

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

February 3, 2014
10:00 a.m.
State Capitol, Room 304

H.B. 1728
RELATING TO TRANSPORTATION

House Committee on Transportation

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.

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.

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

Monday February 3, 2014
10:00 AM
State Capitol, Conference Room 309

In consideration of
HOUSE BILL 1728
RELATING TO TRANSPORTATION

House Bill 1728 specifies that a government agency does not assume ownership or jurisdiction over a disputed road solely through maintenance or repair activities, authorizes the State to quitclaim ownership of roads in favor of the counties and establishes necessary funding for the maintenance and repair of disputed roads through the authorization of 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 3 and 4 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."

NEIL ABERCROMBIE
GOVERNOR

SHAN TSUTSUI
LT. GOVERNOR



STATE OF HAWAII
DEPARTMENT OF TAXATION
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FREDERICK D. PABLO
DIRECTOR OF TAXATION

JOSHUA WISCH
DEPUTY DIRECTOR

To: The Honorable Ryan I. Yamane, Chair
and Members of the House Committee on Transportation

Date: Monday, February 3, 2014
Time: 10:00 A.M.
Place: Conference Room 309, State Capitol

From: Frederick D. Pablo, Director
Department of Taxation

Re: H.B. No. 1728, Relating to Transportation

The Department of Taxation (Department) provides the following comments regarding H.B. 1728 for your consideration.

H.B. 1728 specifies that a government agency does not assume ownership or jurisdiction over disputed roads solely through maintenance or repair activities, authorizes the State to quitclaim ownership of roads in favor of counties, and allows the counties to establish a surcharge on the State tax at the rates enumerated in sections 237-8.6 and 238-2.6, Hawaii Revised Statutes.

The Department notes that at present only the City and County of Honolulu has established a surcharge on the General Excise Tax (GET) and Use Tax, and that the rate of the surcharge is one half of one percent. Creating a new separate surcharge with the potential to have different tax rates within the State creates an administrative and enforcement problem for the Department. Differing surcharge rates are also likely to cause some taxpayers to improperly source their income to the county with the lowest rate. The Department also notes that having multiple tax rates could affect the State's ability to participate in pending federal legislation which would allow States to compel online retailers to collect Use Tax on items sold into the State, potentially denying the State of significant amounts of tax revenue.

The Department suggests that if other counties were to implement a surcharge, that the rate be the same as the one established by the City and County of Honolulu, and that the effective date be the same for all counties. By keeping the surcharge rate the same for all counties, there would be no advantage to allocating income to one county over another.

Thank you for the opportunity to provide comments.

February 3, 2014

The Honorable Ryan I. Yamane, Chair
House Committee on Transportation
State Capitol, Room 309
Honolulu, Hawaii 96813

RE: H.B. 1728, Relating to Transportation

HEARING: Monday, February 3, 2014, at 10:00 a.m.

Aloha Chair Yamane, Vice Chair Takayama, and Members of the Committee:

I am Myoung Oh, Government Affairs Director, here to testify on behalf of the Hawai'i Association of REALTORS® ("HAR"), the voice of real estate in Hawai'i, and its 8,300 members. HAR **strongly opposes Section 2** of H.B. 1728 which authorizes an additional county surcharge on the state's general excise tax.

It is consumer confidence and spending that will revitalize and strengthen our economy. Residents and businesses continue to struggle to keep up with the cost of living and doing business in Hawai'i, and authorizing the counties to add a new tax will only contribute to this burden.

The proposed increase in Section 2 in the General Excise Tax (GET) will take millions out of the pockets of our consumers. Our priority should be to restore consumer confidence and we cannot do so with a significant tax increase, even if it's a half or quarter of one percent of the GET.

HAR believes that, in the current economic environment, businesses and residents are particularly sensitive to additional financial burdens imposed by government. HAR further believes that an increase in GET will be especially burdensome for low-income families, who have the least ability to afford a new tax which may apply broadly to a family's basic needs such as food, medicine, and clothing.

While the GET rate is seemingly low, relative to the sales tax rate assessed in other states and municipalities, studies have shown that, with the pyramiding effect, the effective rate is considerably higher. A 0.5% increase, equivalent to a 12.5% increase in the tax rate, raises the stated rate to 4.5% (or 5.0% on Oahu), but increases the effective rate even more drastically. Consumers can ill afford this tax increase at this time. The GET in Hawaii is applied to 160 of 168 goods and services, the most of any state in the nation. Our citizens

cannot afford a 12.5% increase in their general excise tax burden, when they are struggling today to afford other necessities.

We just cannot continue to place the burden of rising costs on already overtaxed citizens.

Mahalo for the opportunity to testify in strong opposition to Section 2 of this measure.

LATE

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

DATE: Monday, February 3, 2014

TIME: 10:00 am

To: Chairman Ryan Yamane and Members of the House Committee on Transportation:

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, Relating to Transportation.

The purpose of this measure is to enable government agencies to maintain roads whose ownership is in dispute between the state and counties and to establish necessary funding for the maintenance of these "roads in limbo".

HAJ supports the provisions in Section 3 on page 2, lines 17-22 and on page 3, lines 1-5. Likewise HAJ supports the other similar provisions in this measure which address this issue, such as in Section 4 on page 4, lines 20-22 and on page 5, lines 1-10. We feel that this will solve a major dispute with these roads in limbo.

HAJ also supports whatever funding alternatives that the legislature decides upon as this is a crucial step in solving the repair and maintenance issues surrounding the roads in limbo. However, HAJ does not take a position on the method of funding set out in this bill as it is a policy matter for this committee and the legislature.

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