of the  
17 notice, the county shall accept the highway, road, alley,  
18 street, way, lane, bikeway, bridge, or trail as surrendered and  
19 record its ownership with the state bureau of conveyances,  
20 unless the county establishes other proof of ownership within  
21 six months of the notice.



1        (d) In the case of a highway, road, alley, street, way,  
2 lane, bikeway, bridge, or trail that has been commonly used by  
3 residents of a particular area for emergency access purposes or  
4 for health and safety reasons, that highway, road, alley,  
5 street, way, lane, bikeway, bridge, or trail shall be deemed to  
6 be publicly accessible for those reasons, without regard to  
7 actual ownership or responsibility for maintenance.

8        (e) If a privately owned highway, road, alley, street,  
9 way, lane, bikeway, bridge, or trail is deemed to have been  
10 surrendered to the State or county pursuant to subsection  
11 (c) (2), the State or county shall be exempt from any state laws  
12 or rules adopted that would require the State or county to  
13 perform construction, reconstruction, preservation, resurfacing,  
14 restoration, or rehabilitation upon it. The State or county  
15 shall be immune from liability for personal injury, death, or  
16 property damage in any accident arising out of the use of a  
17 surrendered highway, road, alley, street, way, lane, bikeway,  
18 bridge, or trail for a period of two years following performance  
19 of construction, reconstruction, preservation, resurfacing,  
20 restoration, or rehabilitation. The State or county shall not  
21 acquire any liability for the negligent acts or omissions of



1 others that the State or county did not already have before the  
2 surrender of the highway, road, alley, street, way, lane,  
3 bikeway, bridge, or trail, solely by reason of the surrender.

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

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

12 SECTION 4. This Act shall take effect on July 1, 2050.

13





**Report Title:**

Private Roads; Repair and Maintenance

**Description:**

Requires the counties to accept the surrender of a private road in cases where there has been an absence of any act of private ownership over the road for five years of the county has undertaken repair and maintenance. Exempts the State and counties from liability arising from use of the road for a period of two years following maintenance work. Deems a highway, road, alley, street, way, lane, bikeway, bridge, or trail that has been commonly used by residents of a particular area for emergency access purposes or for health and safety reasons to be publicly accessible for those reasons, without regard to actual ownership or responsibility for maintenance. Deems surrender to a county to occur when that county undertakes repair and maintenance pursuant to a repair and maintenance program. Effective 7/1/2050. (SD3)

*The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.*

