

STAND. COM. REP. NO. 3202

Honolulu, Hawaii

MAR 04 2022

RE: S.B. No. 2008
S.D. 1

Honorable Ronald D. Kouchi
President of the Senate
Thirty-First State Legislature
Regular Session of 2022
State of Hawaii

Sir:

Your Committee on Judiciary, to which was referred S.B. No. 2008 entitled:

"A BILL FOR AN ACT RELATING TO HIGHWAYS,"

begs leave to report as follows:

The purpose and intent of this measure is to:

- (1) Remove the three-year limit on the exemption of the State and counties from the requirement to maintain or improve any condemned roads; and
- (2) Abolish joint and several liability of the State and counties for any condemned roads.

Your Committee received testimony in support of this measure from the Department of Transportation and one member of the Maui County Council. Your Committee received testimony in opposition to this measure from the Hawaii Association for Justice.

Your Committee finds that many privately owned roads exist throughout the State. Despite the public frequently using these roads, many people may not realize that the road is owned by a private entity and not a government entity, creating difficulties when individuals seek to have a private road repaired. This measure will reduce disincentives to state and county condemnation



of private lanes so that the difficulties of repairing and maintaining private lanes do not continue.

Your Committee further finds that the counties and the State are already potentially liable for any improvements or repairs they have made to private roads or lanes. The fact that the counties or the State do not own these lanes does not exempt them from liability.

Your Committee further finds that the intent of this measure may be best explained through an illustration. If the city condemns Rawlins Lane in Palama and the owner cannot be found, the price of condemnation will be very little, if anything. Then, the city repaves the lane, but not up to the normal subdivision standard. Five years later, a culvert put in by a previous owner collapses due to an undetected negligent construction flaw and someone trips and falls in the resulting hole in the lane and sues the city and the previous owner. The plaintiff then reaches a settlement where the previous owner is eighty percent negligent for the construction defect and the city is twenty percent negligent for not properly inspecting the culvert. Normally, under the joint and several liability rules, the plaintiff could collect one hundred percent of the damages from the city and the city would have to sue the previous owner for eighty percent of the damages. This measure would instead make the city liable to the plaintiff for twenty percent of the total damages and the plaintiff would have to collect the other eighty percent from the previous owner directly.

Your Committee has amended this measure by:

- (1) Limiting the applicability of the waiver of the joint and several liability rule to acts or omissions of the State or county that occurred prior to condemnation;
- (2) Allowing the State and counties to utilize flexibility in highway design pursuant to section 264-20, Hawaii Revised Statutes, regarding a privately owned condemned road where the owners are unknown;
- (3) Amending section 1 to reflect its amended purpose;



- (4) Inserting an effective date of July 30, 2075, to encourage further discussion; and
- (5) Making technical, nonsubstantive amendments for the purposes of clarity and consistency.

As affirmed by the record of votes of the members of your Committee on Judiciary that is attached to this report, your Committee is in accord with the intent and purpose of S.B. No. 2008, as amended herein, and recommends that it pass Third Reading in the form attached hereto as S.B. No. 2008, S.D. 1.

Respectfully submitted on
behalf of the members of the
Committee on Judiciary,



KARL RHOADS, Chair



The Senate
Thirty-First Legislature
State of Hawai'i

Record of Votes
Committee on Judiciary
JDC

Bill / Resolution No.:*	Committee Referral:	Date:		
SB 2002	PSM/TRS, JDC	03-03-22		
<input type="checkbox"/> The Committee is reconsidering its previous decision on this measure. If so, then the previous decision was to: _____				
The Recommendation is: <input type="checkbox"/> Pass, unamended 2312 <input checked="" type="checkbox"/> Pass, with amendments 2311 <input type="checkbox"/> Hold 2310 <input type="checkbox"/> Recommit 2313				
Members	Aye	Aye (WR)	Nay	Excused
RHOADS, Karl (C)	✓			
KEOHOKALOLE, Jarrett (VC)	✓			✓
ACASIO, Laura	✓			
GABBARD, Mike	✓			
KIM, Donna Mercado	✓			
LEE, Chris	✓			
FEVELLA, Kurt				✓
TOTAL	6	-	-	1
Recommendation: <input checked="" type="checkbox"/> Adopted <input type="checkbox"/> Not Adopted				
Chair's or Designee's Signature: <i>Karl Rhoads</i>				
Distribution: Original Yellow Pink Goldenrod File with Committee Report Clerk's Office Drafting Agency Committee File Copy				

*Only one measure per Record of Votes