

CHAPTER 264
HIGHWAYS

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Note

City and county of Honolulu to take ownership of specified road or parcel upon acceptance of funds. L 2016, c 194, §4.

Roads commission; private roads disputes; reports to 2018-2019 legislature (ceases to exist June 30, 2018). L 2016, c 194, §2.

Cross References

Use, repair, and maintenance of public roads in ownership dispute, see §46-15.9.

"PART I. HIGHWAYS, GENERALLY

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

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

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

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

(c) All highways, roads, alleys, streets, ways, bikeways, bridges, and trails in the State, opened, laid out, or built by private parties and dedicated or condemned to the public use, are declared to be public highways or public trails as follows:

(1) Dedication of public highways, roads, alleys, streets, ways, lanes, bikeways, bridges, or trails shall be by deed of conveyance naming the State as grantee in the case of a state highway, road, alley, street, way,

lane, bikeway, bridge, or trail and naming the county as grantee in the case of a county highway, road, alley, street, way, lane, bikeway, bridge, or trail. The deed of conveyance shall be delivered to and accepted by the director of transportation in the case of a state highway, road, alley, street, way, lane, bikeway, or bridge, or the board of land and natural resources in the case of a state trail. In the case of a county highway, road, alley, street, way, lane, bikeway, bridge, or county trail, the deed shall be delivered to and accepted by the legislative body of a county; provided that in every case where the highway, road, alley, street, way, lane, bikeway, bridge, or county trail is constructed and completed as required by any ordinance of the county or any rule, regulation, or resolution thereof having the effect of law, the legislative body of the county shall accept the dedication of the same without exercise of discretion; and

- (2) Condemnation of public highways, roads, alleys, streets, ways, lanes, bikeways, bridges, or trails initiated by the State or county pursuant to chapter 101, shall be by final order of condemnation by a court; provided that any private owner of a highway, road, alley, street, way, lane, bikeway, bridge, or trail may petition the mayor of the county in which the highway, road, alley, street, way, lane, bikeway, bridge, or trail is located to initiate condemnation proceedings if the highway, road, alley, street, way, lane, bikeway, bridge, or trail is part of a public road, ownership has not been exercised by limiting use or access, or the State or county has provided some form of maintenance to the highway, road, alley, street, way, lane, bikeway, bridge, or trail in the interest of the public; provided further that a private owner may only petition the mayor of a county after the dissolution of the roads commission established by Act 194, Session Laws of Hawaii 2016; provided further that in every case where the highway, road, alley, street, way, lane, bikeway, bridge, or trail is constructed and completed as required by any ordinance of the county or any rule, regulation, or resolution thereof having the effect of law at the time of construction and completion, the highway, road, alley, street, way, lane, bikeway, bridge, or trail shall be exempt from meeting the construction

standards in place at the time of condemnation by the State or county.

(d) If a privately owned highway, road, alley, street, way, lane, bikeway, bridge, or trail is deemed to have been dedicated to or condemned by the State or county pursuant to subsection (c), the State or county shall be exempt for a period of three years from any state laws or rules adopted pursuant thereto that would require the State or county to perform construction, reconstruction, preservation, resurfacing, restoration, or rehabilitation upon it.

(e) All county public highways and trails once established shall continue until vacated, closed, abandoned, or discontinued by a resolution of the legislative body of the county wherein the county highway or trail lies. All state trails once established shall continue until lawfully disposed of pursuant to the requirements of chapter 171. [L 1892, c 47, §2; RL 1945, §6111; am L 1947, c 142, pt of §1; am L 1949, c 74, §2; RL 1955, §142-1; am L 1957, c 155, §1; am L 1963, c 190, §1; HRS §264-1; am L 1977, c 68, §4; am L 1988, c 150, §1; am L 2008, c 12, §1; am L 2016, c 194, §3]

Cross References

Construction of facilities for physically handicapped persons, see §286-9.

Highways, maintenance, see §27-31.

Attorney General Opinions

Public highway does not include proposed road not yet constructed. Att. Gen. Op. 63-54.

Case Notes

In absence of statute no particular form or ceremony is requisite in the dedication. 2 H. 118.

Defendant claiming right-of-way as a public highway cannot extend such right by using path in different or enlarged manner than usual custom. 2 H. 307.

Implied consent. 17 H. 523.

Territory cannot acquire fee in public highway by legislative enactment; only by condemnation or consent of owner. 17 H. 523.

A public highway can be closed only by the method prescribed by statute. 19 H. 168.

Lease of public land does not extinguish a highway existing across it. 19 H. 168.

Park road not public. 38 H. 592.

Seawall used as a public thoroughfare is included in term "public highways". 50 H. 497, 443 P.2d 142.

State which holds open a public thoroughfare for travel has duty to maintain it in condition safe for travel. 50 H. 497, 443 P.2d 142.

Ownership of fee underlying a road built by private parties and abandoned to the public. 50 H. 567, 445 P.2d 538.

Implied dedication by designation of roadways on subdivision maps. 55 H. 305, 517 P.2d 779.

A responsible government has a duty to keep its highways in safe condition. 57 H. 656, 562 P.2d 436.

Not applicable where trustees did not build or lay out a trail to the general public. 73 H. 297, 832 P.2d 724.

A highway is not a county highway unless it is accepted or adopted as such by the county council. 2 H. App. 387, 633 P.2d 1118; 6 H. App. 414, 724 P.2d 118.

A public highway is not a state highway unless it is designated for inclusion in the state highway system under §264-41. 2 H. App. 387, 633 P.2d 1118.

Cited: 29 H. 820, 822, aff'd 188 F.2d 459.

" **[§264-1.5] Emergency powers; traffic emergency zones.** (a) Notwithstanding any law to the contrary, if the governor or state director of transportation, in the case of a state highway, or the mayor of a county or the county director of transportation, in the case of a county highway, determines that substantial endangerment to public health and safety is or is highly likely to be caused by the temporary closure of, or the lack of adequate access to an area by, a county highway or a state highway as defined under section 264-1(a), which requires immediate action, the governor or state director of transportation, in the case of a state highway, or a mayor of a county or the county director of transportation, in the case of a county highway, without a public hearing, may designate the area to be a traffic emergency zone, and may take any action that may be necessary until access to the designated area has been established. The designation shall fix a place and time, not later than twenty-four hours after the designation, for a hearing to be held before the state director of transportation, or the county director of transportation.

(b) Upon designation of an area as a traffic emergency zone by the governor or the state director of transportation, or the mayor of a county or the county director of transportation:

- (1) State or county highway or street improvements, including but not limited to new construction, reconstruction, preservation, resurfacing, restoration, or rehabilitation of any county or state

highway may be undertaken without regard to chapter 103D;

(2) All structures and improvements to land to be used for state or county highway purposes:

(A) May be planned, designed, and constructed by the appropriate state or county department without the approval of county agencies; and

(B) Shall be exempt from any county permitting requirements; and

(3) The state department of transportation or county department of transportation may acquire and designate cane haul roads as state or county highways; provided that the use of cane haul roads as state or county highways shall be for temporary purposes only for a period of time as determined by the state or county director of transportation, but for no longer than the public health and safety requires.

(c) Any other law to the contrary notwithstanding, except as otherwise provided in subsection (d), any decision under this section by the governor, the department of transportation, the mayor of a county, the transportation department of a county, or any officers, employees, or agents of the State or a county, shall not give rise to a cause of action or claim against:

(1) The State or any county;

(2) The state department of transportation;

(3) A county department of transportation; or

(4) Any officer, employee, or agent of an entity under paragraphs (1) to (3).

(d) There shall be a qualified standard of care of the common-law emergency doctrine that shall apply to a claim of negligence in any design, construction, repair, and correction undertaken pursuant to this section.

(e) Where a cane haul road is designated as a state or county highway under subsection (b)(3), the State or county, as the case may be, shall indemnify the owner of the cane haul road from any liability that may arise out of the use of such cane haul road when designated as a state highway.

(f) For the purposes of this section:

"Cane haul road" means a road that is part of an agricultural system of roads or ways established to take agricultural products from the fields to processing facilities without using the public highways.

"County highway" shall have the same meaning as in section 264-1(a).

"State highway" shall have the same meaning as in section 264-1(a).

"Traffic emergency zone" means an area that is accessible by a single state highway and whose accessibility would be compromised by major motor vehicle accidents, fires, floods, erosion, or other factors that would cause the closure of a state or county highway and causes or is highly likely to cause substantial endangerment to public health and safety.

(g) Each designation of a traffic emergency zone shall expire within five years. [L 2007, c 141, §1]

Cross References

Emergency use of private real property, see chapter 135.

" **§264-2 Owned by government.** The ownership of all public highways and the land, real estate and property of the same shall be in the government in fee simple. The term "government" as used herein means the State with reference to state highways and means the respective counties with reference to county highways. If any county highway is required by the State for state highway purposes, the ownership of the county highway shall be transferred to and vested in the State without compensation.

The governor may, at any time by executive order, turn over to any county, state land, in fee simple, for use as a county highway, and the county involved shall thereafter be responsible for its repair and maintenance as a county highway.

The ownership of all county highways is transferred to and vested in the respective counties in which the county highways lie. [L 1892, c 47, §5; RL 1925, §1893; RL 1935, §2341; RL 1945, §6112; RL 1955, §142-2; am L 1963, c 190, §§2, 4; am L 1965, c 221, §1; am L 1966, c 12, §2; HRS §264-2]

Attorney General Opinions

Counties are owners of county highways within their boundaries; title to highways on Hawaiian Home Lands not transferred to counties. Att. Gen. Op. 86-15.

Case Notes

Condemnation of territorial public highway by United States, damages. 188 F.2d 459.

Beneficial use is in public, use for private gain is special and extraordinary and subject to regulation. 34 H. 52.

Cited: 19 H. 468, 469.

" **§264-3 Disposal of abandoned public highway.** Whenever a public highway, or any portion thereof is at any time vacated, closed, abandoned, or discontinued, the public highway shall be used or disposed of for the use of the State in the case of a state highway as provided by law and for the use of the county in which the highway lies in the case of a county highway; provided that:

- (1) In the case of a county highway, before it is disposed of in any way, it shall be first offered to the abutters for a reasonable length of time and at a reasonable price, and if they do not take the county highway, then it may be sold at public auction; and
- (2) If any county highway, the right-of-way for which has been acquired in whole or in part by expenditure of federal funds, is abandoned and disposed of, the necessary portion of the proceeds from the sale thereof shall be remitted to the State for reimbursement or credit to the Federal Highway Administration, if reimbursement or credit is so required. [L 1963, c 190, §3; am L 1965, c 221, §2; Supp, §142-2.5; HRS §264-3; am L 1993, c 288, §2]

Case Notes

Implied dedication by designation of roadways on subdivision maps. 1 H. App. 52, 613 P.2d 662.

" **§264-4 Restoration of boundary markers.** In all cases in which a boundary marker along the right-of-way of a public highway has been disturbed or removed by a public agency of the State or a county in connection with the widening, construction, or maintenance of the highway, the public agency which caused the disturbance or removal shall, if requested by an owner of land a boundary marker of which has been so affected, restore the boundary marker or set a new one at the point of intersection of the affected boundary of the owner's land with the boundary of the right-of-way; provided that no boundary marker shall be restored or set unless its proper location has been established by law or by agreement of all persons having an interest in the location thereof; and provided further that this section shall not apply to markers disturbed or removed prior to January 1, 1950. [L 1953, c 62, §1; RL 1955, §111-40; HRS §264-4]

" **§264-5 In lieu of other compensation.** Any such restoration or setting of new boundary markers shall be in lieu

of all other compensation for the disturbance or removal. [L 1953, c 62, §2; RL 1955, §111-41; HRS §264-5]

" **§264-6 State highway not to be disturbed without permit.**

No person or government agency, whether federal, state, or county, shall, in any manner or for any purpose do any of the following acts without a written permit from the director of transportation or the director's authorized representative:

- (1) Break up, dig up, disturb, undermine or dig under, or cause to be broken up, dug up, disturbed, undermined, or dug under, the right-of-way of any state highway; or
- (2) Place, erect, leave, or store any structure, motor or other vehicle, equipment, or any other object wholly or partially within the right-of-way of any state highway; provided that this paragraph shall not apply to the holding or displaying of movable signs, for the purpose of carrying on political campaign activities. [L 1967, c 163, pt of §2; HRS §264-6; am L 1980, c 146, §1; gen ch 1985]

" **§264-7 Permits, fees, etc.** (a) Any person or government agency desiring the permit required by section 264-6 shall apply for a permit on a form prescribed by the director of transportation. Any permit issued shall be conditioned upon the adherence of the applicant to the requirements of sections 264-8 and 264-9; provided that on awarding any contract for the construction, reconstruction, maintenance or repair of any state highway or federal-aid highway project, the director of transportation or the director's authorized representative shall ascertain whether the work to be done by the terms of that contract will require the contractor, the contractor's employees, or the contractor's agents to engage in any of the activities enumerated in section 264-6(1) and (2) and, if one or more such activities is likely to be required, shall issue the permit required by section 264-6, waiving the fee requirements imposed by subsection (b) of this section.

(b) The director, subject to chapter 91, shall establish a fee schedule for the issuance of the permit. The fee schedule established shall be calculated to provide revenues sufficient to defray any expenses the department of transportation may incur in connection with the permit under sections 264-6 to 264-12. An applicant for a permit shall pay the applicable fee, provided that the director may waive the fee payable when the director determines that the work to be done will either improve the highway or otherwise be of benefit to the State; and provided further that no fee shall be required where the only

work to be done is the setting of poles and guys to carry overhead wires. [L 1967, c 163, pt of §2; HRS §264-7; am L 1971, c 15, §1; am L 1980, c 146, §2; gen ch 1985]

" **§264-8 Specifications, standards, procedures.**

Specifications, standards and procedures to be followed in the installation and construction of connections for streets, roads and driveways, concrete curbs and sidewalks, structures, drainage systems, landscaping or grading within the highway rights-of-way, excavation and backfilling of trenches or other openings in state highways, and in the restoration, replacement, or repair of the base course, pavement surfaces, highway structures, and other highway improvements shall be prescribed by the director of transportation. At the request of an applicant for a permit, a copy of such specifications, standards and procedures, shall be furnished. In prescribing the specifications, standards and procedures, the director need not comply with the provisions of law relating to the adoption of rules and regulations. [L 1967, c 163, pt of §2; HRS §264-8; am L 1971, c 15, §2]

" **§264-8.5 REPEALED.** L 1994, c 201, §4.

Cross References

Similar provision, see §103D-407.

" **§264-9 Backfilling, repaving, repairing, expense of permit holder.** (a) All excess materials remaining at the site of the work done under any permit shall be removed at the expense of the permit holder. The excess material shall not be deposited or placed within any highway right-of-way except with the approval of the director of transportation or the director's authorized representative.

(b) The permit holder, at the permit holder's own expense and upon completion of the work for which the permit was issued, shall backfill all trenches or other openings and make all necessary repairs to or replacement of any concrete gutter, curb, sidewalk, or any other structure in public use and restore or replace any plants, landscaping, signs, markers, or other facilities or improvements that were cut or damaged by the permit holder to a condition similar to that which existed before work was begun under the permit.

(c) Except as otherwise provided in section 264-33, the permit holder shall be responsible for all costs in the installation, construction, repair, removal, restoration, reconstruction or replacement of any improvement within the

right-of-way of any state highway. [L 1967, c 163, pt of §2; HRS §264-9; am L 1971, c 15, §3; gen ch 1985]

" **§264-10 Deposit of fees, etc.; inspectors.** Fees collected pursuant to section 264-7 shall be deposited in the state highway fund.

The department of transportation shall employ one or more persons who shall inspect the work of the permit holder and require that it be done in accordance with sections 264-8 and 264-9. [L 1967, c 163, pt of §2; HRS §264-10]

Cross References

State highway fund, generally, see §248-9.

" **§264-11 Performance bond.** The director of transportation may require that before the issuance of a permit the applicant give a cash bond, surety company bond, or personal surety bond in favor of the State, and for an amount equal to the estimated cost of backfilling, restoring, or repairing the base court pavement surface, structures, improvements, and landscaped area, and any other additional costs that may be incurred as a result of the work done under the permit during the one-year period following the satisfactory completion of the work. The bond shall be conditioned upon the compliance of the permit holder with the requirements of sections 264-8 and 264-9. [L 1967, c 163, pt of §2; HRS §264-11]

" **§264-12 Penalty for violations.** Any person, including any public officer or employee who violates section 264-6, shall be fined not more than \$250 or imprisoned not more than three months, or both. [L 1967, c 163, pt of §2; HRS §264-12]

Cross References

Classification of offense and authorized punishment, see §§701-107, 706-640, 663.

" **§264-13 Easements, etc., along state highways.** Notwithstanding any law to the contrary, the governor or the director of transportation as the governor's designee, may dispose of easements within and access rights along the state highway rights-of-way under such terms and conditions which, in the director's opinion, are in the best interest of the public. [L 1966, c 30, §2; HRS §264-13; gen ch 1985; am L 1991, c 36, §1; gen ch 1992]

" **[\$264-14] Permit and paving requirements.** Notwithstanding the existence of any right of vehicle access to or from a state highway in favor of an abutting owner, the department of transportation may prohibit vehicle access via any street, road or driveway to or from abutting properties unless the owner applies for a permit and paves the highway right-of-way between the access opening and the paved portion of the highway pursuant to sections 264-6 to 264-11. Access to or from abutting property via any street, road or driveway which is in use on April 16, 1971 shall not be affected by this section. [L 1971, c 15, §4]

Revision Note

"April 16, 1971" substituted for "the effective date of this section".

" **§264-15 Highway advance acquisition; source of funds.** The director may, with the approval of the governor, expend moneys appropriated by the legislature as may be necessary for the acquisition of real property when the director determines:

- (1) The acquisition of the real property is necessary for a state highway project authorized by the legislature;
- (2) Funds previously authorized by the legislature are inadequate; and
- (3) That any delay in the acquisition of such property would unnecessarily increase the cost of the highway project;

provided that the selected corridor and alignment of the project shall have been approved by the governor.

All moneys received from the rental, sale, or lease of any property acquired under this section shall be paid into the state general fund; provided that whenever federal funds are involved in the acquisition of the property, any money received from the sale, lease, or rental of such property shall be expended toward the project for which the property was acquired. [L 1971, c 132, §2; gen ch 1985; am L 1993, c 280, §54]

" **[\$264-16] State highway clearing accounts.** The director of transportation may with the prior approval of the director of finance and comptroller establish the state highway payroll clearing account, employee benefits clearing account, construction administration clearing account, and any other necessary clearing account to effectively account for program costs and appropriations.

The director of transportation may, from time to time, make advances to the clearing accounts from the state highway fund or

from any moneys appropriated or otherwise made available to the department. The advances shall be in such amounts as may be required to meet the obligations of the department which are authorized by the legislature.

As soon as practicable after an expenditure from a clearing account, a determination shall be made of the proper fund or appropriation to which the expenditure should be charged. The fund or account from which funds are advanced shall thereupon be reimbursed out of the proper fund or appropriation. [L 1979, c 166, §1]

" **[\$264-17] Public hearing.** Any state or county agency which prepares proposed plans for a major public highway project shall provide an opportunity for a public hearing at the earliest practicable time before the proposed plans for the project are finalized and commitments have been made by the state or county to the plans or the project. The public hearing shall be conducted and notice given in an adequate manner to apprise all interested persons of the proposed routes and scope of the projects and allow an opportunity for all interested persons to submit data, views, or arguments, orally or in writing. The public hearing required under this section may be held in conjunction with a public hearing held on the project to meet the requirement of any federal, state or county law provided the provisions of this section are satisfied.

The proposing agency shall satisfy any requirement for holding a public hearing under this section if adequate notice of the opportunity for the public hearing on the project is given to interested persons and no written requests for the hearing are received by the agency within a reasonable time.

This section shall not apply to the construction of highway projects where the governor has made a formal determination that the construction of the project is urgently needed because of an emergency, a natural disaster, or a catastrophic failure. [L 1976, c 163, §1]

" **§264-18 Use of highway fund for bikeways.** (a) Out of the state highway fund amounts, whether state funds or federal funds, shall be expended as necessary by the State for the establishment of bikeways; provided that bikeways shall be established, whenever practicable, wherever a new or existing highway, road, or street is being designed, planned, constructed, reconstructed, relocated, or rehabilitated. At least two per cent of eligible federal funds, and in addition, other state highway fund moneys as available, shall be expended to:

(1) Establish multi-use paths, bicycle paths, and bicycle lanes; and

(2) Install signage and safety devices along bikeways; provided that the department of transportation shall include the bicycling community in a public involvement process to determine the location of multi-use paths, bicycle paths, bicycle lanes, and installation of signage and safety devices along bikeways.

Planning for any mass transit system shall include appropriate accommodation for bicycle lanes, bikeways, and bicycle routes, including bicycle racks on mass transit vehicles, to enable mass transit users to connect conveniently by bicycle to transit stations and bus stops.

This subsection shall not be construed as requiring the expenditure of a county surcharge on state tax under section 46-16.8, on bicycle paths if the application of this subsection conflicts with section 46-16.8.

(b) Bikeways are not required to be established under subsection (a):

(1) Where the establishment of the lanes, paths, routes, and ways would be contrary to public safety; or

(2) If the cost of establishing the lanes, paths, routes, and ways would be excessively disproportionate to the need or probable use; or

(3) Where low population density, other available ways, or other factors indicate an absence of any need for the lanes, paths, routes, and ways;

provided that the department of transportation shall involve representatives of the bicycling community, such as the Hawaii Bicycling League, Kauai PATH, Maui Bicycling Alliance, PATH (Big Island), and others in making a determination under paragraphs (1), (2), and (3); provided further that any decision under this subsection shall be documented, including but not limited to, the factors considered in making a decision; and provided further that the department of transportation shall have the burden of persuasion under paragraphs (2) and (3).

(c) The department of transportation, when requested, shall provide technical assistance and advice to counties in carrying out the purpose of this section. The department of transportation shall recommend construction standards for bikeways. The department of transportation, in the manner prescribed for marking highways under section 264-25, shall provide a uniform system of marking and signing such lanes, paths, routes, and ways which shall apply to lanes, paths, routes, and ways under the jurisdiction of the department of transportation and the counties. Notwithstanding any provision to the contrary, the department of transportation and the

counties may restrict the use of the lanes, paths, routes, and ways to pedestrians and non-motorized vehicles.

(d) As used in this section, the terms "bikeway", "bicycle path", and "bicycle lane" shall have the same meaning as in section 291C-1.

(e) The department of transportation shall report annually to the legislature before the convening of each regular session as to bikeway expenditures and current projects. [L 1995, c 222, §2; am L 2007, c 286, §2]

" **[\$264-19] Transportation improvement special fund.** (a) There is created within the state treasury the transportation improvement special fund to fund qualified transportation projects and to receive reimbursements from private developers who have been advanced public funds to fulfill the conditions of land use development relating to transportation.

The director may expend from the special fund such sums as are necessary to advance transportation projects, including administrative expenses, to the extent permissible:

- (1) When such projects:
 - (A) Have been identified in or are consistent with the statewide transportation plan adopted pursuant to chapter 279A; and
 - (B) Satisfy all applicable federal and state eligibility requirements; or
- (2) When the director determines that funds previously authorized for the aforementioned projects are inadequate or any delay in the completion of such projects would unnecessarily increase their cost or intensify undesirable transportation conditions.

(b) Expenditures from the special fund shall be made on vouchers approved by the director or such other officer as may be designated by the director.

(c) There shall be credited to the special fund all reimbursements and any interest earned or penalty accrued on late payments thereon received from developers who have been advanced public funds to fulfill the conditions of land use development relating to transportation or other transportation requirements imposed upon such developers.

(d) Expenditures from the special fund may not be made by the director without appropriation by the legislature. No expenditure shall be made from, and no obligation shall be incurred against, the special fund in excess of the amount standing to the credit of the special fund or for any purpose for which moneys from the special fund may not lawfully be expended.

(e) The department of transportation shall prepare and submit an annual report to the legislature on the use of the transportation improvement special fund which shall include, but not be limited to:

- (1) The [special] fund balance and the expenses made from the [special] fund for the immediately preceding fiscal year; and
- (2) Proposed appropriations from the [special] fund for the next fiscal year.

This report shall be submitted to the legislature no later than twenty days prior to the convening of each legislative session.

(f) The director may adopt rules pursuant to chapter 91 necessary to effectuate the purposes of, and to administer, this section.

(g) As used in this section:

"Director" means the director of transportation.

"Special fund" means the transportation improvement special fund. [L 1997, c 370, §§2, 3]

Revision Note

Subsection (e) added and subsections (f) and (g) redesignated pursuant to §23G-15(1).

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

- (1) Safety, durability, and economy of maintenance;
- (2) The constructed and natural environment of the area;
- (3) Community development plans and relevant county ordinances;
- (4) Sites listed on the State or National Register of Historic Places;
- (5) The environmental, scenic, aesthetic, historic, community, and preservation impacts of the activity;

- (6) Access for other modes of transportation, including but not limited to bicycle and pedestrian transportation;
- (7) Access to and integration of sites deemed culturally and historically significant to the communities affected;
- (8) Acceptable engineering practices and standards; and
- (9) Safety studies and other pertinent research.

(b) Any other law to the contrary notwithstanding, any decision by the State, the department of transportation, a county, or any officers, employees, or agents of the State, the department of transportation, or a county to select or apply flexibility in highway design pursuant to this section and consistent with the practices used by the Federal Highway Administration and the American Association of State Highway and Transportation Officials shall not give rise to a cause of action or claim against:

- (1) The State;
- (2) The department of transportation;
- (3) The counties;
- (4) Any public utility regulated under chapter 269 that places its facilities within the highway right-of-way; or
- (5) Any officer, employee, or agent of an entity listed in paragraphs (1) to (4).

(c) The exception to liability provided in subsection (b) applies only to the decision to select or apply flexibility in highway design pursuant to this section and does not extend to design, construction, repair, correction, or maintenance inconsistent with subsection (a). [L 2005, c 185, §2; am L 2006, c 70, §1]

" **[\$264-20.5] Complete streets.** (a) The department of transportation and the county transportation departments shall adopt a complete streets policy that seeks to reasonably accommodate convenient access and mobility for all users of the public highways within their respective jurisdictions as described under section 264-1, including pedestrians, bicyclists, transit users, motorists, and persons of all ages and abilities.

(b) This section shall apply to new construction, reconstruction, and maintenance of highways, roads, streets, ways, and lanes located within urban, suburban, and rural areas, if appropriate for the application of complete streets.

(c) This section shall not apply if:

- (1) Use of a particular highway, road, street, way, or lane by bicyclists or pedestrians is prohibited by law, including within interstate highway corridors;
- (2) The costs would be excessively disproportionate to the need or probable use of the particular highway, road, street, way, or lane;
- (3) There exists a sparseness of population, or there exists other available means, or similar factors indicating an absence of a future need; or
- (4) The safety of vehicular, pedestrian, or bicycle traffic may be placed at unacceptable risk. [L 2009, c 54, §1]

Note

Section applies to development for which planning or design commences on or after January 1, 2010. L 2009, c 54, §4.

Revision Note

Section was enacted as an addition to chapter 286 but was renumbered to this chapter pursuant to §23G-15.

"PART II. FEDERAL-AID HIGHWAYS

§264-21 Definitions. Whenever used in this part:

"Administrator" means the official or officials administering the Federal Highway Act.

"Federal-aid funds" means funds appropriated by the Congress of the United States under or for the purposes of the Federal Highway Act, in which the State is entitled to share.

"Federal-aid project" means any project for the construction or reconstruction of any highway or portion thereof upon which federal-aid funds are to be, are being, or have been, expended, in connection with local appropriations as in this section defined.

"Federal Highway Act" means Title 23 of the United States Code, and all acts of the Congress of the United States amendatory or supplementary thereto, including future enactments not requiring substantial changes of the powers and duties provided for by this part.

"Local funds" means funds appropriated by the State or any county for the construction of any federal-aid project. [L 1929, c 53, pt of §1; RL 1935, §1710; RL 1945, §4961; RL 1955, §111-1; HRS §264-21]

Revision Note

Definitions rearranged.

" **§264-22 State highway department.** For the purpose of complying with the Federal Highway Act, the department of transportation is designated as the state highway department. [L 1929, c 53, pt of §1; RL 1935, §1711; RL 1945, §4962; RL 1955, §111-2; am L Sp 1959 2d, c 1, §26; HRS §264-22]

" **§264-23 Duties of director.** The director of transportation shall:

- (1) Select, designate, acquire, or lay out, in compliance with the requirements of the Federal Highway Act, a system or systems of highways in the State, upon which federal-aid funds may or are to be expended, together with state or county funds, or both;
- (2) Alter, modify, revise, or acquire new or additional real property interests in support of the system or systems or any portion or portions thereof, to such extent as may be required by the administrator under the Federal Highway Act; provided the alteration, modification, revision, or acquisition of new or additional real property interests is not forbidden by the laws of the State and exempt from any county subdivision ordinances;
- (3) Prepare, or cause to be prepared, and submit for approval to the administrator, in conformity with the Federal Highway Act, project statements setting forth proposed construction or reconstruction of any highway or portion thereof upon which federal-aid funds are proposed or desired to be expended in connection with local funds; and upon approval of any of the project statements, in conformity with the Federal Highway Act, prepare or cause to be prepared, and submit for approval to the administrator, the surveys, plans, specifications, and estimates for the project embraced by the statement, or any portion thereof, that the administrator may require;
- (4) Subject to the approval of the administrator, and in conformity with the Federal Highway Act, on behalf of the State, undertake, and enter into contracts for, the construction of the federal-aid projects, and the expenditure of federal-aid funds, together with local funds, upon the projects, and supervise the construction of the projects; and
- (5) Undertake and perform any and all acts that are necessary or proper for the purpose of complying with

the Federal Highway Act and securing the benefits of federal-aid for highways which the State is eligible to receive under the Federal Highway Act.

The director may designate in writing a qualified subordinate who may sign vouchers, make routine reports, and perform any other routine duties that the director may deem necessary to delegate. All acts of the subordinate shall be performed under the direction of the director, who shall be responsible therefor. [L 1929, c 53, pt of §1; RL 1935, §1712; RL 1945, §4963; am L 1947, c 180, §2; RL 1955, §111-3; am L Sp 1959 2d, c 1, §26; HRS §264-23; am L 2008, c 12, §2]

Cross References

Functions, generally, see §26-19.

" **§264-24 Powers of director.** The director of transportation shall have any powers which may be necessary for the full and effective performance and discharge of the duties imposed upon the director by this part or which may be necessary fully and completely to carry out and effectuate the purposes of this part.

The director may, on behalf of the State, with the approval of the governor, accept donations of land, money, or other property for deposit in the state highway fund or for any purpose of this part, upon such terms and conditions as are acceptable to the director, and not inconsistent with the proper discharge of the director's duties and functions or prejudicial to the obtaining of the federal-aid funds payable to the State without such donations. [L 1929, c 53, pt of §1; RL 1935, §1713; RL 1945, §4964; am L 1947, c 73, §4; RL 1955, §111-4; am L Sp 1959 2d, c 1, §26; HRS §264-24; gen ch 1985]

" **§264-25 Signs and markings on federal-aid highways.** On any federal-aid highway, the location, form, and character of informational, regulatory, and warning guideposts, direction boards, signs, curb, and pavement or other markings, and traffic signals, installed or placed by or under the authority of any county, shall be subject to the approval of the director of transportation or the director's authorized representative. The director shall exercise the authority conferred upon the director in such manner as to protect and promote the securing of federal-aid for highways. [L 1945, c 172, §1; RL 1955, §111-5; am L Sp 1959 2d, c 1, §26; HRS §264-25; gen ch 1985]

" **§264-26 Combination of federal and state funds.** (a) Every agreement for the engineering or construction of federal-

aid highways or for the acquisition of rights-of-way for these highways shall be made on behalf of the State by the director of transportation. Section 103D-309 shall apply only to that portion of the price that is payable out of local funds. As to that portion of the price that is payable out of federal-aid funds, the agreement is that the State will pay the contractor only out of federal funds actually received for that portion of the project and is not a general agreement on the part of the State to pay that portion out of any other funds. Each agreement shall be deemed to contain a provision to that effect whether specifically included or not.

(b) Any moneys appropriated for the State's share of the price or any moneys in the state highway fund created by section 248-8, in the discretion of the director, may be drawn upon to advance the federal share of payments (1) earned by contractors on federal-aid projects for completed portions of the work, or (2) due the owners for property conveyed by them where the necessary federal-aid moneys are not immediately forthcoming, the appropriation or fund to be reimbursed for the advances when federal-aid moneys are received. [L 1929, c 53, pt of §1; am L 1933, c 77, §1; RL 1935, §1714; RL 1945, §4965; RL 1955, §111-6; am L 1967, c 116, §1; HRS §264-26; am L Sp 1993, c 8, §20]

" **§264-27 REPEALED.** L 1979, c 165, §1.

" **§264-28 Federal-aid projects; mandatory on council.** Whenever appropriations are made by the legislature for the construction or reconstruction of any highway or portion thereof, the director of transportation, in the absence of any provisions to the contrary in the act making the appropriation or in any other state laws applicable thereto, and in case the highway is eligible for federal aid and the director deems such course advisable, may, subject to the approval of the administrator, construct such highway as a federal-aid project and contract for it in accordance with the provisions of this part and of the Federal Highway Act. If any appropriation made by the legislature for the construction or reconstruction of any highway or any portion thereof is required by the act making the appropriation to be expended by the council of a particular county, the director may, in the absence of any specific provision to the contrary in the act making such appropriation, subject to the approval of the governor, designate such highway as a federal-aid project; and the council, upon that designation, shall place the appropriation in the control and at the disposal of the director for the purpose of constructing the highway or portion thereof as a federal-aid project, and the director shall proceed to construct such highway as a federal-

aid project and to contract for it in accordance with this part and the Federal Highway Act. [L 1929, c 53, pt of §1; am L 1931, c 95, §1; RL 1935, §1715; RL 1945, §4967; RL 1955, §111-8; am L Sp 1959 2d, c 1, §26; HRS §264-28; gen ch 1985]

Revision Note

References to "council" substituted for "board of supervisors" to conform to county charters.

" **§264-29 Council's authority.** The council of a county, by resolution adopted in the manner required by law relating to resolutions involving the expenditure of public money, may place under the control and at the disposal of the director of transportation any funds of the county expendable for construction or reconstruction of highways within the county for the purpose of securing or attempting to secure federal aid for the construction or reconstruction, as a federal-aid project, of any highway or portion thereof eligible for federal aid within the county. The council, whenever an appropriation for the construction of any highway or portion thereof lying within the system or systems of highways eligible for federal aid, as designated from time to time by the governor and the administrator under the provisions of the Federal Highway Act, as amended, is made by it, by resolution shall place the appropriation under the control of the director for the purpose of constructing the highway or portion thereof as a federal-aid project.

The council, by the resolution, shall also grant the director of transportation exemptions from county subdivision requirements in order to expedite and make efficient the expenditure of public money. [L 1929, c 53, pt of §1; am L 1931, c 95, §2; RL 1935, §1716; RL 1945, §4968; RL 1955, §111-9; am L Sp 1959 2d, c 1, §26; HRS §264-29; am L 2008, c 12, §3]

Revision Note

References to "council" substituted for "board of supervisors" to conform to county charters.

" **§264-30 Transfers of county funds.** If any funds for highways are placed at the disposal of the director of transportation by the council of any county under the provisions of section 264-28 or 264-29, these funds, if not already in the treasury of the State, or under the immediate control of the proper officers of the State, shall be paid by the county into the treasury of the State for the purpose specified, and shall

thereafter be expendable only by the director for the purpose upon warrants drawn by the comptroller based upon vouchers approved by the director.

If the funds are not wholly expended for such project, or if for any reason the project fails to become a federal-aid project, the director shall certify such fact to the comptroller and director of finance of the State and to the council of the county concerned, and such funds or the unexpended balance thereof, as the case may be, shall, upon the certification immediately resume the former status thereof, and shall be retransferred to the proper fund, or to the county, as the case may be, to which it formerly belonged. [L 1929, c 53, pt of §1; RL 1935, §1717; RL 1945, §4969; RL 1955, §111-10; am L 1957, c 152, §1; am L Sp 1959 2d, c 1, §§14, 26; am L 1963, c 114, §1; HRS §264-30]

Revision Note

References to "council" substituted for "board of supervisors" to conform to county charters.

" **§264-31 Maintenance of federal-aid highways.** (a) The maintenance work on all roads upon which federal-aid funds have been expended shall be performed under the direction and supervision of the director of transportation either by public employment or by contract, or the director may have the work performed by the county road department, by public employment or by contract, upon authorization of the council of the county concerned. Expenditures for the maintenance work shall be made from the state highway fund created by section 248-8.

(b) All maintenance work shall consider the extent to which work undertaken will increase traffic congestion and the director shall ensure that action is taken to reasonably minimize any adverse impact. The feasibility of off-hour maintenance work shall be considered for all maintenance work that results in significant traffic congestion or delay.

(c) As used in this section, "off-hour maintenance work" means maintenance work performed between the hours of six o'clock p.m. and six o'clock a.m. [L 1929, c 53, pt of §1; RL 1935, §1720; RL 1945, §4972; am L 1945, c 82, §2; RL 1955, §111-11; am L Sp 1959 2d, c 1, §26; HRS §264-31; am L 1992, c 42, §2]

Revision Note

References to "council" substituted for "board of supervisors" to conform to county charters.

" **§264-32 Utility facility defined.** The term "utility facility" wherever used in section 264-33 means and includes any of the following: any surface, underground, or overhead water mains, fire hydrants, gas mains, sewer mains, pipes (including fuel oil lines), conduits, utility holes, poles, wires, cables, lines, street lighting structures, or other structures or equipment, and the appurtenances thereto, owned by any privately owned public utility or by any county or by any police department or board of water supply of a county and used in connection with the producing or the furnishing of water, gas, light, electric power, communications, transportation, or other public utility services. [L 1953, c 277, §1; RL 1955, §111-19; HRS §264-32; am L 1986, c 339, §27]

" **§264-33 Relocation of utility facilities.** (a) Whenever, as the result of the work of construction, reconstruction, or maintenance of any state highway or state or county federal-aid highway, it is necessary to provide for or require the removal, relocation, replacement, or reconstruction of any utility facility, and the expense of removal, relocation, replacement, or reconstruction exceeds \$10,000, one-half of this excess expense shall be a proper charge against the state or county funds available for the construction or maintenance of state or county highways; provided that all of the expense of removal, relocation, replacement, or reconstruction of publicly owned utility facilities shall be a charge against the state or county funds.

(b) The work of the removal, relocation, replacement, or reconstruction may be performed in the following manner, subject to the following conditions:

- (1) The work shall be performed in accordance with standards of construction currently used by the utility; and
- (2) Such work may be performed by contract as provided in chapter 103D; or after first calling for bids under that chapter, the director of transportation or other officer having power to award such contract, may contract with the public utility owning the utility facility to have the work performed by it, with the use of its own employees and equipment at not to exceed actual cost or in the amount of the lowest responsible bid (if such bids have been submitted), whichever is the lowest amount, with the adjustments hereinafter provided for.

(c) The amount to be paid out of state or county funds shall be computed as follows:

- (1) The total cost shall first be determined.

- (2) From the total cost there shall be deducted the following items:
- (A) Depreciation, except that this shall not be applicable to publicly owned utility facilities, and the salvage value of any materials or parts salvageable and retained by the utility;
 - (B) The amount of any betterment to the utility facility resulting from the removal, relocation, replacement, or reconstruction;
 - (C) In the case of a privately owned utility facility only, the first \$10,000 of the expense of such work;
 - (D) The balance of the cost, in the case of a privately owned utility facility only, shall be paid one-half by the owner thereof, and the remaining one-half shall be the amount payable out of state or county funds. [L 1953, c 227, §2; RL 1955, §111-20; am L Sp 1959 2d, c 1, §26; HRS §264-33; am L 1981, c 42, §1; am L Sp 1993, c 8, §21]

Attorney General Opinions

Section applies to temporary relocations. Att. Gen. Op. 62-8.
Section does not apply to city and county street. Att. Gen. Op. 63-46.

" **[\$264-33.5] Underground installation of utility facilities along federal-aid highways; when required; when waived.** (a)

The director of transportation shall arrange for the installation of all utility cables and facilities below the ground, within a berm or away from the alignment of a highway, during the design or redesign and construction or reconstruction phases of any new or existing federal-aid highway project, when a determination is made that federal highway funds are available to pay for the federal share of the cost differential between underground and overhead facilities.

(b) The director of transportation may make exceptions to subsection (a) if:

- (1) The director determines that exceptions are appropriate due to either:
 - (A) Any of the following criteria: environmental, safety, research, technology, corridor alignment, or management concern; or
 - (B) The following criteria collectively: state funding impacts, economic feasibility, and federal funding concerns; or

- (2) The projects do not lend themselves to undergrounding, such as: resurfacing, traffic signal installation, drainage installation, bikeway markings, guardrail installation, traffic markings, and enhancement improvements. [L 1996, c 84, §2]

Cross References

Overhead or underground construction of high-voltage electric transmission lines, see §269-27.6.

" **§264-34 Portions of projects deemed one.** Where a particular highway project is divided into sections or portions for the purpose of calling for bids thereon, all sections or portions of the project for which bids are called for at or about the same time shall be deemed one project for the purposes of determining the expense of the removal, relocation, replacement, or reconstruction. [L 1953, c 227, §3; RL 1955, §111-21; HRS §264-34]

" **§264-35 Assistance for displaced families and business.**
(a) As used in this section the term "eligible person" means any individual, family, business concern (including the operation of a farm), and nonprofit organization to be displaced by construction of a project.

(b) The director of transportation, in estimating the cost of any project under section 106, Title 23, United States Code, for right-of-way acquisition or actual construction, shall include as a part of the cost of construction on any of the federal-aid highway systems, relocation payments to be made initially by the director, from state highway funds, to eligible persons for their reasonable and necessary moving expenses caused by their displacement from real property acquired for such project.

(c) Payments under this section shall not exceed \$200 in the case of an individual or family, or \$3,000 in the case of a business concern (including the operation of a farm) or nonprofit organization. In the case of a business (including the operation of a farm) and in the case of a nonprofit organization, the allowable expenses for transportation under this subsection shall not exceed the cost of moving fifty miles from the point from which the business or organization is being displaced.

(d) In order that the State may avail itself of federal participation in making payments under this section, the director will comply with such rules and regulations regarding payments as may be prescribed by the Secretary of Transportation

of the United States. [L 1963, c 187, §1; Supp, §111-22; am L 1967, c 106, §1; HRS §264-35]

" **§264-36 Conformance with county general or master plans.** All federal-aid highways shall conform to the general or master plans of the respective political subdivisions of the State unless the conformance jeopardizes the receipt of federal aid, in which case the governor, by executive order, may set aside the general or master plan to the extent any conflict prevents the receipt of federal aid on any given project or the prosecution of the work thereunder. [L 1963, c 170, §1; Supp, §111-23; HRS §264-36]

Case Notes

Federal-aid highway found in conformance with Oahu General Plan. 389 F. Supp. 1102.

"PART III. STATE HIGHWAY SYSTEM

§264-41 Establishment. There is established a state highway system which shall consist of federal-aid highways and other public highways which may be designated for inclusion in the system pursuant to section 264-42. [L 1965, c 159, pt of §1; Supp, §111-51; HRS §264-41]

Case Notes

A public highway is not a state highway unless it is designated for inclusion in the state highway system. 2 H. App. 387, 633 P.2d 1118.

" **§264-42 Authority to include other public highways in the state highway system.** The director of transportation acting in cooperation with appropriate federal and county agencies, may designate for inclusion in the state highway system, such other public highways, including county highways, which are used primarily for through traffic and not for access to any specific property, whether residential, business, or other abutting property. [L 1965, c 159, pt of §1; Supp, §111-52; HRS §264-42]

" **§264-43 Responsibility.** The department of transportation shall acquire, subdivide, consolidate, construct, maintain, and administer all highways comprising the state highway system in accordance with all state and federal laws and exempt from county subdivision ordinances. [L 1965, c 159, pt of §1; Supp, §111-53; HRS §264-43; am L 2008, c 12, §4]

Case Notes

State has a duty to keep shoulders of road in reasonably safe condition. 60 H. 381, 590 P.2d 564.

" **§264-44 Maintenance of state highway system.** (a) The maintenance of the state highway system may be performed either by public employment or by contract, or the director of transportation may have the maintenance performed by the county in which the highways are situated, by public employment or by contract, upon authorization of the legislative body of the county concerned.

(b) All maintenance work shall consider the extent to which work undertaken will increase traffic congestion and the director shall ensure that action is taken to reasonably minimize any adverse impact. The feasibility of off-hour maintenance work shall be considered for all maintenance work that results in significant traffic congestion or delay.

(c) As used in this section, "off-hour maintenance work" means maintenance work performed between the hours of six o'clock p.m. and six o'clock a.m. [L 1967, c 163, §3; HRS §264-44; am L 1992, c 42, §3]

" **[§264-45] Highway lighting.** To the extent that it is practical and not in conflict with any safety regulation or federal law, regulation, or mandate, if any highway rule or standard relating to highway lighting conflicts with any county ordinance or other rule regarding highway lighting, the more stringent requirement or standard shall govern all new installations of highway lighting. [L 2007, c 121, §3]

"PART IV. CONTROLLED-ACCESS FACILITIES

§264-61 Definition of a controlled-access facility. For the purposes of this part, a controlled-access facility is defined as a public highway especially designed for through traffic, and over, from, or to which owners or occupants of abutting land or other persons have no right or easement or have only a controlled right or easement of access, light, air, or view by reason of the fact that their property abuts upon the controlled-access facility or for any other reason. [L 1960, c 3, pt of §2; Supp, §111-43; HRS §264-61]

" **§264-62 Authority to establish controlled-access facilities.** The director of transportation, acting alone or in cooperation with any federal, or local agency, may plan,

designate, establish, regulate, vacate, alter, realign, widen, improve, maintain, and provide controlled-access facilities for public use whenever the director is of the opinion that traffic conditions, present or future, will justify the special facilities. The director may regulate, restrict, or prohibit the use of the controlled-access facilities by the various classes of vehicles or traffic by means of signs and other devices to promote the safe and efficient use of the facilities. [L 1960, c 3, pt of §2; Supp, §111-44; HRS §264-62; gen ch 1985]

" **§264-63 Acquisition of property.** For the purposes of this part, the director of transportation may acquire for controlled-access facilities and service roads:

- (1) Property, as defined in chapter 101, by gift, devise, or purchase; or
- (2) Property by eminent domain under chapter 101. [L 1960, c 3, pt of §2; Supp, §111-46; HRS §264-63]

" **§264-64 Design of controlled-access facility and regulation, restriction, or prohibition of access; penalty.** The director of transportation may so design any controlled-access facility and so regulate, restrict, or prohibit access as to best serve the traffic for which such facility is intended. In this connection, the director may divide and separate any controlled-access facility into separate roadways by the construction of raised curbing, central dividing sections, or other physical separations, or by designating the separate roadways by signs, markers, stripes, and the proper lane for the traffic by appropriate signs, markers, stripes, and other devices.

No person shall have any right of ingress or egress to, from, or across controlled-access facilities to or from abutting lands, except at the designated points at which access may be permitted, upon such terms and conditions as may be specified by the director. Any person who violates this section shall be fined not more than \$250 or imprisoned not more than three months, or both. [L 1960, c 3, pt of §2; Supp, §111-45; HRS §264-64; gen ch 1985]

Cross References

Classification of offense and authorized punishment, see §§701-107, 706-640, 663.

" **§264-65 New and existing facilities; grade-crossing eliminations.** The director of transportation may designate and establish controlled-access highways as new and additional

facilities or may designate and establish an existing public highway as included within a controlled-access facility. The director may provide for the elimination of intersections at grade of controlled-access facilities with existing public highways by grade separation or service road, or by closing off the highways at the right-of-way boundary line of the controlled-access facility; and after the establishment of any controlled-access facility, no highway which is not part of the facility shall intersect the same at grade. No public highway shall be opened into or connected with any such controlled-access facility without the consent and previous approval of the director. The consent and approval shall be given only if the public interest is served thereby. [L 1960, c 3, pt of §2; Supp, §111-47; HRS §264-65; gen ch 1985]

" **§264-66 Authority to enter into agreements.** The director of transportation may enter into agreements with the council of any county, or with the federal government, respecting the financing, planning, establishment, improvement, maintenance, use, regulation, or vacation of controlled-access facilities or other public highways, to facilitate the purposes of this part. [L 1960, c 3, pt of §2; Supp, §111-48; HRS §264-66]

Revision Note

"Council" substituted for "board of supervisors or councilmen" to conform to county charters.

" **§264-67 Local service roads.** In connection with the development of any controlled-access facility, the director of transportation may plan, designate, establish, use, regulate, alter, realign, widen, improve, maintain, and vacate local service roads and streets or designate as local service roads and streets any existing public highway, and exercise jurisdiction over service roads and streets in the same manner as is authorized over controlled-access facilities under this part, if, in the director's opinion, the local service roads or streets are necessary or desirable. The local service roads or streets shall be of appropriate design, and shall be separated from the controlled-access facility proper by means of all devices designated as necessary or desirable by the director. [L 1960, c 3, pt of §2; Supp, §111-49; HRS §264-67; gen ch 1985]

"PART V. OUTDOOR ADVERTISING

Cross References

Regulation by counties, see §§445-111 to 121.

Law Journals and Reviews

Metromedia, Inc. v. City of San Diego: The Conflict Between Aesthetic Zoning and Commercial Speech Protection; Hawaii's Billboard Law Under Fire, Note, 5 UH L. Rev. 79.

§264-71 Definitions. For the purpose of this part, if not inconsistent with the context:

"Department" means the department of transportation.

"Director" means the director of transportation.

"Outdoor advertising" means any device which is:

- [(1)] A writing, picture, painting, light, model, display, emblem, sign, billboard, or similar device situated outdoors, which is so designed that it draws the attention of persons on any federal-aid or state highway, to any property, services, entertainment, or amusement, bought, sold, rented, hired, offered, or otherwise traded in by any person, or to the place or person where or by whom such buying, selling, renting, hiring, offering or other trading is carried on;
- [(2)] A sign, billboard, poster, notice, bill, or word or words in writing situated outdoors and so designed that it draws the attention of and is read by persons on any federal-aid or state highway; or
- [(3)] A sign, billboard, writing, symbol, or emblem made of lights, or a devise or design made of lights so designed that its primary function is not giving light, which is situated outdoors and draws the attention of persons on any federal-aid or state highway. [L 1966, c 45, pt of §2; HRS §264-71]

Revision Note

Numeric designations deleted.

" **§264-72 Control of outdoor advertising.** No person shall erect or maintain any outdoor advertising outside of the right-of-way boundary and visible from the main-traveled way of any federal-aid or state highway within the State, except the following:

- (1) Directional and other official signs and notices, which signs and notices shall include, but not be limited to, signs and notices pertaining to natural wonders, scenic and historic attractions as authorized or required by law.

- (2) Signs, displays, and devices advertising the sale or lease of the property upon which they are located.
- (3) Signs, displays, and devices advertising activities conducted on the property upon which they are located.
- (4) Signs lawfully in existence on October 22, 1965, determined by the director to be landmark signs, including signs on farm structures or natural surfaces, of historic or artistic significance the preservation of which would be consistent with the purpose of this section. [L 1966, c 45, pt of §2; HRS §264-72; am L 1975, c 39, §1]

" **§264-73 Regulations.** The director of transportation may promulgate rules and regulations governing the erection and maintenance of outdoor advertising permitted under section 264-72, consistent with the safety and welfare of the traveling public and with the national standards promulgated by the Secretary of Transportation pursuant to Title 23, United States Code. [L 1966, c 45, pt of §2; HRS §264-73]

Cross References

Rulemaking, see chapter 91.

" **§264-74 Removal of nonconforming outdoor advertising.** Any outdoor advertising lawfully in existence on May 4, 1966, and which is not in conformity with the provisions contained herein shall be required to be removed by July 1, 1970. Any other outdoor advertising lawfully erected which subsequently does not conform to this part shall not be required to be removed until the end of the fifth year after it becomes nonconforming. [L 1966, c 45, pt of §2; HRS §264-74]

" **§264-75 Compensation for removal of outdoor advertising.**

(a) The director of transportation may acquire by purchase, gift, or condemnation, and pay just compensation upon the removal of any outdoor advertising lawfully erected.

- (1) Those lawfully in existence on October 22, 1965.
 - (2) Those lawfully on any federal-aid or state highway on or after October 22, 1965, and before January 1, 1968.
 - (3) Those lawfully erected on or after January 1, 1968.
- (b) The compensation will be paid only for the following:
- (1) The taking from the owner of the outdoor advertising of all right, title, leasehold, and interest therein; and
 - (2) The taking from the owner of the real property on which the outdoor advertising is located, of the right

to erect and maintain the outdoor advertising thereon.
[L 1966, c 45, pt of §2; HRS §264-75; am L 1975, c 39,
§2]

" **§264-76 Unlawful outdoor advertising.** Any outdoor advertising which violates this part is a public nuisance. [L 1966, c 45, pt of §2; HRS §264-76]

" **§264-77 Penalty.** Any person violating this part shall be fined not less than \$25 nor more than \$500, or imprisoned not more than one month, or both. [L 1966, c 45, pt of §2; HRS §264-77]

" **§264-78 Interpretation.** Nothing in this part shall be construed to abrogate or affect the provisions of any law, ordinance, or regulation which are more restrictive than this part. [L 1966, c 45, pt of §2; HRS §264-78]

" **§264-79 Agreements with the United States authorized.** The director of transportation may enter into agreements with the Secretary of Transportation of the United States as provided by Title 23, United States Code, relating to control of outdoor advertising in areas adjacent to any federal-aid highway, and take action in the name of the State to comply with the terms of the agreement. [L 1966, c 45, pt of §2; HRS §264-79]

"PART VI. JUNKYARD CONTROL

§264-81 Short title. This part may be cited as the "Junkyard Control Act". [L 1966, c 46, pt of §2; HRS §264-81]

Cross References

Ownership of solid waste, see chapter 340A.

" **§264-82 Purposes.** For the purpose of promoting the public safety, health, welfare, convenience, and enjoyment of public travel, to protect the public investment in public highways, and to preserve and enhance the scenic beauty of lands bordering public highways, it is declared to be in the public interest to regulate and restrict the establishment, operation, and maintenance of junkyards in areas adjacent to federal-aid or state highways within the State. The legislature finds, determines, and declares that junkyards which do not conform to the requirements of this part are public nuisances. [L 1966, c 46, pt of §2; HRS §264-82]

" **§264-83 Definitions.** For the purpose of this part, if not inconsistent with the context:

"Automobile graveyard" means any establishment or place of business which is maintained, used, or operated, for storing, keeping, buying, or selling wrecked, scrapped, ruined, or dismantled motor vehicles or motor vehicle parts.

"Department" means the department of transportation.

"Director" means the director of transportation.

"Junk" means old or scrap copper, brass, rope, rags, batteries, paper, trash, rubber debris, waste, or junked, dismantled, or wrecked automobiles, or parts thereof, iron, steel, and other old or scrap ferrous or nonferrous material.

"Junkyard" means an establishment or place of business which is maintained, operated, or used for storing, keeping, buying, or selling junk, or for the maintenance or operation of an automobile graveyard, and the term includes garbage dumps and sanitary fills. [L 1966, c 46, pt of §2; HRS §264-83]

Revision Note

Numeric designations deleted.

" **§264-84 Control of junkyards.** No person shall establish, operate, or maintain a junkyard, any portion of which is within 1,000 feet of the nearest edge of the right-of-way of any federal-aid or state highways within the State, except the following:

- (1) Those which are screened by natural objects, plantings, fences, or other appropriate means so as not to be visible from the main traveled way of a federal-aid or state highway.
- (2) Those which are not visible from the main traveled way of a federal-aid or state highway. [L 1966, c 46, pt of §2; HRS §264-84]

" **§264-85 Junkyards lawfully in existence.** Any junkyard lawfully in existence on May 4, 1966, which is within one thousand feet of the nearest edge of the right-of-way and visible from the main traveled way of any federal-aid or state highway shall be screened, if feasible, by the department of transportation at locations on the highway right-of-way or in areas acquired for such purposes outside the right-of-way so as not to be visible from the main traveled way of the highway; provided that if such a junkyard is located in an area zoned for industrial use, the requirement for screening shall not apply. [L 1966, c 46, pt of §2; HRS §264-85; am L 1980, c 82, §1]

" **§264-86 Requirement as to screening.** The director of transportation may promulgate rules and regulations governing the location, planting, construction, and maintenance, including the materials used in the screening required by this part. [L 1966, c 46, pt of §2; HRS §264-86]

Cross References

Rulemaking, see chapter 91.

" **§264-87 Authority to acquire interest in land for removal and screening of existing junkyards.** When the director of transportation determines that the topography of the land will not permit the adequate screening of existing junkyards or that the screening of the junkyards would not be economically feasible, the director may acquire by gift, purchase, exchange, or condemnation, such interests in lands as may be necessary to secure the relocation, removal, or disposal of the junkyards, and pay for the costs of relocation, removal, or disposal thereof. When the director determines that it is in the best interest of the State, the director may acquire such lands, or interests in lands, as may be necessary to provide adequate screening of the junkyards. [L 1966, c 46, pt of §2; HRS §264-87; gen ch 1985]

" **§264-88 Injunction.** The department of transportation may apply to the circuit court in the county in which the junkyards may be located for an injunction to abate the nuisance of a nonconforming junkyard. [L 1966, c 46, pt of §2; HRS §264-88]

" **§264-89 Interpretation.** Nothing in this part shall be construed to abrogate or affect the provisions of any lawful ordinance or regulation which are more restrictive than this part. [L 1966, c 46, pt of §2; HRS §264-89]

" **§264-90 Agreements with the United States authorized.** The director of transportation may enter into agreements with the Secretary of Transportation of the United States as provided by Title 23, United States Code, relating to the control of junkyards in areas adjacent to any federal-aid highway, and take action in the name of the State to comply with the terms of the agreements. [L 1966, c 46, pt of §2; HRS §264-90]

"PART VII. CONTROL OF VENDING

§264-101 Vending from highways prohibited. (a) No person shall park or place a vehicle or structure wholly or partly on

any highway for the purpose of selling the vehicle or structure or of selling therefrom or therein any article, service, or thing, thereby creating a hazardous condition or a public nuisance or in reckless disregard of the risk of creating a hazardous condition or public nuisance. The department of transportation may remove or require the immediate removal of the vehicle or structure from the highway.

(b) The director of transportation, in the case of state highways, may, upon application in writing, issue a written permit, subject to any terms and conditions imposed by the director, authorizing the applicant to vend in the airspace, as that term is defined in title 23 Code of Federal Regulations section 710.105, as amended, of the State's interstate highway system.

(c) For the purposes of this section, "highway" means the entire width, including the berm or shoulder of a public highway as defined in section 264-1. [L 1980, c 44, pt of §1; am L 2000, c 23, §1; am L 2002, c 16, §10; am L 2013, c 115, §1]

" **§264-102 Penalty.** Any person who violates section 264-101 is guilty of a petty misdemeanor and shall be fined not more than \$1,000 or imprisoned not more than thirty days, or both. [L 1980, c 44, pt of §1; am L 2000, c 23, §2]

"[PART VIII.] IMPACT FEES

§264-121 Definitions. As used in this part, unless the context requires otherwise:

"Capital costs" means part or all of the cost for capital improvements. Capital costs may include costs to acquire right-of-way, plan, design, engineer, finance, and construct improvements including costs of management and consultant fees. Capital costs shall not include periodic maintenance and other operating costs.

"Department" means the department of transportation.

"Development" means any artificial change to real property that requires a county grading or building permit including but not limited to construction, expansion, enlargement, alteration, or erection of buildings or structures.

"Director" means the director of transportation.

"Impact fee" means an assessment on a development used to incrementally fund a fair share of the capital costs of public highway improvements reasonably needed to serve that development.

"State highway improvements" means capital improvements to the physical infrastructure of state highways. [L 2004, c 155, pt of §2; am L 2006, c 197, §1]

" **[\$264-122] Highway development special fund.** (a) There is established in the state treasury the highway development special fund to be administered by the department, into which shall be deposited:

- (1) Transfers of county impact fees assessed under part VIII of chapter 46 and this part to pay for state highway improvements;
- (2) Interest from investment of deposits; and
- (3) Legislative and county appropriations.

(b) Moneys in the highway development special fund shall be used for the following purposes:

- (1) Capital costs of qualifying proposed state highway improvements;
- (2) Reevaluation of the need, geographic limitations, amount, and use of impact fees;
- (3) Transfers to reimburse other special funds for expenditures which otherwise might have been funded with moneys in the highway development special fund;
- (4) Transfers under sections 36-27 and 36-30;
- (5) Refunds under section 264-125; and
- (6) The department's costs to implement this part, including but not limited to costs to administer the highway development special fund.

(c) The department may establish accounts in the highway development special fund as necessary to implement this part and rules adopted by the department. [L 2004, c 155, pt of §2]

" **[\$264-123] Authority to assess impact fees; needs assessment study.** (a) A county may assess, impose, levy, collect, and transfer to the department impact fees for any development pursuant to ordinances adopted under section 46-142 and this part, and the department is authorized to receive those funds for state highway improvements.

(b) Prior to the assessment, imposition, levy, collection, or transfer to the department of impact fees pursuant to this section, the director shall approve a needs assessment study that shall identify the kinds of state highway improvements for which the fees shall be imposed by the county pursuant to part VIII of chapter 46. [L 2004, c 155, pt of §2]

" **[\$264-124 Impact fees; director's consent.]**

Notwithstanding section 264-123, no county shall assess impact fees for state highway improvements without the director's consent. [L 2004, c 155, pt of §2]

" **[\$264-125] Refund of impact fees to county.** Upon the request of a county, the department shall refund impact fees transferred to the highway development special fund which have not been expended or encumbered for purposes established under this part within six years after collection under part VIII of chapter 46. [L 2004, c 155, pt of §2]

" **[\$264-126] Adoption of rules.** The department may adopt rules pursuant to chapter 91 to implement this part. [L 2004, c 155, pt of §2]

" **[\$264-127] Limitations on actions.** A civil lawsuit contesting an action by the department or a county under this part or under part VIII of chapter 46 shall be filed within sixty calendar days after the date of the action. [L 2004, c 155, pt of §2]