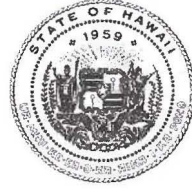


SB2372

RELATING TO PRIVATE
ROADS

DAVID Y. IGE
GOVERNOR



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

February 11, 2016
Time: 3:00 PM
State Capitol, Room 229

S.B. 2372
RELATING TO PRIVATE ROADS

Senate Committee(s) on Transportation and Energy &
Public Safety, Intergovernmental and Military Affairs

The Department of Transportation ("DOT") would like to submit the following **comments**. Under this proposed amendment to Section 264-1(c)(2), HRS the County has no discretionary authority to accept roads. Counties should be given this discretionary authority if the County proves that the road to be surrendered was not accepted for a reasonable cause. Additionally, the DOT is concerned whether the six month time frame to research the ownership of these roads in Section 264-1(c)(2), HRS is sufficient.

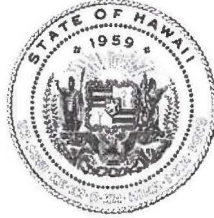
Thank you for the opportunity to provide testimony.

Testimony by:
FORD N. FUCHIGAMI
DIRECTOR

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

IN REPLY REFER TO:

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 Senate Committees on
TRANSPORTATION AND ENERGY
and
PUBLIC SAFETY, INTERGOVERNMENTAL AND MILITARY AFFAIRS**

**Thursday, February 11, 2016
3:00 PM
State Capitol, Conference Room 229**

**In consideration of
SENATE BILL 2372
RELATING TO PRIVATE ROADS**

Senate Bill 2372 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 counties from performing any maintenance on a surrendered road and from liability arising from the use of the road until the State or county performs maintenance work on the road. 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 odious 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 amounts to nothing more than a mere placebo. The immunity terminates once a government entity performs practically any type of remedial or maintenance work on the damaged once private road. That doesn't make any sense at all, as it 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) are 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 which were caused by the original private developer.

February 11, 2016

The Honorable Lorraine R. Inouye, Chair

Senate Committee on Transportation and Energy

The Honorable Clarence K. Nishihara, Chair

Senate Committee on Public Safety, Intergovernmental, and Military Affairs

State Capitol, Room 229

Honolulu, Hawaii 96813

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

HEARING: Thursday, February 11, 2016 at 3:00 p.m.

Aloha Chair Inouye, Chair Nishihara, and Members of the Committees:

I am Myoung Oh, Government Affairs Director, here to testify 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 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 performing any maintenance on a surrendered road and from liability arising from use of the road until the State or county performs maintenance work on the road; 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 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 testify.



TESTIMONY TO THE JOINT COMMITTEES ON TRANSPORTATION AND ENERGY AND PUBLIC SAFETY

Thursday, February 11, 2016, 3 p.m.

State Capitol, Conference Room 229

TO: The Honorable Lorraine R. Inouye, Chair
The Honorable Mike Gabbard, Vice Chair
Members of the Transportation and Energy Committee

The Honorable Clarence K. Nishihara, Chair
The Honorable Will Espero, Vice Chair
Members of the Public Safety Committee

TESTIMONY IN SUPPORT OF SB2372 RELATING TO PRIVATE ROADS

I am Stafford Kiguchi with Bank of Hawaii testifying in support of SB2372 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 also exempts the state and counties from performing any maintenance on a surrendered road and from liability arising from use of the road until the state or county performs maintenance work on the road. It 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.

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. 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.

SB2372 Bank of Hawaii Testimony in Support

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.

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

TESTIMONY OF ROBERT TOYOFUKU ON BEHALF OF THE HAWAII ASSOCIATION FOR JUSTICE (HAJ) IN OPPOSITION TO S.B. NO. 2372

DATE: Thursday, February 11, 2016
TIME: 3:00 pm

To: Chairs Lorraine Inouye and Clarence Nishihara and Members of the Senate Committees on Transportation and Energy, and Public Safety, Intergovernmental, and Military Affairs:

My name is Bob Toyofuku and I am presenting this testimony on behalf of the Hawaii Association for Justice (HAJ) in OPPOSITION to the immunity provisions of S.B. No. 2372, relating to Private Roads.

More than one hundred years ago, the 1913 Legislature considered HB 280 in an attempt to address repair and maintenance obligations of roads whose ownership was disputed or unclear. Today, there are still hundreds of miles of roads throughout the State which lack adequate maintenance because counties simply do not have the funds to accept private and disputed roads, and the maintenance obligation that accompanies these roads.

The single biggest issue and over-riding factor, by far, is funding. Many of the roads affected by this measure have not been adequately maintained for decades. Because these roads have been allowed to deteriorate for so long, there certainly are liability concerns related to them. However, because they are in such bad shape the cost to rebuild them to meet current standards is enormous and any type of comprehensive resolution will have to address funding. Immunity is not the issue and will not solve the problem. Counties don't want and cannot afford to assume the cost of rebuilding and maintaining these roads whether or not they are given immunity.

This measure provides immunity for government if it does not perform needed repairs or remediation. If government does not have sufficient funds to repair or maintain these roads, then a reasonable grace period, such as four years, should be extended for planning, budgeting and construction. Temporary immunity for failure to provide immediate repairs should sunset in four years. Government can ask for extensions of the sunset date if justified. This procedure at least assures that there is an incentive for government to repair the most dangerous roads as quickly as feasible and provides legislative oversight to re-evaluate the situation in light of the progress made. If adequate progress is being made, then the sunset date can be extended, if not, then a shorter extension, repeal, or some other solution can be explored. Some oversight is required to make sure needed repairs are done otherwise this problem will be here another hundred years in the future. Complete immunity to do nothing ultimately encourages government to do nothing.

Government immunity from all acts that happened before surrender of the property is overly broad. For many of these roads, there may already be government liability for its own acts. Therefore, any limitation of responsibility should be limited to those of others. The following language is suggested: “The state or county shall not acquire any liability for the negligent acts or omissions of others that it did not already have before surrender of the highway, road, alley, street, way, lane, bikeway, bridge, or trail, solely by reason of the surrender.” Page 7, lines 13-17.

For these reasons, HAJ opposes the immunity provisions of this measure and asks that this bill be amended as suggested and a sunset for subsection (e) be added or the measure be held.

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



**Testimony to the Senate Committee on Transportation and Energy and
Committee on Public Safety, Intergovernmental, and Military Affairs
Thursday, February 11, 2016 at 3:00 P.M.
Conference Room 229, State Capitol**

RE: SENATE BILL 2372 RELATING TO PRIVATE ROADS

Chairs Inouye and Nishihara, Vice Chairs Gabbard and Espero, and Members of the Committees:

The Chamber of Commerce Hawaii ("The Chamber") **strongly supports** SB 2372, which 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. Also exempts the State and counties from performing any maintenance on a surrendered road and from liability arising from use of the road until the State or county performs maintenance work on the road.

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 SB 2372 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. SB 2372 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 SB 2372 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.