

JAN 27 2016

A BILL FOR AN ACT

RELATING TO TRANSPORTATION.

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, with disputed ownership 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
17 road 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 non-conforming, 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 roads,
20 highways, alleys, streets, ways, lanes, bikeways, bridges, and
21 all 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 in the State, opened, laid out, or
5 built by private parties and dedicated or surrendered to the
6 public use, are declared to be public highways or public trails
7 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, or 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[-]; provided that in every case where the
3 highway, road, alley, street, way, lane, bikeway,
4 bridge, or county trail is constructed and completed
5 as required by any ordinance of the county or any
6 rule, regulation, or resolution thereof having the
7 effect of law, the legislative body of the county
8 shall accept the dedication of the same without
9 exercise of discretion.

10 (2) Surrender of public highways, roads, alleys, streets,
11 ways, lanes, bikeways, bridges, or trails shall be
12 deemed to have taken place if no act of ownership by
13 the owner of the highway, road, alley, street,
14 [bikeway,] way, lane, [trail, or] bikeway, bridge, or
15 trail has been exercised for five years [and when, in
16 the case of a county highway, in addition thereto, the
17 legislative body of the county has, thereafter, by a
18 resolution, adopted the same as a county highway or
19 trail-]; provided that, driving on the private
20 highway, road, alley, street, way, lane, bikeway,
21 bridge, or trail shall not, on its own, constitute an



1 act of ownership. A county shall accept without
2 exercise of discretion all surrendered highways,
3 roads, alleys, streets, ways, lanes, bikeways,
4 bridges, or trails, except where the State has
5 notified the county within thirty days of the
6 surrender that it will accept the surrendered highway,
7 road, alley, street, way, lane, bikeway, bridge, or
8 trail. Any resident or abutting landowner may notify
9 the county of a highway, road, alley, street, way,
10 lane, bikeway, bridge, or trail that the resident or
11 landowner believes qualifies for surrender under this
12 paragraph. Upon receipt of such notice, the county
13 shall accept as surrendered the highway, road, alley,
14 street, way, lane, bikeway, bridge, or trail and
15 record its ownership with the state bureau of
16 conveyances, unless the county establishes other proof
17 of ownership by within six months of the notice.

18 ~~[In every case where the road, alley, street, bikeway, way,~~
19 ~~lane, trail, bridge, or highway is constructed and completed as~~
20 ~~required by any ordinance of the county or any rule, regulation,~~
21 ~~or resolution thereof having the effect of law, the legislative~~



1 ~~body of the county shall accept the dedication or surrender of~~
2 ~~the same without exercise of discretion.]~~

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

20 ~~[(d)]~~ (e) All county public highways and trails once
21 established shall continue until vacated, closed, abandoned, or



1 discontinued by a resolution of the legislative body of the
2 county wherein the county highway or trail lies. All state
3 trails once established shall continue until lawfully disposed
4 of pursuant to the requirements of chapter 171."

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

7 SECTION 4. This Act shall take effect upon its approval.
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INTRODUCED BY:

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S.B. NO. 2735

Report Title:

Private Roads; Repair and Maintenance

Description:

Requires the counties to accept the surrender of a private road if there has been no act of private ownership for five years. Exempts the State and counties from maintaining surrendered roads and from liability for lack of maintenance or for maintenance performed prior to assuming ownership.

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

