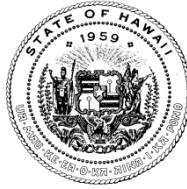


DAVID Y. IGE
GOVERNOR



TESTIMONY BY:

JADE T. BUTAY
DIRECTOR

Deputy Directors
ROSS M. HIGASHI
EDUARDO P. MANGLALLAN
PATRICK H. MCCAIN
EDWIN H. SNIFFEN

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

February 15, 2022
3:15 P.M.
State Capitol, Teleconference

LATE

**S.B. 2008
RELATING TO HIGHWAYS**

Senate Committee(s) on Transportation &
Public Safety, Intergovernmental, and Military Affairs

The Department of Transportation (DOT) **supports** this bill that will repeal the current 3-year exemption of the state and counties from any obligation to maintain or improve any privately-owned road that is condemned. Additionally, this measure will provide immunity from joint and several liability of the state and counties for any condemned roads.

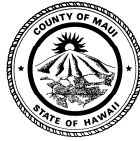
Thank you for the opportunity to provide testimony.

Council Chair
Alice L. Lee

Vice-Chair
Keani N.W. Rawlins-Fernandez

Presiding Officer Pro Tempore
Tasha Kama

Councilmembers
Gabe Johnson
Kelly Takaya King
Michael J. Molina
Tamara Paltin
Shane M. Sinenci
Yuki Lei K. Sugimura



Director of Council Services
Traci N. T. Fujita, Esq.

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

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

February 14, 2022

TO: Honorable Chris Lee, Chair
Senate Committee on Transportation

FROM: Alice L. Lee
Council Chair

DATE: February 14, 2022

SUBJECT: **SUPPORT FOR SB 2008, RELATING TO HIGHWAYS**

Thank you for the opportunity to testify in **SUPPORT** of this important measure. This measure's purpose is to relieve the State and counties of liability for condemned roads and the requirement to maintain and improve condemned roads.

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. This measure appropriately reduces impediments to State and county condemnation of private roads.
2. This measure abolishes joint and several liability of the State and counties for acts or omissions that occurred prior to, or after, the condemnation of a highway, road, alley, street, way, lane, bikeway, bridge, or trail. Removing the threat of liability will make it more likely that roads will be repaired.

For the foregoing reasons, I **SUPPORT** this measure.

ocs:proj:legis:22legis:testimony:sb2008_paf22-018(39)a_wal

LATE

**TESTIMONY OF EVAN OUE ON BEHALF OF THE HAWAII ASSOCIATION FOR
JUSTICE (HAJ) IN OPPOSITION TO SB 2008**

Date: Tuesday February 15, 2022

Time: 3:15 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 SB 2008, Relating to Highways.

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.

In 2016, the legislature passed Act 194 which gave the State and County 3 years to maintain the road after the condemnation. The purpose of condemnation is to allow the State or County to fix roads that have fallen into disrepair and are a danger to the public. Upon enactment in 2016, it was logical to allow 3 years to enable repair of the roads, but after that period, the State or County would then be liable, just like any other road. This same logic still applies in 2022.

HAJ is concerned with SB 2008 as it repeals the 3-year limit on the exemption of the State and counties from the requirement to maintain or improve any condemned roads. Further, the measure provides immunity for the State and counties from joint and several liability. After the 3-year exemption period, which allows sufficient time for the State or County to repair or maintain the condemned road, the condemned road should be treated the

same as any other road in the State. Removal of the time limitation and making both the State and County immune from joint and several liability would advance a public policy that disregards the welfare of the community by removing any impetus to make acquired roads safe. This could affect a large portion of the residents and tourist population. For example, even if the State or County were to take no action to make a condemned roadway safe, both governmental bodies would now have limitless immunity and joint and several liability would not apply.

Moreover, Section 1 of SB 2008 indicates that the purpose is “to reduce impediments to State and county condemnation of private lanes so that the predicament of private lanes does not endure.” However, 1) removing the three-year limit on the exemption of the State and counties from the requirement to maintain or improve any condemned road, and 2) abolishing joint and several liability of the state and counties for any condemned roads, does not accomplish this goal.

Under this bill the state or county can condemn a privately owned road and do nothing to make sure it’s improved such that it’s safe for people to use. SB 2008 would allow the State or County eliminate all responsibility for maintenance. While the bill would not impact rights and duties that have already matured to preclude current cases, providing immunity from future liability eliminates any form of accountability leaving residents vulnerable without any form of recourse.

HAI understands that immediate repairs may be difficult, if government does not have sufficient funds to repair or maintain these roads. At a minimum, the current 3 year grace period should be maintained for planning, budgeting and construction. Temporary immunity

for failure to provide immediate repairs should sunset with government having the ability to ask for extensions of the sunset date if justified, on a case by case basis. This procedure at least assures that there is an incentive for government to repair the most dangerous roads as quickly and as feasibly as possible while providing legislative oversight to re-evaluate the situation in light of the progress made. If adequate progress is being made, then the sunset date can be extended, if not, then a shorter extension, repeal, or some other solution can be explored.

Complete immunity to do nothing ultimately encourages government to do nothing. Government immunity from all acts that happened prior to, or after, the condemnation of the road is overly broad. For these reasons, HAJ opposes the immunity provisions of this measure and asks that this bill be deferred to maintain the 3 year sunset of subsection (d). Thank you for allowing us to testify regarding this measure. Please feel free to contact us should you have any questions or desire additional information.