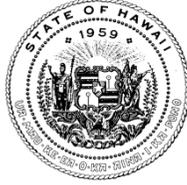


JOSH GREEN, M.D.
GOVERNOR
KE KIA'ĀINA



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

February 20, 2025
2:00 p.m.
State Capitol, Room 325 & Videoconference

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

House Committee on Judiciary & Hawaiian Affairs

The Hawaii Department of Transportation (HDOT) **supports** H.B. 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 HAWAI'I
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 House Committee on
JUDICIARY &
HAWAIIAN AFFAIRS

Thursday, February 20, 2025
2:00PM

House Conference Room 325 & Via Videoconference

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

House Bill 860, House Draft 1, 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 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

February 19, 2025

TO: The Honorable David A. Tarnas, Chair
House Committee on Judiciary & Hawaiian Affairs

FROM: Alice L. Lee
Council Chair 

SUBJECT: **HEARING OF FEBRUARY 20, 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.

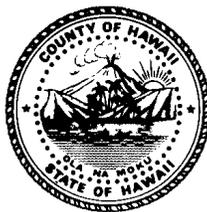
I **support** this measure for the following reasons:

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(22)_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@hawaiicounty.gov

HAWAI‘I COUNTY COUNCIL

25 Aupuni Street, Ste. 1402.
Hilo, Hawai‘i 96720

February 19, 2025

House Committee on Judiciary and Hawaiian Affairs
Honorable Representative David A. Tarnas, Chair
Honorable Representative Mahina Poepoe, Vice Chair
Submission via online testimony only

RE: **Support of HB860 HD1**

Dear Chair Tarnas, Vice Chair Poepoe, and Members of the Judiciary and Hawaiian 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 Kimball". The signature is written in black ink and is positioned above the printed name.

HEATHER L. KIMBALL

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

Date: Thursday February 20, 2025

Time: 2:00 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.

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: 2/18/2025 1:05:50 PM

Testimony for JHA on 2/20/2025 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Ellen Awai	Individual	Support	Written Testimony Only

Comments:

I stand in support of HB860 HD1. Hopefully the transfer is in a few years and no longer than 2029! Lots of confusion now going on with everyone! Mahalo for all that you folks are trying to do in such a short time!

TO: House Committee on Judiciary & Hawaiian Affairs

FROM: Deborah L. Chang, Resident of Hāmākua District, Island of Hawai'i

SUBJECT: HB860, HD1 Relating to Liability

Aloha Chair Tarnas and Members of the House Committee on Judiciary & Hawaiian Affairs:

I support HB860 and believe it can be amended to address the concerns that have been expressed by previous testifiers.

I reside in Hāmākua District where numerous "roads in limbo" are increasingly being relied upon as more subdivisions are approved by the county. In many cases, these historic, public roads are the only access to and from our homes. Unmaintained by the county even though they are recognized as county-owned roads, they continue to deteriorate with expanding use. This decades-long road neglect is increasingly unsafe.

The Hawai'i Association for Justice (HAJ) has provided testimony in opposition to this bill. While I agree with HAJ that this bill will not solve the roads in limbo problems, their argument that the bill would "violate government's responsibility to provide for the safety and welfare of its citizens," fails to acknowledge that this responsibility has been ignored for decades where roads in limbo are concerned.

Dawn Chang, Chairperson of DLNR, has testified that the roads in limbo are not "in dispute" as stated in the bill. The state considers the counties to be responsible for the roads in limbo, and the counties are not maintaining them due to lack of resources, their substandard conditions, and fear of liability. Meanwhile, the citizens are caught in the middle.

Let's be honest with ourselves. To require the grossly substandard roads in limbo to be repaired and brought up to current road standards is unrealistic and cost prohibitive. Unfortunately fear of liability is being used by government to indefinitely delay, defer, and refuse to act.

I suggest that the bill be amended to require the counties to (1) identify, classify, and prioritize roads in limbo according to their condition and maintenance requirements, (2) act upon the simplest road repairs, supervised by county employees, i.e., perform pot hole repairs that would extend the life of the roads and the vehicles using them, (3) produce work plans with timelines that are reviewed and approved by county engineer(s), (4) ensure that road repairs are supervised by county employees, (5) post warning signs stating: "This road is infrequently repaired and maintained. Proceed at your own risk," and (6) submit annual progress reports to the Legislature until (1) has been completed. The counties should be granted immunity from liability for personal injuries and property damage while satisfying these requirements.

Roads in limbo are critical public roads. Not only are they essential accesses to our homes, they are needed for emergency evacuation purposes. Roads in limbo have been neglected for too many years by too many county administrations. If this bill can encourage the counties to accept responsibility for repair and maintenance of more roads in limbo by providing liability protection, that would be a significant public and community benefit. Please continue to work on this bill and amend it to address the clarifications that are needed.

Mahalo for your consideration.

HB-860-HD-1

Submitted on: 2/19/2025 12:47:26 PM

Testimony for JHA on 2/20/2025 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Ruth Love	Individual	Oppose	Written Testimony Only

Comments:

I oppose this bill. I propose that since neither the state nor the county is assuming the responsibility as they should from the roads needing repair that any liability or lawsuit findings or awards by the court should be split between the arguing entities trying to avoid responsibility.

Thank you

Mrs Ruth Love

Law Office of Georgette A. Yaindl, LLLC
Georgette Anne Yaindl 8940
P.O. Box 307
Kailua-Kona Hawai`i 96745-0307
(808) 224-0219 v/txt (877) 300-8869 fax
gyaindl@gyattorney.com

February 19, 2025

Rep. David A. Tarnas, Chair
Rep. Mahina Poepoe, Vice Chair
Committee on Judiciary & Hawaiian Affairs
House of Representatives
33rd Legislature, State of Hawai`i

via: <http://www.capitol.hawaii.gov>

Dear Committee leadership and members,

Re: OPPOSITION TO HB860 HD1, RELATING TO LIABILITY

Hearing Date: Thursday, February 20, 2025
Time: 2:00 p.m.
Location: Conference Room 325
State Capitol
415 South Beretania Street

I write to express opposition to this legislation. This bill proposes to address the issue of “roads in limbo” based on the legislature’s finding that “government agencies are unwilling to maintain these roads because of potential liability issues associated with repair and maintenance,” and that 408.9 miles of these roads are located here on Hawaii island. And the legislature’s proposed response to “the urgent need for clear action to address disputed roads,” is to “ensur[e] the State and counties are not held liable for repairing a road or maintaining a road that may not be in their jurisdiction.” What? No. Yes. “[T]he purpose of this Act is to provide immunity to the State and counties for injuries sustained due to the repair or maintenance of streets undertaken by the State or a county, in cases in which the ownership or jurisdiction of such streets is in dispute between the State and a county.”

Testimony in support of this bill was received by the House Committee on Transportation on February 4, 2025 the State DOT from DLNR and City & County. DLNR States that it “understands the bill *may encourage* the counties to accept responsibility for repair and maintenance of roads more readily[.]” (emphasis added) The C&C states the bill “*will indirectly encourage* the City and State to take steps to repair and maintain roads in limbo that require repair and maintenance without a determination of jurisdiction.” (emphasis added). Until such time that this proposed legislation is preceded with a statement of legislative findings that

bestowing upon State and county governments immunity for liability associated with death, injury, and property loss as a result of government's failure to repair and maintain our roadways actually shall result in a settlement of jurisdiction and actual repair and maintenance, it is right and proper that this Honorable committee decline to advance this bill.

In addition, this proposed legislation cannot stand in the bright light of Article IX, section 10 of the State of Hawai'i Constitution, as amended. ("The law of the splintered paddle, mamalahoe kanawai, decreed by Kamehameha I – Let every elderly person, woman and child lie by the roadside in safety – shall be a unique and living symbol of the State's concern for public safety."). Unless this proposed immunity carrot for the State and counties will result in actual repair and maintenance of roads in limbo, it cannot be said that this action is in any way consonant with the public interest or public safety in Hawai'i.

Thank you, Honorable committee leadership and members, for your attention to this issue and consideration of my letter. Mahalo.

Sincerely,

/s/ Georgette A. Yaindl
GEORGETTE ANNE YAINDL