

HB2049, HD2

TESTIMONY



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

March 17, 2016
3:00 p.m.
State Capitol, Room 229

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

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

The Department of Transportation **opposes** this bill and respectfully wishes to express concerns regarding the condemnation of private roads by the state or counties. The state and the counties already have the authority to condemn property for a public purpose. Condemnation is a complicated, time consuming and expensive process and more so when ownership is unclear. Although condemnation would provide clear title at the end of the process, it may require a fair market value be deposited in advance with the filing. The agency may then gain legal possession shortly after the filing and far in advance of legal title which may also create a quandary of liability for having possession long before any work is contemplated for the repair of the long unmaintained road. This version does not provide any immunity from liability from the time of legal possession of the road until the agency repairs, rehabilitates or reconstructs the road to a good condition.

This bill also lacks any direction that would signal the need to file a condemnation action of a privately owned road or parcel.

Thank you for the opportunity to provide comments.

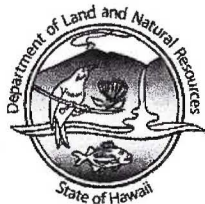
Testimony by:

FORD N. FUCHIGAMI
DIRECTOR

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

IN REPLY REFER TO:

DAVID Y. IGE
GOVERNOR OF HAWAII



**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
TRANSPORTATION AND ENERGY
and
PUBLIC SAFETY, INTERGOVERNMENTAL, AND MILITARY AFFAIRS**

**Thursday, March 17, 2016
3:00 P.M.
State Capitol, Conference Room 229**

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

House Bill 2049, House Draft 2 proposes to authorize the State or a county to obtain ownership over a road by condemnation pursuant to the State's powers of eminent domain. The measure also proposes to exempt the State and Counties from maintaining or improving condemned roads. **The Department of Land and Natural Resources ("Department") supports this version of the measure.**

The current draft of this measure provides the State and Counties the authority to assume ownership over a privately constructed highway, road, alley, street, way, lane bikeway, bridge or trail through condemnation proceedings pursuant to Chapter 101, Hawaii Revised Statutes. Providing the State or Counties this discretion will mitigate the Department's concern where a private developer can avoid building roads to the appropriate county or government standards and subsequently abandon such substandard roads to the Counties. Furthermore, exempting the State or County from regulatory requirements to perform construction, reconstruction, preservation, resurfacing, restoration and rehabilitation upon such condemned roads would alleviate a significant financial burden on the State and Counties.

Thank you for your consideration of this testimony.

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

Date: March 17, 2016
Time: 3:00 pm
Place: Conference Room 229 State Capitol
415 South Beretania Street

H.B. 2049 (HD2)
Relating to Transportation

Senate Committee on Transportation and Energy
and
Committee on Public Safety, Intergovernmental, and Military Affairs

The Department of Public Works for the County of Hawaii ("DPW") respectfully submits testimony opposing HB 2049.

Private roadways have remained private for a variety of reasons. These reasons range from:

1. land-owner choice to retain ownership, or
2. development infrastructure being left incomplete by developers, or
3. that the roadways were initially not constructed to minimum roadway design safety standards/requirements necessary for dedication to the government.

This amendment to HRS § 264-1 appears to undermine the "home rule" authority of the Counties by forcing the counties to "accept the dedication [...] without exercise of discretion."

Although DPW appreciates the intention behind proposed section (d), which provides that roads that have been condemned are exempt from state laws or rules that might require the State or a county to perform construction, reconstruction, preservation, resurfacing, restoration, or rehabilitation on such roads, as a practical matter this exemption does not immunize the counties from liability for personal injuries or deaths that may occur on such roads due to substandard road conditions, so the counties could inherit substantial liability as they accept these substandard roads. The substandard conditions could be due to the roads not having been properly developed and/or neglected or not maintained for years. It would be unfair for the counties to assume the liability for such roads.

This amendment also constitutes an unfunded mandate upon the counties. See Article VII, section 5, of the Hawai'i State Constitution.

Additionally, this amendment to HRS § 264-1 states that in order to acquire a public road, a county must bring a condemnation proceeding pursuant to HRS Chapter 101, unless the owner of the road is voluntarily dedicating the road to the county. Requiring counties to condemn all roads that they seek to acquire, even roads that have clearly been abandoned as to ownership, but which the public is using, could be more costly and time-consuming than the present statutory scheme.

For the foregoing reasons DPW respectfully opposes HB No. 2049.

March 17, 2016

The Honorable Loraine R. Inouye, Chair

Senate Committee on Transportation and Energy

The Honorable Clarence K. Nishihara, Chair

Senate Committee on Public Safety, Intergovernmental, and Military Affairs

State Capitol, Room 229

Honolulu, Hawaii 96813

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

HEARING: Thursday, March 17, 2016 at 3:00 p.m.

Aloha Chair Inouye, Chair Nishihara, and Members of the Committees:

I am Myoung Oh, Government Affairs Director, here to testify on behalf of the Hawai'i Association of REALTORS® ("HAR"), the voice of real estate in Hawai'i, and its 8,800 members. HAR **supports** H.B. 2049, H.D.2 which authorizes the State or a county to obtain ownership over a road by condemnation pursuant to the State's powers of eminent domain and exempts the State and counties from maintaining or improving condemned roads.

It is believed that decades ago when the homes adjacent to these roads were developed and deeded to the homeowners, 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.

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, in many cases, the city currently provides maintenance services for these roads.

While HAR believes that maintenance and ownership of such roads best belongs within the jurisdiction of the city and county, we recommend continued passage and discussion on this measure.

Mahalo for the opportunity to testify.



**TESTIMONY TO THE JOINT COMMITTEES ON TRANSPORTATION AND ENERGY
AND PUBLIC SAFETY, INTERGOVERNMENTAL AND MILITARY AFFAIRS**

**Thursday, March 17, 2016, 3 p.m.
State Capitol, Conference Room 229**

TO: The Honorable Lorraine R. Inouye, Chair
The Honorable Mike Gabbard, Vice Chair
Members of the Transportation and Energy Committee

The Honorable Clarence K. Nishihara, Chair
The Honorable Will Espero, Vice Chair
Members of the Public Safety, Intergovernmental & Military Affairs Committee

TESTIMONY IN SUPPORT OF HB2049 HD2 RELATING TO TRANSPORTATION

I am Stafford Kiguchi with Bank of Hawaii testifying in support of HB2049 HD2 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 would authorize the State or county to obtain ownership over a road by process of condemnation pursuant to the State's powers of eminent domain. It additionally exempts the State and counties from maintaining or improving condemned roads.

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.

-More-

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. For these reasons, we believe it makes most practical sense for the city to own and maintain these types of roads. It 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 who are paying property taxes to have the roads maintained.

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” or other means to gradually transfer ownership of certain pre-designated roads or streets that would accommodate a mutually agreed upon schedule and set of conditions. Condemnation appears to be a practical solution to address transfer of ownership issues, although it may also be beneficial to have clarity under what conditions and timeline condemnation would be initiated.

We appreciate the Committee’s 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



**Testimony to the Senate Committee on Transportation & Energy and
Committee on Public Safety, Intergovernmental, & Military Affairs
Thursday, March 17, 2016 at 3:00 P.M.
Conference Room 229, State Capitol**

RE: HOUSE BILL 2049 HD 2 RELATING TO TRANSPORTATION

Chairs Inouye and Nishihara, Vice Chairs Gabbard and Espero, and Members of the Committees:

The Chamber of Commerce Hawaii ("The Chamber") **strongly supports** HB 2049 HD 2, 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.

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 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 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.

Amend existing HRS:

- Nunc pro tunc: If road was built to code at the time it was built, then upon transfer city does not have to bring road up to current standards.
- Any private owner may petition the mayor of their county to **condemn** a road or remnant parcel or a road provided it meet **any** of the following conditions:
 - it is part of or a public road;
 - private ownership has not been exercised in limiting access and use of the public road or



Chamber of Commerce HAWAII

The Voice of Business

- the county has as some point provided some form of maintenance of the public road or in the interest of the public.

Add Part II to the bill

- Establishes a commission to address issues regarding private ownership of existing public roads.
- The commission shall be made up of the following:
 - Mayor from each county or their designee
 - Two Senator appointed by the President of the Senate
 - Two Representative appointed by the Speaker of the House
 - Director of the Department of Transportation
 - One County Director of Transportation as decided by the counties
- The commission shall be attached administratively to _____.
- There is appropriated \$_____ in general fund operations and to staff the commission.
- The commission shall meet to review all private remnants and roads currently used by the public without exercise of ownership. Notwithstanding any law to the contrary the commission shall assign private remnants and roads to a state or city agency for ownership. The commission shall then create procedures to transfer private remnants and roads.
- The Commission shall be governed by (boards and commission HRS)
- The report of the private remnants and roads to be condemned is due to the legislature no later than 20 days prior to the convening of the 2018 regular session.
- Commission shall sunset on June 30, 2018

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. \$_____ 18th 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 on 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.