

DAVID Y. IGE
GOVERNOR OF HAWAII



**STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES**

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

**Testimony of
SUZANNE D. CASE
Chairperson**

**Before the House Committee on
FINANCE**

**Friday, April 1, 2016
11:00 AM
State Capitol, Conference Room 308**

**In consideration of
SENATE BILL 2372, SENATE DRAFT 3, HOUSE DRAFT 1
RELATING TO PRIVATE ROADS**

Senate Bill 2372, Senate Draft 3, House Draft 1 proposes to 1) establish a temporary roads commission to make recommendations on the disposition of private roads and roads in limbo; 2) authorize the State or county to obtain ownership over a road by condemnation pursuant to the power of eminent domain; 3) exempt a county from having to modify a road to meet current construction standards of the road was built according to standards at place at the time of construction and completion; 4) allow for private road owners to petition the mayor to begin condemnation proceedings if certain requirements are met; 5) exempt the State and counties from maintaining or improving condemned roads; and 6) appropriate funds for the repair and improvement of certain roads. **The Department of Land and Natural Resources (Department) offers the following comments on the measure.**

The current draft of this measure provides the State and Counties the authority to assume ownership over a privately constructed highway, road, alley, street, way, lane bikeway, bridge or trail through condemnation proceedings pursuant to Chapter 101, Hawaii Revised Statutes (HRS). Providing the State or Counties this discretion will mitigate the Department's concern where a private developer can avoid building roads to the appropriate county or government standards and subsequently abandon such substandard roads to the Counties. Furthermore, exempting the State or County from regulatory requirements to perform construction, reconstruction, preservation, resurfacing, restoration and rehabilitation upon such condemned roads would alleviate a significant financial burden on the State and Counties.

In regards to the temporary roads commission, the Department is generally supportive of efforts to resolve the issue of roads in limbo. However, pursuant to Chapter 264, HRS, jurisdiction of

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

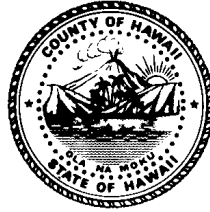
AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
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CONSERVATION AND RESOURCES ENFORCEMENT
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FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
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LAND
STATE PARKS

highways, roads or other public thoroughfares are clearly under the jurisdiction of either the respective counties or the State through the Department of Transportation (DOT) only, and not the Department. Consequently and in accordance with Chapter 264, HRS, the Department respectfully states that it will not implement any recommendation by the commission imposing upon it the jurisdiction over, or management of roads and highways. Furthermore, in order to help assure an outcome that is consistent with Chapter 264, HRS, the Department respectfully suggests that the Department Chairperson or Chairperson's designee be added to be as a voting member of the commission.

Thank you for your consideration of this testimony.

William P. Kenoi
Mayor

Randall Kurohara
Managing Director



Warren H. W. Lee
Director

Brandon A. K. Gonzalez
Deputy Director

County of Hawai'i
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Date: April 1, 2016
Time: 11:00 am
Place: Conference Room 308
State Capitol
415 South Beretania Street

S.B. 2372 (SD3, HD1)
Relating to Private Roads

House of Representatives
Committee on Finance

The Department of Public Works for the County of Hawai'i ("DPW") respectfully but firmly opposes S.B. 2372 (SD3, HD1), which in its present version is impracticable, inequitable, and likely unconstitutional. The Bill internally conflicts as it creates a commission that it tasks with a number of powers and then lays out inequitable procedures requiring counties to accept roads¹ that appear to be superfluous. This Bill inequitably requires the counties to condemn any private road, in any condition and without any discretion upon any private owner of a road petitioning the county's mayor to condemn the road if it "is part of a public road, ownership has not been exercised by limiting use or access, or the county has provided some form of maintenance to the ... road... in the interest of the public." The Bill now also further requires the counties' respective legislative bodies to accept substandard roads without the exercise of any discretion, as they must accept any roads that are constructed and completed as required by a county's ordinance, rule, regulation, or resolution, and such roads are expressly exempt "from meeting the construction standards in place at the time of transfer to the county." Finally, the Bill appropriates some funds, but only to the City and County of Honolulu for five roads on Oahu for the fiscal year 2016-2017. These further proposed amendments to HRS § 264-1 make this Bill wholly impracticable in addition to inequitable and probably unconstitutional.

¹ For the purposes of brevity DPW is using the term "roads" to refer to and include the "highway, road, alley, street, way, lane, bikeway, bridge, or trails" referred to in S.B. No. 2372 (SD3, HD1).

S.B. 2372 (SD3, HD1) internally conflicts as it first creates a commission that is tasked with determining the ownership of all roads in limbo and private roads and with recommending proposed legislation to determine ownership and/or to condemn such roads², but then sets forth procedures for a private owner of a road to petition a county's mayor to accept the road and for the counties' legislative bodies to automatically accept substandard roads that were constructed and completed according to county ordinance, rule, regulation, or resolution. The further procedures appear superfluous when the commission is already tasked with determining ownership of all roads in limbo and private roads, developing protocols to determine ownership, and recommending proposed legislation regarding determining the ownership of roads to the State Legislature in 2018. It appears that the provisions of the Bill other than creating the commission will not take effect until 2050, so laying out further procedures at this juncture seems premature and superfluous. DPW is concerned that S.B. 2372 (SD3, HD1) is tasking this commission with a herculean set of tasks which it will not be able to complete by 2018, and it would seem more prudent for such a commission to focus its inquiry on proposing legislation to amend HRS § 264-1 to address the issues highlighted in the preamble to S.B. 2372 (SD3, HD1).

Both of the proposed procedures by which the counties will be forced to automatically accept roads are extremely objectionable. The first measure allows any private owner of a road to petitioning a county's mayor to condemn the road if it "is part of a public road, ownership has not been exercised by limiting use or access, or the county has provided some form of maintenance to the ... road... in the interest of the public." This provision does not provide any mechanism for a county to contest the claim that a private road meets any of the above conditions, and completely ignores the commission created in the first section of S.B. 2372 (SD3, HD1). This provision is also problematic because of the lack of standards: there is no definition for a "public road" appropriate for a petition; it does not provide how a mayor is supposed to respond to a petition, or where or if a petition should be filed; there are no time limits for when a private owner may have restricted access or a county provided maintenance; and the section regarding the county providing "some form of maintenance...in the interest of the public" is ill-defined and could be interpreted very broadly. "Some form of maintenance" is an ambiguous term. This measure clearly creates a disincentive to counties going forward in making any efforts to repair or maintain roads that may be privately owned, but are publicly used, and alters the present statutory framework which allows counties to undertake the maintenance and/or repair of such roads without having to assume ownership. See HRS Chapter 265A.

S.B. 2372 (SD3, HD1) further requires the counties' respective legislative bodies to accept substandard roads without the exercise of any discretion. Any roads that are constructed and completed as required by a county's ordinance, rule, regulation, or resolution are to be accepted, but are also expressly exempt "from meeting the

² The commission has a number of powers, including the powers to conduct an inventory and analysis of all private roads and roads in limbo, determine the ownership of all such roads, develop protocols or rules to determine how to resolve disputes over the ownership of such roads, and to advise the appropriate legislative body of its determination of ownership and recommend action to the appropriate legislative body including initiating condemnation proceedings. This commission is to "submit a report of its findings and recommendations, including proposed legislation, to the legislature" within twenty days of the beginning of the 2018 regular session.

construction standards in place at the time of transfer to the county.” In the County of Hawai‘i when roads are required to be constructed and completed by county ordinances, rules, regulations, or resolutions, the applicable county law will provide that the roads are to be developed to dedicable standards and there is an established procedure of review and approval by DPW that takes place prior to any road actually being dedicated to the County of Hawai‘i. That procedure, and further reviews and approvals are in place to ensure that the County of Hawai‘i does not accept substandard roads for which it will bear substantial liability and incur substantial costs to improve, repair, and maintain. S.B. 2372 (SD3, HD1) would eviscerate these procedures and allow developers to inequitably avoid their obligations to develop roads to dedicable standards. The measure would clearly decrease a developer’s incentive to construct new roads to dedicable standards, and require the counties to repair, improve and/or reconstruct roads that were not properly planned or developed to avoid potential liability for these substandard roads. This measure may also violate the Americans With Disabilities Act and potentially other federal laws or obligations that the counties must follow, and the counties would unfairly bear the costs of complying with such obligations that the private owners disregarded and are now shifting to the counties.

The proposal also unfairly shifts the burden of, and liability for, maintaining roads from private owners who have not been performing their duties to maintain such roads to the counties. The preamble to this measure admits that some of these private roads are in disrepair. Such conditions may be due to disputes in land ownership between private property owners, lack of maintenance due to insufficient funding, and/or the inability of private property owners to agree via subdivision covenants, road maintenance associations, or other agreements to effectuate repair work. This measure would allow the owners of such roads that they have failed to maintain to shift the burden of, and liability for, repairing and/or maintaining their neglected roads to the counties.

DPW still has serious concerns that S.B. 2372 (HD1, SD 3) will violate the Constitution of the State of Hawai‘i as an unfunded mandate. Article VIII, Section 5 of the Constitution of the State of Hawai‘i provides that any new program or increase in the level of service under an existing program that the State Legislature mandates that the counties undertake must provide that the State shall share in the cost. However, as further explained below, S.B. 2372 (HD1, SD 3) will cause the counties to incur tremendous costs, but the measure does not provide for any funding to the counties for these costs other than specific funds to City and County of Honolulu for five roads on Oahu for the fiscal year 2016-2017.

S.B. 2372 (HD1, SD 3) also undermines the counties’ “home rule” authority as it is forcing the counties to accept and condemn a number of roads without the exercise of any discretion, and also may be undermining presently existing county ordinances, rules, regulations, or resolutions that require developers to meet the county’s construction standards to dedicate roads. As stated above, S.B. 2372 (HD1, SD 3) expressly exempts roads that were constructed and completed pursuant to county ordinances, rules, regulations, or resolutions “from meeting the construction standards in place at the time of transfer to the county”.

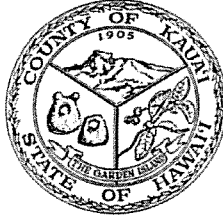
The effective date of S.B. 2372 (HD1, SD 3) will be 2050, so the counties will eventually incur even greater costs and take over an ever-increasing substandard roads as more

substandard roads are created. Due to this legislation private owners and developers will have no incentive to create and/or improve roads to dedicable standards.

Finally, S.B. 2372 (HD1, SD 3) does not provide the counties with any immunity for these substandard roads which they may be forced to accept or condemn.

For the foregoing reasons DPW respectfully opposes S.B. 2372 (HD1, SD

Bernard P. Carvalho, Jr.
Mayor



Lyle Tabata
Acting County Engineer

Nadine K. Nakamura
Managing Director

DEPARTMENT OF PUBLIC WORKS

County of Kaua'i, State of Hawai'i

4444 Rice Street, Suite 275, Lihu'e, Hawai'i 96766
TEL (808) 241-4992 FAX (808) 241-6604

March 31, 2016

The Honorable Sylvia Luke, Chair
The Honorable Scott Y. Nishimoto, Vice Chair
and Members of the House Committee on Finance
Hawai'i State Senate
State Capital
Honolulu, Hawai'i 96813

Dear Chair Luke, Vice Chair Nishimoto, and Members:

SUBJECT: SENATE BILL 2372 SD 3 HD 1, RELATING TO PRIVATE ROADS

The County of Kaua'i, Department of Public Works (Kauai DPW) submits testimony in opposition to SB 2372, SD3, HD1.

Kauai DPW generally supports the creation of a temporary roads commission to review previous studies, conduct an inventory, determine ownership, develop rules, implement protocols, and advise and recommend action to the legislature on resolving and settling ownership of roads in limbo and private roads. However, Kauai DPW has concerns regarding the amendments to Hawaii Revised Statutes (HRS) Chapter 264; particularly the requirement that the counties acquire private roads through condemnation. Although condemnation may restore some level of discretion to the county on whether to initiate proceedings pursuant to Hawaii Revised Statutes (HRS) Chapter 101, concerns include: 1) who will just compensation be paid to in the scenario where a private owner does not exist anymore or cannot be found; 2) what will just compensation look like where highways, roads, alleys, streets, ways, lanes, bikeways, bridges, or trails are substandard and costs for improving, maintaining, and addressing liability exceeds the property's value; and 3) condemnation will impose a complicated, time consuming, and costly process for the acquisition of property whose owner may be missing-in-action and whose value is overshadowed by great costs for improvements, maintenance, and liability.

By exempting highways, roads, alleys, streets, ways, lanes, bikeways, bridges, or trails from meeting construction standards at the time of transfer, the bill encourages private owners or developers to shift the cost and burden of properly improving and maintaining privately owned roads to minimally safe standards to the county. Substandard private roads remain substandard and unsafe due to the developers' failure to properly develop or maintain the properties. This

SENATE BILL 2372 SD 3 HD 1, RELATING TO PRIVATE ROADS

March 31, 2016

Page 2

bill fails to require owners, developers or realtors to complete their duty or contribute to the costs to address minimal safety issues.

Exempting the state and counties from maintaining or improving highways, roads, alleys, streets, ways, lanes, bikeways, bridges, or trails may conflict and eliminate the counties' ability to address minimal safety standards on behalf of private owners pursuant to county ordinance. HRS §265A-1 allows the counties to create regulations to allow the counties to repair or maintain private roads without assuming ownership. Accordingly, Kauai County Ordinance §18-2.4 allows the county to maintain privately owned roads at the request of the owner without assuming ownership. This bill will eliminate the counties ability to address safety issues in this manner.

In addition, legislation that requires the county to assume ownership will result in an unfunded mandate that is prohibited by Article VIII, section 5, of the Hawaii State Constitution, particularly where funding is only provided for five roads on Oahu during fiscal year 2016 – 2017.

Kauai DPW recommends that SB 2372 SD3, HD 1 be amended to eliminate any amendments to HRS Chapter 264 until the temporary roads commission fulfills the tasks enumerated in Section 2 of SB 2372 SD3, HD 1.

Yours truly,

FOR 
Lyle Tabata
Acting County Engineer

**COMMENTS OF ROBERT TOYOFUKU ON BEHALF OF THE HAWAII
ASSOCIATION FOR JUSTICE (HAJ) REGARDING S.B. NO. 2372, S.D. 3, H.D..1**

DATE: Friday, April 1, 2016

TIME: 11:00 am

ROOM: 308

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

My name is Bob Toyofuku and I am presenting comments on behalf of the Hawaii Association for Justice (HAJ) regarding S.B. No. 2372, S.D. 3, H.D. 1, relating to Private Roads.

HAJ has no objection to this measure as currently drafted. There have been many attempts to craft language in this and the House companion measure HB 2049 HD during the course of this legislative session. HAJ has objected to language, in prior drafts, that gives government broad immunity in connection with the acquisition of private or disputed roads.

HAJ also has no objection to the House companion measure HB 2049 HD2.

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



TESTIMONY TO THE COMMITTEE ON FINANCE

Friday, April 1, 2016 11 a.m.

State Capitol, Conference Room 308

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

TESTIMONY IN SUPPORT OF SB2372 SD3 HD1 RELATING TO PRIVATE ROADS

I am Stafford Kiguchi with Bank of Hawaii testifying in support of SB2372 SD3 HD1 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 establish a temporary roads commission to make recommendations on the disposition of private roads and roads in limbo. It permits the state or county to obtain ownership over a road by condemnation pursuant to the State's power of eminent domain. It exempts the State and counties from having to modify a road to meet current standards if the road was built according to standards in place at the time. It also allows private road owners to petition the mayor to begin condemnation if certain requirements are met; and it exempts the State and counties from maintaining or improving condemned roads. Additionally, it appropriates funds for repair and improvement of certain roads.

As noted in prior testimony, Bank of Hawaii is on title to a number of roads that were acquired when it purchased Hawaiian Trust and Bishop Trust companies back in the 1980s and early 1990s. 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.

SB2372 SD3 HD1 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. 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 who are paying property taxes to have the roads maintained.

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 set of 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.

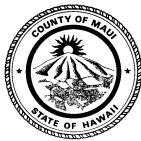
Stafford Kiguchi
Executive Vice President, Bank of Hawaii
694-8580

Council Chair
Mike White

Vice-Chair
Don S. Guzman

Presiding Officer Pro Tempore
Michael P. Victorino

Councilmembers
Gladys C. Baisa
Robert Carroll
Elle Cochran
Don Couch
Stacy Crivello
Riki Hokama

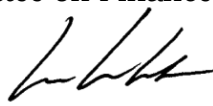


Director of Council Services
David M. Raatz, Jr., Esq.

COUNTY COUNCIL
COUNTY OF MAUI
200 S. HIGH STREET
WAILUKU, MAUI, HAWAII 96793
www.MauiCounty.us

March 31, 2016

TO: The Honorable Sylvia Luke, Chair
House Committee on Finance

FROM: Mike White
Council Chair 

SUBJECT: **HEARING OF APRIL 1, 2016; TESTIMONY IN OPPOSITION TO
SB 2372, SD3, HD1, RELATING TO PRIVATE ROADS**

Thank you for the opportunity to testify in **opposition** to this measure. The purpose of this measure is to address questions regarding responsibility for the repair and maintenance of privately owned highways.

The Maui County Council has not had the opportunity to take a formal position on this measure. Therefore, I am providing this testimony in my capacity as an individual member of the Maui County Council.

I oppose this measure for the following reasons:

1. This measure constitutes an unfunded mandate to the counties. Section 264-1(c), Hawaii Revised Statutes currently provides for dedication or surrender of privately owned roads to a county, if the county council accepts the road. This bill would require the county to accept the surrender or condemnation of certain roadways "without exercise of discretion."
2. Article VIII, Section 5 of the Hawaii State Constitution states: "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." This measure provides no compensation for the financial cost and liabilities incurred by counties for their forced acceptance of roadways.
3. The measure is unclear with respect to additional liability that may fall on the counties, is overly broad, and raises questions regarding public usage of private roadways.

For the foregoing reasons, I **oppose** this measure.

From: mailinglist@capitol.hawaii.gov
Sent: Thursday, March 31, 2016 10:59 AM
To: FINTestimony
Cc: robert.carroll@mauicounty.us
Subject: Submitted testimony for SB2372 on Apr 1, 2016 11:00AM

SB2372

Submitted on: 3/31/2016

Testimony for FIN on Apr 1, 2016 11:00AM in Conference Room 308

Submitted By	Organization	Testifier Position	Present at Hearing
robert carroll	Individual	Oppose	No

Comments: I oppose SB 2372 for the reasons cited in testimony submitted by the Maui County Council Chair, and urge you to oppose this measure.

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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From: mailinglist@capitol.hawaii.gov
Sent: Thursday, March 31, 2016 11:23 AM
To: FINTestimony
Cc: michael.victorino@mauicounty.us
Subject: *Submitted testimony for SB2372 on Apr 1, 2016 11:00AM*

SB2372

Submitted on: 3/31/2016

Testimony for FIN on Apr 1, 2016 11:00AM in Conference Room 308

Submitted By	Organization	Testifier Position	Present at Hearing
Michael Victorino	Individual	Oppose	No

Comments:

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.

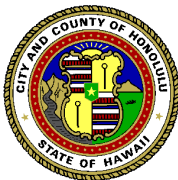
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OFFICE OF THE MAYOR
CITY AND COUNTY OF HONOLULU

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LATE

KIRK CALDWELL
MAYOR



ROY K. AMEMIYA, JR.
MANAGING DIRECTOR DESIGNATE

GEORGETTE T. DEEMER
DEPUTY MANAGING DIRECTOR

March 21, 2016

The Honorable Sylvia Luke, Chair
The Honorable Scott Y. Nishimoto, Vice Chair
and Members of the Committee on
Finance
Hawaii State Capitol
415 South Beretania Street, Room 308
Honolulu, Hawaii 96813

Dear Chair Luke, Vice Chair Nishimoto, and Members of the Committee:

Subject: SB2372, HD1, Relating to Private Roads

The City and County of Honolulu (City) submits testimony in support of SB2372, HD1, Relating to Private Roads (the "Bill") with comments about certain provisions.

The Bill establishes a temporary roads commission to make recommendations on the disposition of private roads and "roads in limbo" (where ownership between the State and the City is unclear). The City strongly supports the creation of a State and counties roads commission that is staffed by the State.

The City further supports using the condemnation process; however, condemnation of any real property is not deemed to have taken place until a final order of condemnation is made by the court. As such, we recommend the following amendment to section 264-1(c)(2):

(2) [~~Surrender~~ Condemnation of public highways, roads, alleys, streets, ways, lanes, bikeways, bridges, or trails [shall be deemed to have taken place if no act of ownership by the owner of the road, alley, street, bikeway, way, lane, trail, or bridge has been exercised for five years] initiated by the State or county pursuant to chapter 101, shall be by final order of condemnation by a court;...

This City also seeks clarification with respect to the proviso on page 11, line 18 – page 12, line 8 that allows private road owners to petition the mayor to initiate condemnation proceedings. The City is unclear as to what such a petition to the mayor entails.

The City supports the provisions that exempt a county from having to modify a road to meet current construction standards if the road was built according to standards in place at the time of construction and completion.

The Honorable Sylvia Luke, Chair
The Honorable Scott Y. Nishimoto, Vice Chair
and Members of the Committee on
Finance
Re: SB2372, HD1, Relating to Private Roads
March 31, 2016
Page 2

Finally, the City supports the appropriation of funds for repair work and resurfacing of Kalani Street, Auld Lane, Rawlins Lane, Eighteenth Avenue, and Kalakaua Avenue.

The City acknowledges the various challenges that this Bill and other similar bills attempt to address. It remains a difficult issue with far-ranging consequences. We look forward to working cooperatively with the State to reach a workable solution to this issue and encourage your committee to support this measure.

DAVID Y. IGE
GOVERNOR



Testimony by:
FORD N. FUCHIGAMI
DIRECTOR

Deputy Directors
JADE T. BUTAY
ROSS M. HIGASHI
EDWIN H. SNIFFEN
DARRELL T. YOUNG

IN REPLY REFER TO:

LATE

STATE OF HAWAII
DEPARTMENT OF TRANSPORTATION
869 PUNCHBOWL STREET
HONOLULU, HAWAII 96813-5097

April 1, 2016
11:00 a.m.
State Capitol, Room 308

S.B. 2372, S.D. 3, H.D. 1
RELATING TO PRIVATE ROADS

House Committee on Finance

The Department of Transportation **opposes** this bill and respectfully wishes to express concerns regarding the proposed process under which the Commission established by this bill, determines which agency a road is assigned to, whether it be a private road or a "road in limbo" and the transfer is deemed to occur at the time of determination. Liability also transfers to the agency upon such determination. This version does not provide any immunity from liability from the time of assignment of a road under this section until the agency repairs, rehabilitates or reconstructs the road to a good condition. There should be time allowed for the agency to incorporate such a road, which may be in poor condition, into its maintenance or construction schedule.

We also note that the purpose of this bill has expanded to include "Roads in Limbo" which is a dispute between the State and the counties over ownership/jurisdictional issues. If expanded to include the Roads in Limbo identification and assignment as determined by the Commission, we feel that this will overburden the process and the private roads issue will suffer for it.

Thank you for the opportunity to provide comments.

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SERVCO HOME & APPLIANCE
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Testimony to the House Committee on Finance

Friday, April 1, 2016

11:00 a.m.

State Capitol - Conference Room 308

LATE

RE: S.B. 2372 S.D. 3 H.D 1: Relating to Private Roads.

Dear Chair Luke, Vice-Chair Nishimoto, and members of the Committee:

My name is Gladys Marrone, Chief Executive Officer for the Building Industry Association of Hawaii (BIA-Hawaii), the Voice of the Construction Industry. We promote our members through advocacy and education, and provide community outreach programs to enhance the quality of life for the people of Hawaii. BIA-Hawaii is a not-for-profit professional trade organization chartered in 1955, and affiliated with the National Association of Home Builders.

BIA Hawaii is in **support** of S.B. 2372 SD 3, HD 1, which:

- Establishes a temporary roads commission to make recommendations on the disposition of private roads and roads in limbo.
- Authorizes the State or a county to obtain ownership over a road by condemnation pursuant to the power of eminent domain.
- Exempts a county from having to modify a road to meet current construction standards if the road was built according to standards in place at the time of construction and completion.
- Allows for private road owners to petition the mayor to begin condemnation proceedings if certain requirements are met.
- Exempts the State and counties from maintaining or improving condemned roads.
- Appropriates funds for the repair and improvement of certain roads.

Clarifying the ownership of roads has been an on-going problem in the state for many years. The recent road ownership dispute in Kakaako has brought renewed attention to this issue.

The approached proposed in the bill allows for an organized and focus effort, using existing eminent domain proceedings to address the problem. We believe this process provides for a prudent resolution of this long standing problem.

We support S.B. No. 2372 S.D. 3, H.D. 1 and appreciate the opportunity to express our views on this matter.

LATE



Chamber of Commerce HAWAII
The Voice of Business

**Testimony to the House Committee on Finance
Friday, April 1, 2016 at 11:00 A.M.
Conference Room 308, State Capitol**

RE: SENATE BILL 2372 SD3 HD1 RELATING TO TRANSPORTATION

Chair Luke, Vice Chair Nishimoto, and Members of the Committee:

The Chamber of Commerce Hawaii ("The Chamber") **strongly supports** SB 2372 SD3 HD1, which establishes a temporary roads commission to make recommendations on the disposition of private roads and roads in limbo. Authorizes the State or a county to obtain ownership over a road by condemnation pursuant to the power of eminent domain. Exempts a county from having to modify a road to meet current construction standards if the road was built according to standards in place at the time of construction and completion. Allows for private road owners to petition the mayor to begin condemnation proceedings if certain requirements are met. Exempts the State and counties from maintaining or improving condemned roads. Appropriates funds for the repair and improvement of certain roads.

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 with amendments SB 2372 SD3 HD1 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. This bill 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 understand this is still a work in progress and look forward to working with stakeholders.

Thank you for the opportunity to testify.

April 1, 2016

The Honorable Sylvia Luke, Chair
House Committee on Finance
State Capitol, Room 308
Honolulu, Hawaii 96813

LATE

RE: S.B. 2372, S.D.3, H.D.1, Relating to Private Roads

HEARING: AGENDA #1, Friday, April 1, 2016 at 11:00 a.m.

Aloha Chair Luke, Vice-Chair Nishimoto, and Members of the Committee:

I am Myoung Oh, Government Affairs Director, submitting written testimony on behalf of the Hawai'i Association of REALTORS® ("HAR"), the voice of real estate in Hawai'i, and its 8,900 members. HAR **supports** S.B. 2372, S.D.3, H.D.1 which:

1. Establishes a temporary roads commission to make recommendations on the disposition of private roads and roads in limbo,
2. Authorizes the State or a county to obtain ownership over a road by condemnation pursuant to the power of eminent domain
3. Exempts a county from having to modify a road to meet current construction standards if the road was built according to standards in place at the time of construction and completion
4. Allows for private road owners to petition the mayor to begin condemnation proceedings if certain requirements are met
5. Exempts the State and counties from maintaining or improving condemned roads. Appropriates funds for the repair and improvement of certain roads.

There are many private roads or even parts of roads that have been inadvertently evolved. As such, S.B. 2372, S.D. 3, H.D.1 would provide a means to respond to private roads that are not owned by a governmental entity, their ownership is being disputed, or they often do not receive proper repair and maintenance.

We continue to support this measure and ask that it be approved by this Committee.

Mahalo for the opportunity to submit written testimony.