



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
TWENTY-SEVENTH LEGISLATURE, 2013**

ON THE FOLLOWING MEASURE:

H.B. NO. 1112, H.D. 1 RELATING TO HIGHWAYS.

BEFORE THE:

HOUSE COMMITTEE ON FINANCE

DATE: Wednesday, February 20, 2013 **TIME:** 3:30 p.m.

LOCATION: State Capitol, Room 308

TESTIFIER(S): David M. Louie, Attorney General, or
Stella M.L. Kam, Deputy Attorney General

Chair Luke and Members of the Committee:

The Department of the Attorney General opposes this bill.

This bill would require the director of transportation to (1) designate a separate lane from the Fort Weaver Road on-ramp to the east-bound H-1 freeway; (2) open the right shoulder lane on the H-1 freeway during morning traffic hours from Kapolei to exit number 5 (Kunia); and (3) designate an additional lane from Waipahu Street to Fort Weaver Road, and onto the on-ramp at Fort Weaver Road to the H-1 freeway.

The Department of the Attorney General has two main concerns regarding the constitutionality of this bill. First, we believe that the bill violates article XI, section 5, of the Hawaii Constitution, which provides that “[t]he legislative power over the lands owned by or under the control of the State and its political subdivisions shall be exercised only by general laws.” This bill is not a general law. It specifically requires the Director of Transportation to take operational actions at identified sites on the H-1 freeway and, therefore, does not comply with article XI, section 5, of the Hawaii Constitution.

Our second concern with this bill is that it could violate the separation of powers between the legislative and executive branches of state government. Article V, section 6, of the Hawaii Constitution, provides that “[a]ll executive and administrative offices, departments and instrumentalities of the state government and their respective powers and duties shall be allocated by law among and within not more than twenty principal departments in such a manner as to group the same according to common purposes and related functions.” The powers and duties of the Department of Transportation (DOT) are stated in section 26-19, Hawaii Revised

Statutes (HRS), which authorizes the DOT to “establish, maintain, and operate transportation facilities of the State, including highways, airports, harbors, and such other transportation facilities and activities as may be authorized by law.” Section 264-1(a)(1), HRS, also recognizes the DOT’s jurisdiction over all state highways, which includes the H-1 freeway. Decisions concerning highway engineering and operations are within the authority and expertise of the DOT, and not the Legislature.

The Hawaii Supreme Court addressed a similar situation in *City Council of the City and County of Honolulu v. Fasi, et al.*, 52 Haw. 3, 467 P.2d 576 (1970), where the City Council filed a lawsuit against the mayor and other city officials seeking a judgment mandating the defendants to comply with a resolution passed by the City Council. The resolution at issue directed the City director of finance to offer the Queen’s Surf property, which is owned by the City, at public auction as a restaurant and night club concession for ten years. The Court held that the city council lacked authority to require the director of finance to take such action, and the Court stated that “[t]he power to decide whether or not to permit a concession on any specific city property is not legislative, but executive in nature, to be exercised by the department which has control of the property.” *Id.* at 9, 467 P.2d at 580. Although this case involved a dispute between the legislative and executive branches of city government, we believe that the analysis of the separation of powers issue is also applicable to state government. The power to decide on traffic patterns and additional lanes on the H-1 freeway is executive in nature, not legislative, and should rightfully be exercised by the DOT. For the above reasons, we believe that this bill would not withstand a constitutional challenge.

We respectfully ask the Committee to hold this bill.

HB1112

Submitted on: 2/17/2013

Testimony for FIN on Feb 20, 2013 15:30PM in Conference Room 308

Submitted By	Organization	Testifier Position	Present at Hearing
Troy Abraham	Individual	Support	No

Comments:

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

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