

JOSH GREEN, M.D.
GOVERNOR
KE KIA'ĀINA



EDWIN H. SNIFFEN
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Nā Hope Luna Ho'okele
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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

February 4, 2025
10:00 a.m.
State Capitol, Room 430 & Videoconference

H.B. 860
RELATING TO LIABILITY

House Committee on Transportation

The Hawaii Department of Transportation (HDOT) **supports** H.B. 860 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 House
Committee on
TRANSPORTATION

Tuesday, February 4, 2025
10:00 AM

House Conference Room 430 & Via Videoconference

In consideration of
HOUSE BILL 860
RELATING TO LIABILITY

House Bill 860 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.

HB-860

Submitted on: 2/3/2025 7:57:27 AM

Testimony for TRN on 2/4/2025 10:00:00 AM

Submitted By	Organization	Testifier Position	Testify
Russell Tsuji	Department of Land and Natural Resources	Comments	Remotely Via Zoom

Comments:

DLNR Testimony was already submitted for HB860. Requesting zoom link for additional staff to be backup testifier at the hearing.

OFFICE OF THE MAYOR
KE KE'ENA O KA MEIA
CITY AND COUNTY OF HONOLULU

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RICK BLANGIARDI
MAYOR
MEIA



MICHAEL D. FORMBY
MANAGING DIRECTOR
PO'O HO'OKELE

KRISHNA F. JAYARAM
DEPUTY MANAGING DIRECTOR
HOPE PO'O HO'OKELE

February 3, 2025

The Honorable Darius K. Kila, Chair
The Honorable Tina Nakada Grandinetti, Vice Chair
and Members of the House Committee on Transportation
House of Representatives
415 South Beretania Street
Honolulu, Hawaii 96813

Dear Chair Kila, Vice Chair Grandinetti, and Members of the Committee:

Subject: HB860 – Relating to Liability

The City and County of Honolulu **supports** HB 860 which 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.

Thank you for the opportunity to testify on this measure,

Sincerely,

A handwritten signature in black ink, appearing to read "Michael D. Formby".

Michael D. Formby
Managing Director Designate

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

Date: Tuesday February 4, 2025

Time: 10:00 a.m.

Aloha Chair Kila, Vice Chair Grandinetti, Members of the Committee on Transportation:

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.

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January 26, 2025

Rep. Darius K. Kila, Chair
Rep. Tina Nakada Grandinetti, Vice Chair
Committee on Transportation
House of Representatives
33rd Legislature, State of Hawai`i

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

Dear Committee leadership and members,

Re: **OPPOSITION TO HB860, RELATING TO LIABILITY**

Hearing Date: Tuesday, February 4, 2025
Time: 10:00 a.m.
Location: Conference Room 430
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.”

Bestowing immunity on State and county government for liability associated with death, injury, and property loss as a result of government’s failure to repair and maintain our roadways is an incentive for the State and counties to never settle “roads in limbo” disputes and to add more roadways to the limboed ranks.

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