



GOV. MSG. NO. 1296

EXECUTIVE CHAMBERS
HONOLULU

DAVID Y. IGE
GOVERNOR

July 1, 2016

The Honorable Ronald D. Kouchi,
President
and Members of the Senate
Twenty-Eighth State Legislature
State Capitol, Room 409
Honolulu, Hawai'i 96813

The Honorable Joseph M. Souki,
Speaker and Members of the
House of Representatives
Twenty-Eighth State Legislature
State Capitol, Room 431
Honolulu, Hawai'i 96813

Dear President Kouchi, Speaker Souki, and Members of the Legislature:

This is to inform you that on July 1, 2016, the following bill was signed into law:

HB2049 HD2 SD2 CD1

RELATING TO TRANSPORTATION
ACT 194 (16)

Sincerely,

DAVID Y. IGE
Governor, State of Hawai'i

A BILL FOR AN ACT

RELATING TO TRANSPORTATION.

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

1 PART I

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

14 The legislature further finds that since these private
15 roads are not owned by a governmental entity, or their ownership
16 is being disputed, they often do not receive proper repair and
17 maintenance. Although these roads are often used by, and are of
18 benefit to the public, the public does not realize that the road



1 is not owned by a governmental agency. This creates
2 difficulties for members of the public and government agencies
3 when individuals report repair or maintenance issues.

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

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

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

17 (1) Establishing a temporary roads commission within the
18 department of transportation to, among other things,
19 review studies on disputes regarding private roads,
20 provide an opinion on the ownership of certain private
21 roads, advise the appropriate legislative body of the



- 1 determination of ownership of the private road, and
2 recommend action to the appropriate legislative body,
3 including the initiation of condemnation proceedings
4 as appropriate;
- 5 (2) Expanding the State and counties' authority to condemn
6 public roads;
- 7 (3) Allowing private owners of roadways to petition the
8 mayor of the county in which the roadway is located to
9 begin condemnation proceedings if certain conditions
10 are met;
- 11 (4) Exempting roads meeting county construction standards
12 at the time of construction and completion from having
13 to meet county construction standards in place at the
14 time of transfer to the county;
- 15 (5) Exempting the State or county from requirements to
16 maintain or improve roads taken by condemnation; and
- 17 (6) Appropriating funds for road repair work, including
18 resurfacing, flood mitigation, and installation of
19 drainage infrastructure to certain roads.



1 PART II

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

- 6 (1) The mayor of each county;
- 7 (2) A member of the state house of representatives
8 appointed by the speaker of the house of
9 representatives;
- 10 (3) A member of the state senate appointed by the
11 president of the senate;
- 12 (4) The director of transportation;
- 13 (5) The chairperson of the board of land and natural
14 resources;
- 15 (6) The director of a county transportation department,
16 appointed by the Hawaii council of mayors and
17 confirmed by the Hawaii state association of counties;
- 18 (7) The director of planning from a county, appointed by
19 the Hawaii council of mayors and confirmed by the
20 Hawaii state association of counties;



- 1 (8) One member of the public, with expertise in civil
2 engineering, city planning, construction, easements
3 and acquisitions, condemnation, real property title
4 research, compliance with the Americans with
5 Disabilities Act, or environmental regulations,
6 appointed by the speaker of the house of
7 representatives;
- 8 (9) One member of the public, with expertise in civil
9 engineering, city planning, construction, easements
10 and acquisitions, condemnation, real property title
11 research, compliance with the Americans with
12 Disabilities Act, or environmental regulations,
13 appointed by the president of the senate; and
- 14 (10) Two members of the public, with expertise in civil
15 engineering, city planning, construction, easements
16 and acquisitions, condemnation, real property title
17 research, compliance with the Americans with
18 Disabilities Act, or environmental regulations,
19 appointed by a majority of the members on the roads
20 commission.

1 (b) Any vacancy occurring in the membership of the
2 commission shall be filled in the same manner as the original
3 appointments.

4 (c) The chair and vice chair of the commission shall be
5 selected by a majority of the members of the commission.

6 (d) A simple majority shall constitute a quorum whose
7 affirmative vote shall be necessary for all actions of the
8 commission.

9 (e) Members of the commission shall serve without
10 compensation but shall be reimbursed for necessary expenses,
11 including travel expenses, incurred in the performance of their
12 duties under this section.

13 (f) The commission shall:

14 (1) Review all previous studies on disputes regarding
15 private roads;

16 (2) Provide an opinion about the ownership of five private
17 roads that are remnants or whose ownership is in
18 dispute; provided that two of these roads shall be
19 roads that are not widely used by the general public;
20 and



1 (3) Advise the appropriate legislative body of its
2 determination of ownership of the five private roads,
3 and recommend action to the appropriate legislative
4 body, including the initiation of condemnation
5 proceedings as appropriate.

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

9 (g) The commission may:

- 10 (1) Sue and be sued;
- 11 (2) Have a seal and alter the same at its pleasure;
- 12 (3) Adopt rules under chapter 91 necessary to effectuate
13 this section;
- 14 (4) Obtain federal or private funding for the upgrading,
15 repair, and maintenance of private roads and
16 distribute the funding to the appropriate governmental
17 body;
- 18 (5) Make and execute contracts and all other instruments
19 necessary or convenient for the exercise of its powers
20 under this section;



1 (6) Carry out surveys, research, and investigations with
2 respect to the ownership of private roads in the
3 State; and

4 (7) Direct, subpoena, or examine under oath all persons
5 whose testimony may be required to determine ownership
6 of a private road.

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

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

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

18 PART III

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



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

6 Public highways are of two types:

7 (1) State highways, which are those lands, interests, or
8 other real property rights, as defined above, having
9 an alignment or possession of a real property highway
10 related interest as established by law, subdivided and
11 acquired in accordance with policies and procedures of
12 the department of transportation, separate and exempt
13 from any county subdivision ordinances, and all those
14 under the jurisdiction of the department of
15 transportation; and

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

17 (b) All trails, and other nonvehicular rights-of-way in
18 the State declared to be public rights-of-ways by the Highways
19 Act of 1892, or opened, laid out, or built by the government or
20 otherwise created or vested as nonvehicular public rights-of-way
21 at any time thereafter, or in the future, are declared to be



1 public trails. A public trail is under the jurisdiction of the
2 state board of land and natural resources unless it was created
3 by or dedicated to a particular county, in which case it shall
4 be under the jurisdiction of that county.

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

10 (1) Dedication of public highways, roads, alleys, streets,
11 ways, lanes, bikeways, bridges, or trails shall be by
12 deed of conveyance naming the State as grantee in the
13 case of a state highway, road, alley, street, way,
14 lane, bikeway, bridge, or trail and naming the county
15 as grantee in the case of a county highway, road,
16 alley, street, way, lane, bikeway, bridge, or trail.
17 The deed of conveyance shall be delivered to and
18 accepted by the director of transportation in the case
19 of a state highway, road, alley, street, way, lane,
20 bikeway, or bridge, or the board of land and natural
21 resources in the case of a state trail. In the case



1 of a county highway, road, alley, street, way, lane,
2 bikeway, bridge, or county trail, the deed shall be
3 delivered to and accepted by the legislative body of a
4 county[-]; provided that in every case where the
5 highway, road, alley, street, way, lane, bikeway,
6 bridge, or county trail is constructed and completed
7 as required by any ordinance of the county or any
8 rule, regulation, or resolution thereof having the
9 effect of law, the legislative body of the county
10 shall accept the dedication of the same without
11 exercise of discretion; and

- 12 (2) [~~Surrender~~] Condemnation of public highways, roads,
13 alleys, streets, ways, lanes, bikeways, bridges, or
14 trails [~~shall be deemed to have taken place if no act~~
15 ~~of ownership by the owner of the road, alley, street,~~
16 ~~bikeway, way, lane, trail, or bridge has been~~
17 ~~exercised for five years and when, in the case of a~~
18 ~~county highway, in addition thereto, the legislative~~
19 ~~body of the county has, thereafter, by a resolution,~~
20 ~~adopted the same as a county highway or trail.]
21 initiated by the State or county pursuant to chapter~~



1 101, 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 _____, 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 ~~[In every case where the road, alley, street, bikeway, way,~~
7 ~~lane, trail, bridge, or highway is constructed and completed as~~
8 ~~required by any ordinance of the county or any rule, regulation,~~
9 ~~or resolution thereof having the effect of law[, the legislative~~
10 ~~body of the county shall accept the dedication or surrender of~~
11 ~~the same without exercise of discretion.]~~

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

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 PART IV

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

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

19 provided that the city and county of Honolulu shall take
20 ownership of a road or parcel listed in paragraphs (1) through
21 (3) of this section upon acceptance of funds by the city and



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

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

12 PART V

13 SECTION 6. Statutory material to be repealed is bracketed
14 and stricken. New statutory material is underscored.

15 SECTION 7. If any provision of this Act, or the
16 application thereof to any person or circumstance, is held
17 invalid, the invalidity does not affect other provisions or
18 applications of the Act that can be given effect without the
19 invalid provision or application, and to this end the provisions
20 of this Act are severable.



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

APPROVED this 1 day of JUL , 2016



GOVERNOR OF THE STATE OF HAWAII

