

ACT 123

S.B. NO. 2008

A Bill for an Act Relating to Highways.

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

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

The purpose of this Act is to:

- (1) Clarify that the State and counties may only be held jointly and severally liable for acts or omissions relating to a condemned highway or trail that occurred after condemnation; and
- (2) Allow the State and counties to utilize flexibility in highway design regarding any condemned highway.

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

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

- (1) State highways, which are those lands, interests, or other real property rights, as defined above, having an alignment or possession of a real property [~~highway-related~~] highway-related interest as established by law, subdivided and acquired in accordance with policies and procedures of the department of transportation, separate and exempt from any county subdivision ordinances, and all those under the jurisdiction of the department of transportation; and
 - (2) County highways, which are all other public highways.
- (b) All trails, and other nonvehicular rights-of-way in the State declared to be public rights-of-ways by the Highways Act of 1892, or opened, laid out, or built by the government or otherwise created or vested as nonvehicular public rights-of-way at any time thereafter, or in the future, are declared to be public trails. A public trail is under the jurisdiction of the state board of land and natural resources unless it was created by or dedicated to a particular county, in which case it shall be under the jurisdiction of that county.

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

- (1) Dedication of public highways, roads, alleys, streets, ways, lanes, bikeways, bridges, or trails shall be by deed of conveyance naming the State as grantee in the case of a state highway, road, alley, street, way, lane, bikeway, bridge, or trail and naming the county

as grantee in the case of a county highway, road, alley, street, way, lane, bikeway, bridge, or trail. The deed of conveyance shall be delivered to and accepted by the director of transportation in the case of a state highway, road, alley, street, way, lane, bikeway, or bridge, or the board of land and natural resources in the case of a state trail. In the case of a county highway, road, alley, street, way, lane, bikeway, bridge, or [county] trail, the deed shall be delivered to and accepted by the legislative body of a county; provided that in every case where the highway, road, alley, street, way, lane, bikeway, bridge, or [county] trail is constructed and completed as required by any ordinance of the county or any rule, regulation, or resolution thereof having the effect of law, the legislative body of the county shall accept the dedication of the same without exercise of discretion; and

- (2) Condemnation of public highways, roads, alleys, streets, ways, lanes, bikeways, bridges, or trails initiated by the State or county pursuant to chapter 101[.] shall be by final order of condemnation by a court; provided that any private owner of a highway, road, alley, street, way, lane, bikeway, bridge, or trail may petition the mayor of the county in which the highway, road, alley, street, way, lane, bikeway, bridge, or trail is located to initiate condemnation proceedings if the highway, road, alley, street, way, lane, bikeway, bridge, or trail is part of a public road, ownership has not been exercised by limiting use or access, or the State or county has provided some form of maintenance to the highway, road, alley, street, way, lane, bikeway, bridge, or trail in the interest of the public; provided further that a private owner may only petition the mayor of a county after the dissolution of the roads commission established by Act 194, Session Laws of Hawaii 2016; provided further that in every case where the highway, road, alley, street, way, lane, bikeway, bridge, or trail is constructed and completed as required by any ordinance of the county or any rule, regulation, or resolution thereof having the effect of law at the time of construction and completion, the highway, road, alley, street, way, lane, bikeway, bridge, or trail shall be exempt from meeting the construction standards in place at the time of condemnation by the State or county.

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

(e) All county public highways and trails once established shall continue until vacated, closed, abandoned, or discontinued by a resolution of the legislative body of the county wherein the county highway or trail lies. All state trails once established shall continue until lawfully disposed of pursuant to the requirements of chapter 171.

(f) A privately owned highway, road, alley, street, way, lane, bikeway, or bridge that has been condemned by the State or county pursuant to subsection (c) may be accorded flexibility in design, including limitations of liability, pur-

suant to section 264-20, in consideration of the unique nature and limitations associated with property dedicated or condemned to public use.”

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

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

SECTION 5. This Act shall take effect upon its approval.

(Approved June 27, 2022.)