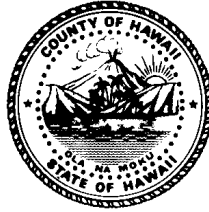


William P. Kenoi
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Date: April 4, 2016
Time: 9:15 am
Place: Conference Room 211 State Capitol
415 South Beretania Street

H.B. 2049 (SD1)
Relating to Transportation

Senate Committee on Judiciary and Labor
and
Committee on Ways and Means

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,
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.

The amendment now also provides for a commission on remnant roads that will have the duty and authority to assign ownership of any privately owned roads that are used by the public and over which the private owners have not exercised ownership to either the State or a county. This commission's determination will operate as an actual transfer of ownership, which seems to contradict the earlier provision of the amendment that requires a county to condemn such a road. DPW believes it would be more appropriate for such a commission to initially inventory and/or propose policies or legislation as to these "remnant private roads" rather than to actually determine ownership.

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.