

JAN 21 2011

A BILL FOR AN ACT

RELATING TO TRANSFER OF STATE HIGHWAYS.

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

1 SECTION 1. The legislature finds that the State's current
2 fiscal crisis necessitates an abolition of duplicative state and
3 county functions. The legislature further finds that counties
4 are more economically efficient at providing highway maintenance
5 inasmuch as highway maintenance is primarily a county function
6 in Hawaii which does not have an interstate highway system
7 similar to mainland states.

8 The purpose of this Act is to establish a pilot project to
9 provide for the transfer of all state highway maintenance
10 functions in the county of _____ to that county and to
11 transfer applicable funding for maintenance of state highways to
12 that county.

13 SECTION 2. **Pilot project established.** There is
14 established a pilot project to transfer all state highway
15 maintenance functions relating to state highways located on the
16 island of _____ to their respective county, and to transfer
17 applicable funding for maintenance of those state highways from
18 the State to the appropriate county in accordance with this Act.



1 SECTION 3. **Definitions.** For purposes of this Act:

2 "Highway maintenance functions" mean those maintenance
3 functions performed by the department of transportation on state
4 highways located in any county.

5 "State highways" means every highway on the islands of
6 _____ that is under the jurisdiction of the state
7 department of transportation, highways division, as of
8 December 30, 2011.

9 SECTION 4. **Transfer of highway maintenance functions.** No
10 later than January 1, 2012, the jurisdiction, functions, powers,
11 duties, and authority heretofore exercised by the state
12 department of transportation relating to the maintenance of
13 state highways in any county that has been transferred to that
14 county pursuant to this Act shall be transferred to that county.

15 All rules, policies, procedures, guidelines, and other
16 material adopted or developed by the state department of
17 transportation relating to the highway maintenance functions
18 shall remain in full force and effect for the duration of the
19 pilot project under this Act, except as provided under
20 section 11 of this Act for a county administrative rule to
21 supersede a state administrative rule.



1 All deeds, leases, contracts, loans, agreements, permits,
2 or other document executed or entered into by or on behalf of
3 the state department of transportation highways division
4 pursuant to the provisions of the Hawaii Revised Statutes, shall
5 remain in full force and effect for the duration of the pilot
6 project under this Act.

7 SECTION 5. **Ownership of state highways.** Notwithstanding
8 section 264-2, Hawaii Revised Statutes, the ownership of all
9 state highways shall remain with the State for the duration of
10 the pilot project under this Act.

11 SECTION 6. **Transfer of statutory state highway maintenance**
12 **functions.** For purposes of this Act, specific provisions
13 relating to state highway functions under chapter 264, Hawaii
14 Revised Statutes, that relate to the maintenance of state
15 highways transferred to any county pursuant to this Act shall be
16 deemed to be transferred to that county for the duration of the
17 pilot project under this Act.

18 SECTION 7. **Transfer of department functions, officers, and**
19 **employees.** Concurrent with the transfer of the highway
20 maintenance functions, all rights, powers, functions, and duties
21 of the state department of transportation with respect to the
22 transferred highway maintenance functions shall be transferred



1 to the appropriate county, until this Act is repealed at which
2 time the rights, powers, functions, and duties shall revert to
3 the state department of transportation.

4 All officers and employees whose functions are transferred
5 by this Act shall be transferred with their functions and shall
6 continue to perform their regular duties upon their transfer,
7 subject to the state personnel laws and this Act, until this Act
8 is repealed, at which time the officers and employees shall be
9 transferred back to the state department of transportation.

10 No officer or employee of the State having tenure shall
11 suffer any loss of salary, seniority, prior service credit,
12 vacation, sick leave, or other employee benefit or privilege as
13 a consequence of this Act, and such officer or employee may be
14 transferred or appointed to a civil service position without the
15 necessity of examination; provided that the officer or employee
16 possesses the minimum qualifications for the position to which
17 transferred or appointed; and provided further that subsequent
18 changes in status may be made pursuant to applicable civil
19 service and compensation laws.

20 An officer or employee of the State who does not have
21 tenure and who may be transferred or appointed to a civil
22 service position as a consequence of this Act shall become a



1 civil service employee without the loss of salary, seniority,
2 prior service credit, vacation, sick leave, or other employee
3 benefits or privileges and without the necessity of examination;
4 provided that such officer or employee possesses the minimum
5 qualifications for the position to which transferred or
6 appointed.

7 If an office or position held by an officer or employee
8 having tenure is abolished, the officer or employee shall not
9 thereby be separated from public employment, but shall remain in
10 the employment of the State with the same pay and classification
11 and shall be transferred to some other office or position for
12 which the officer or employee is eligible under the personnel
13 laws of the State as determined by the state director of
14 transportation or the governor.

15 **SECTION 8. Transfer of records and appropriations.**

16 Concurrent with the transfer of highway maintenance functions to
17 the county of _____, all appropriations, records,
18 equipment, machines, files, supplies, contracts, books, papers,
19 documents, maps, and other personal property heretofore made,
20 used, acquired, or held by the state department of
21 transportation relating to the maintenance functions transferred
22 to the appropriate county department shall be transferred with



1 the functions to which they relate, until this Act is repealed,
2 at which time the appropriations, records, equipment, machines,
3 files, supplies, contracts, books, papers, documents, maps, and
4 other personal property shall be transferred back to the state
5 department of transportation.

6 SECTION 9. **Federal funds, administration and transfer.**

7 (a) The highways division, or similar administrative division,
8 of the state department of transportation shall continue to
9 receive, transfer, or expend federal funds for state highways,
10 including during the duration of the pilot project established
11 under this Act.

12 (b) Concurrent with the transfer of highway maintenance
13 functions to the county of _____, the state director of
14 transportation shall transfer a proportionate share of federal
15 aid as may be received from time to time the State, to the
16 county of _____ to be used for highway maintenance and
17 repair.

18 (c) It is the intent of this Act not to jeopardize the
19 receipt of any federal aid nor to impair the obligation of the
20 State or _____ county, or any agency respectively thereof,
21 to the holders of any bond issued by the State or by any such
22 agency, and to the extent, and only to the extent, necessary to



1 effectuate this intent, the governor or mayor of _____, as
2 applicable, may modify the strict provisions of this Act, but
3 shall promptly report any such modification with reasons
4 therefor to the legislature at its next regular session.

5 SECTION 10. **Equitable proportionate funding formula.** No
6 later than January 1, 2012, the department of transportation
7 shall develop and apply an equitable proportionate formula of
8 distribution of tax revenue, general fund appropriations, and
9 federal grant moneys to _____ county for purposes of
10 highway maintenance functions.

11 SECTION 11. **Adoption of ordinances and rules.** The county
12 council of _____ may adopt ordinances and that county's
13 appropriate department may adopt administrative rules relating
14 to highway maintenance functions, as defined in section 3 of
15 this Act, for the period of time the pilot project is in
16 existence; provided that ordinances shall be deemed to be
17 supplemental to provisions of the Hawaii Revised Statutes, and
18 county administrative rules shall be deemed to supersede state
19 administrative rules where a county rule is comprehensive so as
20 to be intended to be exclusive. In the absence of county
21 administrative rules, state administrative rules shall continue
22 in effect.



1 SECTION 12. **Transfer of mandated programs; funding.**
2 article VIII, section 5, of the Hawaii State Constitution,
3 relating to state funding of mandated programs to the counties,
4 shall be deemed satisfied by the transfer of state
5 appropriations and federal funds from the State to the county of
6 _____ under this Act; provided that the county of
7 _____ may request the legislature to appropriate additional
8 funds as necessary from time to time to implement this Act.

9 SECTION 13. **Reports to legislature.** The state department
10 of transportation and the _____ department of _____
11 shall each report separately to the legislature on the progress,
12 problems, implementation, and other relevant issues concerning
13 the transfer of highway maintenance functions to the county of
14 _____. The reports shall be filed no later than twenty
15 days prior to the convening of the regular session immediately
16 preceding the repeal date of this Act.

17 SECTION 14. **Reversion to State on sunset.** On December 31,
18 2017, the highway maintenance functions transferred by this Act
19 to the _____ department of _____ shall revert back
20 forthwith to the state department of transportation, including
21 transfer of officers and employees, records and appropriations,
22 and federal funds transfers, on the same terms and conditions as



1 specified in this Act for the transfer from the state department
2 of transportation to the county department.

3 SECTION 15. This Act shall take effect upon its approval;
4 provided that this Act shall be repealed on December 31, 2017.

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INTRODUCED BY: James Menendez Jr.

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Report Title:

State Highways; Transfer to County

Description:

Creates a pilot project to transfer maintenance functions of state highways in the county of _____ from the state department of transportation to that county.

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