



**TESTIMONY OF  
THE DEPARTMENT OF THE ATTORNEY GENERAL  
KA 'OIHANA O KA LOIO KUHINA  
THIRTY-SECOND LEGISLATURE, 2024**

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**ON THE FOLLOWING MEASURE:**

H.B. NO. 2122, RELATING TO TRANSPORTATION.

**BEFORE THE:**

HOUSE COMMITTEE ON TRANSPORTATION

**DATE:** Tuesday, February 13, 2024      **TIME:** 11:00 a.m.

**LOCATION:** State Capitol, Room 312 and Videoconference

**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.

The purpose of the bill is to establish a private roads task force within the Department of Transportation to: (i) identify and develop an inventory of all private and disputed government roads; (ii) create a priority list of roads that require more immediate attention than other roads; (iii) draft and execute memoranda of agreement between the State and each county that requires the State to transfer title of ownership of a private or disputed road to the county once the State repairs and brings the road up to county standards; (iv) establish a system for repairing private and disputed roads through memoranda of agreement between the State and each county; and (v) explore the possibility of accessing federal funds to alleviate the costs of repairing such private or disputed roads.

While the intent in creating this task force appears to be to repair certain roads up to county standards to be placed under county ownership and management, it is not clear upon what basis the State has authority to “transfer title of ownership of a private road” or to repair private roads. The State cannot convey property it does not own and usually would not be authorized to repair property it does not own.

Additionally, to the extent there will be any appropriation of state funds for the repair of privately owned roads, such appropriation may be subject to constitutional

challenge as violating article VII, section 4, of the Hawaii State Constitution, titled “Appropriations for Private Purposes Prohibited.”

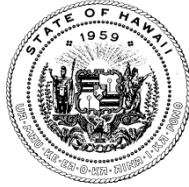
Article VII, section 4, of the Hawaii State Constitution provides in relevant part:

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, 1180-81 (1976). With respect to repairs and maintenance of privately owned roads, the bill could specify the type of private road it is intending to address and the public use served by such action. We believe that the bill could be bolstered by providing a finding of a public purpose regarding privately owned roads that is clearer and more specific. For example, a determination to consider may be that repair and maintenance of such privately owned 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 repair and maintenance 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 State or several counties are additional considerations.

Thank you for the opportunity to testify.

JOSH GREEN, M.D.  
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February 13, 2024  
11:00 A.M.  
State Capitol, Room 312 via Videoconference

**H.B. 2122**  
**RELATING TO TRANSPORTATION**

House Committee on Transportation

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The Department of Transportation (DOT) **opposes** H.B. 2122 which establishes a private roads task force to identify and facilitate the repair and transfer of certain private or disputed roads to the appropriate government agency.

The transfer or surrender of disputed roads to the county is already provided under §264-2.1, Hawaii Revised Statutes, pursuant to administrative order.

The DOT is concerned that the State would be taking on the responsibility of private owners to upgrade a facility to County standards without a clear benefit for the investment by the State.

In addition, funds are not being appropriated to the State for the repair and upgrade of roads that are not under the jurisdiction of the DOT, nor for the reimbursement of reasonable expenses to the members, including travel.

Finally, the DOT is concerned that there are insufficient resources available to identify and develop an inventory of all private and disputed roads which the DOT has no jurisdiction over and is not authorized to manage and control.

Thank you for the opportunity to provide testimony.