



NEIL ABERCROMBIE
GOVERNOR OF HAWAII



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

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

Testimony of
WILLIAM J. AILA, JR.
Chairperson

Before the House Committee on
FINANCE

Thursday, February 20, 2014
11:00 AM
State Capitol, Conference Room 308

In consideration of
HOUSE BILL 1728, HOUSE DRAFT 1
RELATING TO TRANSPORTATION

House Bill 1728, House Draft 1, specifies 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. This version of the bill eliminates the funding mechanism for the maintenance and repair of disputed roads through an additional county surcharge on state tax. **The Department offers the following comments as discussed below.**

In the event that the intent of this bill is to provide an incentive to State and County agencies to voluntarily undertake repair and maintenance projects over "roads in dispute", then the Department believes the bill should contain language for no liability. If the intent of the bill is as aforesaid, then the Department respectfully offers the following amendments:

That SECTIONS 2 and 3 of the bill proposing to amend Chapter 662 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.

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

§662- No liability for maintenance or repair of disputed roads. A state agency maintaining or repairing a road 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.



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

§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 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.

Council Chair
Gladys C. Baisa

Vice-Chair
Robert Carroll

Presiding Officer Pro Tempore
Michael P. Victorino

Council Members
Elle Cochran
Donald G. Couch, Jr.
Stacy Crivello
Don S. Guzman
G. Riki Hokama
Mike White

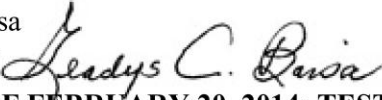


Director of Council Services
David M. Raatz, Jr., Esq.

COUNTY COUNCIL
COUNTY OF MAUI
200 S. HIGH STREET
WAILUKU, MAUI, HAWAII 96793
www.maui-county.gov/council

February 19, 2014

TO: The Honorable Sylvia Luke, Chair
House Committee on Finance

FROM: Gladys C. Baisa
Council Chair 

SUBJECT: **HEARING OF FEBRUARY 20, 2014; TESTIMONY IN SUPPORT OF HB 1728,
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.

Legislation with a similar purpose is included in the Hawaii State Association of Counties' Legislative Package; however, 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.

**TESTIMONY OF ROBERT TOYOFUKU ON BEHALF OF THE HAWAII
ASSOCIATION FOR JUSTICE (HAJ) IN SUPPORT OF H.B. NO. 1728, HD 1**

DATE: Thursday, February 20, 2014

TIME: 11:00 am

To: Chairperson Sylvia Luke and Members of the House Committee on Finance:

My name is Bob Toyofuku and I am presenting this testimony on behalf of the Hawaii Association for Justice (HAJ) in Support of H.B. No. 1728, HD 1, Relating to Transportation.

The purpose of this HD 1 measure is to enable government agencies to maintain roads whose ownership is in dispute between the state and counties.

HAJ supports the provisions in Section 2 on page 1, lines 16-18, and on page 2, lines 1-5. Likewise HAJ supports the other similar provisions in this measure which address this issue, such as in Section 3 on page 3, lines 1-7. We feel that this will solve a major dispute with regard to these “roads in limbo”.

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

FIN-Jo

From: mailinglist@capitol.hawaii.gov
Sent: Wednesday, February 19, 2014 11:07 AM
To: FINTestimony
Cc: stacy.crivello@mauicounty.us
Subject: Submitted testimony for HB1728 on Feb 20, 2014 11:00AM

HB1728

Submitted on: 2/19/2014

Testimony for FIN on Feb 20, 2014 11:00AM in Conference Room 308

Submitted By	Organization	Testifier Position	Present at Hearing
Stacy Helm Crivello	Individual	Support	No

Comments: I support the measure and reasons stated in Maui County Council Chair Gladys Baisa support testimony.

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.

Do not reply to this email. This inbox is not monitored. For assistance please email webmaster@capitol.hawaii.gov

From: mailinglist@capitol.hawaii.gov
Sent: Wednesday, February 19, 2014 6:14 PM
To: FINTestimony
Cc: nwong@99imperial.net
Subject: *Submitted testimony for HB1728 on Feb 20, 2014 11:00AM*



HB1728

Submitted on: 2/19/2014

Testimony for FIN on Feb 20, 2014 11:00AM in Conference Room 308

Submitted By	Organization	Testifier Position	Present at Hearing
Napualani Wong	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.

Do not reply to this email. This inbox is not monitored. For assistance please email webmaster@capitol.hawaii.gov

NEIL ABERCROMBIE
GOVERNOR



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

February 20, 2014
11:00 a.m.
State Capitol, Room 308

**H.B. 1728, H.D. 1
RELATING TO TRANSPORTATION**

LATE

House Committee on Finance

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 recommended that the Legislature pass legislation to protect government agencies maintaining disputed roads pending resolution of the dispute.

This bill provides government agencies with protection from liability when those agencies begin to maintain roads whose ownership/jurisdiction 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.

Thank you for the opportunity to provide testimony.