
A BILL FOR AN ACT

RELATING TO TRANSPORTATION.

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

1 SECTION 1. The legislature finds that the safety of
2 residents traveling over roads whose ownership and jurisdiction
3 are in dispute between the State and the counties, commonly
4 known as "roads in limbo", is affected by the lack of any
5 maintenance to such roads. The legislature also finds that
6 government agencies are unwilling to maintain these roads
7 because the maintenance activities may be construed as assuming
8 ownership and jurisdiction over the disputed roads, and the
9 government agency may be subject to liability due to the
10 maintenance activities. The purpose of this Act is to enable
11 government agencies to maintain roads whose ownership and
12 jurisdiction are in dispute between the State and the counties
13 without incurring liability or assuming ownership or
14 jurisdiction over those roads.

15 SECTION 2. Chapter 662, Hawaii Revised Statutes, is
16 amended by adding a new section to be appropriately designated
17 and to read as follows:



1 "§662- No liability for maintenance or repair of
2 disputed roads. A state agency maintaining or repairing a road
3 whose ownership is in dispute between the State and a county
4 shall not be liable to any person for injury or damage sustained
5 when using that road and shall not be deemed to have assumed
6 ownership or jurisdiction over the disputed road."

7 SECTION 3. Section 46-15.9, Hawaii Revised Statutes, is
8 amended to read as follows:

9 "§46-15.9 Traffic regulation; repair and maintenance;
10 public right to use public streets, roads, or highways whose
11 ownership is in dispute[-]; county liability. (a) Any
12 provision of law to the contrary notwithstanding, any county and
13 its authorized personnel may impose and enforce traffic laws and
14 shall enforce chapters 249; 286; 287; 291; 291C; 291E; 431,
15 articles 10C and 10G; and 486, part III on public streets,
16 roads, or highways whose ownership is in dispute between the
17 State and the county.

18 (b) [~~Any provision of the law to the contrary~~
19 ~~notwithstanding, any county and its authorized personnel may~~
20 ~~repair or maintain, in whole or in part, public streets, roads,~~
21 ~~or highways whose ownership is in dispute between the State and~~
22 ~~the county.] A county agency maintaining or repairing a road~~



1 whose ownership is in dispute between the State and the county
2 shall not be liable to any person for injury or damage sustained
3 when using that road.

4 (c) No presumption that a county owns a particular street,
5 road, or highway shall arise as a result of the county's
6 performance of the activities allowed by subsection (a) or (b).

7 (d) If a county accepts by resolution the dedication of a
8 road whose ownership is in dispute between the county and the
9 State, the county shall not be liable to any person for injury
10 or damage sustained while that person is using that road for a
11 period of ten years following the acceptance of that road by
12 resolution.

13 [~~(d)~~] (e) The general public shall have the unrestricted
14 right to use public streets, roads, or highways whose ownership
15 is in dispute between the State and the county to access the
16 shoreline and other public recreational areas; provided that
17 this subsection shall not apply to any private street, road, or
18 highway whose ownership is in dispute.

19 [~~(e)~~] (f) As used in this section[+

20 "~~Public recreational area~~"], "public recreational area"

21 means coastal and inland recreational areas, including beaches,



1 shores, public parks, public lands, public trails, and bodies of
2 water opened to the public for recreational use."

3 SECTION 4. Statutory material to be repealed is bracketed
4 and stricken. New statutory material is underscored.

5 SECTION 5. This Act shall take effect on July 1, 2050, and
6 shall be repealed on December 31, 2023.



Report Title:

Liability; Road Maintenance; Disputed Roads

Description:

Allows state agencies that assume maintenance of disputed roads to improve the condition of the disputed road without incurring liability. Specifies that if a county accepts by resolution the dedication of a road in limbo, the county shall not be liable for injury or damage sustained while using that road for ten years after acceptance of that road by resolution. Specifies that a county agency maintaining or repairing a road whose ownership is in dispute between the State and the county shall not be liable to any person for injury or damage sustained when using that road. Effective 7/01/50. Repeals December 31, 2023 (SD2)

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.



NEIL ABERCROMBIE
GOVERNOR



Testimony of
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DIRECTOR

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

March 20, 2013
10:30 a.m.
State Capitol, Room 309

S.B. 1357, S.D. 2
RELATING TO TRANSPORTATION

House Committee(s) Transportation & Water and Land

The Department of Transportation (DOT) **supports** the intent of this bill, as amended, to 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, which are in dire need of repair and maintenance.

Thank you for the opportunity to provide testimony.





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

ON THE FOLLOWING MEASURE:

S.B. NO. 1357, S.D. 2, RELATING TO TRANSPORTATION.

BEFORE THE:

HOUSE COMMITTEES ON WATER AND LAND AND ON TRANSPORTATION

DATE: Wednesday, March 20, 2013 **TIME:** 10:30 a.m.

LOCATION: State Capitol, Room 309

TESTIFIER(S): David M. Louie, Attorney General, or
Donna H. Kalama, Deputy Attorney General,
Randolph R. Slaton, Deputy Attorney General

Chairs Yamane and Evans and Members of the Committees:

The Department of the Attorney General supports this bill.

This bill provides protection from liability for government agencies maintaining a road whose ownership or jurisdiction is the subject of a dispute between the State and the counties. Specifically, this bill provides a ten-year period in which the government agency that assumes maintenance or repair activities of the disputed road will not be held liable for injuries or damages sustained in connection with use of the disputed road.

The disputed roads issue has a long and complicated history, as set forth in a report prepared by the Legislative Reference Bureau (“LRB”) in 1989 entitled Roads in Limbo: An Analysis of the State-County Jurisdictional Dispute. One of the recommendations made by the LRB was that the Legislature implement a “temporary liability shield” to allow the counties sufficient time to bring the roads up “at least to a non-dangerous condition.” Although section 46-15.9(b) and (c), Hawaii Revised Statutes (HRS), which was enacted in 2008, provides that counties may repair or maintain disputed roads and that there is no presumption of ownership as a result of such activities, there is no temporary protection from liability.

More recently, in the 2012 Legislative Session, Senate Concurrent Resolution No. 49 directed the Director of the Department of Transportation (DOT) to form a “Roads in Limbo” Working Group, consisting of the DOT director, the Chairperson of the Board of Land and Natural Resources, the Mayor of each county, and the director of each county department or division of public works or facilities maintenance, or their designees. Senate Concurrent

Resolution No. 49 requested that the Working Group “expeditiously resolve the issue of roads in limbo statewide for the greater good of the residents.” In its December 2012 report to the Legislature, entitled Findings and Recommendations From the “Roads in Limbo” Working Group, the Working Group recommended legislation to protect the government agencies from liability while they work on improving the condition of the disputed roads and resolving the ownership issue. This bill is a result of the recommendations of the “Roads in Limbo” Working Group.

This bill presently has an effective date of July 1, 2050. We respectfully request that the effective date be amended to July 1, 2013.

We respectfully ask the Committees to pass this bill with the recommended amendment.

NEIL ABERCROMBIE
GOVERNOR OF HAWAII



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

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

**Before the House Committees on
WATER & LAND
and
TRANSPORTATION**

**Wednesday, March 20, 2013
10:30 AM
State Capitol, Conference Room 309**

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

Senate Bill 1357, Senate Draft 2 proposes to amend Chapters 662 and 46, Hawaii Revised Statutes, to limit the liability of a government agency that maintains or repairs a road whose ownership is in dispute as between the State and a county. **The Department of Land and Natural Resources (“Department”) supports this bill, but offers the following amendment.**

The Department suggests that language be added to the bill to clarify that to the extent a county requests or requires title to a disputed road or “road in limbo” to effectuate the intent of this measure, the State may quitclaim whatever interest it has in the road to the county. Such quitclaim conveyances may be necessary in cases where a county cannot justify expenditures for road repair or maintenance unless there is documentation that the road is in the county inventory.

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