

DAVID Y. IGE  
GOVERNOR



**TESTIMONY BY:**

JADE T. BUTAY  
DIRECTOR

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

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

February 4, 2021  
3:00 P.M.  
State Capitol, Teleconference

**S.B. 649**  
**RELATING TO LIABILITY**

Senate Committee on Transportation

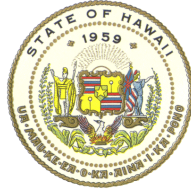
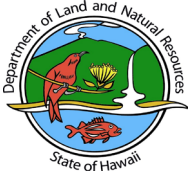
---

The Department of Transportation (DOT) **supports** S.B. 649 to provide immunity to the State and Counties for personal injuries and property damage sustained from the repair and maintenance of streets of unknown or questionable ownership or jurisdiction.

Further, DOT agrees that performing repair and maintenance activities on a street, in and of itself, shall not confer ownership or jurisdiction of the street to the agency performing such activities.

Thank you for the opportunity to provide testimony.

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 Committee on  
TRANSPORTATION**

**Thursday, February 4, 2021  
3:00 PM  
State Capitol, Conference Room 224**

**In consideration of  
SENATE BILL 649  
RELATING TO LIABILITY**

Senate Bill 649 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) offers the following comments.**

The Department believes this bill is not necessary because there is no such thing as a "road in dispute" – only roads the counties have refused to accept responsibility over for purposes of maintenance or liability. “[L]ands 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. However, the Department understands the bill may encourage the counties to accept responsibility for repair and maintenance of roads more readily, notwithstanding their existing ownership of or jurisdiction over them under current law. Accordingly, the Department does not oppose the measure.

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

**M. KALEO MANUEL**  
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

**LATE**

**TESTIMONY OF NAHELANI WEBSTER ON BEHALF OF  
THE HAWAII ASSOCIATION FOR JUSTICE (HAJ) IN OPPOSITION TO  
S.B. NO. 649**

DATE: Thursday, February 4, 2021

TIME: 3:00 pm

To: Chair Chris Lee and Members of the Senate Committee on Transportation:

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 S.B. 649, 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 does 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.