



**TESTIMONY TO THE COMMITTEE ON TRANSPORTATION**

**Wednesday, February 10, 2016, 10 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 HB2049 RELATING TO TRANSPORTATION**

I am Stafford Kiguchi with Bank of Hawaii testifying in support of HB2049 dealing with private roads. We appreciate and support the committee's initiative and efforts in addressing this long-standing issue and public concern.

This bill would require 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. It exempts the State and counties from maintaining surrendered roads and from liability for lack of maintenance or for maintenance performed prior to assuming ownership.

Bank of Hawaii is on title to a number of roads that were acquired when it purchased Hawaiian Trust and Bishop Trust companies 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, 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.

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.

-More-

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.

However, we also recognize that this is a complex issue and are willing to work in cooperation with the appropriate city and state government entities to develop a “pilot process” to gradually transfer ownership of certain pre-designated roads or streets that would accommodate a mutually agreed upon schedule and conditions.

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  
Wednesday, February 10, 2016 at 10:00 A.M.  
Conference Room 309, State Capitol**

**RE: HOUSE BILL 2049 RELATING TO TRANSPORTATION**

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

The Chamber of Commerce Hawaii ("The Chamber") **strongly supports** HB 2049, which requires the counties to accept the surrender of a private road if there has been no act of private ownership for five years. Also exempts the State and counties from maintaining surrendered roads and from liability for lack of maintenance or for maintenance performed prior to assuming ownership.

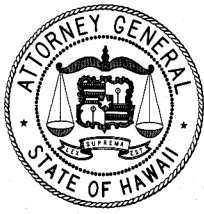
The Chamber is Hawaii's leading statewide business advocacy organization, representing about 1,000 businesses. Approximately 80% of our members are small businesses with less than 20 employees. As the "Voice of Business" in Hawaii, the organization works on behalf of members and the entire business community to improve the state's economic climate and to foster positive action on issues of common concern.

The Chamber strongly supports HB 2049 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. HB 2049 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 to suggest the following amendments:

1. Amend HB 2049 section 2 of the bill by adding [HRS 264-1 (c) 2] with the following amendments:
  - a. Allows the state and counties the ability to use condemnation as the process for the surrendering of private parcels.

We understand that this is a work in progress and look forward to working with the various stakeholders. Thank you for the opportunity to testify.



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

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**ON THE FOLLOWING MEASURE:**  
H.B. NO. 2049, RELATING TO TRANSPORTATION.

**BEFORE THE:**  
HOUSE COMMITTEE ON TRANSPORTATION

**LATE**

**DATE:** Wednesday, February 10, 2016      **TIME:** 10:00 a.m.

**LOCATION:** State Capitol, Room 309

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

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Chair Aquino and Members of the Committee:

The Department of Attorney General appreciates the intent of this bill, but opposes it as written.

The bill addresses the problem of privately owned roads. Often it is unclear who owns a privately owned road. Frequently, even if the owner is identified, the owner is not repairing the road. The road is not owned by either the County or the State so no government entity will repair the road. This bill facilitates the dedication or 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 and instead provides that a county shall accept the dedication or surrender “without exercise of discretion.”

The potential problem we identify is that the bill as written may constitute 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 provides that counties – previously entitled to reject ownership of unwanted roads – would now be required to own these otherwise private roads.

The bill seeks to mitigate the impact of road ownership by providing that the county is (1) not required to repair or maintain “surrendered” roads and (2) is not liable for injuries on surrendered roads. These provisions do not extend to “dedicated” roads.

Requiring the counties to repair and maintain dedicated roads arguably constitutes a “new program or increase in the level of service under an existing program.”

We also note that there is an open question as to whether a road can be surrendered to the State without State approval. Two Intermediate Court of Appeal (ICA) cases say that “a road cannot be surrendered unless the State approves the surrender.” *Santos v. Perreira*, 2 Haw. App. 387, 390, 633 P.2d 1118, 1122 (1981), and *Maui Ranch Estates Owners Ass’n v. Maui County*, 6 Haw. App. 414, 417-18, 724 P.2d 118, 121 (1986). More recently the ICA reached the opposite conclusion in *Gold Coast Neighborhood Ass’n v. State*, 2015 WL 4005271 (Haw. Ct. App. June 30, 2015). The ICA did not discuss, overrule, or distinguish its earlier decision. The matter is now under review by the Supreme Court. We do not know when the Court will rule but its decision will shed light on the meaning of the law and might assist the Legislature in deciding if or how to revise the law.

We note that the concern as to unfunded mandate would be diminished if provisions limiting duties as to surrendered roads are extended to dedicated roads.

We respectfully request that the Committee defer the bill.

DEPARTMENT OF FACILITY MAINTENANCE  
**CITY AND COUNTY OF HONOLULU**

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KIRK CALDWELL  
MAYOR



*Late*

ROSS S. SASAMURA, P.E.  
DIRECTOR AND CHIEF ENGINEER

EDUARDO P. MANGLALLAN  
DEPUTY DIRECTOR

IN REPLY REFER TO:  
16-036

February 10, 2016

The Honorable Henry J.C. Aquino, Chair  
and Members of the Committee on Transportation  
House of Representatives  
Hawaii State Capitol  
415 S. Beretania Street, Room 419  
Honolulu, Hawaii 96813

**LATE**

Dear Chair Aquino and Members of the Committee:

SUBJECT: Opposition to House Bill No. 2049, Relating to Transportation

Thank you very much for the opportunity to present testimony in opposition to House Bill No. 2049, Relating to Transportation, which requires the legislative body of a county to accept the dedication or surrender of a highway, road, alley, street, way, lane, bikeway, bridge, or trail where such highway, road, alley, street, way, lane, bikeway, bridge, or trail is used by the public without restriction and has a history of being maintained by the county or State. The measure also provides that, if a private highway, road, alley, street, way, lane, bikeway, bridge, or trail has been surrendered to the county, the county shall be responsible for performing construction, reconstruction, preservation, resurfacing, restoration, and rehabilitation upon such highway, road, alley, street, way, lane, bikeway, bridge, or trail pursuant to all State laws and rules applicable to the public highway.

The City and County of Honolulu (the "City") strongly opposes House Bill 2049.

Section 264-1(d) of the Hawaii Revised Statutes, as amended already requires the legislative body of a county to accept dedication or surrender of a road, alley, street, bikeway, way, lane, trail, bridge, or highway that is constructed and completed as required by any ordinance of the county or any rule, regulation, or resolution thereof having the effect of law. If a road, alley, street, bikeway, way, lane, trail, bridge, or highway complies with the current code, the City must accept it.

The Honorable Henry J.C. Aquino, Chair  
February 10, 2016  
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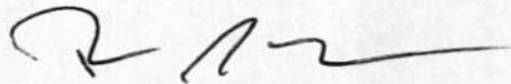
House Bill 2049 would effectively require the City to accept any non-compliant road, alley, street, bikeway, way, lane, trail, bridge, or highway if used by the public and maintained by the City or the State. Such a requirement would strongly encourage developers to reject their obligation to complete their roads as required by law or to maintain their roads and would strongly discourage the City from initiating maintenance of any private road, alley, street, bikeway, way, lane, trail, bridge, or highway in the public's interest.

House Bill 2049 forces the City to accept potentially thousands of non-compliant highways, roads, alleys, streets, ways, lanes, bikeways, bridges, and trails, imposing unreasonable responsibility and liability on the City.

House Bill 2049, if enacted, will require the City to take on additional responsibility it is not now required to perform, will increase the level of service the City currently provides and will result in an unfunded mandate to the City in violation of Article VIII, Section 5 of the Hawaii State Constitution.

For the reasons stated above, the City strongly opposes House Bill 2049, and strongly urges that the measure be filed.

Sincerely,

A handwritten signature in black ink, appearing to read 'R. Sasamura', with a long horizontal flourish extending to the right.

Ross S. Sasamura, P.E.  
Director and Chief Engineer