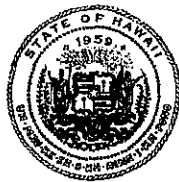


COPY



LINDA LINGLE
GOVERNOR

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STATE OF HAWAII
DEPARTMENT OF THE ATTORNEY GENERAL
LAND/TRANSPORTATION DIVISION
465 South King Street
Honolulu, Hawaii 96813
Telephone No. (808) 587-2992
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February 8, 2008

The Honorable J. Kalani English
Chair, Senate Committee on Transportation
and International Affairs
State Capitol, Room 205
Honolulu, Hawaii 96813

Re: S.B. No. 2900, Relating to Public Lands
February 11, 2008, 1:30 p.m., Room 229

Dear Senator English:

S.B. No. 2900 proposes to expand the counties' jurisdiction over highway safety and traffic code enforcement to public highways whose ownership is in dispute between the State and the counties, i.e., "roads in limbo." We note that article VIII, section 5 of the Hawaii Constitution states that "[i]f any program or increase in the level of service under an existing program shall be mandated to any of the political subdivisions by the legislature, it shall provide that the State share in the cost." (Emphasis added). S.B. No. 2900, as written, does not provide funding to the counties for this expansion in their current program of highway safety and traffic code enforcement. We believe that the bill, if passed, may be subject to constitutional challenge due to this omission.

If you have questions, please call me at 587-2987.

Very truly yours,

Stella M.L. Kam
Deputy Attorney General

APPROVED:

Mark J. Bennett
Attorney General

c: The Honorable Mike Gabbard, Vice Chair, Committee on
Transportation and International Affairs

DEPARTMENT OF THE CORPORATION COUNSEL
CITY AND COUNTY OF HONOLULU

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MAYOR

CARRIE K.S. OKINAGA
CORPORATION COUNSEL

DONNA M. WOO
FIRST DEPUTY CORPORATION COUNSEL

February 8, 2008

The Honorable J. Kalani English, Chair
Senate Committee on Transportation
and International Affairs
Hawaii State Senate
Hawaii State Capitol
Honolulu, Hawaii 96813

The Honorable Lorraine R. Inouye, Chair
Senate Committee on Intergovernmental
and Military Affairs
Hawaii State Senate
Hawaii State Capitol
Honolulu, Hawaii 96813

Dear Chairs English and Inouye and Members of the
Committees:

Re: SB 2900, Relating to Public Lands

Thank you for the opportunity to testify before you on
SB 2900, Relating to Public Lands. The City and County of
Honolulu opposes this bill.

We understand that this bill attempts to address an
issue with private individuals improperly blocking access
to paper roads that lead to coastal and inland recreational
areas.

The dispute over ownership of public roads between the
State and the counties has been ongoing for many years.
Hawaii Revised Statutes Section 264-1 (2007) provides that
public roads not under the jurisdiction of the State
Department of Transportation belong to the counties.

The Honorable J. Kalani English, Chair
The Honorable Lorraine R. Inouye, Chair
February 8, 2008
Page 2

Believing that it would be in the best interest of the public, the City accepted all existing disputed roads within its jurisdiction in 1993. The City did so with the understanding that it would take over roads that were already built, even though many of the roads were not built up to City standards. In accepting the roads, the City relied on a State Attorney General opinion that paper roads (roads that merely appear on a map but are not built) and unimproved ways not open to the general public do not fall under the definition of "public highways" in HRS Section 264-1. Therefore, the City did not contemplate acceptance of paper roads and unimproved ways.

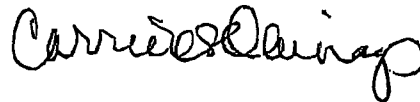
SB 2900 provides that the counties shall impose and enforce traffic laws and shall enforce HRS Chapters 286 and 291C on paper roads. This bill, if enacted, may result in requiring the City to take on additional enforcement responsibility it is not now required to perform. In order to provide enforcement of the proposed legislation, the City will have to post signs for the law to be enforceable. This may result in an unfunded mandate in violation of Article VIII, Section 5 of the Hawaii State Constitution in that there are many paper roads throughout Oahu that would require such signage.

If there is an issue with private parties improperly blocking access to paper roads that lead to coastal and inland recreational areas, these instances should be dealt with on a case-by-case basis to reach to a solution. The remedy should not be to require the counties to take on additional responsibilities and liabilities and install signs on all paper roads.

The Honorable J. Kalani English, Chair
The Honorable Lorraine R. Inouye, Chair
February 8, 2008
Page 3

We ask that SB 2900 be held in committee. Should you have any questions, please contact me at 523-4115.

Very truly yours,



CARRIE K. S. OKINAGA
Corporation Counsel

CKSO:di

LEG2008-SB 2900 (TESTIMONY)

**TESTIMONY OF THE
OFFICE OF THE MAYOR
COUNTY OF KAUA`I**

**TO THE SENATE COMMITTEES
ON TRANSPORTATION AND INTERNATIONAL AFFAIRS AND
INTERGOVERNMENTAL AND MILITARY AFFAIRS**

**TWENTY-FOURTH LEGISLATURE
REGULAR SESSION OF 2008**

February 11, 2008
1:30 p.m.

TESTIMONY ON SENATE BILL NO. 2900, RELATING TO PUBLIC LANDS

**TO THE HONORABLE J. KALANI ENGLISH AND LORRAINE R. INOUE, CHAIRS, AND
MEMBERS OF THE COMMITTEES:**

My name is Bryan J. Baptiste, Mayor, testifying on behalf of the County of Kaua`i (County).

The County supports Senate Bill No. 2900.

The Bill allows the counties to enforce traffic laws on public "roads in limbo" and establishes that there is no private right to possess these roads arising from the fact the State and the counties dispute the ownership of the roads.

The State and the counties have not agreed whether certain roads are within the jurisdiction of the State or counties, placing the responsibility for the roads "in limbo." This dispute should not diminish the fact that the roads are public, and that laws applicable to public roads should apply. This Bill will clarify that State and county laws can be enforced on "roads in limbo," including the laws that prevent private parties from blocking access on public roads and ways. The measure also assists the counties by specifying that no presumption of ownership shall arise because the counties enforce laws on these roads.

The County believes that maintaining public access to coastal and inland recreational areas is extremely important, and the clarification provided by this Bill will enable it to continue to ensure open access.

We thank the Committees for the opportunity to present testimony on this matter.

testimony

From: Jeannine Johnson [jeannine@hawaii.rr.com]
Sent: Saturday, February 09, 2008 9:13 PM
To: testimony
Cc: 'Rich Figel'; 'Elizabeth Reilly'; 'Ann Marie Kirk'; 'Scott Werny'; 'Marti'; 'Miwa Tamanaha'; Sen. Sam Slom; Rep. Lyla B. Berg; Rep. Barbara Marumoto; Rep. Gene Ward; Sen. Fred Hemmings; Sen. Gary Hooser
Subject: Testimony in Strong Support of SB 2900 - RELATING TO PUBLIC LANDS
Attachments: image001.jpg

COMMITTEE ON TRANSPORTATION AND INTERNATIONAL AFFAIRS

Senator J. Kalani English, Chair
Senator Mike Gabbard, Vice Chair

COMMITTEE ON INTERGOVERNMENTAL AND MILITARY AFFAIRS

Senator Lorraine R. Inouye, Chair
Senator Shan S. Tsutsui, Vice Chair

COMMITTEE ON TRANSPORTATION AND INTERNATIONAL AFFAIRS

Senator J. Kalani English, Chair
Senator Mike Gabbard, Vice Chair

Re: SB 2900 - RELATING TO PUBLIC LANDS
Hearing: Monday, February 11, 2008, at 1:30 pm in Conference Room 229

Aloha kākou,

I strongly support SB2900 which establishes that there is no private right to possess any public roadway arising from the fact that the ownership of the roadway is disputed between the State and county in which the roadway exists; and gives counties the power to enforce traffic laws on these roadways without a presumption of ownership being created.



On Saturday, February 2, 2008, 250 to 300 people participated on every island in an state-wide protest for more beach access. My sons and I (here is a picture of my son Matt) braved the wind and rain for two hours to call attention to our lack of public access in Niu Valley and East Honolulu. Ensuring that the public retains the right to use roads in limbo to access coastal and inland recreational areas, including beaches, shores, parks, and trails against individuals who 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,

is an excellent start.

Mahalo for your support.

Jeanrnie

Jeanrnie Johnson

5648 Pia Street

Honolulu, Hawai'i 96821

Ph: 373-2874 / 523-5030 (w)

Email: jeannine@hawaii.rr.com

"PUPUKAHI I HOLOMUA"

(Unite in Order to Progress)