

**HB 2604,
HD1**

DAVID Y. IGE
GOVERNOR OF
HAWAII



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

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COMMISSION ON WATER RESOURCE MANAGEMENT
CONSERVATION AND COASTAL LANDS
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HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES

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Testimony of
SUZANNE D. CASE
Chairperson

Before the Senate Committee on
WATER, LAND, AND AGRICULTURE

Wednesday, March 16, 2016
3:00 P.M.

State Capitol, Conference Room 224

In consideration of
HOUSE BILL 2604, HOUSE DRAFT 1
RELATING TO THE ACQUISITION OF REAL PROPERTY

House Bill 2604, House Draft 1 proposes to amend Section 171-30, Hawaii Revised Statutes (HRS), to provide that the acceptance by the Territorial Legislature or State Legislature of a dedication of land in the Kakaako Community Development District by a private owner is sufficient to convey title to the State. **The Department of Land and Natural Resources (Department) opposes this measure.**

Although the latest draft of the measure is limited to land located within the Kakaako Community Development District, title is still being conveyed to the State under the Board of Land and Natural Resources (Board), as opposed to another agency that can hold title in its own name. Requiring the Board to take title to such land would abrogate the Board's authority to conduct the necessary due diligence before considering the acquisition in a public, sun-shined meeting. Therefore, the Department respectfully requests that the measure be amended to designate the appropriate agency that will hold title to lands acquired pursuant to this measure.

Prior to approving any land acquisition, the Board has authorized the Department to conduct an extensive due diligence review of the land to be acquired to determine potential liability to the State. This process includes a review of title status including the impact of any encumbrances affecting the property, environmental hazards assessment via a Phase I and Phase II (if necessary) environmental site assessments, boundary survey and descriptions reviewed by the State Surveyor, and an independent appraisal to determine the fair market value. In addition, all acquisitions of real property interests are subject to review and approval by the Attorney General. The Department does not believe the Legislature has the staff, time, or budget to

conduct these vital assessments on its own. Public comments alone would not rise to the level of a due diligence review.

In addition, the measure is unclear as to whether the proposed authority of the Legislature is limited to dedications of land at gratis. If compensation is provided to the public landowner, Section 171-30 (2)(e), HRS, prohibits the State from purchasing land at greater than the fair market value as determined by independent appraisal. The measure is unclear on whether this provision would apply to dedications of land accepted by the Legislature. The Department opposes any exception that would allow for the purchase of private lands at greater than fair market value.

Thank you for your consideration of this testimony.



HAWAII COMMUNITY
DEVELOPMENT AUTHORITY



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STATEMENT OF

AEDWARD LOS BANOS, INTERIM EXECUTIVE DIRECTOR
HAWAII COMMUNITY DEVELOPMENT AUTHORITY

BEFORE THE

SENATE COMMITTEE ON WATER AND LAND

ON

WEDNESDAY, MARCH 16, 2016

3:00 P.M.

State Capitol, Conference Room 224

in consideration of

**HB 2604 HD1 – RELATING TO THE ACQUISITION OF REAL
PROPERTY**

Purpose: Clarifies that the acceptance by the Territorial Legislature or the Legislature of a dedication of land in the Kakaako Community Development District by a private landowner is sufficient to convey title to the State of Hawaii.

Position: As the Hawaii Community Development Authority (HCDA) board has not established its position on this proposal, as the interim Executive Director, I take no position but, offer the following comments.

There is currently a dispute regarding ownership of public right-of-ways in the Kakaako Community Development District. Lands claimed by a private entity (via quit claim deed) are otherwise considered to be public roadways, however the unimproved roadway shoulders are currently being administered as private property. These right-of-ways and shoulders include (but may not be limited to):

- A portion of Queen, Kawaiahao and Waimanu Streets (between Cooke and Kamakee);
- Cummins Street;
- The attendant unimproved roadway shoulders; and
- Possibly other streets or real estate not yet identified.

Testimony reflects the view and position of the Executive Director and not that of the Authority.

The issues involved in this matter are not simply limited to clarifying the effect of historic or prospective legislative action. While the proposal would seek to clarify that title had already been or could have been conveyed to the State of Hawaii [more specifically the Department of Land and Natural Resources (DLNR)], the proposal does not address other issues (which include but may not be limited to):

- What interest or capacity (if any) that the State of Hawaii DLNR has or did have for acquiring public right-of-way that is typically owned and maintained (via county property and vehicle taxes) as County roadways;
- Whether there is any compelling state interest to acquire, improve and maintain rights-of-way that do not qualify as state highways (with its attendant federal requirements and limited prospects of attracting matching funds) and which only benefit private landowners;
- With whom (i.e., DLNR, Department of Transportation, City & County of Honolulu, private community association) should the title of the right-of-way and unimproved shoulders be ultimately conveyed to; and
- Whether a landowner may assert control over only a portion of public right-of-way (unimproved roadway shoulders) without having improved or maintained either the shoulder or public right-of-way.

It is also noteworthy that litigation seeking clarification of the existing quit claim deed in circuit court (where disputes regarding title to real estate are typically adjudicated) have not yet run its course.

Thank you for the opportunity to provide our comments on this measure.



**Testimony to the Senate Committee on Water, Land, & Agriculture
Wednesday, March 16, 2016 at 3:00 P.M.
Conference Room 224, State Capitol**

**RE: HOUSE BILL 2604 HD 1 RELATING TO THE ACQUISITION OF REAL
PROPERTY**

Chair Gabbard, Vice Chair Nishihara, and Members of the Committee:

The Chamber of Commerce Hawaii ("The Chamber") **provides comments on** HB 2604 HD 1, which proposes to amend Chapter 171-30 HRS by adding that acceptance by the Territorial Legislature or the Legislature of a dedication of land in the Kakaako Community Development District by a private owner is sufficient to convey title to the State.

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.

It appears that HB 2604 HD 1 attempts to address a situation in Kakaako where there may be private ownership of public roads. With respect to the ownership of public roads, it is our understanding that Hawaii, unlike any other State in the U.S., was originally a sovereign nation – a kingdom. There were certain preexisting laws that were passed on and incorporated into what became laws of the U.S. Territory, and then ultimately, of the State.

The Highways Act of 1892:

In October of 1892, Queen Liliuokalani approved a law that determined that the ownership of all public highways and the land, real estate and property of the same, shall be in the Hawaiian Government in fee simple. The definition of public highway includes all existing roads and trails at the time "or hereafter opened, laid out or built by the Government, or by private parties, and dedicated or abandoned to the public as a highway, are hereby declared to be public highways." Furthermore, "All public highways once established shall continue until abandoned by due process of law".

We understand that Chapter 264 HRS provides a definition of State and County highways, roads, etc., which include situations where ownership is acquired by the State or County through dedication or surrender.

Not knowing the exact circumstances of the situation in Kakaako, it would appear that if the road ownership issue falls outside of what is provided in the existing laws, perhaps rather



Chamber *of* Commerce HAWAII

The Voice of Business

than amending Chapter 171-30 HRS, the government entity responsible for oversight of the public roads in this area should acquire the public roads by purchase or eminent domain.

The proposed amendment to the Statute seems to add more confusion to a complicated situation. We appreciate the opportunity to provide our comments on the matter.

Thank you for the opportunity to testify.

From: mailinglist@capitol.hawaii.gov
To: [WLA Testimony](#)
Cc: lynnehi@aol.com
Subject: Submitted testimony for HB2604 on Mar 16, 2016 15:00PM
Date: Sunday, March 13, 2016 11:07:08 AM

HB2604

Submitted on: 3/13/2016

Testimony for WLA on Mar 16, 2016 15:00PM in Conference Room 224

Submitted By	Organization	Testifier Position	Present at Hearing
lynne matusow	Individual	Support	No

Comments: It is important that grey areas be clarified. Please vote yes. Lynne Matusow

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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