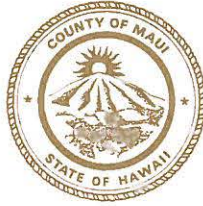


ALAN M. ARAKAWA
MAYOR



KEITH A. REGAN
MANAGING DIRECTOR

OFFICE OF THE MAYOR

Ke'ena O Ka Meia
COUNTY OF MAUI – Kalana O Maui

**TESTIMONY OF ALAN ARAKAWA, MAYOR
COUNTY OF MAUI**

BEFORE THE SENATE COMMITTEE ON JUDICIARY AND LABOR

and

THE SENATE COMMITTEE ON WAYS AND MEANS

Wednesday, February 24, 2016
10:00 a.m. - Conference Room 211

SB 2372, SD1, RELATING TO PRIVATE ROADS

Honorable Gilbert S.C. Keith-Agaran, Chair
Honorable Maile S.L. Shimabukuro, Vice Chair
Honorable Members of the Senate Committee on Judiciary & Labor

Honorable Jill N. Tokuda, Chair
Honorable Donovan M. Dela Cruz, Vice Chair
Honorable Members of the Senate Committee on Ways and Means

Thank you for this opportunity to testify in **OPPOSITION** to **SB 2372, SD1**.

This bill proposes to require the counties to accept surrender of private roads where there has been no act of ownership by the owner for five years.

As mayor of Maui County I oppose this bill for the following reasons:

1. In Maui County, there are hundreds of miles of private roads that the county would be forced to accept "without exercise of discretion." In most cases these roads are substandard after years of not being repaired or maintained. This unfunded mandate would place a tremendous economic burden on the county by shifting the costs of repairing and maintaining these roads from private owners to the public. The county would also have to bear the costs necessary to determine ownership of these roads.

Sen. Gilbert S.C. Keith-Agaran
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2. While the proposed bill purports to exempt the county from any state laws or rules that would require the county to perform any repair or maintenance of these roads, it also acknowledges that many of these roads “are regularly used for vehicular traffic” and “often used by, and are of benefit to the public” which then “creates difficulties ... when individuals report repair or maintenance issues.” In reality, any exemption is a pretense that the county could choose to ignore that these roads are substandard, being used for vehicular and pedestrian traffic, and that there have been public complaints.
3. This proposed bill also states that the county shall be immune from liability for personal injury, death, or property damage for “a period of two years following performance of construction, reconstruction, preservation, resurfacing, restoration, or rehabilitation.” As I see it, this provision creates a disincentive for the county to perform any necessary repair or maintenance as it would trigger the two year window of immunity from liability.

May I humbly suggest that before transferring the roads in question to the counties that we take the time to carefully examine the true aggregate costs to the counties of this unfunded mandate. The County of Maui is very willing to participate in such a discussion and can provide the necessary information so that a responsible and sound decision can be made

For these reasons I **OPPOSE SB 2372, SD1.**



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

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

**Testimony of
SUZANNE D. CASE
Chairperson**

**Before the Senate Committees on
JUDICIARY AND LABOR
and
WAYS AND MEANS**

**Wednesday, February 24, 2016
10:00 AM
State Capitol, Conference Room 211**

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

Senate Bill 2372, Senate Draft 1 proposes to require the counties to accept the surrender of a private road in cases where there has been an absence of any private ownership over the road for five years. The measure also proposes to exempt the State and the Counties from liability arising from the use of the road for a period of two years following maintenance work. Finally, the measure would deem a highway, road, alley, street, way, lane, bikeway, bridge or trail that has been commonly used by residents or a particular area for emergency access purposes or for health and safety reasons to be publicly accessible for those reasons, without regard to actual ownership or responsibility for maintenance. **With respect, the Department of Land and Natural Resources (Department) opposes the measure.**

This measure serves to alleviate the liability of a private party and transfer that liability to the public. The bill is particularly concerning 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. In addition, according to the proposed subsection (d), such areas as alleys, ways and lanes that have no reasonable expectation of public access could be deemed publicly accessible simply because nearby residents access the area for "health and safety reasons". Such ambiguity and overly broad scope may subject the State and Counties to takings claims and maintenance obligations.

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
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

Furthermore, the limited immunity provided by this measure is a mere placebo. The immunity terminates two years after a government entity performs practically any type of remedial or maintenance work on the damaged once private road. This would serve as a disincentive for the Counties (or State if it so elects) to perform emergency or necessary repairs on a poorly maintained and substandard road. The Counties (and State if it so elects) will be 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 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 that were caused by the original private developer.

Thank you for your consideration of this testimony.

February 24, 2016

The Honorable Gilbert S.C. Keith-Agaran, Chair

Senate Committee on Judiciary and Labor

The Honorable Jill N. Tokuda, Chair

Senate Committee on Ways and Means

State Capitol, Room 211

Honolulu, Hawaii 96813

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

HEARING: Wednesday, February 24, 2016 at 10:00 a.m.

Aloha Chair Keith-Agaran, Chair Tokuda, and Members of the Committees:

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 8,800 members. HAR **supports** S.B. 2372, S.D.1 which:

1. 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;
2. Exempts the State and counties from liability arising from use of the road for a period of two years following maintenance work; and
3. Deems a highway, road, alley, street, way, lane, bikeway, bridge, or trail that has been commonly used by residents of a particular area for emergency access purposes or for health and safety reasons to be publicly accessible for those reasons, without regard to actual ownership or responsibility for maintenance..

There are many private roads or even parts of roads that have been inadvertently evolved. S.B. 2372 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 a period of two years for lack of maintenance or for maintenance performed prior to assuming ownership.

It is believed that decades ago when the homes adjacent to these roads were developed and deeded to the homeowners, 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.

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, in many cases, the city currently provides maintenance services for these roads.

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.

Mahalo for the opportunity to submit written testimony.