



STATE OF HAWAII
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IN REPLY REFER TO:

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TESTIMONY OF THE DEPARTMENT OF TRANSPORTATION

HOUSE BILL NO. 1702

COMMITTEE ON TRANSPORTATION

House Bill 1702 allows any person to file for a contested case hearing to determine jurisdiction over a public road and establish the determination process.

The Department appreciates the intent of this bill to assist in bringing closure to the issue of roads-in-limbo. However, we do not believe this will resolve the underlying issue.

When there is a dispute of a public road, the legislation proposes to allow any person to file an application for determination with the Department of Commerce and Consumer Affairs (DCCA) as a contested case pursuant to Section 91-9.

The bill also states that the contested case hearing shall be open to the public and held no later than 180 days after receipt of application and a final decision rendered no later than 180 days after commencement of hearing, where the applicant initiating proceedings shall have the burden of proof and all parties affected shall be afforded an opportunity argue their side and cross-examine if required.

The Department has had discussions with the counties to determine the degree of disagreement in the status of roads-in-limbo. To date, only Maui County does not acknowledge or accept the findings by the Legislative Reference Bureau's 1989 report titled, "*Roads in Limbo: an Analysis of the State-County Jurisdictional Dispute.*" According to the 1989 LRB report, prior to 1947, the counties had jurisdiction and were responsible for the maintenance of all public highways in the Territory of Hawaii.

In many cases, it is understood that counties have jurisdiction over certain public highways. The counties do not or are unable to maintain the roads because they do not have the financial resources to do so. However, under Sections 264-1 and 265-1, Hawaii Revised Statutes, counties are responsible for the maintenance of all public highways, which are not under the jurisdiction of the DOT. Even with these state laws in place, there are county roads that are not being maintained due to the lack of funding.

We also believe the jurisdiction issue may be too complex for a hearings officer to bear, as the inventory lists of the disputed roads are also in question and in many cases it is not known how a certain road became public.

As an example, if a private road or parcel of property was used consistently by the public, an unplanned public road by easement could have been created. Other problems arise when there are no formal recordings of such roads, making surveys and documentation hard to verify.

Many of the roads in limbo are not just public, but private roads and this bill only provides a process by which to determine jurisdiction of public roads presumably as defined in HRS 264-1.