

## ACT 70

H.B. NO. 1947

A Bill for an Act Relating to Liability.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 264-20, Hawaii Revised Statutes, is amended to read as follows:

“~~[[§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, [the following parties shall be immune from liability for personal injury, death, or property damage in any accident arising out of the decision to elect] 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 [immunity from] 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).”~~

SECTION 2. Act 185, Session Laws of Hawaii 2005, is amended by amending section 3 to read as follows:

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“SECTION 3. (a) Before ~~[June 30, 2006,]~~ December 31, 2006, the director of transportation shall establish flexible highway design guidelines to govern new construction, reconstruction, preservation, resurfacing (except for maintenance surfacing), restoration, or rehabilitation of bridges, principal and minor arterial roads, collector and local roads, and streets. The guidelines shall include and address the considerations set forth in section 2 of this Act.

The guidelines shall also provide for documentation of the facts, circumstances, and considerations involved in the flexible design decision, including an explanation of the process and the reasoning that led to the decision.

(b) The director shall establish a process to allow flexible highway design to be considered when designing improvements on the following highways:

- (1) Hana highway, east Maui;
- (2) Hanalei road, north Kauai;
- (3) Hamakua-Honokaa heritage corridor, island of Hawaii;
- (4) Upper Kona road, island of Hawaii; and
- (5) Ka Iwi coastal highway, eastern Oahu.

(c) In establishing the guidelines described under this section, the director shall solicit and consider the views of organizations and elected officials, including but not limited to:

- (1) Those with expertise in:
  - (A) Environmental protection;
  - (B) Historic preservation;
  - (C) Scenic conservation; and
  - (D) Bicycle and pedestrian transportation;
- (2) Community planning organizations;
- (3) The State historic preservation office of the department of land and natural resources; and
- (4) The Federal Highway Administration.”

SECTION 3. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 4. This Act shall take effect on June 1, 2006.

(Approved May 2, 2006.)