



Deputy Directors
MICHAEL D. FORMBY
FRANCIS PAUL KEENO
BRIAN H. SEKIGUCHI
JIRO A. SUMADA

IN REPLY REFER TO:

STATE OF HAWAII
DEPARTMENT OF TRANSPORTATION
869 PUNCHBOWL STREET
HONOLULU, HAWAII 96813-5097

February 14, 2009

TESTIMONY OF THE DEPARTMENT OF TRANSPORTATION

HOUSE BILL NO. 932

COMMITTEE ON TRANSPORTATION

The Department supports this bill but with concerns.

House Bill 932 amends 264-1 and includes (a) (2) old government roads as county highways and (e) all county public highways once established that are vacated, closed, abandoned or discontinued, whether by resolution of the legislative body of the county wherein the county highway lies or not, shall: (1) remain the property of the county wherein they lie unless disposed of pursuant to Section 264-3; and (2) for purposes of this chapter be referred to as "old government roads".

Similar to "roads-in-limbo" bills and references to the Legislative Reference Bureau's 1989 report, counties are responsible for maintenance of all public highways which are not under the jurisdiction of the DOT. The problems exist when the counties refuse to recognize this report due to costs, council formal acceptance and liabilities.

The Department has had discussions with the counties to determine the degree of disagreement in the status of roads-in-limbo. To date, only Maui County does not acknowledge or accept the findings by the Legislative Reference Bureau's 1989 report titled, "*Roads in Limbo: an Analysis of the State-County Jurisdictional Dispute.*" According to the 1989 LRB report, prior to 1947, the counties had jurisdiction and were responsible for the maintenance of all public highways in the Territory of Hawaii.

In many cases, it is understood that counties have jurisdiction over certain public highways. The counties do not or are unable to maintain the roads because they do not have the financial resources to do so. However, under Sections 264-1 and 265-1, Hawaii Revised Statutes, counties are responsible for the maintenance of all public highways, which are not under the jurisdiction of the DOT. Even with these state laws in place, there are county roads that are not being maintained due to the lack of funding.

As an example, if a private road or parcel of property was used consistently by the public, an unplanned public road by easement could have been created. Other problems arise when there are no formal recordings of such roads, making surveys and documentation hard to verify.

Many of the roads in limbo are not just public, but private roads and this bill only provides a process to clarify jurisdiction of public roads presumably as defined in HRS 264-1 as amended.

DEPARTMENT OF FACILITY MAINTENANCE
CITY AND COUNTY OF HONOLULU

1000 Ulu'ohia Street, Suite 215, Kapolei, Hawaii 96707
Phone: (808) 768-3343 • Fax: (808) 768-3381
Website: www.honolulu.gov

MUFI HANNEMANN
MAYOR



JEFFREY S. CUDIAMAT, P. E.
ACTING DIRECTOR AND CHIEF ENGINEER

GEORGE "KEOKI" MIYAMOTO
DEPUTY DIRECTOR

IN REPLY REFER TO:

February 13, 2009

The Honorable Joseph M. Souki, Chair
and Members of the Committee on Transportation
State House of Representatives
State Capitol
Honolulu, Hawaii 96813

Dear Chair Souki and Members:

Subject: House Bill No. 932
Relating to Highways

The City and County of Honolulu respectfully opposes House Bill No. 932
Relating to Highways.

Believing that it was in the best interest of its citizens to end the decades of dispute over the jurisdiction of public roads, in 1993 the City and County of Honolulu accepted all existing disputed roads within its jurisdiction. The City did so with the understanding that it would take over roads that were already built, even though many of these roads were not built to City standard.

In accepting these disputed roads, the City relied on an Attorney General opinion that paper roads (roads that appear on maps but were never built) or unimproved ways not open to the general public do not fall under the definition of "public highways" in Section 264-1, Hawaii Revised Statutes. House Bill 932 seeks to expand the definition of county highways in §264-1, Hawaii Revised Statutes to include "old government roads." Many old government roads are paper roads which have never been built or unimproved ways not open for public use. This definition places the maintenance obligations on the counties for roads which were never contemplated when the City accepted jurisdiction of disputed roads in 1993. This bill, if enacted, will result in requiring the City to take on additional responsibility it is not now required to perform. Therefore, it may result in an unfunded mandate in violation of Article VIII, Section 5 of the Hawaii State Constitution.

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and Members of the Committee on Transportation
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The proposed House Bill also mandates that all county public highways once established that are vacated, closed, abandoned, or discontinued to remain the property of the county unless disposed pursuant to section 264-3. The titles to these roads that are no longer in use are sometimes undetermined. Some of these roads may have been established by the Federal Government using federal funds. Others may be abandoned private roads that became state roads by force of law. If the proposed bill is enacted, the City will be straddled with maintenance responsibility and exposure to liability of these unused roads with very little ability to dispose thereof.

For the reasons stated above, the City strongly opposes House Bill 932, and respectfully requests that the Bill be filed.

Thank you for the opportunity to testify.

Sincerely,

A handwritten signature in black ink that reads "Jeffrey Cudiamat". The signature is written in a cursive, flowing style.

Jeffrey S. Cudiamat, P. E.
Acting Director and Chief Engineer

JSC/pnm

William P. Kenoi
Mayor



Lincoln S.T. Ashida
Corporation Counsel

Katherine A. Garson
Assistant Corporation
Counsel

COUNTY OF HAWAII
OFFICE OF THE CORPORATION COUNSEL

101 Aupuni Street, Suite 325 • Hilo, Hawaii 96720-4262 • (808) 961-8251 • Fax (808) 961-8622

February 13, 2009

The Honorable Joseph Souki, Chair,
and Members
Committee on Transportation
State Capitol
415 South Beretania Street
Honolulu, Hawai'i 96813

Dear Chair Souki and Members of the Committee:

Re: Testimony in Opposition to House Bill 932
Hearing: Saturday, February 14, 2009, at 9:00 a.m.,
Conference Room 309

The County of Hawai'i ("County") opposes House Bill 932 for several reasons. First, it fails to adequately define "old government roads." Second, it will overburden the County's limited resources in unnecessary disputes and litigation. And third, the bill is confusing when attempting to add an additional subsection (e) which appears to be superfluous.

A. No Clear Definition of "Old Government Roads."

In this bill and in the current statutory provision, there is no definition for "old government road." It's a term used by surveyors/map makers to describe a road that they **believe** to have been owned by a government entity. If someone wants to make a definition of "old government road," it should be referenced to only those government roads established by the Highways Act of 1892. Prior to the Highways Act, no one knew which roads were "government roads." The Highways Act required the Minister of the Interior to map all government roads (perhaps this is the genesis of the phrase "old government road"). All government roads created after the Act should have been appropriately "opened, laid out or built by the government."

B. Creating Unnecessary Disputes and Needless Litigation.

1. Lack of Evidence.

The bill will increase disputes and needless litigation from landowners and others, whether from the public or other governmental entities, who demand that the County provide maintenance or improvements to any "old government road" where there had been no evidence of prior ownership by the County or of a road that was opened, laid out or built by a governmental entity.

There are at least two situations where disputes would certainly arise. In one situation, a map, whether properly surveyed or not, may identify a roadway as being a government road but there is no evidence that the road was opened, laid out or built by a government entity prior to the Highways Act of 1892. In another situation, a deed or lease may identify a roadway parcel as being a government road, despite the absence of evidence that the road was opened, laid out or built by a government entity prior to the Highways Act of 1892.

2. Roads in Limbo.

In March of 2004, the County created a Multi-Agency Task Force ("Task Force") to study and plan to implement a project for maintenance of roads classified as Roads in Limbo, which would include "old government roads." The County has a total of at least 152.5 miles of Roads in Limbo and an additional 250 miles of "paper roads." There are also roads in private subdivisions which have been developed and well maintained and are a hybrid of government and private roads.

The County's Task Force reviewed a Report to the Twentieth State Legislature – Relating to Duplication of Government Services, Act 223, SLH 1998, dated January 1999, which included a Preliminary Report on Highway and Roadway Maintenance and Parks Program. This joint report by the State of Hawai'i ("State") and all the counties showed a difference of opinion among the counties as to highway maintenance responsibilities. The State recommended one highway maintenance operation for all four counties administered; and the County recommended that the State assume responsibility for its road maintenance and construction on the Big Island including homestead roads, shoreline access and mountain trails.

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The County Task Force in March of 2004 also reviewed a letter dated January 28, 2004, to Senator Cal Kawamoto, Chair of the Committee on Transportation, Military Affairs and Government Operations requesting a hearing on a bill (SB 533) providing \$2,000,000 annually to the County for maintenance of Roads in Limbo and proposing an ongoing partnership program with the State to address this issue through combined funding from the State and counties. However, the County only recently received \$1,000,000 from the State Department of Transportation to implement the Roads in Limbo project; and currently it appears to be only a one shot deal.

The current bill will thus add to the County's inventory of roads without providing any financial support to maintain or improve "old government roads."

C. Subsection (e) is Confusing and Unnecessary.

The bill adds a subsection (e) concerning the disposal of abandoned county roads including "old government road." The County opposes this subsection (e) for two reasons.

First, it seems that if a road is vacated, closed, abandoned or discontinued, whether or not it is officially authorized by council resolution, the road will now be called an "old government road." If this is the meaning of the bill, obviously this will cause a lot of confusion as there are many "old government roads" that are still being actively used.

And second, subsection (e) is unnecessary because Hawai'i Revised Section §264-3 already has the procedure for disposing of a county roadway "or any portion thereof is any time vacated, closed, abandoned, or discontinued." Subsection (e) is superfluous.

D. Conclusion.

Because the bill fails to define "old government road," creates a likelihood of unwarranted disputes and litigation, and appears superfluous, the County requests that this bill be filed. Given the current severe economic downturn, the bill is similar to an unfunded mandate that would further deplete the County's coffer.

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The County respectfully thanks the Committee for the opportunity to present testimony on this matter.

Sincerely,



Joseph K. Kamelamela
Deputy Corporation Counsel
Litigation Supervisor
County of Hawai'i

JKK:fc

c via email only: Kevin Dayton, Executive Assistant
Bobby Jean Leithead-Todd, Acting Deputy Planning Director
Warren Lee, Director, Department of Public Works