

DAVID Y. IGE
GOVERNOR

LATE



STATE OF HAWAII
DEPARTMENT OF TRANSPORTATION
869 PUNCHBOWL STREET
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JADE T. BUTAY
DIRECTOR

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LYNN A.S. ARAKI-REGAN
DEREK J. CHOW
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IN REPLY REFER TO:

February 7, 2020
1:15 P.M.
State Capitol, Room 225

S.B. 2332
RELATING TO HIGHWAYS

Senate Committee on Transportation
Senate Committee on Public Safety, Intergovernmental, and Military Affairs

The Department of Transportation (DOT) **support the intent** of S.B. 2332 to resolve disputes between the counties relating to jurisdiction over old government roads and to provide funding to repair the roads and bridges to bring them up to county standards. It is DOT's position, however, that Hawaii Revised Statutes (HRS) 264-2.1 already resolves such jurisdictional issues. HRS 264-2.1 states, if no party has exercised ownership over the disputed road in the five years prior to the effective date of the section, the disputed road shall be deemed to have been surrendered to the county in which the road is situated, pursuant to an administrative order issued by the state director of transportation. The county shall accept without exercise of discretion all surrendered roads and shall record its ownership immediately with the bureau of conveyances.

Additional funding will be necessary to upgrade and maintain any newly adopted roads, whether it be by the State or counties. DOT recommends that any General Funds appropriated be transferrable to counties as they must adopt the road or roads pursuant to current laws.

Thank you for the opportunity to provide testimony.



HAWAI‘I STATE ETHICS COMMISSION

State of Hawai‘i · Bishop Square, 1001 Bishop Street, ASB Tower 970 · Honolulu, Hawai‘i 96813

Committees: Committee on Transportation
 Committee on Public Safety, Intergovernmental, and Military Affairs
Bill Number: S.B. 2332
Hearing Date/Time: Friday, February 7, 2020, 1:15 p.m.
Re: Testimony of the Hawai‘i State Ethics Commission
 with **COMMENTS AND PROPOSED AMENDMENT** to
 S.B. 2332, Relating to Highways

Chair Inouye, Vice Chair Harimoto, and Members of the Committee on Transportation, and
Chair Nishihara, Vice Chair Wakai, and Members of the Committee on Public Safety,
Intergovernmental, and Military Affairs:

The Hawai‘i State Ethics Commission (“Commission”) respectfully suggests the deletion of the following language of Section 2(f): “No member of the commission shall be made subject to Chapter 84, Hawaii Revised Statutes, solely because of that member’s participation as a member of the commission.” This carve-out to the Ethics Code is likely unconstitutional.

Article XIV of the Hawai‘i Constitution provides, among other things, that the State’s “code of ethics . . . shall apply to appointed and elected officers and employees of the State . . . including members of the boards, commissions and other bodies.” The Legislature is granted the authority to define the exact contours of the conduct that may be deemed to violate the Ethics Code; however, the constitution requires that the Ethics Code apply to all employees and board/commission members. Indeed, in 2015, the Attorney General issued a letter to then-Representative Rhoads, explaining that the Legislature cannot exempt categories of employees from the Ethics Code:

May the Legislature, consistent with article XIV of the Hawai‘i Constitution, exempt a state entity or the entity’s employees from the State Ethics Code, as codified in chapter 84, Hawaii Revised Statutes?

...

No. By its plain text, article XIV makes the application of the State Ethics Code mandatory to state employees.

Attorney General Op. No. 2015-02 at 1-2, available at <https://ag.hawaii.gov/wp-content/uploads/2012/11/AG-OP-NO-15-2.pdf>. The Opinion goes on to state that the Legislature may exempt certain conduct from the scope of the Ethics Code, but it may not exempt employees from the Code.

As such, the Commission respectfully recommends that the Committee amend this measure to delete this sentence: "No member of the commission shall be made subject to Chapter 84, Hawaii Revised Statutes, solely because of that member's participation as a member of the commission."

Thank you for your continuing support of the Commission's work and for considering the Commission's testimony on S.B. 2332.

Very truly yours,

Daniel Gluck
Executive Director and General Counsel

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 Senate Committees on
TRANSPORTATION
and
PUBLIC SAFETY, INTERGOVERNMENTAL, AND MILITARY AFFAIRS**

**Friday, February 7, 2020
1:15 PM
State Capitol, Conference Room 225**

**In consideration of
SENATE BILL 2332
RELATING TO HIGHWAYS**

Senate Bill 2332 proposes to establish the Old Government Roads Commission (Commission) to assist in resolving disputes between the State and the counties relating to jurisdiction over old government roads by, among other things, drafting memoranda of agreement between the State and the counties to provide for the repair of old government roads, bring them up to county standards, and transfer their ownership to the counties. **The Department of Land and Natural Resources (Department) offers the following comments on this measure.**

The proposed Commission would be established within the Department of Transportation (DOT) for administrative purposes and would be charged with: (1) identifying and developing an inventory of all disputed government roads; (2) creating a priority list of roads that require more immediate attention than other roads based upon the condition of the roads and the volume of traffic on the roads; (3) drafting and executing memoranda of agreement between the State and each county that require the State to transfer title or ownership of a disputed road to the county once the State repairs the road and brings it up to county standards; (4) establishing a system for repairing disputed roads, which includes creating a new budget line item for DOT to design, plan, and construct a particular road that the commission deems a priority under paragraph (2); and (5) exploring the possibility of accessing federal funds to alleviate the costs of repairing roads of which ownership is disputed.

The bill further requires the Commission to convene meetings and submit annual reports to Legislature. The bill directs DOT to provide administrative and clerical support that would add to DOT's operational expenses. In addition to clerical support from DOT, the Commission would likely require office equipment, supplies, and travel expenses for the nine Commission members.

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

ROBERT K. MASUDA
FIRST DEPUTY

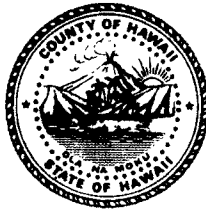
M. KALEO MANUEL
ACTING DEPUTY DIRECTOR - WATER

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

There would be added expense for the Commission to comply with HRS Chapter 92's sunshine law requirements. Further, the Commission's actions may be subject to contested case hearings and appeals. A conservative budget for the proposed Commission would be approximately \$500,000 annually.

Thank you for the opportunity to comment on this measure.

Harry Kim
Mayor



Roy Takemoto
Managing Director

Barbara J. Kossow
Deputy Managing Director

County of Hawai'i Office of the Mayor

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February 5, 2020

Senator Lorraine R. Inouye, Chair
Senator Breene Harimoto, Vice Chair
Committee on Transportation

Senator Clarence K. Nishara, Chair
Senator Glenn Wakai, Vice Chair
Committee on Public Safety, Intergovernmental, and Military Affairs
Hawai'i State Legislature

Dear Chairs Inouye and Nishihara, Vice-Chair Harimoto and Wakai, and Committee members:

RE: **SB 2332 Relating to Highways**

The issue of disputed roads, that is, disputes over jurisdiction between State and counties, has been with us for decades, and every attempt to resolve the matter has failed. Therefore, I applaud the author of SB 2332 for proposing a way forward that will reflect the kind of cooperation and collaboration that should always be our North Star when we confront difficult problems.

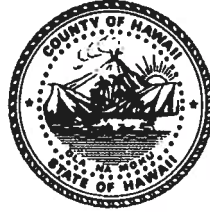
I support SB 2332 and will do my best to assure that the County is a full participant in the Commission it proposes to establish.

Respectfully Submitted,

Harry Kim
MAYOR

Harry Kim
Mayor

Roy Takemoto
Managing Director



David Yamamoto, P.E.
Director

Allan G. Simeon, P.E.
Deputy Director

County of Hawai'i
DEPARTMENT OF PUBLIC WORKS
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February 6, 2020

Senator, Lorraine Inouye, Chair
Senator Breene Harimoto, Vice Chair
And Members of the Committee on Transportation

Senator Clarence Nishihara, Chair
Senator Glenn Wakai, Vice Chair
And Members of the Committee on Public Safety, Intergovernmental, and Military Affairs

RE: TESTIMONY IN SUPPORT OF SB 2332, RELATING TO HIGHWAYS AND THE CREATION OF AN OLD GOVERNMENT ROADS COMMISSION

Dear Chairs and members:

Thank you for this opportunity to testify in support of SB 2332 and its companion bill HB 2199.

The Hawai'i County Department of Public Works strongly supports SB 2332 creating a commission on old government roads to address the issue of jurisdiction between the State and the counties over disputed roads. The creation of this commission and the appropriation of funds will go a long way in resolving the long standing issue of maintaining these disputed roads, also known as Roads In Limbo.

As the largest County in the state, Hawai'i County has a higher proportion of disputed roads than other islands with roughly 200 disputed roads. Many of these old government roads are substandard roads, the required maintenance of which is above and beyond what is required of current road standards. Long-term maintenance of these roads will be less costly if they are improved to current standards.

In FY 2006-2007 the state provided one-time funding in the amount of \$2 million dollars to Hawai'i County to address safety assessments, the improvement and maintenance of these old government roads, the bridges they contain, and road signage. These funds were only a small fraction of what was actually needed to fully restore and maintain these disputed roads. Funding was not renewed leaving Hawai'i County with an unfunded mandate. Existing Hawai'i County budget constraints barely address county road maintenance costs, not to mention the additional costs of maintaining old government roads.

While Hawai'i County DPW supports this bill, it is worth pointing out that the County of Hawai'i will bear maintenance/repairs cost upon the State completing initial improvement and transfer of these roads. Thus it is critical that the source of resources for the perpetual maintenance/repair costs needs to be addressed.

Thank you for this opportunity to submit testimony in support of SB 2332.

Respectfully submitted,

A handwritten signature in black ink, appearing to be 'David Yamamoto', written in a cursive style.

David Yamamoto, P.E.
Director, Hawai'i County Department of Public Works