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# A BILL FOR AN ACT

RELATING TO HIGHWAYS.

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

1           SECTION 1. The legislature finds that there are numerous  
2 roads throughout the State that are privately owned. Although  
3 these roads are often used by the public, the public may not  
4 realize that the road is not owned by a governmental agency.  
5 This creates difficulties when individuals seek to have a  
6 private road repaired. The legislature sought to address the  
7 situation by passing Act 194, Session Laws of Hawaii of 2016,  
8 which, among other things, expanded the State's and counties'  
9 authority to condemn private roads and exempted the State and  
10 counties from requirements to maintain or improve condemned  
11 roads for a three-year period. Further legislation is now  
12 needed to reduce impediments to state and county condemnation of  
13 private lanes so that the predicament of private lanes does not  
14 endure.

15           The purpose of this Act is to:

16           (1) Clarify that the State and counties may only be held  
17                 jointly and severally liable for acts or omissions



1 relating to a condemned highway or trail that occurred  
2 after condemnation; and

3 (2) Allow the State and counties to utilize flexibility in  
4 highway design regarding any condemned highway.

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

7 "**§264-1 Public highways and trails.** (a) All highways,  
8 roads, [~~highways,~~] alleys, streets, ways, lanes, bikeways,  
9 bridges, and all other real property [~~highway-related~~] highway-  
10 related interests in the State, opened, laid out, subdivided,  
11 consolidated, and acquired and built by the government are  
12 declared to be public highways. Public highways are of two  
13 types:

14 (1) State highways, which are those lands, interests, or  
15 other real property rights, as defined above, having  
16 an alignment or possession of a real property [~~highway~~  
17 ~~related~~] highway-related interest as established by  
18 law, subdivided and acquired in accordance with  
19 policies and procedures of the department of  
20 transportation, separate and exempt from any county



1 subdivision ordinances, and all those under the  
2 jurisdiction of the department of transportation; and

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

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

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

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



1 lane, bikeway, bridge, or trail and naming the county  
2 as grantee in the case of a county highway, road,  
3 alley, street, way, lane, bikeway, bridge, or trail.  
4 The deed of conveyance shall be delivered to and  
5 accepted by the director of transportation in the case  
6 of a state highway, road, alley, street, way, lane,  
7 bikeway, or bridge, or the board of land and natural  
8 resources in the case of a state trail. In the case  
9 of a county highway, road, alley, street, way, lane,  
10 bikeway, bridge, or [county] trail, the deed shall be  
11 delivered to and accepted by the legislative body of a  
12 county; provided that in every case where the highway,  
13 road, alley, street, way, lane, bikeway, bridge, or  
14 [county] trail is constructed and completed as  
15 required by any ordinance of the county or any rule,  
16 regulation, or resolution thereof having the effect of  
17 law, the legislative body of the county shall accept  
18 the dedication of the same without exercise of  
19 discretion; and  
20 (2) Condemnation of public highways, roads, alleys,  
21 streets, ways, lanes, bikeways, bridges, or trails



1 initiated by the State or county pursuant to chapter  
2 101[7] shall be by final order of condemnation by a  
3 court; provided that any private owner of a highway,  
4 road, alley, street, way, lane, bikeway, bridge, or  
5 trail may petition the mayor of the county in which  
6 the highway, road, alley, street, way, lane, bikeway,  
7 bridge, or trail is located to initiate condemnation  
8 proceedings if the highway, road, alley, street, way,  
9 lane, bikeway, bridge, or trail is part of a public  
10 road, ownership has not been exercised by limiting use  
11 or access, or the State or county has provided some  
12 form of maintenance to the highway, road, alley,  
13 street, way, lane, bikeway, bridge, or trail in the  
14 interest of the public; provided further that a  
15 private owner may only petition the mayor of a county  
16 after the dissolution of the roads commission  
17 established by Act 194, Session Laws of Hawaii 2016;  
18 provided further that in every case where the highway,  
19 road, alley, street, way, lane, bikeway, bridge, or  
20 trail is constructed and completed as required by any  
21 ordinance of the county or any rule, regulation, or



1 resolution thereof having the effect of law at the  
 2 time of construction and completion, the highway,  
 3 road, alley, street, way, lane, bikeway, bridge, or  
 4 trail shall be exempt from meeting the construction  
 5 standards in place at the time of condemnation by the  
 6 State or county.

7 (d) If a privately owned highway, road, alley, street,  
 8 way, lane, bikeway, bridge, or trail [~~is deemed to have~~] has  
 9 been [~~dedicated to or~~] condemned by the State or county pursuant  
 10 to subsection (c), the State or county shall be exempt for a  
 11 period of three years from any state laws or rules adopted  
 12 pursuant thereto that would require the State or county to  
 13 perform construction, reconstruction, preservation, resurfacing,  
 14 restoration, or rehabilitation upon it. The State and counties  
 15 may only be held jointly and severally liable for acts or  
 16 omissions that occurred after the condemnation of a highway,  
 17 road, alley, street, way, lane, bikeway, bridge, or trail.

18 (e) All county public highways and trails once established  
 19 shall continue until vacated, closed, abandoned, or discontinued  
 20 by a resolution of the legislative body of the county wherein  
 21 the county highway or trail lies. All state trails once



1 established shall continue until lawfully disposed of pursuant  
2 to the requirements of chapter 171.

3 (f) A privately owned highway, road, alley, street, way,  
4 lane, bikeway, or bridge that has been condemned by the State or  
5 county pursuant to subsection (c) may be accorded flexibility in  
6 design, including limitations of liability, pursuant to section  
7 264-20, in consideration of the unique nature and limitations  
8 associated with property dedicated or condemned to public use."

9 SECTION 3. This Act does not affect rights and duties that  
10 matured, penalties that were incurred, and proceedings that were  
11 begun before its effective date.

12 SECTION 4. Statutory material to be repealed is bracketed  
13 and stricken. New statutory material is underscored.

14 SECTION 5. This Act shall take effect on July 30, 2075.



S.B. NO. 2008  
S.D. 1  
H.D. 2

**Report Title:**

Condemnation; Joint and Several Liability; Torts; Roads; Private Lanes; Repairs and Maintenance; State and County Governments

**Description:**

Clarifies that the State and counties may only be held jointly and severally liable for acts or omissions relating to a condemned road that occurred after condemnation. Allows the State and counties to apply flexibility in highway design. Effective 7/30/2075. (HD2)

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

