

DAVID Y. IGE
GOVERNOR OF HAWAII



**STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES**

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

**Testimony of
SUZANNE D. CASE
Chairperson**

**Before the House Committee on
WATER, LAND, & HAWAIIAN AFFAIRS**

**Friday, January 25, 2019
10:35 AM
State Capitol, Conference Room 423**

**In consideration of
HOUSE BILL 544
RELATING TO LIABILITY**

House Bill 544 proposes to provide that the State or a county that repairs or maintains a street whose ownership or jurisdiction is in dispute between the State and the county, shall be immune from liability for personal injuries or property damage arising out of the repair or maintenance of that street. The measure further provides that maintenance of a street shall not confer ownership or jurisdiction over such street, if the ownership or jurisdiction over the street is in dispute between the State and the county. The measure proposes an amendment to Chapter 663, Hawaii Revised Statutes (HRS), titled Tort Actions, to effectuate its intent. **The Department of Land and Natural Resources (Department) supports the measure and offers the following comments.**

The Department regularly encounters situations where a county disclaims ownership of a road and concerned parties look to the Department for assistance. However, "lands being used for roads and streets" are excluded from the definition of public lands over which the Board of Land and Natural Resources (Board) and Department have jurisdiction under Section 171-2(3), HRS. Moreover, Section 264-1, HRS, is clear that all public roads in the State are either State highways under the jurisdiction of the Department of Transportation, or county roads. The Department is therefore limited in what it can do to respond to "road in limbo" complaints, but existing law does allow the Board to quitclaim a "road in limbo" to a county who requests it. The Department believes that a measure such as House Bill 544 may help resolve road maintenance issues for county roads.

The Department notes that a prior measure, House Bill 1171 from the 2015 Legislative Session, proposed a similar amendment but to different chapters of the HRS. House Bill 1171 proposed to amend Chapter 662, HRS, titled State Tort Liability Act, and Chapter 46, HRS, titled County Organization and Administration.

Thank you for the opportunity to comment on this measure.

SUZANNE D. CASE
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

ROBERT K. MASUDA
FIRST DEPUTY

DEAN D. UYENO
ACTING 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 NAHELANI WEBSTER ON BEHALF OF THE HAWAII
ASSOCIATION FOR JUSTICE (HAJ) IN OPPOSITION TO H.B. NO. 544**

DATE: Friday, January 25, 2019

TIME: 10:35 am

To: Chair Ryan I. Yamane and Members of the House Committee on Water,
Land & Hawaiian Affairs:

My name is Nahelani Webster and I am presenting this testimony on behalf of the Hawaii Association for Justice (HAJ) in OPPOSITION to the immunity provisions of H.B. 544, relating to Liability.

The purpose of this measure is to grant immunity to state or county agencies if they repair or maintain a “road in limbo.” HAJ opposes this measure because it will not accomplish its goal of adequate maintenance for roads in limbo and the immunity provided is far too broad for the stated purpose.

ONE HUNDRED YEARS AGO the 1913 Legislature considered HB 280 which attempted to address the Territory – County dispute over roadway jurisdiction and maintenance obligation by giving roads to the counties for ownership and maintenance.

The single biggest issue and overriding factor, by far, is funding. Many roads in limbo have not been adequately maintained for at least 50 years (since Act 190 in 1963 purported to give State roads to the counties) and some for more than a hundred years going back to when the kingdom was overthrown and all government lands ceased to be under single ownership. Because these roads have been allowed to deteriorate for so long, there certainly are liability concerns related to them. However, because they are in

such bad shape the cost to rebuild them to meet current standards is enormous and any type of comprehensive resolution will have to address funding. Immunity will not solve the problem.

In 2017, Act 208 addressed the issue of disputed ownership, requiring each county with a population of five hundred thousand or greater to take ownership and jurisdiction over all roads for which there is a dispute over ownership and jurisdiction between the State or any of its political subdivisions and a county or a private party, or between a county and a private party. Ownership may now be transferred to a county as directed by the State Department of Transportation.

The question of ownership was addressed through Act 208 and we do not feel the need to re-surface the argument by granting the state and county overly broad immunity from the responsibility of providing safe streets for public use.

In addition, the language is too broad as it grants immunity from liability for personal injuries or property damage which would include improper or unsafe workmanship. For example, if workers negligently forget to remove the excess repair materials from the road and your car is damaged from it, there would be immunity. Similarly, if workers negligently use the wrong material and a bridge collapses killing a family driving over the bridge, there would be complete immunity. It is not necessary to give immunity for unsafe roadway repair work and violates government's basic responsibility to provide for the safety and welfare of its citizens. Therefore, should the bill need to move forward we respectfully ask you to **delete lines 16-17 on page 1, and lines 1-6 on page 2**, relating to state or county immunity.

If there remains a need to further clarify that maintenance or repair of a road in dispute does not mean ownership or jurisdiction, then HAJ supports retaining the following language on page 2, lines 7-10:

“For purposes of this section, repair or maintenance of a street shall not be deemed to confer ownership or jurisdiction over such street, if the ownership or jurisdiction over the street is in dispute between the State and the county.”

Realistically, this measure will not solve the roads in limbo problem. A process to resolve the issue or a penalty large enough to force action is required. HAJ suggests that the State and counties be allowed ten (10) years to resolve the issue themselves or by binding arbitration if they are unable to reach agreement. After 10 years, both the State and counties shall be jointly and severally liable. This gives them more than adequate time to resolve the matter, imposes a substantial penalty to encourage action, and removes the current burden on citizens who are caught in the middle.

For these reasons, HAJ opposes this measure and asks that this bill be amended as suggested or be held. Thank you for the opportunity to testify on this measure. Please feel free to contact me should there be any questions.

HB-544

Submitted on: 1/23/2019 1:28:02 PM

Testimony for WLH on 1/25/2019 10:35:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Benton Kealii Pang, Ph.D.	Individual	Support	No

Comments:

As a condo owner at 909 Kapi'olani, I support HB544. Waimanu Street located makai of our building, is being used for private parking, obstructing views of oncoming traffic and vehicles exiting from our condominium. Attempts to reason with Kaka'ako Land Company have proven unproductive. Thank you for supporting this important bill.

Sincerely,

Benton Kealii Pang, owner

909 Kapiolani

Council Chair
Kelly T. King

Vice-Chair
Keani N.W. Rawlins-Fernandez

Presiding Officer Pro Tempore
Tasha Kama

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Yuki Lei K. Sugimura



Director of Council Services
Maria E. Zielinski

COUNTY COUNCIL
COUNTY OF MAUI
200 S. HIGH STREET
WAILUKU, MAUI, HAWAII 96793
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January 24, 2019

TO: The Honorable Ryan I. Yamane, Chair
House Committee on Water, Land, & Hawaiian Affairs
KK for

FROM: Kelly T. King
Council Chair

SUBJECT: **HEARING OF JANUARY 25, 2019; TESTIMONY IN SUPPORT OF
HB 544, RELATING TO LIABILITY**

Thank you for the opportunity to testify in **support** of this important measure. The purpose of this measure is to grant the State or a county that repairs or maintains a street of which the ownership or jurisdiction is in dispute between the State and the county immunity from liability for personal injuries or property damage arising out of the repair or maintenance of that street.

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. Providing quality and reliable infrastructure is a key responsibility for both the State and the counties. However, questions of jurisdiction have made it difficult for the counties and the State to fulfill this responsibility for certain roads.
2. This measure would allow the State and the counties to maintain roads in limbo without fear of liability for incidents that may arise from the maintenance. While the ownership of these roads will not be resolved, the State and the counties will be able to provide better roads for our citizenry.

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

DAVID Y IGE
GOVERNOR

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

January 25, 2019
10:35 AM
State Capitol, Room 423

H.B. 544
RELATING TO LIABILITY

House Committee on Water, Land, and Hawaiian Affairs

The Department of Transportation (DOT), **supports** this bill to resolve maintenance issues for roads whose ownership is disputed between the State and County. This bill will allow DOT to repair disputed roads without the fear of liability or implied ownership; however, funding such repairs outside of DOT jurisdiction may be challenging.

Thank you for the opportunity to provide testimony.

TESTIMONY BY:

JADE T. BUTAY
DIRECTOR

Deputy Directors
LYNN A S. ARAKI-REGAN
DEREK J. CHOW
ROSS M. HIGASHI
EDWIN H. SNIFFEN