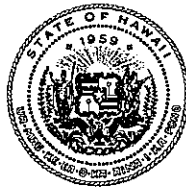


HB2020

HD2 SD1

LINDA LINGLE
GOVERNOR



BRENNON T. MORIOKA
INTERIM DIRECTOR

Deputy Directors
MICHAEL D. FORMBY
FRANCIS PAUL KEENO
BRIAN H. SEKIGUCHI
JIRO A. SUMADA

IN REPLY REFER TO:

STATE OF HAWAII
DEPARTMENT OF TRANSPORTATION
869 PUNCHBOWL STREET
HONOLULU, HAWAII 96813-5097

March 23, 2010

TESTIMONY OF THE DEPARTMENT OF TRANSPORTATION

HOUSE BILL NO. 2020 HD 2 SD 1

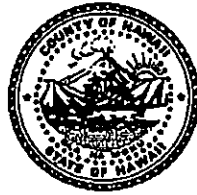
COMMITTEE ON JUDICIARY AND GOVERNMENT OPERATIONS

We support House Bill 2020 HD 2 SD 1, because it will provide enforcement on private roadways, which will make them safer for the people who use them.

HB 2020 HD 2 SD 1 expands the county enforcement of various motor vehicle and traffic laws on private streets and roads to include laws relating to county vehicular taxes, motor vehicle safety responsibility, traffic violations, use of intoxicants while operating a vehicle, odometers, and motor vehicle insurance.

Traffic crashes and fatalities occur upon private roadways which vehicles travel or those private roadways that are open for public use. The enforcement of traffic laws should apply to private roadways that are opened to the public to ensure everyone's safety.

William P. Kenoi
Mayor



Harry S. Kubojiri
Police Chief

Paul K. Ferreira
Deputy Police Chief

County of Hawai`i

March 22, 2010

POLICE DEPARTMENT
349 Kapi'olani Street • Hilo, Hawai'i 96720-3998
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Senator Brian T. Taniguchi
Chair and Members
Committee on Judiciary and Government Operations
State Capitol
415 South Beretania Street, Room 016
Honolulu, Hawai'i 96813

Re: House Bill 2020, HD2, SD1, Relating to Counties

Dear Senator Taniguchi and Members:

The Hawai'i Police Department supports the amendments proposed to Sections 46-15.9 and 46-16 of the Hawai'i Revised Statutes. These amendments are intended to provide clarity in regards to enforceable traffic laws on private roadways which are open to the public and to extend certain traffic code provisions to these roads, thereby ensuring continued public safety on these roadways.

The Big Island of Hawai'i has hundreds of miles of private roadways which are open to the public. Numerous private subdivisions including, but not limited to, Hawaiian Paradise Park, Orchidland Estates, Hawaiian Acres, and Hawaiian Ocean View Estates are all subdivisions with privately maintained roadways which are open to the public. The main roads run for several miles, from the publicly maintained highway to the end of the subdivision.

Recently, questions have been raised as to the legality of officers enforcing traffic laws on the roadways within these vast subdivisions, thus creating confusion for community members, subdivisions' land holders, and law enforcement.

In the Committee Report from the Committee on Transportation, International and Intergovernmental Affairs, it stated that HB 2020 will be deferred to the Committee on Judiciary and Government Operations because:

[The] Committee is concerned that this measure might be interpreted to mean that law enforcement officers now have the ability to enter upon private property, without permission of the owner, for the purpose of enforcing traffic laws on private roadways affronting the private property. The constitutional right to privacy of the property owner may, accordingly, be affected.

Senator Brian Taniguchi
Chairperson
Committee on Judiciary and Government Operations
Page 2

The constitutional right to privacy, however, is not being infringed upon by HB 2020. The law already exists for police to enforce specific areas of the traffic regulations on private streets. *State v. Watson*, 71 Haw. 258 (1990) (Nothing in HRS 291-4 which requires that driving while intoxicated must be done on a public highway to be punishable); *State v. Kelekolio*, 94 Hawai'i 354 (2000) (Person could be cited for driving without license pursuant to HRS 286-102 even if not operating a motor vehicle on public highways); HRS § 46-16 (Traffic regulation and control over private streets).

HB 2020 is merely amending existing law to specifically include several more sections of traffic violations that are currently being thrown out of court, thus creating a public health and safety issue. This law is not intended to, or seeking to provide law enforcement officers with the ability to enter upon private property without permission of the owner, for the purpose of enforcing traffic laws on private roadways, beyond those already established as exceptions to the right to privacy.

Hence, we are not seeking to erode any constitutional privacy rights. We have been enforcing certain provisions of the traffic code for years without doing that. We are merely trying to include other traffic violation sections so tickets for those infractions aren't dismissed by a district court.

The inability of law enforcement to enforce traffic laws on these roadways presents a public safety issue. This proposed amendment will be beneficial to the public interest as it clearly defines enforceable traffic code statutes and helps ensure continued public safety on these roadways.

The District Court of the Third Circuit has questioned whether traffic laws such as seatbelt and child restraint violations, DUI, no-fault insurance requirements and other traffic related statutes are enforceable on these roadways. If this amendment is not passed, it may deter enforcement on these roadways, thereby increasing the likelihood of unsafe roadways and becoming a risk to the general motoring public who make use of these roads on a daily basis.

For these reasons, we urge this committee to support this legislation. Thank you for allowing the Hawai'i Police Department to testify on H.B. No. 2020, HD2, SD1.

Sincerely,


HARRY S. KUBOJIRI
POLICE CHIEF