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# A BILL FOR AN ACT

RELATING TO INFRASTRUCTURE MAINTENANCE IN HOUSING SUBDIVISIONS.

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

1           SECTION 1. The legislature finds that some housing  
2 subdivisions in the State have been approved without a  
3 requirement that the lot owners fund the repair and maintenance  
4 of the private roads and other infrastructure within the  
5 subdivision. Unlike condominium property regimes, many housing  
6 subdivisions are not subject to a statutory framework or an  
7 oversight agency to oversee the creation, monitoring, training,  
8 and auditing of the various volunteer associations responsible  
9 for the subdivision infrastructure. Accordingly, the judicial  
10 system has created a patchwork system through judgments in  
11 various lawsuits that does not provide adequate oversight.

12           The legislature further finds that in the case of *Paradise*  
13 *Hui Hanalike v. Hawaiian Paradise Park Corp.*, 66 Haw. 362, 662  
14 P.2d 211 (1983), the Hawaii supreme court found that there  
15 exists a legal duty for property owners whose property abuts  
16 subdivision roads to contribute to the necessary maintenance of  
17 those subdivision roads. More recently, in *Kaanapali Hillside*



1 *Homeowners' Ass'n v. Doran*, 112 Hawai'i 356, 145 P.3d 899 (App.  
2 2006), property owners questioned an association's authority to  
3 collect an assessment because that authority was not recorded  
4 against the property owners' lot. Currently, there is no  
5 oversight agency for some associations whose assessment  
6 collections are more than \$1 million per year. The inability to  
7 collect assessments from lot owners of some subdivisions with no  
8 court-approved corporation, association, or entity results in  
9 substandard and deeply rutted roads that can delay emergency  
10 vehicles that respond to emergency situations including crime  
11 scenes. Further, numerous structures have been destroyed  
12 because a fire truck was not able to arrive in time.

13 The legislature believes that, because the counties approve  
14 housing subdivisions and collect real property taxes from the  
15 owners in those subdivisions, it is appropriate that the several  
16 counties establish rules and procedures for, conduct audits of,  
17 and act as an oversight agency of the housing subdivisions or be  
18 required to maintain and repair the infrastructure of the  
19 housing subdivisions located in each respective county.

20 The purpose of this Act is to require:



1 (1) Lot owners in a subdivision to pay for the repair and  
 2 maintenance of subdivision roads where the applicable  
 3 deeds do not specify a requirement or are otherwise  
 4 subject to chapter 421J, Hawaii Revised Statutes, and  
 5 to require the counties to provide support for  
 6 applicable assessments; and

7 (2) The counties to provide oversight of assessments for  
 8 repair and maintenance of subdivision roads in housing  
 9 subdivisions where no oversight authority has been  
 10 established.

11 SECTION 2. The Hawaii Revised Statutes is amended by  
 12 adding a new chapter to be appropriately designated and to read  
 13 as follows:

14 "CHAPTER

15 HOUSING SUBDIVISIONS

16 § -1 Definitions. For purposes of this chapter:

17 "Housing subdivisions" or "subdivision" means land that has  
 18 been divided into two or more lots for the construction of  
 19 housing under the applicable county code, including the  
 20 designation of easements for the purpose of sale, lease, rental,  
 21 or transfer of title and is not a planned community.



1 "Maintenance" shall include the costs to manage, maintain,  
2 and repair roads and other infrastructure, insurance costs, and  
3 fees for the management and collection of assessments.

4 "Planned community" shall have the same meaning as in  
5 section 421J-2.

6 § -2 Road repair and maintenance. (a) A lot owner in a  
7 subdivision that is not a planned community shall pay  
8 assessments, as provided by this chapter, necessary for the  
9 repair and maintenance of the subdivision roads. The  
10 assessments shall be determined by an association, corporation,  
11 or other entity to assess and collect fees for the repair and  
12 maintenance of the subdivision roads.

13 (b) If a majority of the lot owners within a subdivision  
14 have not authorized an association, corporation, or other entity  
15 to assess and collect fees for the repair and maintenance of the  
16 subdivision roads, the county in which the subdivision is  
17 located shall assess and collect fees from the lot owners and  
18 expend those funds to repair and maintain the subdivision roads.

19 (c) If a majority of the lot owners within a subdivision  
20 has authorized an association, corporation, or other entity to  
21 assess and collect fees for the repair and maintenance of the



1 subdivision roads, the lot owners may elect by a majority vote  
2 to have the county in which the subdivision is located assess  
3 and collect fees from the lot owners and expend those funds to  
4 repair and maintain the subdivision roads.

5 (d) Each county responsible for the assessment and  
6 collection of fees for the repair and maintenance of subdivision  
7 roads may designate each applicable subdivision as a special  
8 improvement district pursuant to section 46-80.5 or a community  
9 facilities district pursuant to section 46-80.1.

10 (e) This chapter shall be subject to the county's  
11 authority or power within section 46-80.5 or 46-80.1.

12 (f) A court-approved entity, without the approval of a  
13 majority of the lot owners within a subdivision, may collect and  
14 assess fees for a subdivision and maintain, repair, and operate  
15 the subdivision roads.

16 § -3 County duties regarding housing subdivisions; road  
17 maintenance and repair. (a) Each county shall provide:

18 (1) Training to volunteer association boards on their  
19 responsibilities, including conducting effective  
20 meetings pursuant to established rules of order;



1           (2) Auditing services on the assessments and use of funds  
2           for the repair and maintenance of subdivision roads;  
3           and

4           (3) Arbitration and mediation services to resolve disputes  
5           between a lot owner and the entity responsible for the  
6           assessment and collection of fees for the repair and  
7           maintenance of subdivision roads.

8           (b) A county may assess the assisted individuals or  
9 entities a reasonable fee for services provided pursuant to  
10 subsection (a).

11           (c) Once a corporation, association, or entity is  
12 designated by either a court or a majority of the lot owners for  
13 the maintenance and operational responsibilities of common areas  
14 and subdivision roads, the county shall assist the corporation,  
15 association, or entity to draft a recorded instrument as that  
16 term is used in the definition of "declaration" in section 421J-  
17 2."

18           SECTION 3. This Act shall take effect on July 1, 2050.



**Report Title:**

Subdivisions; Road Repair and Maintenance; Assessments; Counties

**Description:**

Requires lot owners in housing subdivisions to pay assessments for repair and maintenance of subdivision roads to an entity approved by a majority of homeowners or appointed by a court, or to the county. Requires the counties to provide oversight and management services to assessing entities. (HB288 HD1)

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

