

**LATE**

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

DATE: March 20, 2013

TIME: 10:30am

To: Chairpersons Cindy Evans and Ryan Yamane and Members of the House Committee on Water and Land and the House Committee on Transportation:

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

The purpose of this measure is to grant immunity to state or county agencies if they maintain a "road in limbo." HAJ opposes this measure because it will not accomplish its goal of adequate maintenance for roads in limbo and the immunity provided is far too broad for the stated purpose.

ONE HUNDRED YEARS AGO the 1913 Legislature considered HB 280 which attempted to address the Territory – County dispute over roadway jurisdiction and maintenance obligation by giving roads to the counties for ownership and maintenance. All of the counties have resisted to this day, notwithstanding periodic legislation (such as Act 190 in 1963) by the State to force ownership and maintenance on the counties. As a result there are hundreds of miles of roads in limbo throughout the State.

The single biggest issue and over-riding factor, by far, is funding. Many roads in limbo have not been adequately maintained for at least 50 years (since Act 190 in 1963 purported to give State roads to the counties) and some for more than a hundred years going back to when the kingdom was overthrown and all government lands ceased to be under single ownership. Because these roads have been allowed to deteriorate for so

long, there certainly are liability concerns related to them. However, because they are in such bad shape the cost to rebuild them to meet current standards is enormous and any type of comprehensive resolution will have to address funding. Immunity will not solve the problem. Counties may not want and may not be able to afford to assume the cost of rebuilding and maintaining roads in limbo whether or not they are given immunity.

First, if the problem is in fact that neither the State nor the counties are willing to maintain these roads for fear that their actions will be construed as proof of ownership, then it is a simple matter to provide that no maintenance by any governmental agency can be used in any way as proof of ownership. The following or similar language will accomplish that purpose:

**No action by a government agency to maintain or repair a road whose ownership is in dispute between the State and the county may be used to establish the agency's ownership or jurisdiction over the disputed road or be deemed to have assumed ownership or jurisdiction over the road.**

Second, the current language is much too broad as it not only addresses the concern that repair work may be deemed an exercise of ownership rights but also extends to improper or unsafe workmanship. For example, if workers negligently forget to replace a stop sign and two cars, each rightfully believing they have the right of way, collide in an intersection there would be immunity granted by the sweeping language on page 2, line 22 and continuing on page 3, lines 1 through 3 as well as on page 3, lines 7 through 12. Similarly, if workers negligently use the wrong material and a bridge collapses killing a family driving over the bridge, there would be complete immunity. It

is not necessary to give immunity for unsafe roadway repair work and violates government's basic responsibility to provide for the safety and welfare of its citizens.

Realistically, this measure will not solve the roads in limbo problem. A process to resolve the issue or a penalty large enough to force action is required. HAJ suggests that the State and counties be allowed ten (10) years to resolve the issue themselves or by binding arbitration if they are unable to reach agreement. After 10 years, both the State and counties shall be jointly and severally liable. This gives them more than adequate time to resolve the matter, imposes a substantial penalty to encourage action, and removes the current burden on citizens who are now caught in the middle of the finger pointing between the State and counties. Citizens needing action or redress are told by the county to see the State; and when they see the State they are told to see the counties. Government has failed to resolve this issue for over a hundred years and will continue to drag their feet for another hundred years if allowed to do so.

For these reasons, HAJ opposes this measure and asks that this bill be amended as suggested and the immunity related language be deleted or that the bill be held.

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