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March 10, 2014

**TESTIMONY OF TIM BYNUM
COUNCILMEMBER, KAUA'I COUNTY COUNCIL
ON**

SB 2728, SD 2 RELATING TO HIGHWAYS
Committee on Transportation and International Affairs
Wednesday, March 12, 2014
10:30 a.m.
Conference Room 309

Dear Chair Yamane and Committee Members:

I would like to submit this testimony in opposition to SB 2728, SD 2 relating to highways. My testimony is submitted in my capacity as a Councilmember of the Kaua'i County Council.

SB 2728, SD 2 intends to provide the legislature with the authority to determine a public trail. However, the Highways Act of 1892 is a very important bedrock of the law in Hawai'i. It was one of the last acts of Queen Liliuokalani, and was meant to protect the public's rights of access to Hawai'i's ancient trail system. If it were to be modified in the proposed manner, it would basically strip any protection that the Highways Act was intended to provide for the public. Ultimately, the state would potentially lose a vast amount of public lands, much of which will be claimed by large landowners, and never to be accessed by the public in the future.

In addition, I recommend that the Committee question and understand why this change would be an improvement, and why this measure applies retroactive to January 1, 2011.

For the reasons stated above, I respectfully request that the Committee defer this measure indefinitely. Again, thank you for this opportunity to submit my testimony.

Sincerely,

TIM BYNUM
Councilmember, Kaua'i County Council

SS:mn

NEIL ABERCROMBIE
GOVERNOR



Testimony of
GLENN M. OKIMOTO
DIRECTOR

Deputy Directors
FORD N. FUCHIGAMI
RANDY GRUNE
AUDREY HIDANO
JADINE URASAKI

IN REPLY REFER TO:

LATE

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

March 12, 2014
10:30 a.m.
State Capitol, Room 309

S.B. 2728 S.D. 1
RELATING TO HIGHWAYS

House Committee on Transportation

The Department of Transportation (DOT) **supports** this bill with reservations, as it will specifically give the legislature the authority to determine what are public trails and amending Section 264-1, Hawaii Revised Statutes.

We are concerned with the liability and maintenance consequences of certain roads that may be dispute in terms of jurisdiction, ownership and how trails and other non-vehicular rights-of-way in the State would be determined to be public rights-of-way pursuant to the Highway Act of 1982.

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
TRANSPORTATION**

**Wednesday, March 12, 2014
10:30 AM
State Capitol, Conference Room 309**

**In consideration of
SENATE BILL 2728, SENATE DRAFT 2
RELATING TO HIGHWAYS**

Senate Bill 2728, Senate Draft 2 proposes to amend Section 264-1, Hawaii Revised Statutes (HRS), to clarify that the designation of a public trail shall be as provided by law. **The Department of Land and Natural Resources (Department) supports the intent of this bill but recommends the following necessary amendments.**

Section 264-1, HRS, places public trails under the jurisdiction of the Board of Land and Natural Resources (Board). Currently, public trails are declared by deed of conveyance naming the State as grantee that is subject to acceptance by the Board pursuant to Section 264-1(c)(1), HRS. This measure as currently drafted may serve to deprive the Board of its discretion and authority to declare a public trail while still leaving the Board with jurisdictional responsibility over the public trail. Pursuant to Chapter 171, HRS, the Board has the management authority over all public lands, including the authority to approve acquisitions, dispositions, exchanges, sales and set asides to other government agencies. To avoid ambiguity and clearly remain consistent with Chapter 171, HRS, the Department respectfully suggests that the measure be revised to amend Section 264-1 (b) and (c)(2), HRS, to require acceptance by the Board as similarly already required in subsection (c)(1).

“(b) All trails, and other nonvehicular rights-of-way in the State declared to be public rights-of-ways by the Highways Act of 1892, or opened, laid out, or built by the government or otherwise created or vested as nonvehicular public rights-of-way at any time thereafter, or in the future, are declared to be public trails[-], and subject to being accepted by the board of land and natural resources. A public trail is under the jurisdiction of the state board of land and natural resources unless it was created by or dedicated to a particular county, in which case it shall be under the jurisdiction of that county.”

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

JESSE K. SOUKI
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

LATE

(c) All roads, alleys, streets, ways, lanes, trails, bikeways, and bridges in the State, opened, laid out, or built by private parties and dedicated or surrendered to the public use, are declared to be public highways or public trails as follows:

- (1) Dedication of public highways or trails shall be by deed of conveyance naming the State as grantee in the case of a state highway or trail and naming the county as grantee in the case of a county highway or trail. The deed of conveyance shall be delivered to and accepted by the director of transportation in the case of a state highway or the board of land and natural resources in the case of a state trail. In the case of a county highway or county trail, the deed shall be delivered to and accepted by the legislative body of a county.*
- (2) Surrender of public highways or trails shall be deemed to have taken place if no act of ownership by the owner of the road, alley, street, bikeway, way, lane, trail, or bridge has been exercised for five years and when, in the case of a county highway, in addition thereto, the legislative body of the county has, thereafter, by a resolution, adopted the same as a county highway or trail. The deed of conveyance shall be delivered to and subject to being accepted by the director of transportation in the case of a state highway or the board of land and natural resources in the case of a state trail.*

In every case where the road, alley, street, bikeway, way, lane, trail, bridge, or highway is constructed and completed as required by any ordinance of the county or any rule, regulation, or resolution thereof having the effect of law, the legislative body of the county shall accept the dedication or surrender of the same without exercise of discretion.”



SB2728 SD2
RELATING TO HIGHWAYS
 House Committee on Transportation

March 12, 2014

10:30 a.m.

Room 309

The Office of Hawaiian Affairs (OHA) **OPPOSES** SB2728 SD2, which may create legal confusion over the ownership status of certain lands established as public trails pursuant to the Highways Act of 1892.

Public trails established with the enactment of the Highways Act of 1892 are “ceded” lands, which must be maintained by the state pending the resolution of Native Hawaiian claims to these lands. As recognized by the Legislature on numerous occasions, including most recently via House Concurrent Resolution No. 6 of the 2013 Regular Session, “ceded” lands are those “one million eight hundred thousand acres of crown and government lands . . . ceded to the United States without the consent or compensation to the Native Hawaiian people or their sovereign government,” as a result of the 1893 illegal overthrow of the Hawaiian Kingdom and the subsequent annexation of Hawai‘i into the United States. Given the recognition that “the health and well-being of the Native Hawaiian people is intrinsically tied to their deep feelings and attachment to the land,” that “the Native Hawaiian people are determined to preserve, develop, and transmit to their descendants, both their ancestral lands and their cultural identity” and that “once any ceded lands are alienated, they will be gone forever,” the state has agreed to refrain from disposing of any such ceded lands or other public lands without a two-thirds supermajority approval by the legislature.¹ Public trails established as public lands with the enactment of the 1892 Highways Act, whether formally recognized at that time or on a subsequent date, were part of the land and property interests ceded to the United States as a result of the 1893 overthrow; accordingly, the state has a moral obligation to identify, protect and maintain these public trail lands as part of the ceded lands corpus.

The statutory amendment in this bill may result in confusion regarding the status of these ceded lands, and legal challenges resulting in the loss of such lands. By amending the statutory recognition of the 1892 Highways Act in HRS §264-1, this bill may result in confusion as to whether and how currently unrecognized public trails automatically established as public lands (and ceded lands) with the enactment of the 1892 Highways Act may now be recognized as such. While OHA maintains that these public trail lands would remain part of the ceded lands corpus regardless of whether or

¹ See House Concurrent Resolution No. 6 (Reg. Sess. 2013); Act 176 (Reg. Sess. 2009). Note that there is an exception to the supermajority approval requirement for the disposal of “remnants,” as defined under section 171-52, HRS.

not this bill passes, legal challenges brought by landowners encouraged by such a law may result in the state disclaiming ownership of what should be considered ceded lands, such as through legal settlements, without legislative approval or public transparency. Similarly, the state may choose to refrain from asserting its claims to what should be considered public trails, but which fail to be recognized “as provided by law” per the vague language of this measure. Such outcomes would be an abdication of the state of its responsibility to maintain the ceded lands corpus, without the accountability and transparency normally required in the disposal of ceded and other public lands.

In addition, OHA notes that any loss of the public character of trails that occur as a result of this bill may impact both Native Hawaiian cultural practitioners as well as the general public, who may wish to use these trails for cultural, subsistence or recreational purposes. Native Hawaiian cultural practitioners often rely on trails, both ancient and new, to access cultural sites and to otherwise engage in constitutionally-protected Native Hawaiian traditional and customary practices. Trails also provide substantial economic, subsistence and recreational benefit to the people of Hawai‘i generally, with countless residents and visitors using our trails for hunting, gathering and recreational purposes. The timeless significance of trails to Native Hawaiians and to the people of Hawai‘i is reflected in one of the first laws of the Hawaiian Kingdom, as pronounced by King Kamehameha the Great via the Kānāwai Māmalahoe (i.e. the Law of the Splintered Paddle, assuring safety for all who lie by the roadside), and in the 1892 Highways Act itself, which was one of the final acts of Queen Lili‘uokalani as the last reigning monarch of Hawai‘i. The fact that both of these pronouncements continue to be recognized in law today further emphasizes the need to recognize and protect all of our public trails, for the benefit of both Native Hawaiians and all the people of Hawai‘i nei.

Accordingly, OHA urges the Committee to **HOLD** SB2728 SD2. Mahalo for the opportunity to testify on this important matter.

LATE



March 11, 2014

Representative Ryan I. Yamane, Chair
Representative Gregg Takayama, Vice-Chair
House Committee on Transportation

Comments regarding SB 2728, SD1 Relating to Highways (Clarifies that the designation of a public trail shall be as provided by law.)

Wednesday, March 12, 2014, 10:30 a.m., in Conference Room 309

The Land Use Research Foundation of Hawaii (LURF) is a private, non-profit research and trade association whose members include major Hawaii landowners, developers and a utility company. LURF's mission is to advocate for reasonable, rational and equitable land use planning, legislation and regulations that encourage well-planned economic growth and development, while safeguarding Hawaii's significant natural and cultural resources, and public health and safety.

LURF appreciates the opportunity to provide its comments in **support of SB 2728, SD1.**

SB 2728, SD1. The purpose of this bill is to propose an amendment to Hawaii Revised Statutes ("HRS"), Section 264-1, to clarify that the historical background and existing law relating to the process of determining appropriate trail designation, use and management; and that the designation of a public trail shall be as provided by law.

LURF's Position. LURF understands that this measure clarifies that the following state laws shall govern the designation of public trails and disputes arising from public access to trails: **(1) The Highways Act of 1892**, which determined by statute that certain trails and other nonvehicular rights-of-way in the state were public rights-of-way and were declared public trails. **(2) HRS Section 264-1(b)**, which confirms the above declaration of certain public trails pursuant to the Highways Act of 1892; and further provides that all public trails and other nonvehicular rights-of-way "*opened, laid out, or built by the government or otherwise created or vested as nonvehicular public rights-of-way at any time after the Highways Act of 1892, or in the future, are declared to be public trails.*" (*See*, Section 264-1(b) HRS Chapter 264, relating to Highways, Part I. Highways, Generally). **(3) HRS Section 264-1(c)(1)**, which subjects the designation to being accepted by the Board of Land and Natural Resources; and **(4) Chapter 198D, HRS**, entitled the Hawaii Statewide Trail and Access System, which establishes the statutory framework within which appropriate access to trails is to be determined.

For the above reasons, LURF **supports SB 2728, SD1**, and respectfully urges your favorable consideration.

Thank you for the opportunity to comment regarding this matter.

11 MAR 2014

COMMITTEE ON TRANSPORTATION, Rep. Ryan I. Yamane, Chair

Rep. Gregg Takayama, Vice Chair and Members

LATE

Re. SB 2728 SD2, Relating to highways

Dear Representatives,

I urge you to kill this bill, and any others like it. SB 2728 SD2 provides the pathway to take the trails and access ways of the past and deny them to the citizens of the future. It is unnecessary, and just allows another mechanism for those with money and influence to rob Hawaii of yet more of the unique elements of the Islands that have made Hawaii so special for its citizens. SB 2728 SD2 is unnecessary, as the HRS transcription of the old Highways Act plus the newer Na 'Ala Hele legislation provides a deliberate, well-researched administrative pathway to add and modify old trails and other access elements to the slowly growing inventory by the state. It is important to retain this process within the administrative process, not the legislative.

I would like to suggest that you replace the words of this bill with others that would provide specified funding directly to each county's Na 'Ala Hele program with the specific instructions to provide additional research necessary to add more trails into the state's (the public) inventory of trails.

Thank you,

Rick Warshauer

Volcano; 967-7476