



TESTIMONY TO THE COMMITTEE ON FINANCE

Thursday, February 25, 2015, 2 p.m.

State Capitol, Conference Room 308

TO: The Honorable Sylvia Luke, Chair
The Honorable Scott Y. Nishimoto, Vice Chair
Members of the Committee

TESTIMONY IN SUPPORT OF HOUSE BILL 1408 HD2 RELATING TO PRIVATE ROADS

I am Stafford Kiguchi with Bank of Hawaii testifying in support of HB1408 HD2 dealing with private roads. I will also offer comments and observations related to the particular issue of road ownership by third parties.

We appreciate and support the committee's initiative and efforts in addressing this long-standing issue and public concern. In addition to the "roads in limbo," where there is a dispute of ownership between the city and state, this measure also aptly notes that there are many roads owned by third parties which are used regularly by the public.

Bank of Hawaii owns a number of roads that were acquired when it purchased Hawaiian Trust and Bishop Trust companies dating back to the 1980s. 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, etc. Many of these roads are what is termed as "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.

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Page 2

HB1408 HD2 Bank of Hawaii Testimony in Support

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.

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 HOUSE FINANCE COMMITTEE

Wednesday, February 25, 2015, 2 p.m.
State Capitol, Conference Room 308

The Honorable Sylvia Luke, Chair
The Honorable Scott Y. Nishimoto, Vice Chair
Members of the Committee

**TESTIMONY IN SUPPORT OF HOUSE BILL 1408 HD2
RELATING TO PRIVATE ROADS**

I am James W. Y. Wong testifying in support of HB 1408 HD2 dealing with private roads.

I support the committee's initiative and efforts in addressing this issue and public concern. There are many "roads in limbo," throughout the state including Honolulu where there is a dispute of ownership between the city and state, and there are many roads owned by third parties which are used regularly by the public.

Many of these roads are open to the public with unrestricted access for cars, buses, refuse trucks, etc. Many of these roads abut or are sandwiched between sections of city-owned roads or streets and in many cases the city currently provides maintenance services for these roads. There is the also the issue of some roads or streets not conforming to current codes.

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. Maintenance and ownership of such roads best belongs within the jurisdiction of the city and county. The city is best equipped to conduct any necessary planning, road repair and maintenance work. I believe it makes the sense for the city to own and maintain these types of roads.

Thank you for the opportunity to testify.

James W. Y. Wong
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DEPARTMENT OF DESIGN AND CONSTRUCTION
CITY AND COUNTY OF HONOLULU

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MAYOR



ROBERT J. KRONING, P.E.
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MARK YONAMINE, P.E.
DEPUTY DIRECTOR

February 24, 2015

The Honorable Sylvia Luke, Chair
and Members
House Committee on Finance
State Capitol, Room 306
415 South Beretania Street
Honolulu, Hawaii 96813

LATE

Dear Chair Luke and Members:

SUBJECT: House Bill No. 1408 HD2, Relating to Private Roads

The Department of Design and Construction (DDC) respectfully **opposes** House Bill No. 1408 HD2, which 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.


The problem that the bill presents for DDC is the portion that proposes to amend Section 264-1 (c), Hawaii Revised Statutes, to require that upon receipt of a notice from a resident or abutting landowner of a parcel that is believed to qualify for surrender, "the county shall accept as surrendered the highway, road, alley, street, way, lane, bikeway, bridge, or trail and record its ownership with the state bureau of conveyances, unless the county establishes other proof of ownership by within six months of the notice."

DDC's Land Division is the City agency that would be responsible for establishing proof of land ownership. The six-month time limit would be unreasonable if many notices were submitted within a short period of time. DDC's limited resources would be able to address a few notices concurrently, but due to the complexity of some land ownership records, and the effort required to establish proof of ownership, the proposed time limit could not be met if a large number of notices needed to be addressed concurrently. Because of the variability and uncertainty associated with the effort required to establish proof of ownership, DDC recommends that the bill allow five years from receipt of a notice to establish proof of ownership.

For this reason, DDC respectfully **opposes** House Bill No. 1408 HD2.

Thank you for the opportunity to testify.

Very truly yours,


Robert J. Kroning, P.E.
Director

DAVID Y. IGE
GOVERNOR OF HAWAII



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES

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Testimony of
CARTY S. CHANG
Interim Chairperson

CARTY S. CHANG
INTERIM CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

DANIEL S. QUINN
INTERIM FIRST DEPUTY

W. ROY HARDY
ACTING 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

LATE

Before the House Committee on
FINANCE

Wednesday, February 25, 2015
2:00 PM
State Capitol, Room 308

In consideration of
HOUSE BILL 1408, HOUSE DRAFT 2
RELATING TO PRIVATE ROADS

House Bill 1408, House Draft 2 proposes to require the Counties¹ 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. The measure also purports to exempt the State and Counties from performing any maintenance on a surrendered road and does not hold the State and Counties liable for not maintaining a surrendered road or for maintenance performed prior to assuming ownership up until the County or State decides to repair the damaged once private road. **The Department of Land and Natural Resources opposes this measure.**

This measure serves to alleviate the liability of a private party and transfer that liability to the public. The bill is particularly onerous 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.

Furthermore, the immunity provided by this measure raises doubt. The immunity terminates once a government entity performs practically any type of remedial or maintenance work on the damaged once private road. The Counties (and State if it so elects) are 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

¹ And State if the State so elects to accept the road.

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 which were caused by the original private developer.

**TESTIMONY OF ROBERT TOYOFUKU ON BEHALF OF THE HAWAII
ASSOCIATION FOR JUSTICE (HAJ) IN OPPOSITION TO H.B. NO. 1408 H.D.2**

DATE: Wednesday, February 25, 2015
TIME: 2:00 pm

LATE

To: Chair Sylvia Luke and Members of the House Committee on Finance:

My name is Bob Toyofuku and I am presenting this testimony on behalf of the Hawaii Association for Justice (HAJ) in OPPOSITION to H.B. No. 1408 H.D. 2, relating to Private Roads.

The purpose of this measure is mandate non-discretionary transfer of private roads and to grant broad immunity to state or county agencies that receive title to highways, roads, alleys, streets, ways, lanes, bikeways, bridges or trails that are currently privately owned or whose ownership may not be clear or is disputed. HAJ opposes this measure because it will not accomplish its goal of adequate repair and maintenance for these roads and the immunity provided is far too broad for the purpose of this measure.

More than one hundred years ago, the 1913 Legislature considered HB 280 in an attempt to address repair and maintenance obligations of roads whose ownership was disputed or unclear. Today, there are still hundreds of miles of roads throughout the State which lack adequate maintenance because counties simply do not have the funds to accept private and disputed roads, and the maintenance obligation that accompanies these roads.

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. Counties don't want and cannot afford to assume the cost of rebuilding and maintaining these roads whether or not they are given immunity.

First, if the problem is that the counties are not willing to maintain these roads for fear that their actions will be construed as proof of past ownership, then it is a simple matter to provide that no maintenance can be used in any way as proof of past ownership.

The following or similar language will accomplish that purpose:

No action by a county to maintain or repair a road whose ownership is acquired pursuant to this section may be used to establish the county's past ownership or jurisdiction over the road.

Second, if the problem is that counties are not currently capable of repairing or maintaining these roads, then a reasonable grace period (e.g., 5 years) should be extended for planning, budgeting and construction.

Third, the current language is much too broad as it provides total immunity indefinitely into the future (whether or not repairs are made), extends to improper or unsafe workmanship, and excuses all past negligent or wrongful acts by the county in connection with these roads. For example, if workers negligently forget to replace a stop sign and two cars, each rightfully believing they have the right of way, collide in an intersection there would be immunity granted by the sweeping language of (d). Similarly, if workers negligently use the wrong material and a bridge collapses killing a family driving over the bridge, there would be complete immunity. If a county already

has existing obligations this section could be used to absolve it of past negligence as well as future liability. It is not necessary to give immunity for unsafe roadway repair work and violates government's basic responsibility to provide for the safety and welfare of its citizens.

Fourth, this measure would terminate existing responsibilities for the safe maintenance of these roads. Many, if not most, private roads open to the public are currently the responsibility of its owners or owners association in connection with commercial developments, townhomes or small residential developments. This measure will allow any road "built by private parties" to be surrendered to the counties and thus terminate the responsibilities of current owners, while practically insuring that there will be no continued maintenance because counties are not required to maintain these roads. In addition, those harmed by inadequate or improper maintenance will have no recourse because the counties will have total immunity. As it presently stands, the current owners are responsible for harm caused by their failure to adequately maintain these roads.

Realistically, this measure will not solve the problem. This measure will require counties to take title to roads, yet exempt them from any repair or maintenance requirement forever, and terminate all legal responsibility on the part of those currently responsible.

For these reasons, HAJ opposes this measure and asks that this bill be amended as suggested or be held. HAJ did not testify on this bill earlier because it had no objection to the language in the original version of this bill.

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