

JAN 22 2016

S.B. NO. 2372

A BILL FOR AN ACT

RELATING TO PRIVATE ROADS.

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

1 SECTION 1. The legislature finds that while federal,
2 state, and county agencies maintain jurisdiction over, and are
3 responsible for, the repair and maintenance of the majority of
4 highways, streets, and roads throughout Hawaii, there are
5 numerous roads throughout the State that are privately owned or
6 whose ownership has been called into question. In many cases,
7 these private roads are remnants of a road, or a small portion
8 of a larger public road, whose ownership is disputed for various
9 reasons. This has resulted in questions regarding who is
10 responsible for the repair and maintenance of these roads, many
11 of which are regularly used for vehicular traffic.

12 The legislature further finds that since these private
13 roads are not owned by a governmental entity, or their ownership
14 is being disputed, they often do not receive proper repair and
15 maintenance. Although these roads are often used by, and are of
16 benefit to the public, the public does not realize that the road
17 is not owned by a governmental agency. This creates



1 difficulties for members of the public and government agencies
2 when individuals report repair or maintenance issues.

3 The legislature also finds that while counties have
4 policies and procedures to assist owners with the repair and
5 maintenance of private roads, these policies and procedures are
6 only applicable when the county can determine or locate the
7 actual owner of the road. Additionally, the owners of private
8 roads may seek government assistance because they rarely have
9 the expertise, equipment, or ability to coordinate services
10 necessary to address road ownership and maintenance issues.

11 The purpose of this Act is to provide a means to resolve
12 the situation by requiring the county to accept roads, even if
13 nonconforming, where there has been no act of ownership within
14 the past five years, and by exempting the county from
15 requirements to maintain or improve surrendered roads and from
16 liability for not maintaining or improving them.

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

19 "§264-1 Public highways and trails. (a) All highways,
20 roads, alleys, streets, ways, lanes, bikeways, bridges, and all
21 other real property highway related interests in the State,



1 opened, laid out, subdivided, consolidated, and acquired and
2 built by the government are declared to be public highways.

3 Public highways are of two types:

4 (1) State highways, which are those lands, interests, or
5 other real property rights, as defined above, having
6 an alignment or possession of a real property highway
7 related interest as established by law, subdivided and
8 acquired in accordance with policies and procedures of
9 the department of transportation, separate and exempt
10 from any county subdivision ordinances, and all those
11 under the jurisdiction of the department of
12 transportation; and

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

14 (b) All trails, and other nonvehicular rights-of-way in
15 the State declared to be public rights-of-ways by the Highways
16 Act of 1892, or opened, laid out, or built by the government or
17 otherwise created or vested as nonvehicular public rights-of-way
18 at any time thereafter, or in the future, are declared to be
19 public trails. A public trail is under the jurisdiction of the
20 state board of land and natural resources unless it was created



1 by or dedicated to a particular county, in which case it shall
2 be under the jurisdiction of that county.

3 (c) All highways, roads, alleys, streets, ways, lanes,
4 [~~trails~~,] bikeways, [~~and~~] bridges, and trails in the State,
5 opened, laid out, or built by private parties and dedicated or
6 surrendered to the public use, are declared to be public
7 highways or public trails as follows:

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

15 The deed of conveyance shall be delivered to and
16 accepted by the director of transportation in the case
17 of a state highway, road, alley, street, way, lane,
18 bikeway, bridge, or the board of land and natural
19 resources in the case of a state trail. In the case
20 of a county highway, road, alley, street, way, lane,
21 bikeway, bridge, or [county] trail, the deed shall be



1 delivered to and accepted by the legislative body of a
2 county.

3 (2) Surrender of public highways, roads, alleys, streets,
4 ways, lanes, bikeways, bridges, or trails shall be
5 deemed to have taken place if no act of ownership by
6 the owner of the highway, road, alley, street,
7 [bikeway,] way, lane, [trail, or] bikeway, bridge, or
8 trail has been exercised for five years ~~[and when, in~~
9 ~~the case of a county highway, in addition thereto, the~~
10 ~~legislative body of the county has, thereafter, by a~~
11 ~~resolution, adopted the same as a county highway or~~
12 ~~trail.~~

13 ~~In every case where the road, alley, street, bikeway, way, lane,~~
14 ~~trail, bridge, or highway is constructed and completed as~~
15 ~~required by any ordinance of the county or any rule, regulation,~~
16 ~~or resolution thereof having the effect of law, the legislative~~
17 ~~body of the county shall accept the dedication or surrender of~~
18 ~~the same without exercise of discretion.]; provided that driving~~
19 on the private highway, road, alley, street, way, lane, bikeway,
20 bridge, or trail shall not, on its own, constitute an act of
21 ownership. The county shall accept without exercise of



1 discretion all surrendered highways, roads, alleys, streets,
2 ways, lanes, bikeways, bridges, or trails, except where the
3 State has notified the county within thirty days of the
4 surrender that it will accept the surrendered highway, road,
5 alley, street, way, lane, bikeway, bridge, or trail. Any
6 occupant or owner of abutting land may notify the county of a
7 highway, road, alley, street, way, lane, bikeway, bridge, or
8 trail that the resident or landowner believes qualifies for
9 surrender under this subsection. Following receipt of the
10 notice, the county shall accept the highway, road, alley,
11 street, way, lane, bikeway, bridge, or trail as surrendered and
12 record its ownership with the state bureau of conveyances,
13 unless the county establishes other proof of ownership within
14 six months of the notice.

15 (d) In the case of a highway, road, alley, street, way,
16 lane, bikeway, bridge, or trail that has been commonly used by
17 residents of a particular area for emergency access purposes or
18 for health and safety reasons, that highway, road, alley,
19 street, way, lane, bikeway, bridge, or trail shall be deemed to
20 be publicly accessible for those reasons, without regard to
21 actual ownership or responsibility for maintenance.



1 (e) If a privately owned highway, road, alley, street,
2 way, lane, bikeway, bridge, or trail is deemed to have been
3 surrendered to the State or county pursuant to subsection
4 (c)(2), the State or county shall be exempt from any state laws
5 or rules adopted that would require the State or county to
6 perform construction, reconstruction, preservation, resurfacing,
7 restoration, or rehabilitation upon it. The State or county
8 shall be immune from liability for personal injury, death, or
9 property damage in any accident arising out of the use of a
10 surrendered highway, road, alley, street, way, lane, bikeway,
11 bridge, or trail unless the State or county performs
12 construction, reconstruction, preservation, resurfacing,
13 restoration, or rehabilitation upon it. The State or county
14 shall also be immune from liability caused by negligent or
15 wrongful acts or omissions that occurred prior to the surrender
16 of the highway, road, alley, street, way, lane, bikeway, bridge,
17 or trail.

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



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

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

5 SECTION 4. This Act shall take effect upon its approval.

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INTRODUCED BY:

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S.B. NO. 2372

Report Title:

Private Roads; Repair and Maintenance

Description:

Requires the counties to accept the surrender of a private road in cases where there has been an absence of any act of private ownership over the road for five years. Exempts the State and counties from performing any maintenance on a surrendered road and from liability arising from use of the road until the State or county performs maintenance work on the road. Deems a highway, road, alley, street, way, lane, bikeway, bridge, or trail that has been commonly used by residents of a particular area for emergency access purposes or for health and safety reasons to be publicly accessible for those reasons, without regard to actual ownership or responsibility for maintenance.

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