

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

Wednesday, February 12, 2014
8:00 AM
State Capitol, Conference Room 325

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:

"§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."

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

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

~~"(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 10, 2014

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

FROM: Gladys C. Baisa
Council Chair *Gladys C. Baisa*

SUBJECT: **HEARING OF FEBRUARY 12, 2014; TESTIMONY IN SUPPORT OF HB 1728,
HDI, 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.

Council Chair
Gladys C. Baisa

Vice-Chair
Robert Carroll

Council Members
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February 10, 2014

TO: Honorable Cindy Evans, Chair
Committee on Water and Land

Honorable Faye P. Hanohano, Chair
Committee on Ocean, Marine Resources and Hawaiian Affairs

FROM: Robert Carroll
Council Vice Chair

A handwritten signature in cursive script that reads "Robert Carroll".

DATE: Wednesday, February 12, 2014

SUBJECT: **SUPPORT HB 1728 H.D. 1, RELATING TO TRANSPORTATION**

I support HB 1728 HD1 for the reasons cited in testimony submitted by the Maui County Council Chair, and urge you to 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: Wednesday, February 12, 2014

TIME: 8:00 am

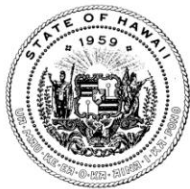
To: Chairperson Cindy Evans and Members of the House Committee on Water and
Land:

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 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.



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

IN REPLY REFER TO:

February 12, 2014
8:00 a.m.
State Capitol, Room 325

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

House Committee(s) on Water and Land
& Ocean, Marine Resources and Hawaiian Affairs

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.

lowen2-Lanaly

From: mailinglist@capitol.hawaii.gov
Sent: Tuesday, February 11, 2014 10:35 AM
To: waltestimony
Cc: michael.victorino@mauicounty.us
Subject: *Submitted testimony for HB1728 on Feb 12, 2014 08:00AM*

HB1728

Submitted on: 2/11/2014

Testimony for WAL on Feb 12, 2014 08:00AM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Michael Victorino	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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lowen2-Lanaly

From: mailinglist@capitol.hawaii.gov
Sent: Tuesday, February 11, 2014 11:02 AM
To: waltestimony
Cc: stacy.crivello@mauicounty.us
Subject: Submitted testimony for HB1728 on Feb 12, 2014 08:00AM

HB1728

Submitted on: 2/11/2014

Testimony for WAL on Feb 12, 2014 08:00AM in Conference Room 325

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

Comments: I support Maui County Chair Gladys Baisa testimony submitted in support of HB1728, HD1.

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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