

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
WATER, LAND, & HAWAIIAN AFFAIRS**

**Wednesday, January 30, 2019
9:00 AM
State Capitol, Conference Room 325**

**In consideration of
HOUSE BILL 94
RELATING TO PRIVATE ROADS**

House Bill 94 proposes to require the Attorney General to condemn certain private roads on the island of Oahu. **The Department of Land and Natural Resources (Department) offers the following comments.**

Lands being used for roads and streets are excluded from the definition of public lands over which the Board of Land and Natural Resources (Board) and Department have jurisdiction under Section 171-2(3), Hawaii Revised Statutes (HRS). Moreover, Section 264-1, HRS, is clear that all public roads in the State are either state highways under the jurisdiction of the Department of Transportation, or county roads. Therefore, the Department cannot take any action or expend any funds to repair or maintain any roads that may be acquired by this condemnation action. Furthermore, the condemnation of private property is subject to providing just compensation to the private owner. The Department notes that this measure does not appropriate any funds for that purpose.

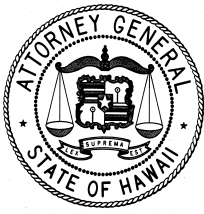
Thank you for the opportunity to comment on this measure..

SUZANNE D. CASE
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

ROBERT K. MASUDA
FIRST DEPUTY

M. KALEO MANUEL
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



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
THIRTIETH LEGISLATURE, 2019**

ON THE FOLLOWING MEASURE:

H.B. NO. 94, RELATING TO PRIVATE ROADS.

BEFORE THE:

WATER, LAND, AND HAWAIIAN AFFAIRS

LATE

DATE: Wednesday, January 30, 2019 **TIME:** 9:00 a.m.

LOCATION: State Capitol, Room 325

TESTIFIER(S): Clare E. Connors, Attorney General, or
Amanda J. Weston

Chair Yamane and Members of the Committee:

The Department of Attorney General provides the following comments:

The bill directs the Attorney General to condemn eight roads on Oahu, which are presumably privately owned. We appreciate the intent of the bill, but request the following amendments:

- (1) As required by section 101-16, Hawaii Revised Statutes (HRS), the bill should contain: (a) a statement of the use to which the land sought to be condemned is to be put; (b) a description of each and every piece of land sought to be condemned; and (c) whether the same includes the whole or only a part of an entire tract or parcel.
- (2) The bill should appropriate funding for the condemnations. The condemnations require significant resources both for due diligence costs and court costs, including compensation to property owners as required by chapter 101, HRS, and title reports and surveys. We recommend including wording to provide for an appropriation of \$ _____ for these costs. The specific appropriation must be included once the value is known.
- (3) The bill should also designate which department will operate and manage the roads once condemned. Lands being used for roads and streets are excluded from the definition of public lands over which the

Department of Land and Natural Resources has jurisdiction under Section 171-2(3), Hawaii Revised Statutes. The Department of Transportation manages state-owned highways and may be the appropriate department to handle the condemnations and to later manage the roads.

We respectfully ask the Committee to pass the bill with the recommended amendments.

**TESTIMONY BEFORE THE HOUSE COMMITTEE ON
WATER, LAND & HAWAIIAN AFFAIRS**

H.B. 94

Relating to Private Roads

Wednesday, January 30, 2019
9:00 a.m., Agenda Item 1
State Capitol, Conference Room 325

Dave Nagata
Land Agent
Hawaiian Electric Company, Inc.

Chair Yamane, Vice Chair Todd, and Members of the Committee

My name is Dave Nagata and I represent Hawaiian Electric Company and its subsidiary utilities Maui Electric Company and Hawaii Electric Light Company (collectively, the "Companies"). We have concerns with the bill as written and offer amendments for the committee's consideration.

HB 94 attempts to condemn certain roads on the island of Oahu. We have concerns with this bill as currently drafted because Hawaiian Electric facilities (poles, wirelines and associated equipment) are located within all of the eight roads implicated and the bill makes no legal provision for the continued presence of these facilities.

To the extent that the presence of such facilities is not otherwise permitted by Hawaiian Electric's franchise concerning facilities within public rights of way, Hawaiian Electric requests that the language of HB 94 be amended to require the attorney general to grant perpetual easements covering all of Hawaiian Electric's facilities within the roads implicated in the bill.

Accordingly, we recommend the language on page 2, lines 1-12 be amended to state:

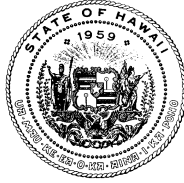
“The attorney general shall take all action necessary to condemn the following roads on the island of Oahu:

1. Auld Lane, from Olomea Street to North King Street;
2. Iao Lane, from Olomea Street to Auld Lane;
3. Rawlins Lane, from Auld Lane to its terminus;
4. Akau Lane, from Hikina Lane to its terminus;
5. Colburn Street, from Puuhale Road to Kalihi Street;
6. Kalani Street, from Puuhale Road to Mokauea Street;
7. Hau Street, from Puuhale Road to Kalihi Street;
8. Hart Street, from Puuhale Road to Kalihi Street;

provided that condemnation proceedings shall be initiated no later than January 1, 2020; and provided further that perpetual easements for access and utility purposes be granted to Hawaiian Electric for all Hawaiian Electric facilities located within the roads that are subject to condemnation proceedings required by this Act and not otherwise permitted by existing law.”

Accordingly, Hawaiian Electric has concerns with the bill as written and offers amendments for the committee’s consideration. Thank you for this opportunity to testify.

DAVID Y. IGE
GOVERNOR OF HAWAII



BRUCE S. ANDERSON, Ph.D.
DIRECTOR OF HEALTH

STATE OF HAWAII
DEPARTMENT OF HEALTH
P. O. Box 3378
Honolulu, HI 96801-3378
doh.testimony@doh.hawaii.gov

WRITTEN
TESTIMONY ONLY

**Testimony COMMENTING on H00B94
RELATING TO PRIVATE ROADS**

REPRESENTATIVE RYAN I. YAMANE, CHAIR
COMMITTEE ON WATER, LAND & HAWAIIAN AFFAIRS

Hearing Date: January 30, 2019

Room Number: 325

1 **Fiscal Implications:** No funding is provided to implement this measure and the Department
2 defers to the Governor's Supplemental Budget Request for appropriation priorities.

3 **Department Testimony:** The Department of Health (Department) offers comments on this
4 measure as the lack of ownership and maintenance of roads in former industrial areas may pose a hazard
5 to children's health when the pavement is in disrepair and contaminated soils under roadways become
6 exposed.

7 DOH investigates sources of contamination and works with land owners to prevent exposures under HRS
8 128D. Properly maintained road surfaces provide a protective barrier to prevent direct contact with
9 potentially contaminated soils. In 2017, while investigating potential childhood lead exposures, DOH
10 identified lead contamination in subsurface soils at Factory Street in Kalihi and took an emergency action
11 to provide temporary patching to potholes in the road surface to limit incidental contact by small children
12 in the adjacent housing. Because this road is designated as abandoned, neither the City nor the property
13 owners are currently maintaining the road surface. Establishing ownership of Factory Street will re-
14 institute routine maintenance of the roadway surface, creating a protective barrier that will protect the
15 community into the future.

16 **Offered Amendments:** The Department requests the following amendment:

17 (9) Factory Street, from North King Street to Waterhouse Street;

18 Thank you for the opportunity to testify on this measure.

HB-94

Submitted on: 1/28/2019 9:45:37 AM

Testimony for WLH on 1/30/2019 9:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Hwa Ja Park	Individual	Support	No

Comments: