



**COMMENTS OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
TWENTY-FIFTH LEGISLATURE, 2010**

ON THE FOLLOWING MEASURE:

S.B. NO. 2954, S.D. 1, RELATING TO TRANSFER OF STATE HIGHWAYS.

BEFORE THE:

SENATE COMMITTEE ON WAYS AND MEANS

DATE: Thursday, February 18, 2010 **TIME:** 9:45 a.m.

LOCATION: State Capitol, Room 211

TESTIFIER(S): Mark J. Bennett, Attorney General, or
Wayne A. Matsuura, Deputy Attorney General

Chair Kim and Members of the Committee:

The Department of Attorney General provides the following comments regarding a legal problem with this bill.

The purpose of the bill is to establish a pilot project to provide for the transfer of all state highway maintenance functions on Maui, Molokai, and Lanai to the county of Maui, and to transfer applicable funding for maintenance of state highways on Maui from the State to Maui County.

We believe the bill as presently written violates article VIII, section 1 of the State Constitution because it confers powers to one specific county under special laws. This constitutional section provides:

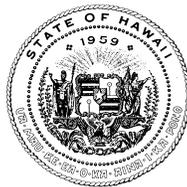
The legislature shall create counties and may create other political subdivisions within the State, and provide for the government thereof. Each political subdivision shall have and exercise such powers as shall be conferred under general laws. [Emphasis added].

The term "general laws" denotes laws that apply uniformly throughout all political subdivisions of the State. Bulgo v. County of Maui, 50 Haw. 51, 58, 430 P.2d 321, 326 (1967).

Although a general law may apply to less than all of the political subdivisions if it applies uniformly to a class of political subdivisions, we do not believe the bill as presently

written meets this latter requirement because the bill confers powers to only one specific county.

We note that some bills are written so that they apply only to counties that have certain characteristics - for example, to counties whose population is larger or smaller than a stated number.



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

February 18, 2010

TESTIMONY OF THE DEPARTMENT OF TRANSPORTATION

SENATE BILL NO. 2954, SD 1

COMMITTEE ON WAYS AND MEANS

The Department of Transportation (DOT) supports this bill in concept, but requests the following amendments.

- Section 1 should be deleted as it states that counties are more economically efficient at providing highway maintenance or Section 1 should be amended to reflect the fact that state highway facilities are actually in far better condition and maintained at a higher level than county facilities. Counties have historically not provided maintenance resources for their roadways commensurate with the levels that the DOT has, especially in recent years.
- The definition of "highway maintenance functions" in Section 3 should be amended to read: *"Highway maintenance functions" means those functions specified in a memorandum of agreement between the department of transportation and the Maui county department of public works concerning maintenance of state highways located in Maui county.*
- The definition of "memorandum of agreement" in Section 3 should be amended to read: *"Memorandum of agreement" means a written agreement, acceptable to the Maui Council, under which the Maui county department of public works agrees to assume responsibility and liability for specified highway maintenance functions for state highways in Maui county and the department of transportation agrees to transfer or delegate specified state facilities, resources, personnel, and funding to the department of public works for the duration of the pilot project under this Act. The county should also adopt the maintenance practices of the DOT by moving towards preventative maintenance programs consistent with Federal Highway Administration (FHWA) guidelines. Preventative maintenance provides for more frequent, low-cost treatments to pavements prior to signs of distress and failure to extend pavement life. Once a State preventative maintenance program is fully implemented under the proposed DOT Highways Modernization Plan, preventive maintenance is estimated to ultimately save the DOT up to \$30 million annually in statewide road maintenance costs while significantly improving pavement conditions.*

- Section 9 should be amended by deleting paragraph (b) because DOT does not use and will not "transfer" federal funds to Maui County for routine highway maintenance. Federal funds are programmed for statewide highway CIP through the federally mandated STIP process and federal-aid for Maui highway CIP must compete with other high priority CIP projects across the state.
- Section 11 should be amended to provide that county rules shall only supersede state rules when county rules are more stringent than state rules and standards relating to highway maintenance. Because compliance with federal standards for maintenance of federal-aid facilities is a prerequisite for DOT receipt of federal aid, inadequate maintenance of federal-aid facilities will result in FHWA withholding federal funds.

The proposed memorandum of agreement between DOT and the County Department of Public Works will need to clearly define County responsibilities, potential County liability, and how much funding DOT will delegate for County expenditure to maintain DOT highways. In order to ensure compliance with federal requirements for adequate maintenance, the MOA will need to contain provisions that require the County to give priority to maintenance of federal-aid highways and restrict the County from using State resources to subsidize "catch-up" with deferred maintenance of County facilities. In general, the DOT will also need to retain operational control and regulatory authority over highway access and permitted work within the State highway right-of-way.

It is our understanding that the proposed pilot project would include routine maintenance including preventive maintenance but would not include major capital improvements such as highway reconstruction or bridge replacement. It also is our understanding that DOT would fund the proposed pilot project by delegating a prorata share of State highway operating and maintenance appropriations and that the pilot project will not utilize federal funds since DOT does not use federal funds for routine highway maintenance. To ensure that other counties are treated fairly and that DOT can meet its statewide responsibilities, we do not believe that there can be direct appropriations of the State highway fund or highway revenue bonds for expenditure by Maui County as part of this pilot program.

Council Chair
Danny A. Mateo

Vice-Chair
Michael J. Molina

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Bill Kauakea Medeiros
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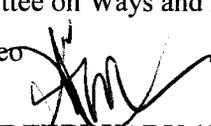


Director of Council Services
Ken Fukuoka

COUNTY COUNCIL
COUNTY OF MAUI
200 S. HIGH STREET
WAILUKU, MAUI, HAWAII 96793
www.mauicounty.gov/council

February 17, 2010

TO: The Honorable Donna Mercado Kim, Chair
Senate Committee on Ways and Means

FROM: Danny A. Mateo
Council Chair 

SUBJECT: **HEARING OF FEBRUARY 18, 2010; TESTIMONY ON SENATE BILL 2954, SD1,
RELATING TO TRANSFER OF STATE HIGHWAYS**

Thank you for the opportunity to provide comments on this important measure. The purpose of this measure is to establish a pilot project to provide for the transfer of all State highway maintenance functions on Maui, Molokai, and Lanai to the County of Maui, and to transfer applicable funding for State highways on Maui from the State to the County of Maui.

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 offer the following comments:

1. Addressing duplicative State and county functions seems a reasonable approach, particularly during our current fiscal crisis. However, a jurisdictional transfer of this complexity requires a level of foresight not readily revealed by the current wording of this bill and should not be seen as an easy fix for the State's budget woes.
2. I urge the Committee to maintain a prudent respect for the multiple issues being impacted by a jurisdictional transfer of this scope (on both the County and the State) including, the effect on union contracts, sources of revenue, liability, Federal grants, required personnel, equipment purchases, repair, maintenance, and the like.
3. I am concerned with the lack of clarity for the funding mechanisms that will be available to the County, on a long term basis, to allow the County to properly maintain the minimum standard of efficiency and management required of this potential jurisdictional and fiscal transfer of responsibility. Additionally, there are no assurances of continued funding at the Federal or State level.

Thank you for the opportunity to provide testimony on this measure.



COUNTY OF MAUI
DEPARTMENT OF PERSONNEL SERVICES

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February 18, 2010

The Honorable Donna Mercado Kim, Chair
and Members of the Committee on Ways and Means
The Senate
Hawaii State Capitol
415 South Beretania Street
Honolulu, HI 96813

Dear Chair Kim and Committee Members:

RE: S.B. 2954 S.D. 1, RELATING TO TRANSFER OF STATE HIGHWAYS

I am Lynn G. Krieg, Director of Personnel Services for the County of Maui, writing to share some comments, questions and observations on this bill.

Aside from the questions regarding the impact on continued eligibility for federal funding, we find the language quite confusing with regard to its impact on the personnel management aspects of such a proposal.

1. Section 7 of this bill states, "All officers and employees whose functions are transferred by this Act shall be transferred with their functions and shall continue to perform their regular duties upon their transfer, subject to the state personnel laws and this Act, until this Act is repealed, at which time the officers and employees shall be transferred back to the state department of transportation" This sentence does not clearly define who will be responsible for these officers and employees or who they will be responsible to. The Section goes on to explain what rights they have depending on whether or not they are tenured and provides for a tenured employee to remain in the employment of the State should the employee's position be abolished. Such employee shall be transferred to some other office or position as determined by the state director of transportation of the governor.
2. Section 7 raises the question as to who will have administrative and/or supervisory responsibility for these transferred positions? The state or the county department of public works?
3. Will these officers and employees be paid by the state or county payroll system? The state and county are on totally different pay systems and pay schedules and union consultation will be required.

4. Will the county department of public works be required to acquaint themselves with state personnel laws, rules and regulations, policies and procedures, in order to manage their operations? If so, this will eventually create friction within the workplace.
5. Will subsequent vacancies be filled by the state recruitment office and its policies and procedures or by the county?
6. If any of the transferred officers and employees should have reason to file a civil service appeal or internal complaint, which board will have jurisdiction, the state's Merit Appeals Board or the county Civil Service Commission.

I would support a thorough feasibility study prior to passage of such a measure

Thank you for the opportunity to provide comment.

Sincerely,



LYNN G. KRIEG
Director of Personnel Services

cc: Mayor Charmaine Tavares
Marian Feenstra, Executive Assistant