

---

---

# 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 management,  
4 maintenance, and repair of the private roads and other  
5 infrastructure within the subdivision. Unlike condominium  
6 property regimes, many housing subdivisions are not subject to a  
7 statutory framework or an oversight agency to oversee the  
8 creation, monitoring, training, and auditing of the various  
9 volunteer associations responsible for the subdivision  
10 infrastructure. Accordingly, the judicial system has created a  
11 patchwork system through judgments in various lawsuits that does  
12 not provide adequate oversight.

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



1 those subdivision roads. More recently, in *Kaanapali Hillside*  
2 *Homeowners' Ass'n v. Doran*, 112 Hawai'i 356, 145 P.3d 899 (App.  
3 2006), property owners questioned an association's authority to  
4 collect an assessment because that authority was not recorded  
5 against the property owners' lot. Currently, there is no  
6 oversight agency for some associations whose assessment  
7 collections are more than \$1,000,000 per year. The inability to  
8 collect assessments from lot owners of some subdivisions with no  
9 court-approved corporation, association, or entity results in  
10 substandard and deeply rutted roads that can delay emergency  
11 vehicles that respond to emergency situations including crime  
12 scenes. Further, numerous structures have been destroyed  
13 because a fire truck was not able to arrive in time.

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



1 The purpose of this Act is to require, in counties with a  
2 population between one hundred seventy-five thousand and two  
3 hundred fifty thousand people:

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

11 (2) Counties to provide oversight of assessments for  
12 management, maintenance, and repair of subdivision  
13 roads and other infrastructure in housing subdivisions  
14 where no oversight authority has been established.

15 SECTION 2. The Hawaii Revised Statutes is amended by  
16 adding a new chapter to be appropriately designated and to read  
17 as follows:

18 "CHAPTER

19 HOUSING SUBDIVISIONS

20 § -1 Definitions. For purposes of this chapter:



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

6 "Maintenance" shall include the costs to manage, maintain,  
7 and repair roads and other infrastructure, insurance costs, and  
8 fees for the management and collection of assessments.

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

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

18 (b) If a majority of the lot owners within a subdivision  
19 have not authorized an association, corporation, or other entity  
20 to assess and collect fees for maintenance of the subdivision  
21 roads, the county in which the subdivision is located shall



1 assess and collect fees from the lot owners and expend those  
2 funds to maintain the subdivision roads.

3 (c) If a majority of the lot owners within a subdivision  
4 has authorized an association, corporation, or other entity to  
5 assess and collect fees for maintenance of the subdivision  
6 roads, the lot owners may elect by a majority vote to have the  
7 county in which the subdivision is located assess and collect  
8 fees from the lot owners and expend those funds to maintain the  
9 subdivision roads.

10 (d) Each county responsible for the assessment and  
11 collection of fees for maintenance of subdivision roads may  
12 designate each applicable subdivision as a special improvement  
13 district pursuant to section 46-80.5 or a community facilities  
14 district pursuant to section 46-80.1.

15 (e) This chapter shall be subject to the county's  
16 authority or power within section 46-80.5 or 46-80.1. This  
17 chapter shall apply to counties with a population between one  
18 hundred seventy-five thousand and two hundred fifty thousand  
19 people.

20 (f) A court-approved entity, without the approval of a  
21 majority of the lot owners within a subdivision, may collect and



1 assess fees for a subdivision and maintain and operate the  
2 subdivision roads.

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

5 (1) Training to volunteer association boards on their  
6 responsibilities, including conducting effective  
7 meetings pursuant to established rules of order;

8 (2) Auditing services on the assessments and use of funds  
9 for the maintenance of subdivision roads; and

10 (3) Arbitration and mediation services to resolve disputes  
11 between a lot owner and the entity responsible for the  
12 assessment and collection of fees for the maintenance  
13 of subdivision roads.

14 (b) A county may assess the assisted individuals or  
15 entities a reasonable fee for services provided pursuant to  
16 subsection (a).

17 (c) Once a corporation, association, or entity is  
18 designated by either a court or a majority of the lot owners for  
19 the maintenance and operational responsibilities of common areas  
20 and subdivision roads; the county shall assist the corporation,  
21 association, or entity to draft a recorded instrument as that



1 term is used in the definition of "declaration" in section  
2 421J-2."

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



**Report Title:**

Subdivisions; Road and Infrastructure Management, Maintenance,  
and Repair; Assessments; Counties

**Description:**

Requires lot owners in housing subdivisions to pay assessments for maintenance of subdivision roads and other infrastructure 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. Applies to counties with a population between 175,000 and 250,000 people. Takes effect 7/1/2050. (SD1)

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

