



**TESTIMONY OF  
THE DEPARTMENT OF THE ATTORNEY GENERAL  
THIRTY-SECOND LEGISLATURE, 2023**

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**ON THE FOLLOWING MEASURE:**  
H.B. NO. 315, RELATING TO FLOODING.

**BEFORE THE:**  
HOUSE COMMITTEE ON TRANSPORTATION

**DATE:** Tuesday, January 31, 2023      **TIME:** 10:00 a.m.

**LOCATION:** State Capitol, Room 312

**TESTIFIER(S):** Anne E. Lopez, Attorney General, or  
Marjorie A. Lau, Deputy Attorney General

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Chair Todd and Members of the Committee:

The Department of the Attorney General provides the following comments.

This bill appropriates moneys to the several counties for the mitigation of flood risks on privately owned roads that are open to public traffic. The bill provides that the appropriation or expenditure of the moneys shall not be construed to establish a duty of care or grounds for liability for the State or the several counties.

The bill's appropriation of state general funds for the mitigation of flood risks on privately owned roads that are open to public traffic may be subject to constitutional challenge as violating article VII, section 4, of the Hawaii State Constitution, titled "Appropriations for Private Purposes Prohibited."

Article VII, section 4, of the Hawaii State Constitution provides in relevant part:

No tax shall be levied or appropriation of public money or property made, nor shall the public credit be used, directly or indirectly, except for a public purpose.

Determining what constitutes a public purpose is generally a question for the legislature to decide. *State ex rel. Amemiya v. Anderson*, 56 Haw. 566, 574, 545 P.2d 1175, 1180-1181 (1976). However, we believe that the bill could be bolstered by providing a finding of a public purpose that is clearer and more specific. For example, a determination to consider may be that the mitigation of flood risks on such roads is necessary for the safety of motorists, bicyclists, pedestrians, and other members of the general public who may use the roads, and in that regard benefits the general public. In

further support of establishing a public purpose, specific conditions or circumstances under which the mitigation of flood risks by the counties would constitute a public purpose on privately owned roads could be set forth. Whether the privately owned roads are used by the general public or are in any manner restricted to the general public or require some form of easement or right-of-entry in favor of the several counties are considerations.

For the above reasons, we respectfully ask the Committee to address the constitutional concerns discussed above. Thank you for the opportunity to testify.

**HB-315**

Submitted on: 1/31/2023 9:09:11 AM

Testimony for TRN on 1/31/2023 10:00:00 AM

**LATE**

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Testify</b>
Nanea Lo	Individual	Support	Written Testimony Only

Comments:

Hello,

My name is Nanea Lo. I'm born and raised in the Hawaiian Kingdom a Kanaka Maoli.

I'm writing in SUPPORT of HB315.

me ke aloha 'āina,

Nanea Lo