
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 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:



- 1 (1) Remove the three-year limit on the exemption of the
2 State and counties from the requirement to maintain or
3 improve any condemned roads;
- 4 (2) Waive applicability of the joint and several liability
5 rule for liability for acts or omissions of the State
6 and counties relating to a condemned road that
7 occurred prior to condemnation of the road; and
- 8 (3) Allow the State and counties to utilize flexibility in
9 highway design pursuant to section 264-20, Hawaii
10 Revised Statutes, regarding any condemned road.

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

13 "**§264-1 Public highways and trails.** (a) All roads,
14 highways, alleys, streets, ways, lanes, bikeways, bridges, and
15 all other real property highway related interests in the State,
16 opened, laid out, subdivided, consolidated, and acquired and
17 built by the government are declared to be public highways.
18 Public highways are of two types:

- 19 (1) State highways, which are those lands, interests, or
20 other real property rights, as defined above, having
21 an alignment or possession of a real property highway



1 related interest as established by law, subdivided and
2 acquired in accordance with policies and procedures of
3 the department of transportation, separate and exempt
4 from any county subdivision ordinances, and all those
5 under the jurisdiction of the department of
6 transportation; and

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

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

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



1 (1) Dedication of public highways, roads, alleys, streets,
2 ways, lanes, bikeways, bridges, or trails shall be by
3 deed of conveyance naming the State as grantee in the
4 case of a state highway, road, alley, street, way,
5 lane, bikeway, bridge, or trail and naming the county
6 as grantee in the case of a county highway, road,
7 alley, street, way, lane, bikeway, bridge, or trail.
8 The deed of conveyance shall be delivered to and
9 accepted by the director of transportation in the case
10 of a state highway, road, alley, street, way, lane,
11 bikeway, or bridge, or the board of land and natural
12 resources in the case of a state trail. In the case
13 of a county highway, road, alley, street, way, lane,
14 bikeway, bridge, or county trail, the deed shall be
15 delivered to and accepted by the legislative body of a
16 county; provided that in every case where the highway,
17 road, alley, street, way, lane, bikeway, bridge, or
18 county trail is constructed and completed as required
19 by any ordinance of the county or any rule,
20 regulation, or resolution thereof having the effect of
21 law, the legislative body of the county shall accept



1 the dedication of the same without exercise of
2 discretion; and

3 (2) Condemnation of public highways, roads, alleys,
4 streets, ways, lanes, bikeways, bridges, or trails
5 initiated by the State or county pursuant to chapter
6 101, shall be by final order of condemnation by a
7 court; provided that any private owner of a highway,
8 road, alley, street, way, lane, bikeway, bridge, or
9 trail may petition the mayor of the county in which
10 the highway, road, alley, street, way, lane, bikeway,
11 bridge, or trail is located to initiate condemnation
12 proceedings if the highway, road, alley, street, way,
13 lane, bikeway, bridge, or trail is part of a public
14 road, ownership has not been exercised by limiting use
15 or access, or the State or county has provided some
16 form of maintenance to the highway, road, alley,
17 street, way, lane, bikeway, bridge, or trail in the
18 interest of the public; provided further that a
19 private owner may only petition the mayor of a county
20 after the dissolution of the roads commission
21 established by Act 194, Session Laws of Hawaii 2016;



1 provided further that in every case where the highway,
 2 road, alley, street, way, lane, bikeway, bridge, or
 3 trail is constructed and completed as required by any
 4 ordinance of the county or any rule, regulation, or
 5 resolution thereof having the effect of law at the
 6 time of construction and completion, the highway,
 7 road, alley, street, way, lane, bikeway, bridge, or
 8 trail shall be exempt from meeting the construction
 9 standards in place at the time of condemnation by the
 10 State or county.

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



1 condemnation of a highway, road, alley, street, way, lane,
2 bikeway, bridge, or trail.

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

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

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

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

21 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:

Repeals the three-year limit on the exemption of the State and counties from the requirement to maintain or improve any condemned roads. Allows the State and counties to apply flexibility in highway design. Abolishes joint and several liability of the State and counties for any condemned roads except for negligence by the State or county after condemnation. Effective 7/30/2075. (SD1)

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