



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
KA 'OIHANA O KA LOIO KUHINA
THIRTY-SECOND LEGISLATURE, 2023**

ON THE FOLLOWING MEASURE:

H.B. NO. 1241, H.D. 1, RELATING TO RIGHT OF ENTRY FOR PROFESSIONAL SURVEYORS.

BEFORE THE:

HOUSE COMMITTEE ON JUDICIARY AND HAWAIIAN AFFAIRS

DATE: Tuesday, February 28, 2023 **TIME:** 2:00 p.m.

LOCATION: State Capitol, Room 325

TESTIFIER(S): Anne E. Lopez, Attorney General, or
Christopher J.I. Leong or Bryan C. Yee, Deputy Attorneys General

Chair Tarnas and Members of the Committee:

The Department of the Attorney General opposes the bill as written and provides the following comments.

The purposes of this bill are to establish a right of entry on private property for professional land surveyors to perform land surveying and to shield land surveyors from prosecution under criminal trespass laws when performing their duties.

While we recognize that the intent of the bill is to better enable land surveyors to perform their professional duties and that other states have similar statutes, we caution that a recent United States Supreme Court decision suggests that these laws may be subject to challenge as a governmental taking of property. *See Cedar Point Nursery v. Hassid*, 141 S. Ct. 2063, 2072 (2021). In *Cedar Point Nursery*, the U.S. Supreme Court found that California's law requiring a private property owner to provide physical access to union organizers onto its property appropriated that property owner's right to exclude and constituted a physical taking. *Id.* A court might apply the same analysis to a law requiring private property owners to provide physical access to land surveyors onto their property. A finding of a taking would cause the State to incur monetary liability in the form of just compensation.

The constitutional concern may be ameliorated by allowing entry onto private property only with notice to and without an objection from the adjoining property owner.

Therefore, we recommend that page 2, line 17, be amended to read as follows: “to be surveyed[.] after providing a landowner with written notice of no fewer than [number of days] before the proposed date of entry, which notifies the landowner of the date and time the entry shall occur, a description of the work to be performed, the approximate duration of the entry, a statement that the landowner may refuse entry by making a timely written objection, and a statement of the date, time, and method by which a landowner may object. Any objection shall be expressly communicated to the land surveyor in writing no later than [duration, e.g., 24 hours] before the date and time the survey work is to be performed. If a landowner makes a timely objection, a professional land surveyor shall not be authorized to enter the private property of the objecting landowner pursuant to this section.”

We also note that subsection (d) of the new section to be added to chapter 464, HRS, poses a separate liability risk against the State by providing that a land surveyor and the land surveyor’s assistant shall not be liable for incidental minor damage to the property. See page 4, lines 10-16. Accordingly, we recommend that subsection (d), on page 4, lines 10-16, be deleted. See, e.g., Haw. Const. art. I, § 20 (Private property shall not be taken or damaged for public use without just compensation).

Thank you for the opportunity to provide comments.

**Testimony of the Board of Professional Engineers, Architects, Surveyors, and
Landscape Architects**

**Before the
House Committee on Consumer Protection and Commerce
Tuesday, February 28, 2023
2:00 p.m.
Room 328 and Via Videoconference**

**On the following measure:
H.B. 1241, H.D.1, RELATING TO RIGHT OF ENTRY FOR PROFESSIONAL
SURVEYORS**

Chair Tarnas and Members of the Committee:

My name is Sheena Choy, and I am the Executive Officer of the Board of Professional Engineers, Architects, Surveyors, and Landscape Architects (Board). The Board supports this bill and offers the following comments.

The purposes of this bill are to: (1) authorize professional land surveyors and assistants under the direct supervision of land surveyors to enter private property to perform land surveying, subject to certain provisions regarding notice, identification, and liability; and (2) shield land surveyors and their assistants from prosecution under criminal trespass laws when performing their duties.

A land surveyor's ability to access adjacent properties is critical in their line of work. While coordination with owners has always been a standard practice, this bill creates and standardizes requirements for land surveyors to legally enter a private property. The Board supports this bill's effort to establish a right of entry for professional land surveyors to conduct a survey that protects the real property interests of property owners and the public interest in maintaining the integrity of a sound uniform real property system.

Thank you for the opportunity to testify on this bill.

Rep. David A. Tarnas, Chair

Rep. Gregg Takayama, Vice Chair

House Committee on Judiciary & Hawaiian Affairs

From: Meyer Cummins, Licensed Professional Land Surveyor

Date: February 28, 2023

Subject: Support for HB 1241 Relating to Right of Entry for Professional Surveyors

Aloha Honorable Rep. David A. Tarnas, Honorable Rep. Gregg Takayama, and members of the Committee on Judiciary & Hawaiian Affairs.

Thank you for allowing me to testify in support of House Bill 1241 HD 1.

My name is Meyer Cummins, and I am a land surveyor licensed to practice in the State of Hawaii. I am also a director on the Board of the Hawaii Land Surveyors Association, which represents the majority of the licensed land surveyors in the state. **I am writing in support of House Bill 1241 HD 1** because it grants Hawaii surveyors a much needed, but temporary, right to access private property for the purposes of producing a thorough and complete survey. Such surveys protect the public interest, maintain Hawai'i's unique land title system, and support government land use goals. House Bill 1241 HD 1 is fair because it provides the landowner with prior notice of the survey and a mechanism for the land surveyor and landowner to negotiate a mutually agreed upon date and time for the survey, should circumstances demand it.

Notwithstanding my support of the bill in its current form, I humbly request the following amendments to its language to add clarity to the intent of the bill.

1. Section (b) should change the ten day notice requirement to a seven day notice requirement as time is typically of the essence with regard to surveys and a week should be sufficient for the purposes of receiving the notice and responding to the surveyor if necessary, even in the case of absentee land owners.
2. A new section should be added explicitly stating that under the provisions of the bill, land surveyors are not permitted to enter any building, structure or vehicle on the non-consenting landowner's real property, notwithstanding the right of entry onto the real property to be accessed.
3. The bill should clarify that the owner of the property to be accessed receives the direct benefit of having its property boundaries determined or confirmed at the expense of the owner of the adjoining lot who requested the survey.
4. The bill should clarify that a failure of the objecting landowner and the surveyor to mutually agree on a new date and time to reschedule the survey does not negate the surveyors right to enter the property. Objecting landowners may unreasonably seek to delay the survey indefinitely under the pre-text of exercising their right to negotiate a new date and time for the survey but refuse to agree on that date or time in bad faith.

These changes will make clear that the surveyor has an unqualified right of entry, subject to the notice and identification provisions contained in the bill, **ONLY FOR THE PURPOSES OF CONDUCTING A SURVEY**. Property rights, particularly the right to exclude others from one's land, are fundamental to our liberty and prosperity, and should not be infringed upon without an important societal interest. Here, that interest is rooted in permitting the execution of surveys that protect those rights by determining the limits in which a landowner may exercise them without infringing on the same rights held by a neighbor.

Surveyors just want to meet the challenge that society has placed on them, namely, to determine the extent of the domain in which a landowner can exercise its right to the quiet enjoyment of its property. The right of entry that HB 1241 HD 1 grants will mitigate these risks and allow surveyors to do their jobs without fear of lengthy litigation. Therefore, I humbly request that you vote in favor of HB 1241 HD 1 to protect the public interest and the land surveying community of professionals.

Mahalo nui for this opportunity to testify. Should you have any questions, I can be reached at 808-294-3051 and I will make myself available for questions.

Meyer Cummins

Meyer Cummins, LPLS

2023 HLSA Director

February 28, 2023

The Honorable David A. Tarnas, Chair

House Committee on Judiciary & Hawaiian Affairs
State Capitol, Conference Room 325 & Videoconference

RE: House Bill 1241, HD1, Relating to Right of Entry for Professional Surveyors

HEARING: Tuesday, February 28, 2023, at 2:00 p.m.

Aloha Chair Tarnas, Vice Chair Takayama, and Members of the Committee:

My name is Lyndsey Garcia, Director of Advocacy, testifying on behalf of the Hawai'i Association of REALTORS® ("HAR"), the voice of real estate in Hawai'i and its over 11,000 members. HAR provides **comments** on House Bill 1241, HD1, which authorizes professional land surveyors and assistants under the direct supervision of land surveyors to enter private property to perform land surveying, subject to certain provisions regarding notice, identification, and liability. Shields land surveyors and their assistants from prosecution under criminal trespass laws when performing their duties.

Hawai'i REALTORS® believes that land surveyors provide very valuable services in identifying land boundaries and conducting surveys of land sites and properties. If the Committee is inclined to pass the measure, we would respectfully request the following amendments to clarify that the measure only applies to adjoining lands and not to private residences, structures or buildings on the property:

Page 2, lines 17-18:

"§464- Professional land surveyor right of entry to private property; notification; identification; liability. (a) A professional land surveyor licensed pursuant to this chapter and any assistant under the direct supervision of the land surveyor may enter the private property of the landowner of the real property to be surveyed and any adjoining lands of the private property, but not any building, structures or residences, at reasonable times to perform land surveying at the request of the landowner of, or person with an interest in, the real property to be surveyed.

Thank you for your consideration of our comments. Mahalo for the opportunity to testify.

Rep. David A. Tarnas, Chair

Rep. Gregg Takayama, Vice Chair

House Committee on Judiciary & Hawaiian Affairs

From: Joanne Williamson

Date: February 28, 2023

Subject: **Support for HB 1241 Relating to Right of Entry for Professional Surveyors**

Aloha Honorable Rep. David A. Tarnas, Honorable Rep. Gregg Takayama, and members of the Committee on Judiciary & Hawaiian Affairs.

Thank you for allowing me to testify in support of House Bill 1241 HD 1.

My name is Joanne Williamson, and I am a licensed land surveyor in the state of Hawaii. I also serve on the board of the Hawaii Land Surveyor Association and the Hawaii Director of the National Society of Professional Surveyors (NSPS). **I am writing in strong support of House Bill 1241 HD 1** because it grants Hawaii surveyors a much needed, but temporary, right to access private property for the purposes of producing a thorough and complete survey. Such surveys protect the public interest, maintain Hawai'i's unique land title system, and support government land use goals. House Bill 1241 HD 1 is fair because it provides the landowner with prior notice of the survey and a mechanism for the land surveyor and landowner to negotiate a mutually agreed upon date and time for the survey, should circumstances demand it.

Please consider these amendments suggested by HLSA to address the concerns noted in the first committee hearings:

1. Section (b) should change the *ten* day notice requirement to a **seven** day notice requirement as time is typically of the essence with regard to surveys and a week should be sufficient for the purposes of receiving the notice and responding to the surveyor, if necessary, even in the case of absentee land owners.
2. A new section should be added explicitly stating that under the provisions of the bill, land surveyors are not permitted to enter any building, structure or vehicle on the non-consenting landowner's real property, notwithstanding the right of entry onto the real property to be accessed. This serves to protect both the landowner and the surveyor from any ambiguity that may have otherwise been read into the bill.
3. The bill should clarify that the owner of the property to be accessed receives the direct benefit of having its property boundaries determined or confirmed at the expense of the owner of the adjoining lot who requested the survey.

Sincerely,

Joanne Williamson
Hawaii Director, NSPS
npsdirector@hlsahawaii.org

Rep. David A. Tarnas, Chair

Rep. Gregg Takayama, Vice Chair

House Committee on Judiciary & Hawaiian Affairs

From:

Date: February 28, 2023

Subject: **Support for HB 1241 Relating to Right of Entry for Professional Surveyors**

Aloha Honorable Rep. David A. Tarnas, Honorable Rep. Gregg Takayama, and members of the Committee on Judiciary & Hawaiian Affairs.

Thank you for allowing me to testify in support of House Bill 1241 HD 1.

My name is James Slentz. **I am writing in support of House Bill 1241 HD 1** because it grants Hawaii surveyors a much needed, but temporary, right to access private property for the purposes of producing a thorough and complete survey. Such surveys protect the public interest, maintain Hawai'i's unique land title system, and support government land use goals. House Bill 1241 HD 1 is fair because it provides the landowner with prior notice of the survey and a mechanism for the land surveyor and landowner to negotiate a mutually agreed upon date and time for the survey, should circumstances demand it.

Notwithstanding my support of the bill in its current form, I humbly request the following amendments to its language to add clarity to the intent of the bill.

1. Section (b) should change the *ten* day notice requirement to a **seven** day notice requirement as time is typically of the essence with regard to surveys and a week should be sufficient for the purposes of receiving the notice and responding to the surveyor if necessary, even in the case of absentee land owners.
2. A new section should be added explicitly stating that under the provisions of the bill, land surveyors are not permitted to enter any building, structure or vehicle on the non-consenting landowner's real property, notwithstanding the right of entry onto the real property to be accessed. This serves to protect both the landowner and the surveyor from any ambiguity that may have otherwise been read into the bill.
3. The bill should clarify that the owner of the property to be accessed receives the direct benefit of having its property boundaries determined or confirmed at the expense of the owner of the adjoining lot who requested the survey.
4. The bill should clarify that a failure of the objecting landowner and the surveyor to mutually agree on a new date and time to reschedule the survey does not negate the surveyors right to enter the property. Objecting landowners may unreasonably seek to

delay the survey indefinitely under the pre-text of exercising their right to negotiate a new date and time for the survey but refuse to agree on that date or time in bad faith.

These changes will make clear that the surveyor has an unqualified right of entry, subject to the notice and identification provisions contained in the bill, **ONLY FOR THE PURPOSES OF CONDUCTING A SURVEY**. Property rights, particularly the right to exclude others from one's land, are fundamental to our liberty and prosperity, and should not be infringed upon without an important societal interest. Here, that interest is rooted in permitting the execution of surveys that protect those rights by determining the limits in which a landowner may exercise them without infringing on the same rights held by a neighbor.

Surveyors just want to meet the challenge that society has placed on them, namely, to determine the extent of the domain in which a landowner can exercise its right to the quiet enjoyment of its property. The right of entry that HB 1241 HD 1 grants will mitigate these risks and allow surveyors to do their jobs without fear of lengthy litigation. Therefore, I humbly request that you vote in favor of HB 1241 HD 1 to protect the public interest and the land surveying community of professionals.

Mahalo nui for this opportunity to testify. Should you have any questions, I can be reached at (808)344-9697 and I will make myself available for questions.

L. Edward Paré
Land Surveyor
P.O. Box 1086
Naalehu, HI 96772
808 443 1174

Hawaii L.P.L.S. # 8094
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207 422 3906

February 8, 2023

Rep. Mark M. Nakashima, Chair
Rep. Jackson D. Sayama, Vice Chair
Committee on Consumer Protection and Commerce

Subject: Support for HB 1241 Relating to Right of Entry for Professional Surveyors

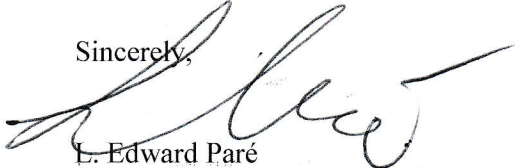
Aloha Honorable Rep. Mark M. Nakashima, Honorable Rep. Jackson D. Sayama, and members of the Committee on Consumer Protection and Commerce.

Thank you for allowing me to testify in support of House Bill 1241. My name is L. Edward Paré, and I am a licensed land surveyor in the State of Hawaii since 1994. **I am writing in support of House Bill 1241** because it grants Hawaii surveyors a much needed, but temporary, right to access private property for the purposes of producing a thorough and complete survey. Such surveys protect the public interest, maintain Hawai'i's unique land title system, and support government land use goals. House Bill 1241 is fair because it provides the landowner with prior notice of the survey and a mechanism for the land surveyor and landowner to negotiate a mutually agreed upon date and time for the survey, should circumstances demand it.

Surveying requires gathering evidence to determine the true location of property boundaries. A typical boundary corner often remains hidden until a thorough search of an area can be completed. Thus, the collection of boundary evidence inevitably results in a crossing of the invisible lines that separate neighboring parcels. A common situation that a surveyor practicing in Hawaii encounters is that a fence has been erected by an abutting lot owner to the lot being surveyed, but the fence has mistakenly been placed outside the boundaries of the abutting lot blocking the surveyor's ability to measure to the correct lot corners because of being locked out by the incorrectly installed fence. Another situation that is starting to occur in this increasingly litigious and contentious society is that an abutting lot owner that is having a boundary dispute with my client will aggressively "defend" their property with threats of dogs, guns or physical violence. Failing to collect such evidence out of fear of legal reprisal or a fear of physical harm is a breach of our duty to our clients and the public at large. However, without a right of entry, executing our responsibilities to meet that duty can risk liability for civil and criminal trespass. The right of entry that HB 1241 grants will mitigate these risks and allow surveyors to do their jobs without fear of lengthy litigation. Therefore, I humbly request that you vote in favor of HB 1241 to protect the public interest and the land surveying community of professionals.

Mahalo nui loa for this opportunity to testify. Should you have any questions, I can be reached at the email or phone number listed above and I will make myself available for questions.

Sincerely,



L. Edward Paré



Rep. David A. Tarnas, Chair

Rep. Gregg Takayama, Vice Chair

House Committee on Judiciary & Hawaiian Affairs

From: Victor M. Rasgado, LPLS

Date: February 26, 2023

Subject: Support for HB 1241 Relating to Right of Entry for Professional Surveyors

Aloha Honorable Rep. David A. Tarnas, Honorable Rep. Gregg Takayama, and members of the Committee on Judiciary & Hawaiian Affairs.

Thank you for allowing me to testify in support of House Bill 1241 HD 1.

My name is Victor Rasgado and I am a licensed land surveyor here in Hawaii. **I am writing in support of House Bill 1241 HD 1** because it grants Hawaii surveyors a much needed, but temporary, right to access private property for the purposes of producing a thorough and complete boundary survey. Such surveys protect the public interest, maintain Hawai'i's unique land title system, and support government land use goals. House Bill 1241 HD 1 is fair because it provides the landowner with prior notice of the boundary survey and a mechanism for the land surveyor and landowner to negotiate a mutually agreed upon date and time for the field survey, should circumstances demand it.

Notwithstanding my support of the bill in its current form, I humbly request the following amendments to its language to add clarity to the intent of the bill.

1. Section (b) should change the *ten* day notice requirement to a *seven* day notice requirement as time is typically of the essence with regard to surveys and a week should be sufficient for the purposes of receiving the notice and responding to the surveyor if necessary, even in the case of absentee land owners.
2. A new section should be added explicitly stating that under the provisions of the bill, land surveyors are not permitted to enter any building, structure or vehicle on the non-consenting landowner's real property, notwithstanding the right of entry onto the real property to be accessed. This serves to protect both the landowner and the surveyor from any ambiguity that may have otherwise been read into the bill.
3. The bill should clarify that the owner of the property to be accessed receives the direct benefit of having its property boundaries determined or confirmed at the expense of the owner of the adjoining lot who requested the survey.
4. The bill should clarify that a failure of the objecting landowner and the surveyor to mutually agree on a new date and time to reschedule the survey does not negate the surveyors right to enter the property. Objecting landowners may unreasonably seek to delay the survey indefinitely under the pre-text of exercising their right to negotiate a new date and time for the survey but refuse to agree on that date or time in bad faith.

These changes will make clear that the surveyor has an unqualified right of entry, subject to the notice and identification provisions contained in the bill, **ONLY FOR THE PURPOSES OF CONDUCTING A SURVEY**. Property rights, particularly the right to exclude others from one's land, are fundamental to our liberty and prosperity, and should not be infringed upon without an important societal interest. Here, that interest is rooted in permitting the execution of surveys that protect those rights by determining the limits in which a landowner may exercise them without infringing on the same rights held by a neighbor.

Surveyors just want to meet the challenge that society has placed on them, namely, to determine the extent of the domain in which a landowner can exercise its right to the quiet enjoyment of its property. The right of entry that HB 1241 HD 1 grants will mitigate these risks and allow surveyors to do their jobs without fear of lengthy litigation. Therefore, I humbly request that you vote in favor of HB 1241 HD 1 to protect the public interest and the land surveying community of professionals.

Mahalo nui for this opportunity to testify. Should you have any questions, I can be reached at email, victor.rasgado@stantec.com or phone 808-208-2837 and I will make myself available for questions.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Victor M. Rasgado', with a stylized flourish extending to the right.

Victor M. Rasgado

Rep. David A. Tarnas, Chair

Rep. Gregg Takayama, Vice Chair

House Committee on Judiciary & Hawaiian Affairs

From:

Date: February 28, 2023

Subject: **Support for HB 1241 Relating to Right of Entry for Professional Surveyors**

Aloha Honorable Rep. David A. Tarnas, Honorable Rep. Gregg Takayama, and members of the Committee on Judiciary & Hawaiian Affairs.

Thank you for allowing me to testify in support of House Bill 1241 HD 1.

My name is Erik Kaneshiro. **I am writing in support of House Bill 1241 HD 1** as a licensed surveyor because it grants Hawaii surveyors a much needed, but temporary, right to access private property for the purposes of producing a thorough and complete survey. Such surveys protect the public interest, maintain Hawai'i's unique land title system, and support government land use goals. House Bill 1241 HD 1 is fair because it provides the landowner with prior notice of the survey and a mechanism for the land surveyor and landowner to negotiate a mutually agreed upon date and time for the survey, should circumstances demand it.

Notwithstanding my support of the bill in its current form, I humbly request the following amendments to its language to add clarity to the intent of the bill.

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Surveyors just want to meet the challenge that society has placed on them, namely, to determine the extent of the domain in which a landowner can exercise its right to the quiet enjoyment of its property. The right of entry that HB 1241 HD 1 grants will mitigate these risks and allow surveyors to do their jobs without fear of lengthy litigation. Therefore, I humbly request that you vote in favor of HB 1241 HD 1 to protect the public interest and the land surveying community of professionals.

Mahalo nui for this opportunity to testify. Should you have any questions, I can be reached at ekaneshiro@atahawaii.com and I will make myself available for questions.

Sincerely,

ERIK S. KANESHIRO, L.P.L.S.

HB-1241-HD-1

Submitted on: 2/24/2023 4:43:46 PM

Testimony for JHA on 2/28/2023 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Dana Keawe	Individual	Oppose	Written Testimony Only

Comments:

oppose