



**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
TRANSPORTATION**

**Monday, March 21, 2016
10:15 AM
State Capitol, Conference Room 309**

**In consideration of
SENATE BILL 2372, SENATE DRAFT 3
RELATING TO PRIVATE ROADS**

Senate Bill 2372, Senate Draft 3 proposes to require the counties to accept the surrender of a private road in cases where there has been an absence of any private ownership over the road for five years or the county has undertaken repair and maintenance. The measure also proposes to exempt the State and the Counties from liability arising from the use of the road for a period of two years following maintenance work. Additionally, the measure would deem a highway, road, alley, street, way, lane, bikeway, bridge or trail that has been commonly used by residents of a particular area for emergency access purposes or for health and safety reasons to be publicly accessible for those reasons, without regard to actual ownership or responsibility for maintenance. Finally, the measure deems surrender to a county to occur when that county undertakes repair and maintenance pursuant to a repair and maintenance program. **With respect, the Department of Land and Natural Resources (Department) opposes the measure.**

This measure serves to alleviate the liability of a private party and transfer that liability to the public. The bill is particularly concerning as it prohibits the Counties from exercising any discretion whether to accept a substandard road. Combined with the provision stating that the actual use of the road does not constitute an act of ownership, in effect, the bill will result in relieving a private developer of the requirement to build roads to the appropriate county or government standards, and subsequently abandon such substandard roads to the Counties.

The current draft of the bill establishes an additional trigger for surrender, where a county undertakes repair and maintenance on the road pursuant to a county maintenance and repair program. Having such routine activities be determinative of management jurisdiction is dubious,

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

as it averts proper oversight regarding the acceptance long term jurisdiction over a road. Depending upon maintenance records to resolve questions of road ownership would further exacerbate the roads in limbo dilemma. In addition, according to the proposed subsection (d), such areas as alleys, ways and lanes that have no reasonable expectation of public access could be deemed publicly accessible simply because nearby residents access the area for “health and safety reasons”. Such ambiguity and overly broad scope may subject the State and Counties to takings claims and maintenance obligations.

Furthermore, the limited immunity provided by this measure is a mere placebo. The immunity terminates two years after a government entity performs practically any type of remedial or maintenance work on the damaged once private road. This would serve as a disincentive for the Counties (or State if it so elects) to perform emergency or necessary repairs on a poorly maintained and substandard road. The Counties (and State if it so elects) will be placed in a precarious position where responsibility for a surrendered road, built by a private developer which may not conform to county or other government standards, is imposed upon them and any action taken to repair or maintain the road (furthering the purpose of the measure), would trigger the loss of immunity and impose unlimited liability upon the government entity performing the remedial work. Ultimately the Counties (and State if it so elects) will be held liable for flaws in the surrendered substandard roads that were caused by the original private developer.

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

March 21, 2016
10:15 a.m.
State Capitol, Room 309

S.B. 2372, S.D. 3
RELATING TO PRIVATE ROADS

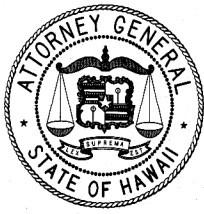
House Committee on Transportation

The Department of Transportation offers **comments** to express its concerns regarding the surrender of private roads to the state or counties. Ownership is often unclear and it may be complicated and time consuming to determine. This bill proposes that surrender shall be accepted without exercise of discretion unless proof of other ownership can be determined within 6 months of receipt of notification that a property may qualify under the proposed provisions.

Title determination of this type may prove problematic and may require more than 6 months. Acceptance of roads that do not meet the standards of the accepting agency would require the agency to expend funds on what may have been a private entity's responsibility. As this measure may result in a large number of properties surrendered in this manner, there may be resource and funding issues created for government agencies.

Also, for clarification purposes, we suggest that immunity from liability should take effect upon the surrender under this section. This is the period when the State or the county assumes ownership but has not had time to perform any work to make the road safe to travel upon. It may appear that there is no protection from liability from the point of surrender to the end of work performed on the surrendered highway and that immunity from liability extends only for a period of two years following performance of any work.

Thank you for the opportunity to provide testimony.



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

ON THE FOLLOWING MEASURE:

S.B. NO. 2372, S.D. 3, RELATING TO PRIVATE ROADS.

BEFORE THE:

HOUSE COMMITTEE ON TRANSPORTATION

DATE: Monday, March 21, 2016

TIME: 10:15 a.m.

LOCATION: State Capitol, Room 309

TESTIFIER(S): Douglas S. Chin, Attorney General, or
William J. Wynnhoff, Deputy Attorney General

Chair Aquino and Members of the Committee:

The Department of Attorney General appreciates the intent of this bill, but opposes it as currently written and recommend that H.B. No. 2049, H.D. 2 be passed instead.

The bill addresses the problem of privately owned roads. Often it is unclear who owns a privately owned road. This bill facilitates the surrender of a privately owned road to the counties.

Section 264-1(c), Hawaii Revised Statutes (HRS), already provides that privately owned roads may be dedicated or surrendered to a county. But the law provides that dedication or surrender will not be effective unless and until the legislative body of the county accepts the road.

This bill removes that proviso as to surrender and instead provides that a county shall accept the surrender "without exercise of discretion." This provision may be challenged as constituting 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.

The bill seeks to mitigate the impact of road ownership by providing that the State or county is not required to repair or maintain surrendered roads and is not liable for injuries on surrendered roads. The extent of the immunity or exemption from liability provided by the bill is unclear. For example, the bill provides (page 7, lines 14-20) that the State or county is immune

from liability for two years after fixing the road. It is unclear if this means the State or county is not liable at all, unless and until it performs some repairs.

To the extent a county is required to repair and maintain – or be liable for injuries on – newly surrendered roads, that arguably constitutes a “new program or increase in the level of service under an existing program.” To the extent that a county need not repair or maintain a newly “surrendered” road, the unfunded mandate issue is alleviated. But by so doing, the bill may not accomplish its intent.

We also note that the bill changes section 264-1(d), HRS, such that privately owned roads can under certain circumstances be used by all members of the public, whether or not the owners consent to public use. This provision may be considered a regulatory taking that might require the State to pay just compensation to the owners. See *Loretto v. Teleprompter Manhattan CATV Corp.*, 458 U.S. 419 (1982).

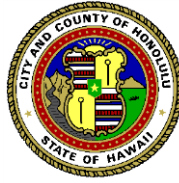
In the wording amending section 264-1(c)(2)(b), HRS, the concluding phrase appears to be redundant. That phrase is “that highway, road, alley, street, way, lane, bikeway, bridge, or trail” on page 5 at lines 18-19.

Finally, we note that H.B. No. 2049, H.D. 2, addresses the same general subject as this bill. H.B. No. 2049 had the same unfunded mandate concern we raise here, but has been amended to address the problem. The Department therefore recommends H.B. No. 2049, H.D. 2, be passed instead.

We respectfully request that the Committee defer this bill.

OFFICE OF THE MAYOR
CITY AND COUNTY OF HONOLULU

530 SOUTH KING STREET, ROOM 300 * HONOLULU, HAWAII 96813
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KIRK CALDWELL
MAYOR

ROY K. AMEMIYA, JR.
MANAGING DIRECTOR DESIGNATE

GEORGETTE T. DEEMER
DEPUTY MANAGING DIRECTOR

March 21, 2016

The Honorable Henry J.C. Aquino, Chair
The Honorable Matthew S. LoPresti, Vice Chair
and Members of the Committee on
Transportation
Hawaii State Capitol
415 South Beretania Street, Room 309
Honolulu, Hawaii 96813

Dear Chair Aquino, Vice Chair LoPresti, and Members of the Committee:

Subject: SB2372, SD3, Relating to Private Roads

The City and County of Honolulu (City) respectfully submits testimony in strong opposition to SB2372, SD3, Relating to Private Roads (the "Bill").

The Bill proposes that the applicable county shall be deemed the owner of a private roadway within the county under certain conditions, including:

- (1) No act of ownership by the owner of the road has been exercised for five years; provided that driving on a road does not constitute an act of ownership;
- (2) The county undertakes repair and maintenance on a private road pursuant to a county maintenance and repair program; *or*
- (3) When any occupant or owner of abutting land notifies the county of a road that the resident or landowner believes qualifies for surrender, unless the county establishes other proof of ownership within six months of the notice.

Requiring the counties to own private roads on which their owners drive daily, but fail to maintain encourages owners to keep their private roads in disrepair because the counties and the State will pay for the upgrades and maintenance. Owners of private roads should be encouraged to maintain their private property and should be discouraged from shifting their burden to other taxpayers.

This Bill encourages the counties to leave private, substandard streets in unsafe conditions to avoid ownership of these roads. The City currently repaves certain privately owned roads to ensure that they are safer for all persons to use; however the City may not continue to maintain and repair private roads if it means that doing so will cause the City to own the private roads.

This Bill encourages developers to build substandard roads and then surrender them to the county. By depriving a county of its discretion to accept private roads, developers no

longer have an incentive to properly construct new roads. Developers should not be able to build unsafe and substandard roads, profit off their development, and force the counties to improve or reconstruct these roads to avoid potential liability for these substandard roads.

Finally, this bill requires a county to accept any road that any resident or landowner believes should belong to the county, unless the county can establish other proof of ownership within six months of the notice. Requiring the county to establish other proof of ownership unfairly imposes high costs to each county. Each county will be required to devote resources to research ownership and commission title reports, which are expensive. This measure may encourage many persons to notify the county that the roads qualify for surrender at one time. It would be impossible for the county to research the ownership of many roads in six months. The county would own the road simply because it does not have adequate time to establish evidence of other ownership.

The City believes that the State legislature cannot determine ownership of privately-owned property without a court judgment in an eminent domain action or without the consent of all owners of real estate interests in the subject lands. (see *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 City acknowledges the various challenges that this Bill and other similar bills attempt to address. It remains a difficult issue with far-ranging consequences. The City continues to embrace a State and counties commission that is staffed by the State and tasked with conducting an inventory and analysis of all private roads; developing protocol to determine resolutions for roads where ownership continues to be in question; and facilitate the implementation of those protocols to settle ownership issues.

We look forward to working cooperatively with the State to reach a workable solution to this issue and encourage your committee to defer this measure indefinitely.

Date: March 21, 2016
Time: 10:15 am
Place: Conference Room 309 State Capitol
415 South Beretania Street

S.B. 2372 (SD3)
Relating to Private Roads

House of Representatives
Committee on Transportation

LATE

The Department of Public Works for the County of Hawai‘i (“DPW”) respectfully submits testimony opposing S.B. 2372 (SD3). This amendment to HRS § 264-1 would inequitably require the counties to accept all “surrendered” private roads, in any condition, without any discretion. The present version of HRS § 264-1 does not put the counties in such a disadvantageous position which unfairly requires them to bear substantial costs.

DPW has serious concerns that S.B. 2372 will violate the Constitution of the State of Hawai‘i as an unfunded mandate. Article VIII, Section 5 of the Constitution of the State of Hawai‘i provides that any new program or increase in the level of service under an existing program that the State Legislature mandates that the counties undertake must provide that the State shall share in the cost. However, as further explained below, S.B. 2372 will cause the counties to incur tremendous costs, but the measure does not provide for any funding to the counties for these costs.

S.B. 2372 also undermines the counties’ “home rule” authority as it is forcing the counties to accept a number of roads without the exercise of any discretion.

Some roads were never properly developed. Requiring the counties to accept these roads that were not properly developed exposes the counties to substantial costs for improving these substandard roads and significant potential liability for a road that was never developed or approved by a county. The County of Hawai‘i presently requires that any roads being dedicated to it meet the standards for dedicable roads laid out in the Hawai‘i County Code, but the proposed amendment would eviscerate those standards, deprive the County of any discretion in deciding whether to accept such roads, decrease a developer’s incentive to construct new roads to dedicable standards, and require the counties to repair, improve and/or reconstruct roads that were not properly planned or developed to avoid potential liability for these substandard roads.

Furthermore, the proposal also unfairly shifts the burden of, and liability for, maintaining roads from private owners who have not been performing their duties to maintain such roads to the counties. The preamble to this measure admits that some of these private roads are in disrepair. Such conditions may be due to disputes in land ownership between private property owners, lack

of maintenance due to insufficient funding, and/or the inability of private property owners to agree via subdivision covenants, road maintenance associations, or other agreements to effectuate repair work. The roads at issue are to be deemed surrendered if the owner has not exercised “ownership” for five years. Subsection (c)(2) of the proposed amendment states that driving on a road does not constitute “ownership”, so the amendment logically means that surrendered roads are those on which owners may be driving, but have not maintained for five or more years. This measure would allow the owners of such roads that they have failed to maintain to shift the burden of, and liability for, repairing and/or maintaining their neglected roads to the counties.

DPW also opposes the counties having to establish proof of ownership and the short length of time (six months from notice) provided in the proposal for counties to establish proof of ownership for a road that an occupant or owner of abutting land believes qualifies for surrender. Having to establish proof of ownership will create an unfair burden of time and expense for the counties, as they may need to devote resources away from other necessities to research ownership or to commission title reports, which can add up in expense. Furthermore, it is reasonable to anticipate that this amendment would result in the counties being deluged with such notices and six months may not be sufficient time to research ownership.

DPW further notes that the most recent version of S.B. No. 2372 (SD3) will allow a road to be “deemed surrendered” to a county if the county undertakes any repair or maintenance on a road pursuant to a county maintenance and repair program. This measure clearly creates a disincentive to counties making any efforts to repair or maintain roads that may be privately owned, but are publicly used, and alters the present statutory framework which allows counties to undertake the maintenance and/or repair of such roads without having to assume ownership. See HRS Chapter 265A.

For the foregoing reasons DPW respectfully opposes S.B. No. 2372 (SD3).

lopresti2 - Jasmine

From: mailinglist@capitol.hawaii.gov
Sent: Friday, March 18, 2016 12:38 PM
To: TRNtestimony
Cc: pua_kona@yahoo.com
Subject: *Submitted testimony for SB2372 on Mar 21, 2016 10:15AM*

SB2372

Submitted on: 3/18/2016

Testimony for TRN on Mar 21, 2016 10:15AM in Conference Room 309

Submitted By	Organization	Testifier Position	Present at Hearing
Kehaulani Shintani	Individual	Oppose	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.

Do not reply to this email. This inbox is not monitored. For assistance please email webmaster@capitol.hawaii.gov

March 21, 2016

The Honorable Henry J.C. Aquino, Chair

House Committee on Transportation
State Capitol, Room 309
Honolulu, Hawaii 96813

RE: S.B. 2372, S.D.3 Relating to Private Roads

HEARING: Monday, March 21, 2016 at 10:15 a.m.

Aloha Chair Aquino, Vice-Chair LoPresti, and Members of the Committee:

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** S.B. 2372, S.D.3 which:

1. Requires the counties to accept the surrender of a private road in cases where there has been an absence of any act of private ownership over the road for five years of the county has undertaken repair and maintenance;
2. Exempts the State and counties from liability arising from use of the road for a period of two years following maintenance work;
3. Deems a highway, road, alley, street, way, lane, bikeway, bridge, or trail that has been commonly used by residents of a particular area for emergency access purposes or for health and safety reasons to be publicly accessible for those reasons, without regard to actual ownership or responsibility for maintenance; and
4. Deems surrender to a county to occur when that county undertakes repair and maintenance pursuant to a repair and maintenance program.
- 5.

There are many private roads or even parts of roads that have been inadvertently evolved. S.B. 2372, S.D. 3 would provide a means to resolve the situation by requiring a county to accept public highways and trails even if nonconforming, where there has been no act of ownership within the past five years or a county has undertaken repair and maintenance, and by exempting a county from requirements to maintain or improve surrendered highways and trails and from liability for not maintaining or improving them.

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.

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.

Mahalo for the opportunity to submit written testimony.



TESTIMONY TO THE COMMITTEE ON TRANSPORTATION

Monday, March 21, 2016 10:15 a.m.

State Capitol, Conference Room 309

TO: The Honorable Henry J.C. Aquino, Chair
The Honorable Matthew S. LoPresti, Vice Chair
Members of the Transportation Committee

TESTIMONY IN SUPPORT OF SB2372 SD3 RELATING TO PRIVATE ROADS

I am Stafford Kiguchi with Bank of Hawaii testifying in support of SB2372 SD3 relating to private roads and in favor of proposed amendments being offered by the Chamber of Commerce Hawaii. Such amendments include provisions amending HRS to allow that if a road was built to code at the time it was built, then upon transfer of ownership, the city is not required to bring that road up to current standards; utilizing condemnation versus surrender in permitting a private owner to petition the mayor to condemn a road or remnant parcel provided it meets one of the following conditions: a) is a public road or part of a public road; b) private ownership has not been exercised in limiting access and use of the public road; c) the county has at some point provided some form of maintenance on the road in the interest of the public. We would also support the idea of establishing a "Commission" to address these long-standing issues regarding ownership of these roads in question.

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.

-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 would welcome an opportunity to work in cooperation with the appropriate city and state government entities to find a means by which to gradually and methodically transfer ownership of designated roads and streets.

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



Chamber of Commerce HAWAII

The Voice of Business

**Testimony to the House Committee on Transportation
Monday, March 21, 2016 at 10:15 A.M.
Conference Room 309, State Capitol**

RE: SENATE BILL 2372 SD 3 RELATING TO TRANSPORTATION

Chair Aquino, Vice Chair LoPresti, and Members of the Committee:

The Chamber of Commerce Hawaii ("The Chamber") **strongly supports with amendments** SB 2372 SD 3, which makes various changes to HRS 264.

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 with amendments SB 2372 SD 3 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. This bill 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. First we ask to replace the existing language in this bill with the language from HB 2049 HD2. Then we ask that the following amendments be made.

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



Chamber of Commerce HAWAII

The Voice of Business

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.



Chamber *of* Commerce HAWAII
The Voice of Business

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.

**TESTIMONY OF ROBERT TOYOFUKU ON BEHALF OF THE HAWAII
ASSOCIATION FOR JUSTICE (HAJ) IN OPPOSITION TO S.B. NO. 2372, S.D. 3**

DATE: Monday, March 21, 2016
TIME: 10:15 am
ROOM: 309

LATE

To: Chairman Henry Aquino and Members of the House Committee on Transportation:

My name is Bob Toyofuku and I am presenting this testimony on behalf of the Hawaii Association for Justice (HAJ) in OPPOSITION to the immunity provisions of S.B. No. 2372, S.D. 3, relating to Private Roads.

The House passed companion measure HB 2049 HD2 which crossed over to the Senate and was moved by the Senate Committee on Transportation and Energy, and Committee on Public Safety, Intergovernmental Relations, and Military Affairs last week. HAJ prefers the substance of HB 2049 HD2 and asks that this measure be held or amended to insert the contents of HB 2049 HD2.

HAJ objects to the language in SB 2372 SD3 for the reasons that follow. The single biggest issue and over-riding factor, by far, is funding. Many of the roads affected by this measure have not been adequately maintained for decades. 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 is not the issue and will not solve the problem.

If government does not have sufficient funds to repair or maintain these roads, then a reasonable grace period, such as four years, should be extended for planning, budgeting and construction. Immunity should sunset in four years. Government can ask

for extensions of the sunset date if justified. This procedure at least assures that there is an incentive for government to repair the most dangerous roads as quickly as feasible and provides legislative oversight to re-evaluate the situation in light of the progress made. If adequate progress is being made, then the sunset date can be extended, if not, then a shorter extension, repeal, or some other solution can be explored. Some oversight is required to make sure needed repairs are done otherwise this problem will be here indefinitely because government is exempted from requirements to timely maintain these roads. This encourages government to do nothing.

Design professionals, contractors and suppliers for capital improvement projects are all required to provide insurance against design and construction defects. Any immunity for improvements performed on surrendered private roads should exclude liability covered by such insurance.

Thank you for the opportunity to testify on this measure. Please feel free to contact me should there be any questions.

lopresti2 - Jasmine

From: mailinglist@capitol.hawaii.gov
Sent: Monday, March 21, 2016 9:09 AM
To: TRNtestimony
Cc: victor.ramos@mpd.net
Subject: *Submitted testimony for SB2372 on Mar 21, 2016 10:15AM*

LATE

SB2372

Submitted on: 3/21/2016

Testimony for TRN on Mar 21, 2016 10:15AM in Conference Room 309

Submitted By	Organization	Testifier Position	Present at Hearing
Victor K. Ramos	Individual	Oppose	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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