

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 Senate Committee on
WAYS AND MEANS**

**Friday, February 28, 2014
10:00 AM
State Capitol, Conference Room 211**

**In consideration of
SENATE BILL 2728, SENATE DRAFT 1
RELATING TO HIGHWAYS**

Senate Bill 2728, Senate Draft 1 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 and recommends the following 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

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

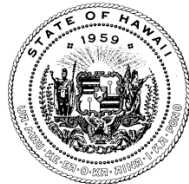
(c) All roads, alleys, streets, ways, lanes, trails, bikeways, and bridges in the State, opened, laid out, or built by private parties and dedicated or surrendered to the public use, are declared to be public highways or public trails as follows:

(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.”

NEIL ABERCROMBIE
GOVERNOR



Testimony of
GLENN M. OKIMOTO
DIRECTOR

Deputy Directors
JADE BUTAY
FORD N. FUCHIGAMI
RANDY GRUNE
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STATE OF HAWAII
DEPARTMENT OF TRANSPORTATION
869 PUNCHBOWL STREET
HONOLULU, HAWAII 96813-5097

February 28, 2014
10:00 a.m.
State Capitol, Room 211

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

Senate Committee on Ways and Means

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.

Senator David Y. Ige, Chair
Senator Michelle N. Kidani, Vice Chair
Committee on Ways and Means

Testimony of Danielle K. Arias

SB 2728 SD1, RELATING TO HIGHWAYS
Friday, February 28, 2014
10:00am
Conference Room 211

Dear Chair Ige and Committee Members:

Aloha! I would like to submit this testimony in **opposition** to SB 2728 SD1, Relating to Highways. My testimony is submitted in my capacity as a Native Hawaiian woman and concerned community member. The proposed amendment to the Highways Act of 1892 intends to give the legislature the authority to determine a public trail.

The health and well being of the Native Hawaiian people is deeply rooted to their feelings and attachment to the land. Many cultural practitioners and community members access these lands to continue to practice cultural beliefs and traditions. The *'āina*, land, is a vital part of the Hawaiian culture, and is extremely important in the preservation of Hawaiian resources. The Highways Act of 1892 protects and preserves these trails for the future generations of Hawai'i. The authority belongs to the people!

It is my understanding that if this measure is passed, it will have a negative impact on the people of Hawai'i. Please help to preserve these lands, and trails, for future generations. It will not only protect the trails, but it will help to protect and perpetuate the Hawaiian culture.

For the reasons stated above, I respectfully request that the Committee preserve these trails and reject this measure. Mahalo for the opportunity to submit my testimony on this important matter.

Ke aloha nō,

Danielle K. Arias, BSW

COUNTY COUNCIL

Jay Furfaro, Chair
Mason K. Chock, Sr., Vice Chair
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Ross Kagawa
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OFFICE OF THE COUNTY CLERK

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Council Services Division
4396 Rice Street, Suite 209
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February 26, 2014

TESTIMONY OF TIM BYNUM
COUNCILMEMBER, KAUAI COUNTY COUNCIL
ON
SB 2728, SD 1, RELATING TO HIGHWAYS
Committee on Ways and Means
Friday, February 28, 2014
10:00 a.m.
Conference Room 211

Dear Senator Ige and Committee Members:

I would like to submit this testimony in opposition to SB 2728, SD 1, relating to highways. My testimony is submitted in my capacity as a Councilmember of the Kaua'i County Council.

SB 2728, SD 1, intends to give the legislature 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 right 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

AB:mn



LAND USE RESEARCH
FOUNDATION OF HAWAII

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(808) 521-4717
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February 27, 2014

Senator David Y. Ige, Chair
Senator Michelle N. Kidani, Vice-Chair
Senate Committee on Ways and Means

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

Friday, February 28, 2014, 10:00 a.m., in Conference Room 211

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 confirm its **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 on the process of determining appropriate trail 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 designation of public trails and disputes arising from public access to trails shall be governed by the following state laws: 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. **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). Furthermore, **Chapter 198D, HRS**, entitled the Hawaii Statewide Trail and Access System, 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.