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# A BILL FOR AN ACT

RELATING TO HIGHWAYS.

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

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

15       The purpose of this Act is to:

16       (1) Clarify that the State and counties shall not be held  
17       jointly and severally liable for acts or omissions



1 relating to a condemned road that occurred prior to  
2 condemnation; and

3 (2) Allow the State and counties to utilize flexibility in  
4 highway design pursuant to section 264-20, Hawaii  
5 Revised Statutes, regarding any condemned road.

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

8 "**§264-1 Public highways and trails.** (a) All roads,  
9 highways, alleys, streets, ways, lanes, bikeways, bridges, and  
10 all other real property highway related interests in the State,  
11 opened, laid out, subdivided, consolidated, and acquired and  
12 built by the government are declared to be public highways.

13 Public highways are of two types:

14 (1) State highways, which are those lands, interests, or  
15 other real property rights, as defined above, having  
16 an alignment or possession of a real property highway  
17 related interest as established by law, subdivided and  
18 acquired in accordance with policies and procedures of  
19 the department of transportation, separate and exempt  
20 from any county subdivision ordinances, and all those



1 under the jurisdiction of the department of  
2 transportation; and

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

4 (b) All trails, and other nonvehicular rights-of-way in  
5 the State declared to be public rights-of-ways by the Highways  
6 Act of 1892, or opened, laid out, or built by the government or  
7 otherwise created or vested as nonvehicular public rights-of-way  
8 at any time thereafter, or in the future, are declared to be  
9 public trails. A public trail is under the jurisdiction of the  
10 state board of land and natural resources unless it was created  
11 by or dedicated to a particular county, in which case it shall  
12 be under the jurisdiction of that county.

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

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



1 as grantee in the case of a county highway, road,  
2 alley, street, way, lane, bikeway, bridge, or trail.  
3 The deed of conveyance shall be delivered to and  
4 accepted by the director of transportation in the case  
5 of a state highway, road, alley, street, way, lane,  
6 bikeway, or bridge, or the board of land and natural  
7 resources in the case of a state trail. In the case  
8 of a county highway, road, alley, street, way, lane,  
9 bikeway, bridge, or county trail, the deed shall be  
10 delivered to and accepted by the legislative body of a  
11 county; provided that in every case where the highway,  
12 road, alley, street, way, lane, bikeway, bridge, or  
13 county trail is constructed and completed as required  
14 by any ordinance of the county or any rule,  
15 regulation, or resolution thereof having the effect of  
16 law, the legislative body of the county shall accept  
17 the dedication of the same without exercise of  
18 discretion; and

19 (2) Condemnation of public highways, roads, alleys,  
20 streets, ways, lanes, bikeways, bridges, or trails  
21 initiated by the State or county pursuant to chapter



1 101[7] shall be by final order of condemnation by a  
2 court; provided that any private owner of a highway,  
3 road, alley, street, way, lane, bikeway, bridge, or  
4 trail may petition the mayor of the county in which  
5 the highway, road, alley, street, way, lane, bikeway,  
6 bridge, or trail is located to initiate condemnation  
7 proceedings if the highway, road, alley, street, way,  
8 lane, bikeway, bridge, or trail is part of a public  
9 road, ownership has not been exercised by limiting use  
10 or access, or the State or county has provided some  
11 form of maintenance to the highway, road, alley,  
12 street, way, lane, bikeway, bridge, or trail in the  
13 interest of the public; provided further that a  
14 private owner may only petition the mayor of a county  
15 after the dissolution of the roads commission  
16 established by Act 194, Session Laws of Hawaii 2016;  
17 provided further that in every case where the highway,  
18 road, alley, street, way, lane, bikeway, bridge, or  
19 trail is constructed and completed as required by any  
20 ordinance of the county or any rule, regulation, or  
21 resolution thereof having the effect of law at the



1 time of construction and completion, the highway,  
2 road, alley, street, way, lane, bikeway, bridge, or  
3 trail shall be exempt from meeting the construction  
4 standards in place at the time of condemnation by the  
5 State or county.

6 (d) If a privately owned highway, road, alley, street,  
7 way, lane, bikeway, bridge, or trail [~~is deemed to have~~] has  
8 been [~~dedicated to or~~] condemned by the State or county pursuant  
9 to subsection (c), the State or county shall be exempt for a  
10 period of three years from any state laws or rules adopted  
11 pursuant thereto that would require the State or county to  
12 perform construction, reconstruction, preservation, resurfacing,  
13 restoration, or rehabilitation upon it. The State and counties  
14 shall not be held jointly and severally liable for acts or  
15 omissions of the State or county that occurred prior to the  
16 condemnation of a highway, road, alley, street, way, lane,  
17 bikeway, bridge, or trail.

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



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

3 (f) A privately owned highway, road, alley, street, way,  
4 lane, bikeway, bridge, or trail that has been condemned by the  
5 State or county pursuant to subsection (c) may be accorded  
6 flexibility in design, including limitations of liability,  
7 pursuant to section 264-20, in consideration of the unique  
8 nature and limitations associated with property dedicated or  
9 condemned to public use."

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

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

15 SECTION 5. This Act shall take effect on July 30, 2075.



**Report Title:**

Condemnation; Joint and Several Liability; Torts; Roads; Private Lanes; Repairs and Maintenance; State and County Governments

**Description:**

Allows the State and counties to apply flexibility in highway design. Clarifies that the State and counties shall not be held jointly and severally liable for acts or omissions relating to a condemned road that occurred prior to condemnation. Effective 7/30/2075. (HD1)

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

