

SB 1357

RELATING TO TRANSPORTATION.

Allows government agencies that assume maintenance of disputed roads to improve the condition of the disputed road without incurring liability. Repeals December 31, 2023.



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

ON THE FOLLOWING MEASURE:

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

BEFORE THE:

SENATE COMMITTEES ON TRANSPORTATION AND INTERNATIONAL AFFAIRS
AND ON PUBLIC SAFETY, INTERGOVERNMENTAL AND MILITARY AFFAIRS
AND ON JUDICIARY AND LABOR

DATE: Wednesday, February 13, 2013 **TIME:** 1:15 p.m.

LOCATION: State Capitol, Room 224

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

Chairs English, Espero, and Hee 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, the 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 directed the Working Group to “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 as drafted provides a ten-year period of liability protection in which a state or county agency can initiate maintenance or repair activities on a disputed road without fear of being sued. However, we note that in a situation where the county has begun to maintain or repair the disputed road, and a person suffers injury or damage while using the road, perhaps even due to the maintenance or repair activities by the county, a court could still hold the State liable by finding the State to be the owner of the disputed road. We recommend the following revision to the wording of the proposed new section in chapter 662, HRS, to clarify that the State shall not be liable to any person for injury or damage sustained in connection with the use of a disputed road:

“§662- No Liability for Maintenance or Repair of Disputed Roads. The State shall not be liable to any person for injury or damage sustained in connection with the use of a road that is under dispute between the State and county concerning ownership between the State and county concerning ownership or jurisdiction. A State agency shall not be deemed to have assumed ownership or jurisdiction over the disputed road due to the State agency’s maintenance or repair of the disputed road.”

Adding this protection, which will also be subject to the ten-year period, gives both the State and the counties sufficient time to improve the condition of the disputed roads and to resolve the ownership issue.

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



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

February 13, 2013
1:15 p.m.
State Capitol, Room 224

S.B. 1357
RELATING TO TRANSPORTATION

Senate Committee(s) on Transportation and International Affairs
& Public Safety, Intergovernmental and Military Affairs
& Judiciary and Labor

The Department of Transportation (**DOT supports**) the intent of this bill 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.

This bill assists government agencies through proposed amendments to section 46-15.9 and chapter 662, Hawaii Revised Statutes. The bill provides government agencies with protection from liability when those agencies begin to maintain roads that are disputed between the State and the counties. However, the bill as currently drafted does not provide protection to the State from being held liable as the "owner" of the disputed road even if it is the county that is maintaining or repairing the road. The DOT suggests that the new section 622- be amended to provide such liability protection to the State when the maintenance or repair is being performed by the county.

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.

Finally, as a housekeeping matter, the DOT notes that the amendment to section 46-15.9, Hawaii Revised Statutes, should be placed under Section 2 of this bill, followed by the new proposed section 662- , Hawaii Revised Statutes, in Section 3 of this bill.

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 Senate Committees on
TRANSPORTATION AND INTERNATIONAL AFFAIRS
and
PUBLIC SAFETY, INTERGOVERNMENTAL AND MILITARY AFFAIRS
and
JUDICIARY AND LABOR

Wednesday, February 13, 2013
1:15 PM
State Capitol, Conference Room 224

In consideration of
SENATE BILL 1357
RELATING TO TRANSPORTATION

Senate Bill 1357 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

ALAN M. ARAKAWA
Mayor

DAVID C. GOODE
Director

ROWENA M. DAGDAG-ANDAYA
Deputy Director

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

Development Services Administration

CARY YAMASHITA, P.E.
Engineering Division

BRIAN HASHIRO, P.E.
Highways Division

February 12, 2013

Honorable J. Kalani English, Chair
and Members of the Committee on Transportation
and International Affairs

Honorable Will Espero, Chair
and Members of the Committee on Public
Safety, Intergovernmental and Military Affairs

Honorable Clayton Hee, Chair
and Members of the Committee on Judiciary
and Labor

Hawaii State Senate
State Capitol, Room Nos. 205, 231 and 407
415 South Beretania Street
Honolulu, Hawaii 96813

Dear Chairs English, Espero and Hee and Members:

RE: SB 1357 RELATING TO TRANSPORTATION

Thank you for the opportunity to comment on the subject bill. The County of Maui Department of Public Works (DPW) SUPPORTS this bill.

The purpose of this measure is to provide immunity to the State and Counties for injuries sustained due to the repair or maintenance of streets undertaken by the State or County, in cases in which the ownership or jurisdiction of such streets is in dispute by the State or County.

The County of Maui DPW is in support for the following reasons:

1. The bill is a product of the work by the Roads in Limbo Task Force that was established last year by the State Department of Transportation. Task force members indicated that liability reduction is critically important to moving forward on resolving the

Honorable J. Kalani English, Will Espero and Clayton Hee, Chairs and Members of the
Committees on Transportation and International Affairs; Public Safety,
Intergovernmental and Military Affairs; and Judiciary and Labor
February 12, 2013
Page 2

issue of "roads in limbo". County of Maui DPW Director David Goode was a member of this task force.

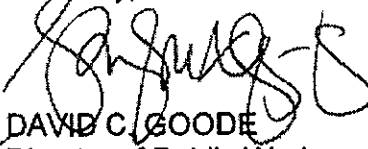
2. The DPW met with the Maui County Council's Policy Committee on September 19, 2012 to give an overview of the work being done by the task force, as well as the findings of the Legislative Reference Bureau (LRB) study done in 1989 regarding roads in limbo. At that meeting, members of the Committee expressed interest in retaining liability protection in the event of the acceptance of a road.
3. DPW is supportive of the bills that grant immunity, though we would request that the immunity be extended for a certain time period after the Council has accepted the dedication of the road to the County.

Should the Committees approve this measure and move it forward, we suggest an amendment along these lines:

"Should a County accept dedication of a road by resolution, whose ownership is in dispute between the State and County, the County shall not be liable to any person for injury or damage sustained when using that road for a period of ten years after the acceptance of the road by resolution."

Thank you for the opportunity to submit this testimony.

Sincerely,


DAVID C. GOODE
Director of Public Works

DCG:RMDA:jso
s:\david2\testimony sb 1357 re transportation 2.12.13

Karen Eoff
Vice Chair
Council District 8 – North Kona



Phone: (808) 323-4280
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HAWAII COUNTY COUNCIL

County of Hawai'i
West Hawai'i Civic Center, Bldg. A
74-5044 Ane Keohokalole Hwy.
Kailua-Kona, Hawai'i 96740

February 8, 2013

Senate Committee on Transportation & International Affairs

Senator J. Kalani English, Chair
Senator Donovan M. Dela Cruz, Chair

Email: TIAtestimony@capitol.hawaii.gov
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Senate Committee on Public Safety, Intergovernmental & Military Affairs

Senator Will Espero, Chair
Senator Rosalyn H. Baker, Vice Chair

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Committee on Judiciary and Labor

Senator Clayton Hee, Chair
Senator Maile S. L. Shimabukuro, Vice Chair

Email: JDLtestimony@capitol.hawaii.gov
Email: senhee@capitol.hawaii.gov
Email: senshimabukuro@capitol.hawaii.gov

Re: **Testimony on SB 1357** Relating to Transportation
Hearing Date: **Wednesday, February 13, 2013; 1:15 p.m.; State Capitol Room 224**

Dear Senators & Committees:

On behalf of myself and my constituents of Council District 8, North Kona, I would like to support the above referenced bill, and I hereby submit a brief testimony:

I agree with this bill in that it will allow government agencies that assume maintenance of disputed roads to improve the condition of the disputed roads without incurring liability.

I encourage the **enactment of SB1357.**

Thank you for your time and consideration.

Sincerely,

KAREN EOFF, Vice Chair, Council District 8, North Kona

*Serving the Interests of the People of Our Island
Hawai'i County Is an Equal Opportunity Provider And Employer*

Bernard P. Carvalho, Jr.
Mayor



Larry Dill, P.E.
County Engineer

Gary K. Heu
Managing Director

Lyle Tabata
Deputy County Engineer

DEPARTMENT OF PUBLIC WORKS
County of Kaua'i, State of Hawai'i
4444 Rice Street, Suite 275, Lihu'e, Hawai'i 96766
TEL (808) 241-4992 FAX (808) 241-6604

February 12, 2013

Testimony of **Larry Dill**, County Engineer, County of Kaua'i

Before the Senate Committee on Transportation and International Affairs: Senator J. Kalani English, Chair & Senator Donovan M. Dela Cruz, Vice Chair

And

Before the Senate Committee on Public Safety, Intergovernmental and Military Affairs: Senator Will Espero, Chair & Senator Rosalyn H. Baker, Vice Chair

And

Before the Senate Committee on Judiciary and Labor: Senator Clayton Hee, Chair & Senator Maile S. L. Shimabukuro, Vice Chair

Wednesday, February 13, 2013
1:15 pm
Senate Conference Room 224

In consideration of
SB1357
RELATING TO TRANSPORTATION

Dear Chair, Vice-Chair, and Members:

I am **Larry Dill**, County Engineer, County of Kaua'i Department of Public Works (DPW). DPW is **in support of the measure if amended**. **Senate Bill (SB) 1357** proposes to amend Chapter 662, Hawaii Revised Statutes and Chapter 46-15.9, Hawai'i Revised Statutes, to allow government entities to maintain or repair a road whose ownership remains in dispute between the State and county without incurring liability.

While the measure does not solve the long-standing dispute between the State and counties known as "roads in limbo," it allows the state or county to begin work on substandard roads whose ownership remains in dispute. In its current form, however, SB1357 does not encourage any entity to accept ownership because immunity extends only to those roads whose ownership is in dispute – i.e. once a disputed road is accepted, the immunity ends. To that end,

An Equal Opportunity Employer

Honorable J. Kalani English, Will Espero and Clayton Hee, Chairs and Members of the Committees on Transportation and International Affairs; Public Safety, Intergovernmental and Military affairs; and Judiciary and Labor

SB1357, RELATING TO TRANSPORTATION

February 12, 2013


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we are supportive of an amendment that extends immunity for a period of ten years after acceptance of a road.

Other issues that SB1357 does not address are: (1) the need for substantial resources to bring numerous roads up to standards, which the state or county may not have; (2) protection from liability for work on roads whose ownership is not in dispute, such as privately-owned roads or state-owned roads that the county may maintain; (3) protection from liability for work on "roads" or trails that service state land or property; and (4) clarification that maintenance activities over disputed or undisputed roads will not be construed as assuming ownership and jurisdiction over those roads. Again, this measure will not alleviate all of these concerns; however the measure allows the state or county to start to work on substandard roads whose ownership remains in dispute.

Thank you for the opportunity to submit this testimony in support if amended to SB1357.

Sincerely,



Larry Dill, P.E.
County Engineer

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

DATE: Wednesday, February 13, 2013

TIME: 1:15 pm

To: Chairmen Kalani English, Will Espero, and Clayton Hee; and Members of the Senate Committees on Transportation & International Affairs; Public Safety, Intergovernmental & Military Affairs; and Judiciary & Labor:

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, 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 don't want and cannot 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 will 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, lines 13 through 16. 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 or be held.

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

SB1357

Wednesday, February 13, 2013
7:50 AM

Subject	Submitted testimony for SB1357 on Feb 13, 2013 13:15PM
From	mailinglist@capitol.hawaii.gov
To	TIATestimony
Cc	jeraul.pladera@mpd.net
Sent	Friday, February 08, 2013 8:54 AM

SB1357

Submitted on: 2/8/2013

Testimony for TIA/PSM/JDL on Feb 13, 2013 13:15PM in Conference Room 224

Submitted By	Organization	Testifier Position	Present at Hearing
Jeraul S. Pladera	Individual	Support	No

Comments: I support this bill because I understand the unique issues that rural communities face while dealing with the upkeep of their roadways when some of their roads are in limbo. These roadways are lifelines that must be kept passable for communities especially in times of emergency or natural disasters. Thank you for this opportunity to testify.

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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SB1357

Wednesday, February 13, 2013

7:53 AM

Subject	*Submitted testimony for SB1357 on Feb 13, 2013 13:15PM*
From	mailinglist@capitol.hawaii.gov
To	TIATestimony
Cc	7501e1a5@opayq.com
Sent	Tuesday, February 12, 2013 11:42 AM

SB1357

Submitted on: 2/12/2013

Testimony for TIA/PSM/JDL on Feb 13, 2013 13:15PM in Conference Room 224

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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