

JOSH GREEN, M.D.
GOVERNOR
KE KIA'ĀINA



EDWIN H. SNIFFEN
DIRECTOR
KA LUNA HO'OKELE

Deputy Directors
Nā Hope Luna Ho'okele
DREANALEE K. KALILI
TAMMY L. LEE
CURT T. OTAGURO
ROBIN K. SHISHIDO

STATE OF HAWAII | KA MOKU'ĀINA 'O HAWAII
DEPARTMENT OF TRANSPORTATION | KA 'OIHANA ALAKAU
869 PUNCHBOWL STREET
HONOLULU, HAWAII 96813-5097

March 13, 2025
3:30 p.m.
State Capitol, Room 224 Videoconference

H.B. 860 H.D. 1
RELATING TO LIABILITY

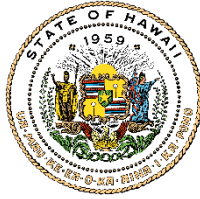
Senate Committee on Transportation and Culture and the Arts
Senate Committee on Energy and Intergovernmental Affairs

The Hawaii Department of Transportation (HDOT) **supports** H.B. No. 860 H.D. 1 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, HDOT 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.

JOSH GREEN, M.D.
GOVERNOR | KE KIA'ĀINA

SYLVIA LUKE
LIEUTENANT GOVERNOR | KA HOPE KIA'ĀINA



**STATE OF HAWAII | KA MOKU'ĀINA 'O HAWAII'
DEPARTMENT OF LAND AND NATURAL RESOURCES
KA 'OIHANA KUMUWAIWAI 'ĀINA**

P.O. BOX 621
HONOLULU, HAWAII 96809

DAWN N.S. CHANG
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE
MANAGEMENT

RYAN K.P. KANAKA'OLE
FIRST DEPUTY

CIARA W.K. KAHAHANE
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

**Testimony of
DAWN N. S. CHANG
Chairperson
Before the Senate Committees on
TRANSPORTATION AND CULTURE AND THE ARTS
&
ENERGY AND INTERGOVERNMENTAL
AFFAIRS**

**Thursday, March 13, 2025
3:00 PM
Senate Conference Room 224 & Via Videoconference**

**In consideration of
HOUSE BILL 860, HOUSE DRAFT 1
RELATING TO LIABILITY**

House Bill 860, House Draft 1, provides 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.**

There are no "road[s] 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 this measure.

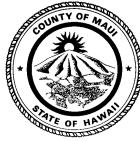
Mahalo for the opportunity to provide testimony on this matter.

Council Chair
Alice L. Lee

Vice-Chair
Yuki Lei K. Sugimura

Presiding Officer Pro Tempore
Tasha Kama

Councilmembers
Tom Cook
Gabe Johnson
Tamara Paltin
Keani N.W. Rawlins-Fernandez
Shane M. Sinenci
Nohelani U'u-Hodgins



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

Deputy Director of Council Services
Richelle K. Kawasaki, Esq.

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

March 12, 2025

TO: The Honorable Chris Lee, Chair
Senate Committee on Transportation and Culture and the Arts
The Honorable Glenn Wakai, Chair
Senate Committee on Energy and Intergovernmental Affairs

FROM: Alice L. Lee
Council Chair

A handwritten signature in cursive script, appearing to read "Alice L. Lee", is written over the printed name and title.

SUBJECT: **HEARING OF MARCH 13, 2025; TESTIMONY IN SUPPORT OF HB860, HD1, RELATING TO LIABILITY**

I **support** this measure to allow the State or counties to repair or maintain “roads in limbo” with immunity for personal injuries or property damage and deem that performing maintenance or repair does not confer ownership.

The Maui County Council has not had the opportunity to take a formal position on this measure. Therefore, I am providing this testimony in my capacity as an individual member of the Maui County Council.

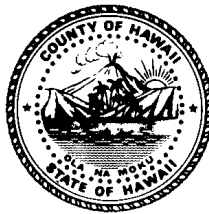
I **support** this measure for the following reasons:

1. Government agencies are reluctant to repair or maintain “roads in limbo” to avoid liability or having ownership conferred.
2. This measure’s granting of immunity to the State and counties for repairing and maintaining these roads will promote public safety and protect taxpayer funds.

Thank you for your consideration.

ocs:proj:legis:25legis:25testimony:hb860hd1_paf25-007(36)_mkm

HEATHER L. KIMBALL
COUNCIL DISTRICT 1
(North Hilo, Hāmākua, and portion of
Waimea)



Phone: (808) 961-8828
Fax: (808) 961-8912
Email: Heather.Kimball@hawaiiicounty.gov

HAWAI'I COUNTY COUNCIL
25 Aupuni Street, Ste. 1402, Hilo, Hawai'i 96720

March 10, 2025

Senate Committee on Transportation and Culture and the Arts
Honorable Senator Chris Lee, Chair
Senate Committee on Energy and Intergovernmental Affairs
Honorable Senator Glenn Wakai, Chair
Submission via online testimony only

RE: Support of HB860 HD1

Dear Chair Lee, Chair Wakai, and Members of the Committee on Transportation and Culture and the Arts, and Members of the Committee on Energy and Intergovernmental Affairs:

As the sitting Council Member for Council District 1, I thank you for the opportunity to submit **testimony in SUPPORT of HB860 HD1**, which seeks to clarify the liability protections for the State and counties when conducting repairs or maintenance on roads of disputed ownership or roads in limbo.

Across the County of Hawai'i, and throughout the state, so-called "roads in limbo" pose significant challenges to public safety, infrastructure maintenance, and government accountability. Due to unresolved ownership or jurisdictional disputes, these roads often fall into disrepair, creating hazards for residents, visitors, and emergency responders. However, under current law, counties and the State face potential liability when undertaking necessary repairs or maintenance, discouraging proactive efforts to address deteriorating conditions.

This bill appropriately ensures that when the State or a county performs necessary maintenance on a road of disputed ownership, such actions do not inadvertently confer ownership or jurisdiction. More importantly, it grants essential liability immunity for repairs and maintenance, allowing government agencies to act in the best interest of public safety without the risk of legal consequences.

By removing legal barriers that discourage maintenance, this measure provides a practical, common-sense approach to improving road conditions, reducing risks to motorists, and ensuring that government agencies can prioritize public welfare without unnecessary liability concerns. The County of Hawai'i urges the Legislature to advance this bill to facilitate more efficient infrastructure management and enhance public safety on our island and throughout the state.

Thank you for the opportunity to submit testimony on this important issue. If you would like to discuss my knowledge of this matter further, please do not hesitate to contact me directly.

Sincerely,

A handwritten signature in cursive script that reads "Heather L. Kimball".

HEATHER L. KIMBALL

Hawai‘i State Association of Counties (HSAC)

Counties of Kaua‘i, Maui, Hawai‘i, and City & County of Honolulu

Website: hawaiicounties.org | Email: hsac@hawaiicounties.org



Testimony of the Hawai‘i State Association of Counties

LATE

H.B. No. 860 HD1 - Support

Relating to Liability

Committee on Transportation and Culture and the Arts

Committee on Energy and Intergovernmental Affairs

Thursday, March 13, 2025, 3:00 p.m.

The Hawai‘i State Association of Counties (HSAC) **supports HB860 HD1**, which addresses “roads in limbo,” those with disputed ownership or jurisdiction between the State and counties. For too long, such roads have been left in disrepair because of worries that maintaining them would imply admission of responsibility or create new liability. HB860 HD1 clarifies that when state or county agencies act to remedy unsafe conditions on disputed roads, they neither confer ownership on themselves nor expose taxpayers to undue legal risk solely by performing maintenance.

This measure is vital because it allows necessary repairs to move forward rather than be delayed indefinitely. Over time, hazards like potholes, crumbling shoulders, and other safety concerns worsen, raising the risk of accidents. By ensuring that good-faith maintenance on a disputed road does not automatically bind the government entity to permanent ownership or liability, this measure helps remove the primary deterrent to addressing these hazards. This measured approach ultimately benefits everyone, from residents and businesses that rely on safe transportation corridors to emergency vehicles that need clear access.

Importantly, HB860 HD1 does not shield a government entity from legitimate claims related to negligence or misconduct; it simply clarifies that repairing a road alone does not confer ownership or create fresh legal exposure. By doing so, it encourages the State and counties to protect public safety on roads in limbo without the fear of shouldering unintended liability. As a result, communities across our islands gain safer, more reliable roads.

For these reasons, HSAC respectfully requests the Committee to support HB860 HD1. By enabling corrective actions on roads of disputed ownership without inadvertently assuming liability, this measure promotes safer communities throughout our islands. Mahalo for the opportunity to provide testimony in support of this important legislation.

HB-860-HD-1

Submitted on: 3/10/2025 3:20:49 PM

Testimony for TCA on 3/13/2025 3:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Robert Culbertson	Testifying for Paaulo Homestead Community Association	Support	Written Testimony Only

Comments:

Aloha Senators!

Please help us break a legal logjam that has unnecessarily and irrationally deterred many worthy efforts by our community and local agencies to address long standing 'Roads in Limbo' access and safety issues for our residents.

Passing HB 860 HD1 will help mightily at this point. Government must not fail us again!

Respectfully,

R A Culbertson

Vice President,

Paaulo Homestead Community Association

**TESTIMONY OF EVAN OUE ON BEHALF OF THE HAWAII ASSOCIATION FOR
JUSTICE (HAJ) IN OPPOSITION TO HB 860**

Date: Thursday March 13, 2025

Time: 3:00 p.m.

My name is Evan Oue and I am presenting this testimony on behalf of the Hawaii Association for Justice (HAJ) in **OPPOSITION** to HB 860, 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.

Historically, the legislature has found that there are many roads throughout Hawaii that are not owned by either the State or any county, and whose private ownership is unknown. These roads may have been indicated on a subdivision plat or may have been a remnant of a former road or a small portion of a larger public road. Although these roads are often used by the public, the roads do not receive necessary repair and maintenance. In some cases, the roads have fallen into significant disrepair.

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. 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.

Furthermore, Act 123 (2022) sought to address the “roads in limbo” issue by reducing impediments for the state and county to condemn these private roads and lanes. The measure provided a 3-year period in which the state or county would be required to perform construction, reconstruction, preservation, resurfacing, restoration, or rehabilitation. Most importantly, the measure clarified that the state and counties may only be joint and severally liable for acts or omissions that occurred after the condemnation.

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 collapse 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.

HAJ would strongly recommend this measure be deferred due to the public safety concerns associated with providing overly broad immunity for maintenance of roads with disputed ownership.

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.

Ultimately, providing immunity for maintenance of “roads in limbo” puts Hawaii residents at risk without any form of recourse. 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.

HB-860-HD-1

Submitted on: 3/10/2025 12:34:42 PM

Testimony for TCA on 3/13/2025 3:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Mike Golojuch, Sr.	Individual	Support	Written Testimony Only

Comments:

I support HB860. Please pass this bill.