

A Bill for an Act Relating to Transportation.

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

PART I

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

The legislature further finds that since these private roads are not owned by a governmental entity, or their ownership is being disputed, they often do not receive proper repair and maintenance. Although these roads are often used by, and are of benefit to the public, the public does not realize that the road is not owned by a governmental agency. This creates difficulties for members of the public and government agencies when individuals report repair or maintenance issues.

The legislature also finds that while counties have policies and procedures to assist owners with the repair and maintenance of private roads, these policies and procedures are only applicable when the county can determine or locate the actual owner of the road. Additionally, the owners of private roads may seek government assistance because they may not have the expertise, equipment, or ability to coordinate services necessary to address road ownership and maintenance issues.

Finally, the legislature finds that the cost to bring many of these private roads up to code is very high and should not be borne solely by the counties.

The purpose of this Act is to provide a means to resolve the situation by, among other things:

- (1) Establishing a temporary roads commission within the department of transportation to, among other things, review studies on disputes regarding private roads, provide an opinion on the ownership of certain private roads, advise the appropriate legislative body of the determination of ownership of the private road, and recommend action to the appropriate legislative body, including the initiation of condemnation proceedings as appropriate;
- (2) Expanding the State and counties' authority to condemn public roads;
- (3) Allowing private owners of roadways to petition the mayor of the county in which the roadway is located to begin condemnation proceedings if certain conditions are met;
- (4) Exempting roads meeting county construction standards at the time of construction and completion from having to meet county construction standards in place at the time of transfer to the county;
- (5) Exempting the State or county from requirements to maintain or improve roads taken by condemnation; and

- (6) Appropriating funds for road repair work, including resurfacing, flood mitigation, and installation of drainage infrastructure to certain roads.

PART II

SECTION 2. (a) There is established a roads commission within the department of transportation for administrative purposes, which shall consist of the following members, or their designees:

- (1) The mayor of each county;
  - (2) A member of the state house of representatives appointed by the speaker of the house of representatives;
  - (3) A member of the state senate appointed by the president of the senate;
  - (4) The director of transportation;
  - (5) The chairperson of the board of land and natural resources;
  - (6) The director of a county transportation department, appointed by the Hawaii council of mayors and confirmed by the Hawaii state association of counties;
  - (7) The director of planning from a county, appointed by the Hawaii council of mayors and confirmed by the Hawaii state association of counties;
  - (8) One member of the public, with expertise in civil engineering, city planning, construction, easements and acquisitions, condemnation, real property title research, compliance with the Americans with Disabilities Act, or environmental regulations, appointed by the speaker of the house of representatives;
  - (9) One member of the public, with expertise in civil engineering, city planning, construction, easements and acquisitions, condemnation, real property title research, compliance with the Americans with Disabilities Act, or environmental regulations, appointed by the president of the senate; and
  - (10) Two members of the public, with expertise in civil engineering, city planning, construction, easements and acquisitions, condemnation, real property title research, compliance with the Americans with Disabilities Act, or environmental regulations, appointed by a majority of the members on the roads commission.
- (b) Any vacancy occurring in the membership of the commission shall be filled in the same manner as the original appointments.
- (c) The chair and vice chair of the commission shall be selected by a majority of the members of the commission.
- (d) A simple majority shall constitute a quorum whose affirmative vote shall be necessary for all actions of the commission.
- (e) Members of the commission shall serve without compensation but shall be reimbursed for necessary expenses, including travel expenses, incurred in the performance of their duties under this section.
- (f) The commission shall:
- (1) Review all previous studies on disputes regarding private roads;
  - (2) Provide an opinion about the ownership of five private roads that are remnants or whose ownership is in dispute; provided that two of these roads shall be roads that are not widely used by the general public; and
  - (3) Advise the appropriate legislative body of its determination of ownership of the five private roads, and recommend action to the ap-

appropriate legislative body, including the initiation of condemnation proceedings as appropriate.

In fulfilling its responsibilities, the commission shall consult and seek advice from any department, agency, or organization the commission deems appropriate.

(g) The commission may:

- (1) Sue and be sued;
- (2) Have a seal and alter the same at its pleasure;
- (3) Adopt rules under chapter 91 necessary to effectuate this section;
- (4) Obtain federal or private funding for the upgrading, repair, and maintenance of private roads and distribute the funding to the appropriate governmental body;
- (5) Make and execute contracts and all other instruments necessary or convenient for the exercise of its powers under this section;
- (6) Carry out surveys, research, and investigations with respect to the ownership of private roads in the State; and
- (7) Direct, subpoena, or examine under oath all persons whose testimony may be required to determine ownership of a private road.

(h) The commission shall submit an interim report of its findings and recommendations, including any proposed legislation, to the legislature no later than twenty days prior to the convening of the regular session of 2018, and a final report of its findings and recommendations, including any proposed legislation, to the legislature no later than twenty days prior to the convening of the regular session of 2019.

(i) No member shall be made subject to chapter 84, Hawaii Revised Statutes, solely because of that member's participation as a member of the commission.

(j) The commission shall cease to exist on June 30, 2018.

### PART III

SECTION 3. Section 264-1, Hawaii Revised Statutes, is amended to read as follows:

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

- (1) State highways, which are those lands, interests, or other real property rights, as defined above, having an alignment or possession of a real property highway related interest as established by law, subdivided and acquired in accordance with policies and procedures of the department of transportation, separate and exempt from any county subdivision ordinances, and all those under the jurisdiction of the department of transportation; and
- (2) County highways, which are all other public highways.

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

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

- (1) Dedication of public highways, roads, alleys, streets, ways, lanes, bikeways, bridges, or trails shall be by deed of conveyance naming the State as grantee in the case of a state highway, road, alley, street, way, lane, bikeway, bridge, or trail and naming the county as grantee in the case of a county highway, road, alley, street, way, lane, bikeway, bridge, or trail. The deed of conveyance shall be delivered to and accepted by the director of transportation in the case of a state highway, road, alley, street, way, lane, bikeway, or bridge, or the board of land and natural resources in the case of a state trail. In the case of a county highway, road, alley, street, way, lane, bikeway, bridge, or county trail, the deed shall be delivered to and accepted by the legislative body of a county[-]; provided that in every case where the highway, road, alley, street, way, lane, bikeway, bridge, or county trail is constructed and completed as required by any ordinance of the county or any rule, regulation, or resolution thereof having the effect of law, the legislative body of the county shall accept the dedication of the same without exercise of discretion; and ~~[Surrender]~~ Condemnation of public highways, roads, alleys, streets, ways, lanes, bikeways, bridges, or trails ~~[shall be deemed to have taken place if no act of ownership by the owner of the road, alley, street, bikeway, way, lane, trail, or bridge has been exercised for five years and when, in the case of a county highway, in addition thereto, the legislative body of the county has, thereafter, by a resolution, adopted the same as a county highway or trail.]~~ initiated by the State or county pursuant to chapter 101, shall be by final order of condemnation by a court; provided that any private owner of a highway, road, alley, street, way, lane, bikeway, bridge, or trail may petition the mayor of the county in which the highway, road, alley, street, way, lane, bikeway, bridge, or trail is located to initiate condemnation proceedings if the highway, road, alley, street, way, lane, bikeway, bridge, or trail is part of a public road, ownership has not been exercised by limiting use or access, or the State or county has provided some form of maintenance to the highway, road, alley, street, way, lane, bikeway, bridge, or trail in the interest of the public; provided further that a private owner may only petition the mayor of a county after the dissolution of the roads commission established by Act \_\_\_\_\_, Session Laws of Hawaii 2016; provided further that in every case where the highway, road, alley, street, way, lane, bikeway, bridge, or trail is constructed and completed as required by any ordinance of the county or any rule, regulation, or resolution thereof having the effect of law at the time of construction and completion, the highway, road, alley, street, way, lane, bikeway, bridge, or trail shall be exempt from meeting the construction standards in place at the time of condemnation by the State or county.

~~[In every case where the road, alley, street, bikeway, way, lane, trail, bridge, or highway is constructed and completed as required by any ordinance of the county or any rule, regulation, or resolution thereof having the effect of law[, the legislative body of the county shall accept the dedication or surrender of the same without exercise of discretion.]~~

(d) If a privately owned highway, road, alley, street, way, lane, bikeway, bridge, or trail is deemed to have been dedicated to or condemned by the State or county pursuant to subsection (c), the State or county shall be exempt for a period of three years from any state laws or rules adopted pursuant thereto that would require the State or county to perform construction, reconstruction, preservation, resurfacing, restoration, or rehabilitation upon it.

~~[(d)]~~ (e) All county public highways and trails once established shall continue until vacated, closed, abandoned, or discontinued by a resolution of the legislative body of the county wherein the county highway or trail lies. All state trails once established shall continue until lawfully disposed of pursuant to the requirements of chapter 171.”

#### PART IV

SECTION 4. There is appropriated out of the general revenues of the State of Hawaii the sum of \$2,000,000 or so much thereof as may be necessary for fiscal year 2016-2017 for positions and other operating expenditures of the roads commission established under section 2 of this Act and for repair work, including flood mitigation and installation of drainage infrastructure, and resurfacing of the following:

- (1) Kalani Street on Oahu, from Puuhale Road to Kalihi Street;
- (2) Eighteenth Avenue on Oahu, from Harding Avenue to Kilauea Avenue; and
- (3) Kalakaua Avenue on Oahu, between Poni Moi Road and Coconut Avenue;

provided that the city and county of Honolulu shall take ownership of a road or parcel listed in paragraphs (1) through (3) of this section upon acceptance of funds by the city and county of Honolulu; provided further that the city and county of Honolulu shall have the discretion to accept or decline funds appropriated for each of the roads or parcels listed in paragraphs (1) through (3) of this section; provided further that the city and county of Honolulu shall not be required to take ownership of any road or parcel listed in paragraphs (1) through (3) of this section if the city and county of Honolulu declines funds for that particular road or parcel from the State.

The sum appropriated shall be expended by the department of transportation for the purposes of this Act.

#### PART V

SECTION 6.<sup>1</sup> Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 7.<sup>1</sup> If any provision of this Act, or the application thereof to any person or circumstance, is held invalid, the invalidity does not affect other provisions or applications of the Act that can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

SECTION 8.<sup>1</sup> This Act shall take effect on July 1, 2016; provided that section 2 shall be repealed on June 30, 2018.

(Approved July 1, 2016.)

#### Note

1. So in original.