



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

April 4, 2013  
2:00 p.m.  
State Capitol, Room 325

**S.B. 1357, S.D. 2, H.D. 1**  
**RELATING TO TRANSPORTATION**

House Committee on Judiciary

---

The Department of Transportation (DOT) **supports** the intent of this bill; however, as amended, it does not continue the efforts that Act 288, Session Laws of 1993 started in addressing the 1989 Legislative Reference Bureau Report, "Roads in Limbo: An Analysis of the State-County Jurisdictional Dispute." Pursuant to Senate Concurrent Resolution 49 of the 2012 Session, the current "Roads in Limbo" Working Group discussed the Roads in Limbo issue and made findings and recommendations in its report to the Legislature, which included the recommendation that the Legislature pass legislation to protect government agencies maintaining disputed roads pending resolution of the dispute.

Government agencies have been reluctant to assume maintenance of "Roads in Limbo" because the agency's maintenance activities may be characterized as evidencing ownership or jurisdiction of a disputed road, subjecting the agency to liability. Providing an interim period in which the government agency can perform maintenance activities without the fear of liability will encourage agencies to begin to maintain these disputed roads and time to bring the roads up to meet current standards. In order to fund such maintenance projects, a legislative body needs to approve the funding and would be reluctant to do so if the road is no longer disputed and the ownership is declared to be theirs.

Therefore, we recommend that S.B. 1357, S.D. 2, H.D.1 be amended to reinstate the language of S.D. 2 and add the language suggested by DLNR of authorizing the State to quitclaim to the Counties if required or requested.

Thank you for the opportunity to provide testimony.



NEIL ABERCROMBIE  
GOVERNOR OF HAWAII



**STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES**

POST OFFICE BOX 621  
HONOLULU, HAWAII 96809

**Testimony of  
WILLIAM J. AILA, JR.  
Chairperson**

**Before the House Committee on  
JUDICIARY**

**Thursday, April 04, 2013  
2:00 PM  
State Capitol, Conference Room 325**

**In consideration of  
SENATE BILL 1357, SENATE DRAFT 2, HOUSE DRAFT 1  
RELATING TO TRANSPORTATION**

Senate Bill 1357, Senate Draft 2, House Draft 1, proposes to amend Chapters 662 and 46, Hawaii Revised Statutes, for the stated purpose of enabling government agencies to maintain roads whose ownership and jurisdiction are in dispute between the State and the counties. **The Department of Land and Natural Resources (“Department”) supports the intent of the bill, but believes that the current version undermines the purpose behind its introduction this session.**

The original version of the bill provided that where ownership of a road is in dispute as between the State and a county, and a government agency takes the initiative to maintain or repair it, the agency shall not be deemed to have assumed ownership or jurisdiction of the road by such actions. In the bill’s present form, the protection to the agency has been watered down so that such maintenance or repair activity cannot be the sole basis for determining the agency owns or has jurisdiction over the road. In other words, maintenance or repair activity can be used when combined with other evidence of ownership or jurisdiction, thereby placing liability for damages sustained by users of the road on the agency undertaking the maintenance or repairs.

There is no incentive to the State or county governments to undertake repairs of roads in dispute under the current version of the bill. The Department recommends that the original version of the bill be reinstated.

Thank you for the opportunity to testify.

**WILLIAM J. AILA, JR.**  
CHAIRPERSON  
BOARD OF LAND AND NATURAL RESOURCES  
COMMISSION ON WATER RESOURCE MANAGEMENT

**ESTHER KIA’AINA**  
FIRST DEPUTY

**WILLIAM M. TAM**  
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES  
BOATING AND OCEAN RECREATION  
BUREAU OF CONVEYANCES  
COMMISSION ON WATER RESOURCE MANAGEMENT  
CONSERVATION AND COASTAL LANDS  
CONSERVATION AND RESOURCES ENFORCEMENT  
ENGINEERING  
FORESTRY AND WILDLIFE  
HISTORIC PRESERVATION  
KAHOOLAWE ISLAND RESERVE COMMISSION  
LAND  
STATE PARKS

ALAN M. ARAKAWA  
Mayor

DAVID C. GOODE  
Director

ROWENA M. DAGDAG-ANDAYA  
Deputy Director

Telephone: (808) 270-7845  
Fax: (808) 270-7955



GLEN A. UENO, P.E., Interim  
Development Services Administration

CARY YAMASHITA, P.E.  
Engineering Division

BRIAN HASHIRO, P.E.  
Highways Division

COUNTY OF MAUI  
**DEPARTMENT OF PUBLIC WORKS**  
200 SOUTH HIGH STREET, ROOM NO. 434  
WAILUKU, MAUI, HAWAII 96793  
April 2, 2013

**TESTIMONY OF DAVID C. GOODE**  
Director of Public Works  
County of Maui

A handwritten signature in black ink, appearing to read "David C. Goode", is written over the printed name and title.

TO THE HOUSE COMMITTEE ON JUDICIARY

**SENATE BILL NO. 1357, SD2, HD1**  
**RELATING TO TRANSPORTATION**

The Honorable Representative Karl Rhoads, Chair  
and Members of the Committee on Judiciary

Thank you for hearing this important bill. The County of Maui, Department of Public Works **supports** the intent of this bill, however, as amended, it does not fully reflect the efforts of Roads in Limbo Working Group report that was submitted to the Legislature at the beginning of this session.

This issue has been ongoing for longer than the 1989 Legislative Reference Bureau Report, "Roads in Limbo: An Analysis of the State-County Jurisdictional Dispute". For the neighbor islands in particular, this has been a tough issue, and the Working Group was a step in a positive direction. One key issue revolves around liability, and the need for some reasonable time to address liability concerns if the Counties were to formally accept the "roads in limbo".

Our Department took this issue to the Maui County Council's Policy Committee last summer in preparation for discussions with the Working Group. The Policy Committee was clear that liability, future costs, and the ability to retain any sales proceeds from disposing of some of the roads were the three central issues.

Government agencies have been reluctant to assume maintenance of "Roads in Limbo" because the agency's maintenance activities may be characterized as evidencing ownership or jurisdiction of a disputed road, subjecting the agency to liability.

Testimony of David C. Goode  
Senate Bill No. 1357, SD2, HD1  
April 2, 2013  
Page 2

Providing an interim period in which the government agency can perform maintenance and improvement activities without the fear of liability will encourage agencies like ours to 1) begin to maintain these disputed roads and 2) provide enough time to bring the roads up to meeting standards.

Accordingly, the Roads in Limbo Working Group's report to the Legislature specifically recognized the need to address liability concerns.

Therefore, we recommend that Senate Bill No. 1357, SD2, HD1 be amended to reinstate the language of SD2 regarding liability protection. We have no problem with the language change in HD1 offered by the Department of Land and Natural Resources (DLNR) authorizing the State to quitclaim to the Counties if required or requested.

We believe with this change our Department will be ready to submit to our County Council and DLNR a number of roads for consideration to finally meet the concerns of hundreds of our constituents to have one government agency own, control, improve, and maintain the "government" road that abuts their property.

Thank you.

Council Chair  
Gladys C. Baisa

Vice-Chair  
Robert Carroll

Council Members  
Elle Cochran  
Donald G. Couch, Jr.  
Stacy Crivello  
Don S. Guzman  
G. Riki Hokama  
Michael P. Victorino  
Mike White



Director of Council Services  
David M. Raatz, Jr., Esq.

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

April 2, 2013

TO: Honorable Karl Rhoads, Chair  
House Committee on Judiciary

FROM: Robert Carroll  
Council Vice Chair

A handwritten signature in black ink that reads "Robert Carroll".

DATE: Thursday, April 4, 2013

SUBJECT: **SUPPORT OF SB 1357 S.D. 2, H.D. 1, RELATING TO TRANSPORTATION**

I support SB 1357 for the reasons cited in testimony submitted by the Maui County Council Chair, and urge you to support this measure.

Council Chair  
Gladys C. Baisa

Vice-Chair  
Robert Carroll

Council Members  
Elle Cochran  
Donald G. Couch, Jr.  
Stacy Crivello  
Don S. Guzman  
G. Riki Hokama  
Michael P. Victorino  
Mike White




Director of Council Services  
David M. Raatz, Jr., Esq.

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

April 2, 2013

TO: The Honorable Karl Rhoads, Chair  
House Committee on Judiciary

FROM: Gladys C. Baisa   
Council Chair

SUBJECT: **HEARING OF APRIL 4, 2013; TESTIMONY IN SUPPORT OF SB 1357, SD2, HD1,  
RELATING TO TRANSPORTATION**

Thank you for the opportunity to testify in support of this important measure. The purpose of this measure is to specify that a government agency does not assume ownership or jurisdiction over a disputed road solely through maintenance activities, and authorizes the State to quitclaim ownership of roads in favor of counties.

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 support this measure for the following reasons:

1. I have actively supported the efforts of the Roads in Limbo Working Group as it has attempted to address this matter. Clarifying the question of ownership or jurisdiction of such roads, while providing protection against liability for maintaining these roads, will do much to provide an incentive to address their often deteriorated condition.
2. I support the request made by the Director of Public Works, County of Maui, to reinstate the language of SD2 regarding liability protection. Restoring this language, included in the original bill and only recently deleted in HD1, is vital in order for its provisions to be implemented. Absent the liability provision, it is likely that counties will be unable to maintain these roadways.
3. This legislation represents a good faith effort by our legislators to advance the condition of such disputed roadways, and I applaud the Maui delegation for having introduced this measure.

For the foregoing reasons, I support this measure.

**LATE**

**TESTIMONY OF ROBERT TOYOFUKU ON BEHALF OF THE HAWAII  
ASSOCIATION FOR JUSTICE (HAJ) IN SUPPORT OF S.B. NO. 1357, SD2, HD1**

DATE: Thursday, March 4, 2013

TIME: 2:00 pm

To: Chairman Karl Rhoads and Members of the House Committee on Judiciary:

My name is Bob Toyofuku and I am presenting this testimony on behalf of the Hawaii Association for Justice (HAJ) in SUPPORT of S.B. No. 1357, SD2, HD1, relating to Transportation as currently reflected in the HD1.

The purpose of this measure is to allow state or county agencies to maintain a “road in limbo” without fear that such maintenance will construed as an exercise or indication of ownership. HAJ supports the purpose and intent of this measure to provide safe and adequate roads for the public while state and county agencies resolve ownership issues and disputes between themselves.

Thank you for the opportunity to testify on this measure. Please feel free to contact me should there be any questions.

**SB1357**

Submitted on: 4/3/2013

Testimony for JUD on Apr 4, 2013 14:00PM in Conference Room 325

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Michael P. Victorino	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.

Do not reply to this email. This inbox is not monitored. For assistance please email [webmaster@capitol.hawaii.gov](mailto:webmaster@capitol.hawaii.gov)