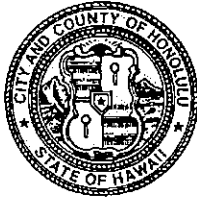


DEPARTMENT OF THE CORPORATION COUNSEL  
**CITY AND COUNTY OF HONOLULU**

530 SOUTH KING STREET, ROOM 110 \* HONOLULU, HAWAII 96813  
PHONE: (808) 768-5193 \* FAX: (808) 768-5105 \* INTERNET: [www.honolulu.gov](http://www.honolulu.gov)



PETER B. CARLISLE  
MAYOR

CARRIE K.S. OKINAGA  
ACTING CORPORATION COUNSEL

KATHLEEN A. KELLY  
FIRST DEPUTY CORPORATION COUNSEL

January 31, 2011

## LATE TESTIMONY

The Honorable Jerry L. Chang, Chair,  
and Members  
Committee on Water, Land, & Ocean Resources  
The House of Representatives  
Hawaii State Capitol  
415 South Beretania Street  
Honolulu, Hawaii 96813

Dear Chair Chang and Members:

Re: Opposition to House Bill No. 836, Relating to Real Property

The City and County of Honolulu ("City") strongly opposes House Bill No. 836. The bill is set for hearing on January 31, 2011, at 9:00 a.m. in Conference Room 325.

The bill proposes to amend Chapter 101 of the Hawaii Revised Statutes (HRS) to add a new section which would require the State or alternatively, the City to condemn a privately owned highway, waterway, or watercourse at the request of an adjacent owner of land; would fix the compensation to be paid in accordance with HRS Section 101-23, provided that if no real property taxes have been paid for the past ten years and the private owner can be located, the compensation would be \$10; would require the State or the City to repair obvious defects on the condemned property in not less than two years after condemnation; and would make the State or the City legally responsible for any damage to the adjacent landowner's property or any injury caused by negligent maintenance beginning two years after condemnation, provided that the failure of the State or the City to bring the condemned property into compliance with State laws or City ordinances regulating maintenance of property shall not constitute evidence of negligence in any subsequent civil action. In addition, the bill proposes to amend HRS Section 46-62 by adding a new subsection providing that if the State declines to file condemnation proceedings under the above proposed amendment to Chapter 101, then the City is required to file condemnation proceedings.

The Honorable Jerry L. Chang, Chair,  
and Members  
Committee on Water, Land, & Ocean Resources  
January 31, 2011  
Page 2

The proposed bill is highly irregular, and in the City's view, is unconstitutional and unlawful. The reason is that under the United States and Hawaii Constitutions and State law, the State and the City have the power of eminent domain, which is the power to condemn private property for public use. It is within the sole discretion of the State or the City as to when to exercise that power, but no matter what, condemnation is only effected for public purposes. By requiring the State or the City to condemn the property designated in the bill at the request of an adjacent landowner is in effect providing the power of eminent domain to that private landowner for a non-public purpose. On that basis, the City believes that the proposed bill is highly irregular, unconstitutional, and unlawful.

In addition, the proposed bill would require the State or the City to repair the property designated in the bill within two years after condemnation, and would make the State or the City liable for damage to the property of the adjacent landowner and any injury caused by negligent maintenance. Obviously, any such repair would require the substantial expenditure of funds by the City, when the City is facing substantial deficits in its budget. Moreover, the added risk of liability on the City proposed by the bill further exacerbates the City's budgetary deficits.

Thank you for the opportunity to present this testimony.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Winston K. Q. Wong', written in a cursive style.

WINSTON K. Q. WONG  
Deputy Corporation Counsel

WKW:di