

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 House Committee on
JUDICIARY**

**Friday, February 26, 2016
2:00 P.M.
State Capitol, Conference Room 325**

**In consideration of
HOUSE BILL 2604, HOUSE DRAFT 1
RELATING TO THE ACQUISITION OF REAL PROPERTY**

House Bill 2604, House Draft 1 proposes to amend Section 171-30, Hawaii Revised Statutes (HRS), to provide that the acceptance by the Territorial Legislature or State Legislature of a dedication of land in the Kakaako Community Development District by a private owner is sufficient to convey title to the State. **The Department of Land and Natural Resources (Department) opposes this measure.**

Although the latest draft of the measure is limited to land located within the Kakaako Community Development District, title is still being conveyed to the State under the Board of Land and Natural Resources (Board), as opposed to another agency that can hold title in its own name. Requiring the Board to take title to such land would abrogate the Board's authority to conduct the necessary due diligence before considering the acquisition in a public, sun-shined meeting. Therefore, the Department respectfully requests that the measure be amended to designate the appropriate agency that will hold title to lands acquired pursuant to this measure.

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. The Department does not believe the Legislature has the staff, time, or budget to

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

conduct these vital assessments on its own. Public comments alone would not rise to the level of a due diligence review.

In addition, the measure is unclear as to whether the proposed authority of the Legislature is limited to dedications of land at gratis. If compensation is provided to the public landowner, Section 171-30 (2)(e), HRS, prohibits the State from purchasing land at greater than the fair market value as determined by independent appraisal. The measure is unclear on whether this provision would apply to dedications of land accepted by the Legislature. The Department opposes any exception that would allow for the purchase of private lands at greater than fair market value.

Thank you for your consideration of this testimony.



HAWAII COMMUNITY
DEVELOPMENT AUTHORITY



David Y. Ige
Governor

John Whalen
Chairperson

Aedward Los Banos
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LATE

STATEMENT OF
AEDWARD LOS BANOS, INTERIM EXECUTIVE DIRECTOR
HAWAII COMMUNITY DEVELOPMENT AUTHORITY

BEFORE THE
HOUSE COMMITTEE ON JUDICIARY

ON
Friday, February 26, 2016

2:00 P.M.

State Capitol, Conference Room 325

in consideration of

**H.B. 2604, H.D. 1– RELATING TO THE ACQUISITION OF
REAL PROPERTY.**

Purpose: Clarifies that acceptance by the Territorial Legislature or the Legislature of a dedication of land in the Kakaako Community Development District by a private owner is sufficient to convey title to the State.

Position: This testimony reflects my view as the Interim Executive Director only, as the Authority has not had an opportunity to review and act on this measure. Generally, I am in agreement with the content of previous testimony submitted by the Department of Land and Natural Resources submitted on February 5, 2016 before the House Committee on Water and Land.

Specific content being the need to conduct extensive due diligence on subject parcels prior to any acquisition of real property. This is a standard practice that manages the risk of the State. Attached to any such acquisition should be an appropriation with adequate resources. Further resources may be necessary to resolve issues identified during due diligence.

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

Testimony reflects the view and position of the Executive Director and not that of the Authority.

DEPARTMENT OF THE CORPORATION COUNSEL
CITY AND COUNTY OF HONOLULU

530 SOUTH KING STREET, ROOM 110 * HONOLULU, HAWAII 96813
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KIRK CALDWELL
MAYOR



DONNA Y. L. LEONG
CORPORATION COUNSEL
PAUL S. AOKI
FIRST DEPUTY CORPORATION COUNSEL

February 25, 2016

The Honorable Karl Rhoads, Chair
and Members of the Committee on Judiciary
House of Representatives
State Capitol
415 South Beretania Street
Honolulu, Hawaii 96813

Dear Chair Rhoads and Committee Members:

Subject: House Bill 2604 HD1, Relating to the Acquisition of Real Property.

The Department of the Corporation Counsel of the City and County of Honolulu opposes this measure.

H.B. 2604 HD1 provides that the acceptance by the State Territorial Legislature or State Legislature of a dedication of land in the Kakaako Community Development District by a private owner is sufficient to convey title to the State.

The State cannot, by legislative act, convert ownership of private property to the government itself. *In The Matter of the Petition of The Hawaiian Trust Co., Ltd., for a Registered Title*, 17 Haw. 523, 1906 WL 1331 (Hawaii Terr. 1906). The government cannot declare itself owner of private property by virtue of a resolution or other legislative act accepting the property when the owner has not gifted it (as evidenced by conveyance of a deed). The willingness of the State to accept a gift does not make the gift so.

Furthermore, discriminately applying this provision only to private landowners in the Kakaako Community Development District instead of equally applying it all private landowners in the State raises constitutional issues of equal protection.

Thank you for the opportunity to provide our comments on this bill.

Very truly yours,

A handwritten signature in black ink, appearing to read "Donna Leong", is written over a horizontal line.

DONNA Y. L. LEONG
Corporation Counsel



**Testimony to the House Committee on Judiciary
Friday, February 26, 2016 at 2:00 P.M.
Conference Room 325, State Capitol**

**RE: HOUSE BILL 2604 HD 1 RELATING TO THE ACQUISITION OF REAL
PROPERTY**

Chair Rhoads, Vice Chair San Buenaventura, and Members of the Committee:

The Chamber of Commerce Hawaii ("The Chamber") **provides comments on** HB 2604 HD 1, which proposes to amend Chapter 171-30 HRS by adding that acceptance by the Territorial Legislature or the Legislature of a dedication of land in the Kakaako Community Development District by a private owner is sufficient to convey title to the State.

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.

It appears that HB 2604 HD 1 attempts to address a situation in Kakaako where there may be private ownership of public roads. With respect to the ownership of public roads, it is our understanding that Hawaii, unlike any other State in the U.S., was originally a sovereign nation – a kingdom. There were certain preexisting laws that were passed on and incorporated into what became laws of the U.S. Territory, and then ultimately, of the State.

The Highways Act of 1892:

In October of 1892, Queen Liliuokalani approved a law that determined that the ownership of all public highways and the land, real estate and property of the same, shall be in the Hawaiian Government in fee simple. The definition of public highway includes all existing roads and trails at the time "or hereafter opened, laid out or built by the Government, or by private parties, and dedicated or abandoned to the public as a highway, are hereby declared to be public highways." Furthermore, "All public highways once established shall continue until abandoned by due process of law".

We understand that Chapter 264 HRS provides a definition of State and County highways, roads, etc., which include situations where ownership is acquired by the State or County through dedication or surrender.

Not knowing the exact circumstances of the situation in Kakaako, it would appear that if the road ownership issue falls outside of what is provided in the existing laws, perhaps rather



Chamber *of* Commerce HAWAII
The Voice of Business

than amending Chapter 171-30 HRS, the government entity responsible for oversight of the public roads in this area should acquire the public roads by purchase or eminent domain.

The proposed amendment to the Statute seems to add more confusion to a complicated situation. We appreciate the opportunity to provide our comments on the matter.

Thank you for the opportunity to testify.

From: mailinglist@capitol.hawaii.gov
Sent: Wednesday, February 24, 2016 11:16 AM
To: JUDtestimony
Cc: clkkimura@gmail.com
Subject: *Submitted testimony for HB2604 on Feb 26, 2016 14:00PM*

HB2604

Submitted on: 2/24/2016

Testimony for JUD on Feb 26, 2016 14:00PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Cara Kimura	Individual	Support	No

Comments:

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

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COMMITTEE ON JUDICIARY

Rep. Karl Rhoads, Chair

Rep. Joy A. San Buenaventura, Vice Chair

Rep. Della Au Belatti

Rep. Dee Morikawa

Rep. Tom Brower

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Rep. Gregg Takayama

Rep. Mark J. Hashem

Rep. Justin H. Woodson

Rep. Derek S.K. Kawakami

Rep. Bob McDermott

Rep. Chris Lee

Rep. Cynthia Thielen

DATE: Friday, February 26, 2016

TIME: 2:00 p.m.

PLACE: Conference Room 325

HB 2604 HD1

RELATING TO THE ACQUISITION OF REAL PROPERTY.

Clarifies that acceptance by the territorial legislature or the legislature of a dedication of land by a private owner is sufficient to convey title to the State.

I would like to express my support for HB 2604 HD1 in that it will overcome immaterial administrative technicalities constraining the State from serving the public's interest in regard to safety and economic development.

It is my understanding that in the case of private roads in the City & County of Honolulu, the intent of the existing law and actions of its original owners is without doubt. This simple measure can pave the way (pun intended) for our government, whether state, city or county, to step up and fulfill its fundamental duty to provide safe roads and passage for the public.

Furthermore, I believe the traffic engineering resources of the state, city and county can achieve the "highest and best use" of these lands and can do so collaboratively with professional developers and the community at-large. One only has to stroll down Waimanu Street, which will require navigating through derelict vehicles and traversing limited sidewalks to see that without the passage of HB 2604 HD1, opportunistic and "maverick" parties can spoil the prospects of a safe and vibrant community.

Lawrence F. Newman

1009 Kapiolani Blvd.

Unit 2402

Honolulu, HI 96814

From: mailinglist@capitol.hawaii.gov
Sent: Wednesday, February 24, 2016 10:20 PM
To: JUDtestimony
Cc: lynnehi@aol.com
Subject: Submitted testimony for HB2604 on Feb 26, 2016 14:00PM

HB2604

Submitted on: 2/24/2016

Testimony for JUD on Feb 26, 2016 14:00PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
lynne matusow	Individual	Support	No

Comments: It is important that grey areas be clarified. Please vote yes. Lynne Matusow

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From: mailinglist@capitol.hawaii.gov
Sent: Thursday, February 25, 2016 9:53 PM
To: JUDtestimony
Cc: jjog4life@gmail.com
Subject: Submitted testimony for HB2604 on Feb 26, 2016 14:00PM

HB2604

Submitted on: 2/25/2016

Testimony for JUD on Feb 26, 2016 14:00PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Jean Ishikawa	Individual	Support	No

Comments: Remember we are in Hawai'i nei - kuleana and pono are not merely words!

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From: mailinglist@capitol.hawaii.gov
Sent: Thursday, February 25, 2016 9:22 PM
To: JUDtestimony
Cc: dylanarm@hawaii.edu
Subject: *Submitted testimony for HB2604 on Feb 26, 2016 14:00PM*

HB2604

Submitted on: 2/25/2016

Testimony for JUD on Feb 26, 2016 14:00PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Dylan Armstrong	Individual	Support	No

Comments:

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From: mailinglist@capitol.hawaii.gov
Sent: Thursday, February 25, 2016 6:19 PM
To: JUDtestimony
Cc: clamor808@yahoo.com
Subject: Submitted testimony for HB2604 on Feb 26, 2016 14:00PM

HB2604

Submitted on: 2/25/2016

Testimony for JUD on Feb 26, 2016 14:00PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Clara K Morikawa	Individual	Support	No

Comments: In the 1903 Journal of the Senate of the 2nd Legislative Assembly of the Territory of Hawaii is recorded that Charles S Desky conveyed to the Territory, without charge, the following named streets situated in Kewalo: Queen St, extension south of South St; Kawaiahao St; Hustace Ave; Cooke St; Ward St; Cummins St; Laniwai St. Also, that after such conveyance these named streets be maintained, repaired and cared for by the government as public highways. In time, Hustace Ave (now Kapiolani Blvd), Cooke St, Ward Ave and Laniwai St were made into public thoroughfares. The Queen St extension, Kawaiahao St and Cummins St were given to the legislature 113 years ago and for all these years, nothing was done and they remain today as "private roads." Belated as it is, it is time for this legislature to act, accept and complete the conveyance of these streets to the state as public thoroughfares and to finally bring this matter to a conclusion. Please.....it is necessary and important. Thank you.
Respectfully submitted, Clara K Morikawa

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: House Judiciary Committee

ite: February 25, 2016

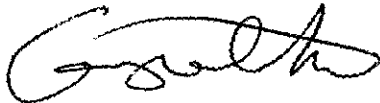
wanted to support the House bill HB 2092 and HB 2604

I work and drive in the Kakaako area and roads are dangerous and unsafe. The long existing potholes are causing drivers to swerve and drive into oncoming traffic, causing traffic jams and endangering the pedestrians that work, live and walk in the area.

It is time for the responsible officers and committee members to take responsibility to properly take action and look after the safety of the citizens in the area.

thank you in advance.

Regards

A handwritten signature in black ink, appearing to read 'SooHwan N. Kim', written in a cursive style.

SooHwan N. Kim

Business and Residence Of Kakaako Community

LATE TESTIMONY

Friday, February 25, 2016

To the House Judiciary Committee

We are writing to you as a community of residents and business Owners who are residing and operating in the kakaako area. We encourage and support the two Bills HB 2092 and HB 2604.

The condition of private roadways in Kakaako are disastrous due to the lack of maintenance and restrictions caused by Kakaako Land Company's personal enrichment.

We think that this legislation will help bring these roadways back under public control and allow for proper maintenance and up keep by State and City and County.

A handwritten signature in black ink, appearing to read 'Bob Emami', with a long horizontal line extending to the right.

Bob Emami