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STATE OF HAWAII
DEPARTMENT OF TRANSPORTATION
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HONOLULU, HAWAII 96813-5097

February 2, 2023
10:00 A.M.

State Capitol, Conference Room 312 via Videoconference

H.B. 1186
RELATING TO LIABILITY

House Committee on Transportation

The Department of Transportation (DOT) **supports** H.B. No. 1186 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, DOT 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.

TESTIMONY OF EVAN OUE ON BEHALF OF THE HAWAII ASSOCIATION FOR JUSTICE (HAJ) IN OPPOSITION TO HB 1186

Date: Thursday February 2, 2023

Time: 10:00 a.m.

Aloha Chair Todd, Vice Chair Kila, 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 1186, 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.

HAI 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. Should the bill need to move forward we respectfully ask you to **delete lines 16-17 on page 1, and lines 1-6 on page 2**, relating to state or county immunity.

If there remains a need to further clarify that maintenance or repair of a road in dispute does not mean ownership or jurisdiction, then HAJ supports retaining the following language on page 2, lines 7-10:

“For purposes of this section, repair or maintenance of a street shall not be deemed to confer ownership or jurisdiction over such street, if the ownership or jurisdiction over the street is in dispute between the State and the county.”

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.