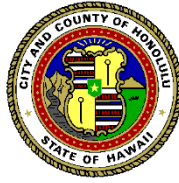


**OFFICE OF THE MAYOR**  
**CITY AND COUNTY OF HONOLULU**

530 SOUTH KING STREET, ROOM 300 \* HONOLULU, HAWAII 96813  
PHONE: (808) 768-4141 \* FAX: (808) 768-4242 \* INTERNET: [www.honolulu.gov](http://www.honolulu.gov)



KIRK CALDWELL  
MAYOR

ROY K. AMEMIYA, JR.  
MANAGING DIRECTOR DESIGNATE

GEORGETTE T. DEEMER  
DEPUTY MANAGING DIRECTOR

April 4, 2016

The Honorable Jill N. Tokuda, Chair  
and Members of the Committee on  
Ways and Means

The Honorable Gilbert S.C. Keith-Agaran, Chair  
and Members of the Committee on  
Judiciary and Labor  
415 South Beretania Street, Room 211  
Honolulu, Hawaii 96813

Dear Chair Tokuda, Chair Keith-Agaran, and Members of the Committees::

Subject: HB 2049, SD1, Relating to Transportation

The City and County of Honolulu (City) supports the intent of HB 2049, SD 1, Relating to Transportation (the "Bill"), with comments. This measure authorizes the State or a county to obtain ownership over a road by condemnation. This measure also exempts the State and counties from maintaining or improving condemned roads.

The City supports provisions that exempt a county from having to modify a road to meet current construction standards if the road was built according to standards in place at the time of construction and completion.

The City further supports using the condemnation process; however, the City notes that condemnation of any real property is not deemed to have taken place until a final order of condemnation is made by the court. As such, we recommend the following be used in place of the proposed amendment to HRS Section 264-1(c)(2):

"(2) ~~[Surrender]~~ Condemnation of public highways, roads, alleys, streets, ways, lanes, bikeways, bridges, or trails[shall be deemed to have taken place if no act of ownership by the owner of the road, alley, street, bikeway, way, lane, trail, or bridge has been exercised for five years and when, in the case of a county highway, in addition thereto, the legislative body of the county has, thereafter, by a resolution, adopted the same as a county highway or trail.], initiated by the state or county pursuant to chapter 101, shall be by final order of condemnation by a court."

The City continues to embrace a State and counties commission that is staffed by the State and tasked with:

The Honorable Jill N. Tokuda, Chair  
and Members of the Committee on  
Ways and Means

The Honorable Gilbert S.C. Keith-Agaran, Chair  
and Members of the Committee on  
Judiciary and Labor

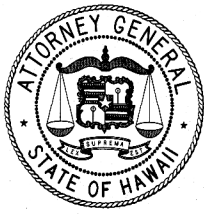
Re: HB2049, SD1, Relating to Transportation

April 4, 2016

Page 2

- (1) Conducting an inventory and analysis of all private roads;
- (2) Developing protocol to determine resolutions for roads where ownership continues to be in question; and
- (3) Facilitating the implementation of those protocols to settle ownership issues.

The City acknowledges the various challenges that this Bill and other similar bills attempt to address. It remains a difficult issue with far-ranging consequences. We look forward to working cooperatively with the State to reach a workable solution to this issue.



## **TESTIMONY OF THE DEPARTMENT OF THE ATTORNEY GENERAL TWENTY-EIGHTH LEGISLATURE, 2016**

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**ON THE FOLLOWING MEASURE:**

H.B. NO. 2049, H.D. 2, S.D. 1, RELATING TO TRANSPORTATION.

**BEFORE THE:**

SENATE COMMITTEES ON JUDICIARY AND LABOR AND ON WAYS AND MEANS

**DATE:** Monday, April 4, 2016

**TIME:** 9:15 a.m.

**LOCATION:** State Capitol, Room 211

**TESTIFIER(S):** WRITTEN COMMENTS ONLY. For more information, call William J. Wynchhoff, Deputy Attorney General at 587-2992.

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Chairs Keith-Agaran and Tokuda and Members of the Committees:

The Department of Attorney General supports this bill except for section 3, which was added in Senate Draft 1.

The bill addresses the problem of privately owned roads. Often it is unclear who owns a privately owned road. Frequently, even if the owner is identified, the owner is not repairing the road. The road is not owned by either the County or the State, so no government entity will repair the road. This bill facilitates the dedication or condemnation of a privately owned road to the State or a county.

In addition to other changes to the law, which this Department welcomes and supports, the bill includes a new section. Section 3 of the bill establishes a "commission on remnant private roads." The commission is directed to identify privately owned remnant roads and to effect administrative transfer of the roads from the private owners to the State or a county.

This section of the bill unquestionably effects a taking of private property. The section may be subject to challenge as being unconstitutional pursuant to the Takings Clause of the Fifth Amendment of the United States Constitution and the parallel provision in the Hawai'i Constitution. The Takings Clause provides "private property [shall not] be taken for public use, without just compensation." By long-standing precedent, the Amendment requires both that the taking be for a "public use" and that just compensation be paid.

The bill does not specify a public use and it is not clear that every private road taken will involve a public use.

In any event, any transfer of a private road will require payment of just compensation. The bill does not explicitly provide a mechanism for calculating and paying just compensation.

Perhaps just compensation will be a subject of the “administrative procedures” contemplated by the bill. Any claim can be settled by agreement of the parties. We believe, however, that any person aggrieved by a taking or the amount of compensation is ultimately entitled to process in court, not just an administrative agency. *First English Evangelical Lutheran Church of Glendale v. Cnty. of Los Angeles, Cal.*, 482 U.S. 304 (1987).

We also respectfully suggest that it may be unwise to empower and direct a commission to take action on behalf of the State without any way of estimating the fiscal consequences.

Finally, the bill appears to constitute an unfunded mandate to the counties. Article VIII, section 5, of the Hawai‘i State Constitution provides:

If any new program or increase in the level of service under an existing program shall be mandated to any of the political subdivisions by the legislature, it shall provide that the State share in the cost.

To the extent the bill requires counties to take – and pay just compensation for - private roads, that constitutes an unfunded mandate of indeterminate proportions.

We respectfully request that the Committee delete section 3 of the bill or, in the alternative, hold the bill.



**STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES**

POST OFFICE BOX 621  
HONOLULU, HAWAII 96809

**Testimony of  
SUZANNE D. CASE  
Chairperson**

**Before the Senate Committees on  
JUDICIARY AND LABOR  
and  
WAYS AND MEANS**

**Monday, April 4, 2016  
9:15 A.M.  
State Capitol, Conference Room 211**

**In consideration of  
HOUSE BILL 2049, HOUSE DRAFT 2, SENATE DRAFT 1  
RELATING TO TRANSPORTATION**

House Bill 2049, House Draft 2, Senate Draft 1 proposes to 1) authorize the State or county to obtain ownership over a road by condemnation pursuant to the State's power of eminent domain; 2) exempt the State and counties from maintaining or improving condemned roads; 3) clarify that if a privately owned highway, road, alley, street, way, lane, bikeway, bridge, or trail complied with construction codes at the time of construction, then upon transfer of that privately owned highway, road, alley, street, way, lane, bikeway, bridge, or trail to a county, the county which accepts the transfer shall not be required to do any construction, renovation, or repair to bring the privately owned highway, road, alley, street, way, lane, bikeway, bridge, or trail up to any construction code existing at the time of transfer; 4) create a commission on remnant private roads to identify all roads by street address and tax map key number located in the State and in each county; and 5) assign, in the discretion of the commission, ownership of identified remnant private roads to the State or county. **The Department of Land and Natural Resources (Department) opposes this measure.**

The Department takes umbrage specifically with the proposed commission on remnant private roads. This measure would grant the commission the authority to transfer ownership over a private remnant road parcel by assigning the subject parcel to the State and County. Pursuant to Chapter 264, Hawaii Revised Statutes (HRS), jurisdiction of highways, roads or other public thoroughfares are clearly under the jurisdiction of either the respective counties or the State through the Department of Transportation (DOT) only, and not the Department. The Department

**SUZANNE D. CASE**  
CHAIRPERSON  
BOARD OF LAND AND NATURAL RESOURCES  
COMMISSION ON WATER RESOURCE MANAGEMENT

**KEKOA KALUHIWA**  
FIRST DEPUTY

**JEFFREY T. PEARSON, P.E.**  
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

opposes the assignment, under its jurisdiction, of ownership or management of a remnant road parcel.

Furthermore, allowing the commission to assume governmental ownership of a private remnant road parcel usurps the authority of the Board of Land and Natural to acquire lands on behalf of the State pursuant to Section 171-30, HRS. Prior to approving any land acquisition, the Board has authorized the Department to conduct an extensive due diligence review of the land to be acquired to determine potential liability to the State. This process includes a review of title status including the impact of any encumbrances affecting the property, environmental hazards assessment via a Phase I and Phase II (if necessary) environmental site assessments, boundary survey and descriptions reviewed by the State Surveyor, and an independent appraisal to determine the fair market value. In addition, all acquisitions of real property interests are subject to review and approval by the Attorney General. Finally, the Department notes that allowing the commission to assume ownership over a private remnant road parcel without providing for just compensation may be deemed an unconstitutional taking.

Thank you for your consideration of this testimony.



**Testimony by:**  
FORD N. FUCHIGAMI  
DIRECTOR

Deputy Directors  
JADE T. BUTAY  
ROSS M. HIGASHI  
EDWIN H. SNIFFEN  
DARRELL T. YOUNG

IN REPLY REFER TO:

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

April 4, 2016  
9:15 a.m.  
State Capitol, Room 211

**H.B. 2049, H.D. 2, S.D. 1**  
**RELATING TO TRANSPORTATION**

Senate Committee(s) on Judiciary and Labor  
& Way and Means

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The Department of Transportation **opposes** this bill and respectfully wishes to express concerns regarding the proposed process under which the Commission established by this bill, determines which agency a road is assigned to and the transfer is deemed to occur at the time of determination. Liability also transfers to the agency upon such determination. This version does not provide any immunity from liability from the time of assignment of a road under this section until the agency repairs, rehabilitates or reconstructs the road to a good condition. There should be time allowed for the agency to incorporate such a road, which may be in poor condition, into its maintenance or construction schedule.

Also, respectfully, there is no funding for expenses for the Commission on Remnant Roads established by this bill.

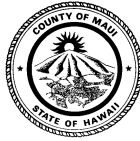
Thank you for the opportunity to provide comments.

Council Chair  
Mike White

Vice-Chair  
Don S. Guzman

Presiding Officer Pro Tempore  
Michael P. Victorino

Councilmembers  
Gladys C. Baisa  
Robert Carroll  
Elle Cochran  
Don Couch  
Stacy Crivello  
Riki Hokama



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

April 3, 2016

TO: The Honorable Gilbert S.C. Keith-Agaran, Chair  
Senate Committee on Judiciary and Labor  
  
The Honorable Jill N. Tokuda, Chair  
Senate Committee on Ways and Means

FROM: Mike White  
Council Chair

A handwritten signature in black ink, appearing to be "Mike White", is written over the text "Council Chair".

SUBJECT: **HEARING OF APRIL 4, 2016; TESTIMONY IN OPPOSITION TO HB2049  
HD2 SD1, RELATING TO TRANSPORTATION**

Thank you for the opportunity to testify in **opposition** to this measure. The purpose of this measure is to authorize the State or a county to obtain ownership over a road by condemnation and address questions regarding responsibility for the repair and maintenance of privately owned highways.

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 oppose this measure for the following reasons:

1. This measure constitutes an unfunded mandate to the counties. Section 264-1(c), Hawaii Revised Statutes currently provides for dedication or surrender of privately owned roads to a county, if the county council accepts the road. This bill would require the county to accept the surrender or condemnation of certain roadways "without exercise of discretion."
2. This measure provides no compensation for the financial cost and liabilities incurred by counties for their forced acceptance of roadways. The measure is unclear with respect to additional liability that may fall on the counties, is overly broad, and raises questions regarding public usage of private roadways.

For the foregoing reasons, I oppose this measure.

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Chamber of Commerce HAWAII  
*The Voice of Business*

**Testimony to the Senate Committee on Judiciary & Labor and Committee on  
Ways & Means  
Monday, April 4, 2016 at 9:15 A.M.  
Conference Room 211, State Capitol**

**RE: HOUSE BILL 2049 HD 2 SD 1 RELATING TO TRANSPORTATION**

Chairs Keith-Agaran and Tokuda, Vice Chairs Shimabukuro and Dela Cruz, and Members of the Committees:

The Chamber of Commerce Hawaii ("The Chamber") **strongly supports with amendments** HB 2049 HD 2 SD 1, which authorizes the State or a county to obtain ownership over a road by condemnation pursuant to the State's powers of eminent domain. Exempts the State and counties from maintaining or improving condemned roads. Clarifies that if a privately owned highway, road, alley, street, way, lane, bikeway, bridge, or trail complied with construction codes at the time of construction, then upon transfer of that privately owned highway, road, alley, street, way, lane, bikeway, bridge, or trail to a county, the county which accepts the transfer shall not be required to do any construction, renovation, or repair to bring the privately owned highway, road, alley, street, way, lane, bikeway, bridge, or trail up to any construction code existing at the time of transfer. Creates a commission on remnant private roads to identify all roads by street address and tax map key number located in the State and in each county. Assigns, in the discretion of the commission, ownership of identified remnant private roads to the State or county.

The Chamber is Hawaii's leading statewide business advocacy organization, representing about 1,000 businesses. Approximately 80% of our members are small businesses with less than 20 employees. As the "Voice of Business" in Hawaii, the organization works on behalf of members and the entire business community to improve the state's economic climate and to foster positive action on issues of common concern.

The Chamber strongly supports HB 2049 HD 2 SD 1 as a solution to an ongoing problem. There are many private roads or public roads with private parcels that are both in use by the public that are in disrepair and require maintenance. However, in many of these cases, the private owners cannot be found or are sometimes unknown. In these situations, the roads have remained in disrepair for many years, often stuck in a limbo wherein the public contacts the counties with requests to repair but the counties are unable to act on these requests as they are privately owned. HB 2049 HD 2 SD 1 provides a solution to these roads in limbo – by surrendering ownership to the counties and allowing them to proceed with necessary repairs and reconstruction to maintain these roads for public use.

We would like ask the committee to amend the bill with the following amendments:

Part III Pilot program (Session Law)

SECTION 1. There is appropriated out of the general revenues of the State of Hawaii the sum of \$ \_\_\_\_\_ or so much thereof as may be necessary for fiscal year 2016-2017 for the city and county of Honolulu for repair work, including flood mitigation and installing drainage infrastructure, and resurfacing as follows:

1. \$\_\_\_\_\_for Kalani Street on Oahu, from Puuhale Road to Kalihi Street;
2. \$\_\_\_\_\_for Auld Lane on Oahu; and
3. \$\_\_\_\_\_for Rawlins Lane on Oahu;
4. \$\_\_\_\_\_Kalakaua (between Poni Moi and Coconut Ave.)
5. \$\_\_\_\_\_18<sup>th</sup> Avenue (between Harding and Kilauea)
6. \$\_\_\_\_\_Hoapili Lane (Between (1) 1-6-2-28 and (1) 1-6-2-36)
7. \$\_\_\_\_\_Panui Street
8. \$\_\_\_\_\_Ihe Street

Provided that no funds shall be made available under this Act unless the city and county of Honolulu has voluntarily accepted ownership of the road pursuant to section 264-1(c), Hawaii Revised Statutes, and provides matching funds of \_\_\_\_ per cent for the purpose for which this sum is appropriated.

The sum appropriated shall be expended by the city and county of Honolulu for the purposes of this Act.

Lastly we would we would like to add a severability clause for the bill just in case one part of the bill is invalidated.

We understand this is still a work in progress and look forward to working with stakeholders.

Thank you for the opportunity to testify.



**TESTIMONY TO THE JOINT COMMITTEES ON JUDICIARY AND LABOR and WAYS AND MEANS**

**Monday, April 4, 2016 9:15 a.m.**

**State Capitol, Conference Room 211**

**TO:** The Honorable Gilbert S.C. Keith-Agaran, Chair  
The Honorable Maile S.L. Shimabukuro, Vice Chair  
Members of the Committee on Judiciary and Labor

The Honorable Jill N. Tokuda, Chair  
The Honorable Donovan M. Dela Cruz, Vice Chair  
Members of the Committee on Ways and Means

**TESTIMONY IN SUPPORT OF HB2049, HD2, SD1 RELATING TO TRANSPORTATION**

I am Stafford Kiguchi with Bank of Hawaii testifying in support of HB2049, HD2, SD1 dealing with private roads. We appreciate and support the committee's initiative and efforts in addressing this long-standing issue and public concern.

This bill authorizes the State or county to obtain ownership over a road by condemnation through its powers of eminent domain. It exempts the State and counties from maintaining or improving condemned roads; and clarifies that if roads, streets, etc. were built to code at the time of construction, then there is no requirement to bring it up to current codes at the time of transfer. It creates a commission on remnant private roads to identify all roads by street address and tax map key located in State and each county. The commission may assign, at its discretion, ownership of identified remnant private roads to the State or county.

As background, Bank of Hawaii is on title to a number of roads that were acquired when it purchased Hawaiian Trust and Bishop Trust companies back in the 1980s and early 1990s. It is believed that decades ago when the homes adjacent to these roads were developed and deeded to the homeowners by the trust companies as agent for the developers, these roads, by right, should have been dedicated to the city. However, for unknown reasons, that transfer never occurred and legal title appears to have remained in the trust companies and subsequently with Bank of Hawaii as successor in interest.

Over the decades, the roads have remained open to the public with unrestricted access for cars, buses, refuse trucks, and emergency vehicles, etc. Many of these roads are termed "remnants" and abut or are sandwiched between sections of city-owned roads or streets. As a result, we know that in many cases the city currently provides maintenance services for these roads.

Despite its ownership, the bank does not enjoy the normal rights and privileges associated with ownership. We would not build on the roads nor would we deny homeowners access to their homes that front these roads. At the same time, there is no acceptable mechanism to assess any fees that could be applied toward road maintenance. As a result, the situation exists where Bank of Hawaii may have obligations but no rights.

We also recognize that there is the issue of some older roads or streets not conforming to current codes. There are no remedies available to a non-government owner to address this dilemma. If there is a desire to bring such roads up to modern standards, there would potentially need to be an exercise of eminent domain of which only a government entity could do.

As noted in the bill, people seeking help when a road or street is in need of repair may face frustration and confusion when attempting to identify the proper authority to have repairs or maintenance issues addressed.

We believe that maintenance and ownership of such roads best belongs within the jurisdiction of the city and county. The city is best equipped with the knowledge and equipment to conduct any necessary planning, road repair and maintenance work. This would provide the public a single point of contact to address its needs, and would also provide both clarity and consistency for the residents and homeowners.

However, we also recognize that this is a complex issue and are willing to work in cooperation with the appropriate city and state government entities to develop a “pilot process” to gradually transfer ownership of certain pre-designated roads or streets that would accommodate a mutually agreed upon schedule and conditions.

We appreciate the Committees’ interest and willingness to continue to examine solutions for this important issue.

Thank you for the opportunity to testify.

Stafford Kiguchi  
Executive Vice President, Bank of Hawaii  
694-8580

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April 4, 2016

**The Honorable Gilbert S.C. Keith-Agaran, Chair**

Senate Committee on Judiciary and Labor

**The Honorable Jill N. Tokuda, Chair**

Senate Committee on Ways and Means

State Capitol, Room 211

Honolulu, Hawaii 96813

**RE: H.B. 2049, H.D.2, S.D.1, Relating to Transportation**

**HEARING: Monday, April 4, 2016 at 9:15 a.m.**

Aloha Chair Keith-Agaran, Chair Tokuda, and Members of the Committees:

I am Myoung Oh, Government Affairs Director, submitting written testimony on behalf of the Hawai'i Association of REALTORS® ("HAR"), the voice of real estate in Hawai'i, and its 8,900 members. HAR **supports** H.B. 2049, H.D.2, S.D.1 which:

1. Authorizes the State or a county to obtain ownership over a road by condemnation pursuant to the State's powers of eminent domain;
2. Exempts the State and counties from maintaining or improving condemned roads;
3. Clarifies that if a privately owned highway, road, alley, street, way, lane, bikeway, bridge, or trail complied with construction codes at the time of construction, then upon transfer of that privately owned highway, road, alley, street, way, lane, bikeway, bridge, or trail to a county, the county which accepts the transfer shall not be required to do any construction, renovation, or repair to bring the privately owned highway, road, alley, street, way, lane, bikeway, bridge, or trail up to any construction code existing at the time of transfer;
4. Creates a commission on remnant private roads to identify all roads by street address and tax map key number located in the State and in each county; and
5. Assigns, in the discretion of the commission, ownership of identified remnant private roads to the State or county.

There are many private roads or even parts of roads that have been inadvertently evolved. As such, S.B. 2372, S.D. 3, H.D.1 would provide a means to respond to private roads that are not owned by a governmental entity, their ownership is being disputed, or they often do not receive proper repair and maintenance.

We continue to support this measure and ask that it be approved by the joint Committees.

Mahalo for the opportunity to submit written testimony.