



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
THIRTY-FIRST LEGISLATURE, 2022**

ON THE FOLLOWING MEASURE:

H.B. NO. 1632, RELATING TO HIGHWAYS.

BEFORE THE:

HOUSE COMMITTEE ON CONSUMER PROTECTION AND COMMERCE

DATE: Thursday, February 10, 2022 **TIME:** 2:00 p.m.

LOCATION: State Capitol, Room 329, Via Videoconference

TESTIFIER(S): Holly T. Shikada, Attorney General, or
Andrew L. Salenger, Deputy Attorney General

Chair Johanson and Members of the Committee:

The Department of the Attorney General offers the following comments.

This bill establishes weight limitations on certain vehicles that can be operated on the Hana highway and the Haleakala highway and user fees for certain vehicles, and directs that those collected fees be used for maintenance of the Hana highway and the Haleakala highway on the island of Maui.

To the extent that this bill collects user fees for certain vehicles throughout the State but intends to use the fees for only two specific State highways, it may be subject to challenge because user fees can only be used for the purpose for which they are collected. *State v. Medeiros*, 89 Hawai'i 361, 366, 973 P.2d 736, 741 (1999).

"Generally, a fee is exchanged for a service rendered or a benefit conferred, and the amount of the fee normally bears a relationship to the value of the service or benefit." *Hawaii Insurers Council v. Lingle*, 120 Hawai'i 51, 59, 201 P.3d 564, 572 (2008). An example of a user fee includes bridge tolls. *Id.* at 60, 201 P.3d at 573.

One example of how fees may be spent is the Hanauma Bay Nature Preserve entrance fee that was litigated in *Daly v. Harris*, 215 F. Supp. 2d 1098 (Haw. 2002), and affirmed by the Ninth Circuit Court of Appeals, 117 Fed. Appx. 498 (9th Cir. 2004). *Daly* involved the \$3 user fee for non-Hawaii residents to enter Hanauma Bay. The proceeds are deposited into the Hanauma Bay Nature Preserve fund and money from the fund is designated for four specific purposes: (1) for the operation, maintenance, and improvement of the Hanauma Bay Nature Preserve; (2) for educational and orientation

programs for visitors to the preserve; (3) for a carrying capacity study of the preserve and other studies relating to the environmental condition of the preserve; and (4) if funds are available, for the operation, maintenance, and improvement of park facilities at Koko Head District Park, Maunaloa Bay Beach Park, Koko Head Rifle Range, and Koko Crater Botanical Garden. *Daly*, 215 F. Supp. 2d at 1101-1102. The court upheld the Hanauma Bay entrance fee because it is being used to preserve Hanauma Bay.

With this bill, unlike the Hanauma Bay entrance fee charged only on those entering Hanauma Bay, the user fees will be collected from any user of certain vehicles at any location throughout the State. Tour vehicles and rental vehicles on the island of Kauai, for instance, will also be assessed fees under this bill, but those fees collected on Kauai will not be used to maintain Kauai highways but instead will benefit only the Hana and Haleakala highways on the island of Maui.

To remedy the issue noted above, we suggest, subject to practical limitations and considerations, proposed section 264-B(a), Hawaii Revised Statutes, be amended to have the collection of user fees be limited to the enumerated vehicles, bicycle tours, electric scooters, and running and hiking tours entering the Hana highway and the Haleakala highway on the island of Maui (page 3, lines 12-19). We suggest the following new wording:

(a) The department of transportation shall collect user fees from the following groups entering the Hana highway and the Haleakala highway on the island of Maui at the following rates:

Thank you for the opportunity to testify.

Council Chair
Alice L. Lee

Vice-Chair
Keani N.W. Rawlins-Fernandez

Presiding Officer Pro Tempore
Tasha Kama

Councilmembers
Gabe Johnson
Kelly Takaya King
Michael J. Molina
Tamara Paltin
Shane M. Sinenci
Yuki Lei K. Sugimura



Director of Council Services
Traci N. T. Fujita, Esq.

Deputy Director of Council Services
David M. Raatz, Jr., Esq.

COUNTY COUNCIL
COUNTY OF MAUI
200 S. HIGH STREET
WAILUKU, MAUI, HAWAII 96793
www.MauiCounty.us

February 9, 2022

TO: The Honorable Aaron Ling Johanson, Chair
House Committee on Consumer Protection & Commerce

FROM: Michael J. Molina 
Councilmember, Maui County Council

SUBJECT: **HEARING OF FEBRUARY 10, 2022; TESTIMONY IN SUPPORT OF HB 1632 HD 1, RELATING TO HIGHWAYS**

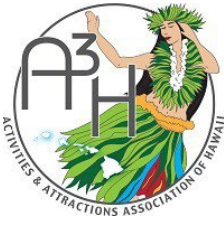
Thank you for the opportunity to testify in **support** of this important measure that will address infrastructure funding concerns for Hana and Haleakala Highways. Ensuring appropriate maintenance is sustained for the long-term future is paramount for the public safety of our residents, businesses, and visitors.

The Maui County Council has not taken a formal position on this measure. I am providing this testimony as an individual member of the Maui County Council.

I support this measure for the following reasons:

1. Appropriate fees will help ensure the commercial rentals and tours are satisfied with infrastructure maintenance of these vital highways.
2. This measure is a solution to the significant public safety concerns putting all users of Hana and Haleakala Highways at risk if deferred maintenance is allowed to continue.
3. The special fund proposed ensures the fees collected will be spent on the precise highways the commercial rentals and tours rely upon for their businesses.

For these reasons, I **support** this measure.



Activities & Attractions Association of Hawaii, Inc.
**Not for Profit 501c-6 ~ Preserve, Protect and
Unite**

COMMITTEE ON CONSUMER
PROTECTION & COMMERCE

Representative Aaron Ling
Johanason, Chair
Representative Lisa Kitagawa, Vice
Chair

DATE: Thursday, February 10, 2022
TIME: 2:00 PM
PLACE: Conference Room 329/Zoom

February 9, 2022

Aloha Honorable Chair Johanson, Vice-Chair Kitagawa and Members of the
Committee on Consumer Protection & Commerce,

As the executive director of the Activities & Attractions Association of Hawaii, Inc. (A3H), representing Hawaii's statewide in-destination experiences, which includes the states' guided tour businesses.

House Bill 1632 is misguided in its approach and fails to target the real problem: the out-of-state visitors who drive the Road to Hana themselves while lacking the proper knowledge and expertise to navigate this danger-laden highway.

It is the unguided visitors that cause the most conflict and damage. Regulating legal operations, which are not the cause of the conflict, is cruel, lacks positive, creative thinking, and is anti-business. These locally owned and operated businesses directly employ hundreds of Maui residents and, indirectly, thousands of Maui residents. These guided tour companies work closely and respectfully with Hana businesses who rely on them for customers. These properly licensed, insured, and regulated companies, and their guests, are already paying heavy State Fees for the parking and entrance to Waianapanapa State Park. Too many fees will fuel the already spiraling inflation.

The DOT shared that there is already a limit of 10 tons for all vehicles on the road to Hana. In addition, no motor coaches are touring the roads; the allowed vehicles hold less than 25 passengers, most only take 6-12 to provide a higher quality experience.

Encourage all visitors to take a legal, authorized, culturally sensitive, controlled tour. Tour vans holding 12 – 24 guests take 6 to 12 cars off the road. The professionally operated and endorsed tours control where their guests visit, where they walk, where they stop, and what they do. **THIS IS WHAT IS NEEDED AND SHOULD BE ENCOURAGED!**

An alternative approach would be charging for and requiring self-driving visitors to earn a Road to Hana Educational Certification. The fee collected could be split between the State and the County of Maui. All self-driving visitors traversing the Road to Hana would be asked/required to show proof of their certification at the start of the Hana Highway.

Another alternative is to impose a county tax on rental cars driving to Hana when the visitors' accommodations are outside Hana. Make this fee \$300 - \$400. GPS on rental vehicles can easily track and charge this fee, paying it forward to the county, who in turn can provide it to the Hana community minus an administrative fee paid to the rental car agency.

Enforcement of unregulated, ill-educated, self-driving visitors is an issue now! Regardless of the approach, improved enforcement is needed as many unlicensed tour operations exist. The PUC should be appealed to, to cease the issuance of any further CPCNs to operate on the Hana Coast. This is the same approach the residents of Waipio Valley took with the PUC many years ago.

Mahalo,
Toni

Toni Marie Davis
Executive
Director
Activities & Attractions Association of
Hawaii, Inc. PO Box 598, Makawao, Hawaii
96768
D: 808-871-7947 * M: 808-264-0000* F: 808-877-3104 Toll Free: 800-398-9698

HB-1632-HD-1

Submitted on: 2/8/2022 2:35:14 PM

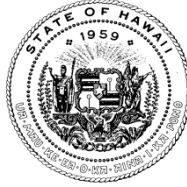
Testimony for CPC on 2/10/2022 2:00:00 PM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
Gerard Silva	Individual	Oppose	No

Comments:

NO user Fees on any Hawaii Roads. The State make more than Enough money to take care of the Roads if the stop paying for pay to play Jobs!!!

DAVID Y. IGE
GOVERNOR



TESTIMONY BY:

JADE T. BUTAY
DIRECTOR

Deputy Directors
ROSS M. HIGASHI
EDUARDO P. MANGLALLAN
PATRICK H. MCCAIN
EDWIN H. SNIFFEN

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

LATE

February 10, 2022
2:00 P.M.
State Capitol, Teleconference

**H.B. 1632, H.D. 1
RELATING TO HIGHWAYS**

House Committee on Consumer Protection & Commerce

The Department of Transportation (DOT) provides **comments** on this measure that seeks to set vehicle weight limits for Hana Highway and Haleakala Highway and establish user fees for access to Hana Highway and Haleakala Highway.

The DOT currently restricts vehicles that weigh over 10 tons from traversing Hana Highway, and further notes that there are no bridges on Haleakala Highway that require a weight limitation.

The proposed user fees may be construed as a toll. If the Federal Highway Administration (FHWA) considers the implementation of user fees as described in H.B. 1632, H.D. 1, as a toll, then there may be limitations and requirements on the use of federal aid for projects on these routes. Additionally, operations of a toll road present statutory requirements on the use of revenues from the toll and a need for annual audits of toll collections.

Approximately six months would be required to further research if this action will be allowed by FHWA and if so, to investigate whether the various requirements would make it feasible to pursue.

The DOT also requests clarification of the route included in this bill. The characteristics and length described for Haleakala Highway do not match the physical attributes of the roadway.

Thank you for the opportunity to provide testimony.

LATE

HB-1632-HD-1

Submitted on: 2/10/2022 2:00:33 PM

Testimony for CPC on 2/10/2022 2:00:00 PM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
DOT - Ross Hironaka	Hawaii DOT, Highways Division	Comments	No

Comments:

I am with the DOT and am available for comments.