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

April 1, 2025  
10:00 a.m.  
State Capitol, Room 211 & Videoconference

**H.B. 860, H.D. 1, S.D. 1**  
**Relating to Liability**

Senate Committee on Judiciary  
Senate Committee on Ways and Means

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The Hawaii Department of Transportation (HDOT) **supports** H.B. 860, H.D. 1, S.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  
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LAND  
STATE PARKS

Testimony of  
DAWN N. S. CHANG  
Chairperson

Before the Senate Committees on  
WAYS AND MEANS  
&  
JUDICIARY

Tuesday, April 1, 2025  
10:00 AM

Senate Conference Room 211 & Via Videoconference

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

House Bill 860, House Draft 1, Senate 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.



**Testimony of the Hawai'i State Association of Counties**

**H.B. No. 860 HD1 SD1 - Comments**

**Relating to Liability**

Committee on Judiciary

Committee on Ways and Means

**LATE**

Tuesday, April 1, 2025, 10:00 a.m.

The Hawai'i State Association of Counties (HSAC) provides **comments** on **HB860 HD1 SD1**, 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.

HSAC supports the original intent of this measure to clarify liability, however there is some uncertainty in the language on how the proportional liability framework will be interpreted and whether it will sufficiently protect counties from unintended exposure when performing good-faith maintenance on roads in limbo.

To further address the underlying concerns and facilitate long-term solutions, HSAC proposes that a working group be conducted during the interim. This working group would support the relevant agencies in evaluating roads in limbo across the state and help create a prioritized list for repair. Such a proactive effort would allow counties and the State to approach this complex issue strategically and with coordinated planning.

While the bill continues to promote the goal of improving public safety on roads in limbo, HSAC is concerned that without clear, strong protections, counties may still hesitate to undertake necessary repairs. We urge the Committees to consider additional clarification or guidance to ensure that counties are not disincentivized from maintaining roads due to lingering liability concerns.

Mahalo for the opportunity to provide testimony. We remain committed to working collaboratively to resolve these issues and enhance road safety across our counties.

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

Date: Tuesday April 1, 2025

Time: 10:00 a.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.

Originally, the purpose of HB 860 was to grant immunity to state or county agencies if they repair or maintain a “road in limbo.” HAJ opposed the original version of the measure because overbroad immunity will not accomplish its goal of adequate maintenance for roads in limbo and the immunity provided is far too broad for the stated purpose.

The previous committee amended the measure to: 1) specify that the State or county may undertake limited resurfacing of an existing road surface of any street of which the ownership or jurisdiction is in dispute between the State and county; 2) limit any additional liability for the State and counties for repairs and maintenance to the limited resurfacing repairs; 3) provide that for any incident that does occur, liability shall be proportional based on responsibility; and 4) deem 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.

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.

The current language providing limited liability for resurfacing these roads in limbo without conferring additional liability is more narrowly tailored than immunity as originally proposed. While we appreciate the previous amendment, the language remains unclear and may not resolve the overall issue of ownership for these roads in limbo.

**HAJ recommends this measure be deferred and this issue be examined further.**

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. Act 208 (2017) and Act 123 (2022) more appropriately address the roads in limbo. Perhaps, an expansion of Act 208 to all counties. Perhaps the State and counties could be additional time to resolve the issue themselves or by binding arbitration if they are unable to reach agreement.

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.

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March 28, 2025

TO: The Honorable Donovan M. Dela Cruz, Chair  
Senate Committee on Ways and Means  
The Honorable Karl Rhoads, Chair  
Senate Committee on Judiciary

FROM: Alice L. Lee  
Council Chair 

SUBJECT: **HEARING OF APRIL 1, 2025; TESTIMONY IN SUPPORT OF HB860, HD1, SD1, RELATING TO LIABILITY**

I **support** this measure to clarify the ability of the State or counties to perform limited resurfacing repairs on roads with disputed ownership without automatically conferring ownership or jurisdiction and establishes proportional liability in the event of incidents involving personal injury or property damage.

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. Many “roads in limbo” remain in disrepair because of concerns about jurisdiction and liability, which poses public-safety risks.
2. Allowing the State or counties to perform limited resurfacing repairs without assuming ownership helps ensure that these roads receive necessary maintenance while protecting taxpayer funds.
3. Establishing proportional liability provides a fair and balanced approach to addressing potential claims while encouraging necessary road improvements.

Thank you for your consideration.