

**TESTIMONY OF ROBERT TOYOFUKU ON BEHALF OF THE HAWAII ASSOCIATION FOR JUSTICE (HAJ) IN SUPPORT OF S.B. No. 2761, SD 2**

DATE: Monday, March 17, 2014

TIME: 9:30 am

To: Chairperson Cindy Evans and Members of the House Committee on Water & Land:

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. 2761, SD 2, Relating to Transportation.

The purpose of this SD 2 measure is to enable government agencies to maintain roads whose ownership is in dispute between the state and counties.

HAJ specifically supports the provisions in Section 3 on page 3, lines 18-22, and on page 4, lines 1-5. Likewise HAJ supports the other similar provisions in this measure which address this issue. We feel that this will be a first step in solving a major dispute with these “roads in limbo”.

HAJ would also like to comment that there have been efforts to amend this legislation to include an immunity provision for a state agency which undertakes the repair and maintenance of these disputed roads and HAJ strongly opposes this effort.

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

NEIL ABERCROMBIE  
GOVERNOR



Testimony of  
GLENN M. OKIMOTO  
DIRECTOR

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

IN REPLY REFER TO:

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

March 17, 2014  
9:30 a.m.  
State Capitol, Room 325

**S.B. 2761, S.D. 2**  
**RELATING TO TRANSPORTATION**

House Committee on Water and Land

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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.

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.

This bill provides that while ownership of a road remains in dispute, between the State and the counties, no action by a government agency to maintain or repair a road shall be used to establish the agency's ownership of or jurisdiction over the road and the agency shall not be deemed to have assumed ownership of or jurisdiction over the road solely because of action to repair or maintain the road.

Thank you for the opportunity to provide testimony.

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Gladys C. Baisa

Vice-Chair  
Robert Carroll

Presiding Officer Pro Tempore  
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Director of Council Services  
David M. Raatz, Jr., Esq.

**COUNTY COUNCIL**  
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March 15, 2014

TO: The Honorable Cindy Evans, Chair  
House Committee on Water & Land

FROM: Gladys C. Baisa  
Council Chair

A handwritten signature in cursive script that reads "Gladys C. Baisa".

SUBJECT: **HEARING OF MARCH 17, 2014; TESTIMONY IN SUPPORT OF SB 2761, 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 or repair activities.

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. There is understandable resistance to maintaining roads when ownership or jurisdiction is in question, as such maintenance may be construed as assuming ownership or liability. This measure will encourage both the State and the counties to perform roadway maintenance and repairs, thereby improving public safety and protecting taxpayers.
2. County workers may need to perform repairs on roads in limbo in times of emergency. Performing such repairs should not result in counties taking ownership or jurisdiction of the roads.
3. Absent liability protection, it is likely that counties will be unable to maintain and repair deteriorated and hazardous roadways. This bill will go a long way in protecting the safety of residents and visitors.

For the foregoing reasons, I **support** this measure.

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  
WATER & LAND**

**Monday March 17, 2014  
9:30 AM  
State Capitol, Conference Room 325**

**In consideration of  
SENATE BILL 2761, SENATE DRAFT 2, HOUSE DRAFT 1  
RELATING TO TRANSPORTATION**

Senate Bill 2761, Senate Draft 2, House Draft 1 proposes to specify that a government agency does not assume ownership or jurisdiction over a disputed road solely through maintenance or repair activities, and authorizes the State to quitclaim ownership of roads in favor of the counties. **The Department of Land and Natural Resources (Department) offers the following comments and amendments below.**

In the bill's present form, state and county agencies, through repair and maintenance actions, may be liable for a person's injury or damage sustained when using such disputed road. If the intent of this measure is to provide an incentive to state and county agencies to undertake repair and maintenance of disputed roads, then the bill should contain language that relieves state and county agencies of any accompanying liability. Therefore, the Department respectfully requests that SECTIONS 2 and 3 of the bill proposing to amend Chapter 27 and Section 46-15.9, Hawaii Revised Statutes, be amended to adopt the language contained in a similar measure, House Bill 1610, as stated below:

**"§27- No liability for maintenance or repair of disputed public streets, roads, or highways; quitclaim. (a) A state agency maintaining or repairing a public street, road, or highway whose ownership is in dispute between the State and a county shall not be liable to any person for injury or damage sustained when using that road and shall not be deemed to have assumed ownership or jurisdiction over the disputed road. (b) If a county requests or requires title to a disputed public street, road, or highway, the State may quitclaim whatever interest it has in the public street, road, or highway to the 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  
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KAHOOLAWE ISLAND RESERVE COMMISSION  
LAND  
STATE PARKS

**"§46-15.9 Traffic regulation; repair and maintenance; public right to use public streets, roads, or highways whose ownership is in dispute[-]; county liability.**

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