

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

February 23, 2010

TESTIMONY OF THE DEPARTMENT OF TRANSPORTATION

HOUSE BILL NO. 2301, HD 1

COMMITTEE ON FINANCE

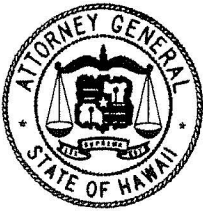
The Department of Transportation supports this bill in concept, but requests the following amendments.

- Section 1 should be deleted, as it states that counties are more economically efficient at providing highway functions, or Section 1 should be amended to reflect the fact that state highway facilities are actually in far better condition and maintained at a higher level than county facilities. Counties have historically not provided maintenance resources for their roadways commensurate with the levels that the DOT has, especially in recent years.
- Section 3 should be amended by adding a definition of "highway maintenance functions" to read: *"Highway maintenance functions" means those functions specified in a memorandum of agreement between the Department of Transportation and the Maui County Department of Public Works concerning maintenance of state highways located in Maui County.*
- Section 3 should be amended by adding a definition of "memorandum of agreement" to read: *"Memorandum of agreement" means a written agreement, acceptable to the Maui Council, under which the Maui County Department of Public Works agrees to assume responsibility and liability for specified highway maintenance functions for state highways in Maui County and the Department of Transportation agrees to transfer or delegate specified state facilities, resources, personnel, and funding to the department of public works for the duration of the pilot project under this Act.* The county should also adopt the maintenance practices of the DOT by moving towards preventative maintenance programs consistent with Federal Highway Administration (FHWA) guidelines. Preventative maintenance provides for more frequent, low-cost treatments to pavements prior to signs of distress and failure to extend pavement life. Once a state preventative maintenance program is fully implemented under the proposed DOT Highways Modernization Plan, preventative maintenance is estimated to ultimately save the DOT up to \$30 million annually in statewide road maintenance costs while significantly improving pavement conditions.

- Multiple sections of the bill may require amendment to clarify that the proposed county-state memorandum of agreement prescribes and limits which DOT functions, facilities, resources, personnel, and funding will be transferred to the County Department of Public Works. The pilot project will be limited to routine maintenance and there are a lot of details which need to be negotiated. However, the bill's current wording (which proposes the transfer of unspecified "functions" or "jurisdiction" ... "relating to the maintenance of state highways") might be interpreted to transfer responsibility for major CIP when routine maintenance is not sufficient, liability for all tort claims alleging improper highway maintenance, and/or authority to regulate construction within the highway right-of-way.
- Section 7 should be amended by deleting paragraph (b) because DOT does not use and will not "transfer" federal funds to Maui County for routine highway maintenance. Federal funds are programmed for statewide highway CIP through the federally mandated STIP process and federal-aid for Maui highway CIP must compete with other high priority CIP projects across the state.
- Section 8 should be amended to provide that county rules shall only supersede state rules when county rules are more stringent than state rules and standards relating to highway maintenance. Because compliance with federal standards for maintenance of federal-aid facilities is a prerequisite for DOT receipt of federal aid, inadequate maintenance of federal-aid facilities will result in FHWA withholding federal funds.
- A new Section should be added to read: "***Ownership of state highways.*** *Notwithstanding any law to the contrary, the ownership of all state highways shall remain with the State for the duration of the pilot project under this Act.*" DOT requires a property interest for functions which will not be transferred under the pilot project.

The proposed memorandum of agreement (MOA) between DOT and the County Department of Public Works will need to clearly define County responsibilities, potential County liability, and how much funding DOT will delegate for County expenditure to maintain DOT highways. In order to ensure compliance with federal requirements for adequate maintenance, the MOA will need to contain provisions that require the County to give priority to maintenance of federal-aid highways and restrict the County from using state resources to subsidize "catch-up" with deferred maintenance of county facilities. In general, the DOT will also need to retain operational control and regulatory authority over highway access and permitted work within the state highway right-of-way.

It is our understanding that the proposed pilot project would include routine maintenance including preventive maintenance but would not include major capital improvements such as highway reconstruction or bridge replacement. It also is our understanding that DOT would fund the proposed pilot project by delegating a prorata share of state highway operating and maintenance appropriations and that the pilot project will not utilize federal funds since DOT does not use federal funds for routine highway maintenance. To ensure that other counties are treated fairly and that DOT can meet its statewide responsibilities, we do not believe that there can be direct appropriations of the state highway fund or highway revenue bonds for expenditure by Maui County as part of this pilot program.



**TESTIMONY OF  
THE DEPARTMENT OF THE ATTORNEY GENERAL  
TWENTY-FIFTH LEGISLATURE, 2010**

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**ON THE FOLLOWING MEASURE:**

H.B. NO. 2301, H.D. 1, RELATING TO TRANSFER OF STATE HIGHWAYS.

**BEFORE THE:**

HOUSE COMMITTEE ON FINANCE

**DATE:** Tuesday, February 23, 2010 **TIME:** 10:00 a.m.

**LOCATION:** State Capitol, Room 308

**TESTIFIER(S):** Mark J. Bennett, Attorney General, or  
Wayne A. Matsuura, Deputy Attorney General

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Chair Oshiro and Members of the Committee:

The Department of Attorney General provides the following comments regarding a legal problem with this bill.

The purpose of the bill is to establish a pilot project to provide for the transfer of all state highway maintenance functions on Maui, Molokai, and Lanai to the county of Maui, and to transfer applicable funding for the maintenance of state highways on Maui from the State to Maui County.

We believe the bill as presently written violates article VIII, section 1 of the State Constitution because it confers powers to one specific county under special laws. This constitutional section provides:

The legislature shall create counties and may create other political subdivisions within the State, and provide for the government thereof. Each political subdivision shall have and exercise such powers as shall be conferred under general laws. [Emphasis added].

The term, "general laws" denotes laws that apply uniformly throughout all political subdivisions of the State. Bulgo v. County of Maui, 50 Haw. 51, 58, 430 P.2d 321, 326 (1967).

Although a general law may apply to less than all of the political subdivisions if it applies uniformly to a class of political subdivisions, we do not believe the bill as presently

written meets this latter requirement because the bill confers powers to only one specific county.

We note that some bills are written so that they apply only to counties that have certain characteristics - for example, to counties whose population is larger or smaller than a stated number.

Council Chair  
Danny A. Mateo

Vice-Chair  
Michael J. Molina

Council Members  
Gladys C. Baisa  
Jo Anne Johnson  
Sol P. Kaho'ohalahala  
Bill Kauakea Medeiros  
Wayne K. Nishiki  
Joseph Pontanilla  
Michael P. Victorino

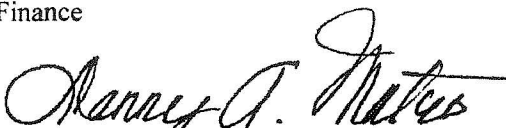


Director of Council Services  
Ken Fukuoka

**COUNTY COUNCIL**  
COUNTY OF MAUI  
200 S. HIGH STREET  
WAILUKU, MAUI, HAWAII 96793  
[www.mauicounty.gov/council](http://www.mauicounty.gov/council)

February 22, 2010

TO: The Honorable Marcus R. Oshiro, Chair  
House Committee on Finance

FROM: Danny A. Mateo  
Council Chair 

SUBJECT: **HEARING OF FEBRUARY 23, 2010; TESTIMONY IN OPPOSITION TO HB 2301, HD1, RELATING TO TRANSFER OF STATE HIGHWAYS**

Thank you for the opportunity to testify in opposition to this important measure. The purpose of this measure is to establish a pilot project to provide for the transfer of all State highway functions on Maui, Molokai, and Lanai to the County of Maui, and to transfer applicable funding for State highways on Maui from the State to the County of Maui.

The Maui County Council has not had the opportunity to take a formal position on this measure. Therefore, I am providing this testimony in my capacity as an individual member of the Maui County Council.

I oppose this measure for the following reasons:

1. Addressing duplicative State and County functions seems, at first glance, a reasonable approach, particularly during the current fiscal crisis. However, Federal law requires that a state entity must have management and oversight over the Federal aid highway program in order to receive Federal aid highway money. The proposed pilot project would jeopardize not only the State's ability to maximize all available Federal funding, but also reduce the ability to maximize the efficient delivery of services to the public.
2. I urge the Committee to carefully consider the multiple issues being impacted by a jurisdictional transfer of this scope (on both the County and the State) including, the adverse effects on union contracts, sources of revenue, liability, Federal grants, required personnel, equipment purchases, repair, maintenance and the like.
3. Like the State of Hawaii, the County of Maui is also in a fiscal crisis and currently unable to assume the responsibility for State roads. I remained concerned with the lack of clarity in this proposed legislation for the federal funding mechanisms that will be available to the County. Additionally, there are no assurances of continued funding at both the Federal or State level.

For the foregoing reasons, I oppose this measure.

CHARMAINE TAVARES  
Mayor



LYNN G. KRIEG  
Director  
LANCE T. HIROMOTO  
Deputy Director

COUNTY OF MAUI  
**DEPARTMENT OF PERSONNEL SERVICES**  
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February 22, 2010

The Honorable Marcus Oshiro, Chair  
and Members of the Committee on Finance  
House of Representatives  
Hawaii State Capitol  
415 South Beretania Street  
Honolulu, HI 96813

Dear Chair Oshiro and Committee Members:

RE: HB 2301, HD1, RELATING TO TRANSFER OF STATE HIGHWAYS

I am Lynn G. Krieg, Director of Personnel Services for the County of Maui, writing to express concerns and questions re this measure which proposes to create a pilot project to transfer jurisdiction of the maintenance of state highways in Maui county from the state department of transportation to the Maui department of public works.

Aside from the questions regarding the impact on continued eligibility for federal funding, we find the language quite confusing with regard to its impact on the personnel management aspects of such a proposal.

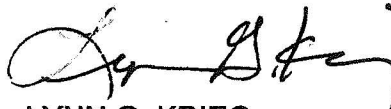
Section 5 of this bill states, "All officers and employees whose functions are transferred by this Act shall be transferred with their functions and shall continue to perform their regular duties upon their transfer, subject to the state personnel laws and this Act, until this Act is repealed, at which time the officers and employees shall be transferred back to the state department of transportation." This sentence does not clearly define who will be responsible for these officers and employees or who they will be responsible to. The section goes on to explain what rights they have depending on whether or not they are tenured and provides for a tenured employee to remain in the employment of the State should the employee's position be abolished. Such employee shall be transferred to some other office or position as determined by the state director of transportation of the governor. What the bill fails to clearly define, is who will have administrative and/or supervisory responsibility for these transferred positions? The state or the county department of public works? Other questions that arise include:

1. Will these officers and employees be paid by the state or county payroll system? The state and county are on totally different pay systems and pay schedules. If a change over is required, will this entail union consultation or will the county be able to process the change over as they would with any other transferred employee?
2. Will the county department of public works be required to acquaint themselves with state personnel laws, rules and regulations, policies and procedures, in order to manage their operations? If so, this will eventually create friction within the workplace.
3. Will subsequent vacancies be filled by the state recruitment office and its policies and procedures or by the county?
4. If any of the transferred officers and employees should have reason to file a civil service appeal or internal complaint, which board will have jurisdiction, the state's Merit Appeals Board or the county Civil Service Commission?

I would support a thorough feasibility study, to include the issues presented, prior to passage of such a measure.

Thank you for the opportunity to provide comment.

Sincerely,



LYNN G. KRIEG  
Director of Personnel Services

cc: Mayor Charmaine Tavares  
Marian Feenstra, Executive Assistant