

A Bill for an Act Relating to Public Lands.

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

SECTION 1. In 1989, the legislative reference bureau published a study entitled *Roads in Limbo: An Analysis of the State-County Jurisdictional Dispute*. In that study, it was found that “[t]here is a considerable and uncatalogued number of public highways in the state whose ownership, as between the State and the counties, is in dispute, as the State holds paper title to these roads but contends that ownership of these roads has passed to the counties by the operation of law.” The study further noted that among the causes for this jurisdictional dispute are that neither the State nor the counties want to be responsible for the cost of maintaining the roads and the potential liability that would arise from ownership of the roads.

A result of this ownership dispute is that both the State and the counties are reluctant to enforce laws and rules regarding the use of roads in limbo by private parties. Consequently, individuals have improperly blocked access to these roads, believing that neither the State nor the counties will enforce laws and rules that would otherwise allow the public to use them to access coastal and inland recreational areas.

The purpose of this Act is to:

- (1) Establish that any county has the power to enforce laws and rules applicable to the use of public streets, roads, or highways whose ownership is in dispute between the State and county;
- (2) Establish that any county may repair and provide maintenance of public streets, roads, or highways whose ownership is in dispute between the State and county without claiming their ownership; and
- (3) Ensure that the general public retains the right to use these public streets, roads, or highways to access coastal and inland recreational areas, including beaches, shores, parks, and trails.

SECTION 2. Chapter 46, Hawaii Revised Statutes, is amended by adding a new section to part I to be appropriately designated and to read as follows:

“§46- Traffic regulation; repair and maintenance; public right to use public streets, roads, or highways whose ownership is in dispute. (a) Any provision of law to the contrary notwithstanding, any county and its authorized personnel may impose and enforce traffic laws and shall enforce chapters 286 and 291C on public streets, roads, or highways whose ownership is in dispute between the State and the county.

(b) Any provision of the law to the contrary notwithstanding, any county and its authorized personnel may repair or maintain, in whole or in part, public streets, roads, or highways whose ownership is in dispute between the State and the county.

(c) No presumption that a county owns a particular street, road, or highway shall arise as a result of the county’s performance of the activities allowed by subsection (a) or (b).

(d) The general public shall have the unrestricted right to use public streets, roads, or highways whose ownership is in dispute between the State and the county to access the shoreline and other public recreational areas; provided that this subsection shall not apply to any private street, road, or highway whose ownership is in dispute.

(e) As used in this section:

“Public recreational area” means coastal and inland recreational areas, including beaches, shores, public parks, public lands, public trails, and bodies of water opened to the public for recreational use.”

SECTION 3. New statutory material is underscored.¹

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

(Approved May 1, 2008.)

Note

1. Edited pursuant to HRS §23G-16.5.