



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

ON THE FOLLOWING MEASURE:

S.B. NO. 1468, S.D. 1, RELATING TO RIGHT OF ENTRY FOR PROFESSIONAL SURVEYORS.

BEFORE THE:

SENATE COMMITTEE ON JUDICIARY

DATE: Wednesday, March 1, 2023

TIME: 9:30 a.m.

LOCATION: State Capitol, Room 016

TESTIFIER(S): **WRITTEN TESTIMONY ONLY.**

(For more information, contact Christopher J.I. Leong,
Deputy Attorney General, at 808-586-1180)

Chair Rhoads 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.”

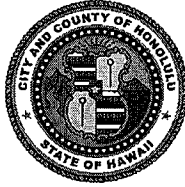
We also note that subsection (d) of the new section to be added to chapter 464, HRS, poses a separate liability risk against the State by providing that a land surveyor and the land surveyor’s assistant shall not be liable for incidental minor damage to the property. See page 4, lines 10-16. Accordingly, 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.

DEPARTMENT OF DESIGN AND CONSTRUCTION
CITY AND COUNTY OF HONOLULU

650 SOUTH KING STREET, 11TH FLOOR
HONOLULU, HAWAII 96813
Phone: (808) 768-8480 • Fax: (808) 768-4567
Web site: www.honolulu.gov

RICK BLANGIARDI
MAYOR



HAKU MILLES, P.E.
DIRECTOR
BRYAN GALLAGHER, P.E.
DEPUTY DIRECTOR

February 27, 2023

The Honorable Karl Rhoads, Chair
The Honorable Mike Gabbard, Vice-Chair
and Members of the Committee on Judiciary
The Senate
State Capitol, Conference Room 016 & Video Conference
415 South Beretania Street
Honolulu, Hawaii 96813

Dear Chair Rhoads, Vice-Chair Gabbard, and Members:

SUBJECT: Senate Bill No. 1468
Relating to Right of Entry for Professional Surveyors

The Department of Design and Construction (DDC) respectfully **supports** Senate Bill No. 1468. The bill proposes 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.

DDC's experience in land surveying has shown that surveying a property is not solely contained within the confines of the subject property, but often extends to finding and locating boundary markers on adjacent properties, and even properties that extend far beyond the site of the survey to ensure that the location of the subject property is the property of record. Through the process of recovering boundary markers, the surveyor or assistants may require entrance onto neighboring properties. Without this access, the survey process could be hindered and the location of the subject property would be uncertain.

Current practice for surveyors and assistants is to verbally ask for permission to enter a property for purposes of surveying. The notification process in the proposed bill would be valuable in instances where verbal agreement is not an option, as it would protect the surveyor from liability while informing the homeowner of the proposed survey.

The Honorable Karl Rhoads, Chair
and Members of the Committee on Judiciary
February 27, 2023
Page 2

Based on the above considerations, DDC respectfully **supports** Senate Bill No. 1468.

Thank you for the opportunity to express our **support** for this bill.

Sincerely,

A handwritten signature in blue ink, appearing to read "H. Milles", is written over a horizontal line.

Haku Milles, P.E., LEEP AP
Director

Sen. Karl Rhoads, Chair

Sen. Mike Gabbard, Vice Chair

Senate Committee on Judiciary

From: Meyer Cummins, Licensed Professional Land Surveyor

Date: February 28, 2023

Subject: **Support for SB1468 SD1 Relating to Right of Entry for Professional Surveyors**

Aloha Honorable Senator Karl Rhoads, Honorable Senator Mike Gabbard, and members of the Senate Committee on Judiciary. Thank you for allowing me to testify in support of Senate Bill 1468 SD1.

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 Senate Bill 1468 SD1** 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. SB1468 SD1 is fair because it provides landowners 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 1(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 SB1468 SD1 grants will allow surveyors to do their jobs without fear of lengthy litigation. Therefore, I humbly request that you vote in favor of SB1468 SD1 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, LPLS

2023 HLSA Director

Sen. Karl Rhoads, Chair

Sen. Mike Gabbard, Vice Chair

Senate Committee on Judiciary

From: Richard Solmerin

Date: February 27, 2023

Subject: **Support for SB1468 SD1 Relating to Right of Entry for Professional Surveyors**

Aloha Honorable Senator Karl Rhoads, Honorable Senator Mike Gabbard, and members of the Senate Committee on Judiciary.

Thank you for allowing me to testify in support of Senate Bill 1468 SD1.

My name is Richard Solmerin. **I am writing in support of Senate Bill 1468 SD1** because it grants Hawai'i 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. Senate Bill 1468 SD 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 1(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 SB1468 SD1 grants will allow surveyors to do their jobs without fear of lengthy litigation. Therefore, I humbly request that you vote in favor of SB1468 SD1 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) 209-7494 and I will make myself available for questions.

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

**Before the
Senate Committee on Judiciary
Wednesday, March 1, 2023
9:30 a.m.
Conference Room 016 and Via Videoconference**

**On the following measure:
S.B. 1468 S.D. 1, RELATING TO RIGHT OF ENTRY FOR PROFESSIONAL
SURVEYORS**

WRITTEN TESTIMONY ONLY

Chair Rhoads 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 the intent of and offers comments on this bill.

The purposes of this bill are to: (1) authorize professional land surveyors and any assistant under the direct supervision of the land surveyor, to enter any 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.

Senator Karl Rhoads, Chair

Senator Mike Gabbard, Vice Chair

Senate Committee on Judiciary

From: Joanne Williamson

Date: February 27, 2023

Subject: **Support for SB 1468 SD1 Relating to Right of Entry for Professional Surveyors**

Aloha Honorable Senator Rhoads, Honorable Senator Mike Gabbard, and members of the Senate Committee on Judiciary,

Thank you for allowing me to testify in support of Senate Bill 1468 SD1.

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 SB 1468 SD1** 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. Senate Bill 1468 SD1 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.

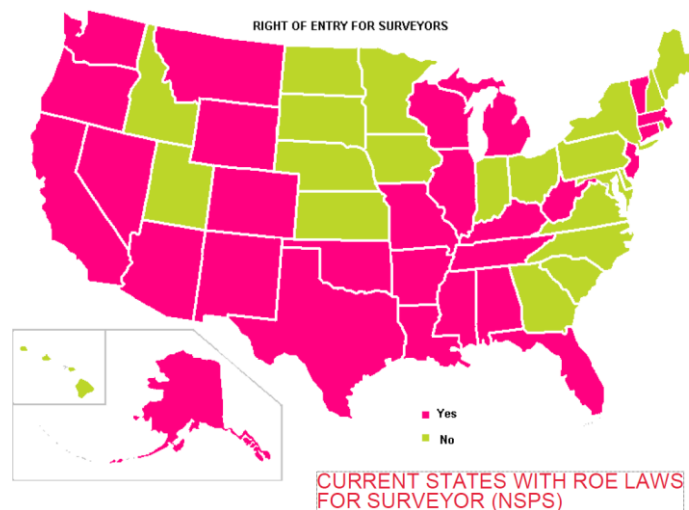
Please consider these amendments suggested by HLSA to address the concerns noted in the first committee hearings:

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.

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 provisions contained in the bill, **ONLY FOR THE PURPOSES OF CONDUCTING A SURVEY.**

Surveyors protect the boundaries of our communities. The right of entry that SB 1468 SD1 grants will mitigate these risks to property owners and allow surveyors to do their jobs without fear of lengthy litigation. Therefore, I ask that you vote in favor of SB 1468 SD 1 to protect the public interest and the professional land surveying community. This [NSPS 2006 ROE REPORT](#) reviews the ROE laws by state, and below is a current graphic of the states with similar laws.



Property rights, particularly the right to exclude others from one's land, are fundamental to our liberty and prosperity, and should never be infringed upon without an important societal interest. The fact is that in order to establish, or re-establish a common boundary line, which is also the neighbor's boundary, the surveyor may need to effectively trespass due to geography, fences and/or walls that may, or may not, delineate the perimeter of the property. An accurate survey is in the interest of both neighbors.

Mahalo nui for this opportunity to testify. I am available for questions. (808)436-6725.

Sincerely,

Joanne Williamson
Hawaii Director, NSPS
npsdirector@hlsahawaii.org

Sen. Karl Rhoads, Chair

Sen. Mike Gabbard, Vice Chair

Senate Committee on Judiciary

From: Beverly V. Pascual, LPLS

Date: February 27, 2023

Subject: **Support for SB1468 SD1 Relating to Right of Entry for Professional Surveyors**

Aloha Honorable Senator Karl Rhoads, Honorable Senator Mike Gabbard, and members of the Senate Committee on Judiciary.

Thank you for allowing me to testify in support of Senate Bill 1468 SD1.

My name is Beverly Pascual, and **I am writing in support of Senate Bill 1468 SD1**. It grants Hawai'i 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. Senate Bill 1468 SD1 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, if required.

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

1. Section 1(b) should change the *ten* day notice requirement to a **seven** day notice requirement. Typically, time is of the essence with regard to land surveys, and one week should be sufficient notice of the survey, from the surveyor to the landowner, even in the case of absentee landowners.
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, despite 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. This is to prevent difficult landowners who may unreasonably seek to delay the survey indefinitely under the pretext of exercising their right to negotiate a new date and time for the survey, and who are instead refusing to agree to proposed dates and times 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. In this case, this 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.

A surveyor's most primary, professional challenge is 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 SB1468 SD1 grants will allow surveyors to do their jobs without fear of lengthy litigation. Therefore, I humbly request that you vote in favor of SB1468 SD1 to protect the public interest and the land surveying community of professionals.

Thank you for this opportunity to testify.

Sincerely,

Beverly Pascual, PE, LPLS, CCM

Sen. Karl Rhoads, Chair

Sen. Mike Gabbard, Vice Chair

Senate Committee on Judiciary

From:

Date: March 1, 2023

Subject: **Support for SB1468 SD1 Relating to Right of Entry for Professional Surveyors**

Aloha Honorable Senator Karl Rhoads, Honorable Senator Mike Gabbard, and members of the Senate Committee on Judiciary.

Thank you for allowing me to testify in support of Senate Bill 1468 SD1.

My name is Leo Bell. **I am writing in support of Senate Bill 1468 SD1** because it grants Hawai'i 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. Senate Bill 1468 SD 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.

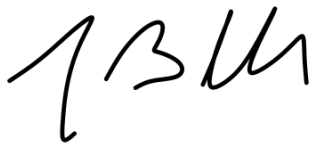
1. Section 1(b) should change the *ten* day notice requirement to a **seven** day notice requirement as time is typically of the essence with regard to surveys and a week should be sufficient for the purposes of receiving the notice and responding to the surveyor if necessary, even in the case of absentee 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 SB1468 SD1 grants will allow surveyors to do their jobs without fear of lengthy litigation. Therefore, I humbly request that you vote in favor of SB1468 SD1 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 leob@rmtowill.com and I will make myself available for questions.

A handwritten signature in black ink, consisting of the letters 'JBM' in a stylized, cursive font.

Sen. Karl Rhoads, Chair

Sen. Mike Gabbard, Vice Chair

Senate Committee on Judiciary

From: Victor M. Rasgado

Date: March 1, 2023

Subject: **Support for SB1468 SD1 Relating to Right of Entry for Professional Surveyors**

Aloha Honorable Senator Karl Rhoads, Honorable Senator Mike Gabbard, and members of the Senate Committee on Judiciary.

Thank you for allowing me to testify in support of Senate Bill 1468 SD1.

My name is Victor Rasgado. **I am writing in support of Senate Bill 1468 SD1** because it grants Hawai'i 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. Senate Bill 1468 SD 1 is fair because it provides the landowner with prior notice of the field 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 1(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 SB1468 SD1 grants will allow surveyors to do their jobs without fear of lengthy litigation. Therefore, I humbly request that you vote in favor of SB1468 SD1 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,

Victor M. Rasgado, LPLS

Sen. Karl Rhoads, Chair

Sen. Mike Gabbard, Vice Chair

Senate Committee on Judiciary

From:

Date: March 1, 2023

Subject: **Support for SB1468 SD1 Relating to Right of Entry for Professional Surveyors**

Aloha Honorable Senator Karl Rhoads, Honorable Senator Mike Gabbard, and members of the Senate Committee on Judiciary.

Thank you for allowing me to testify in support of Senate Bill 1468 SD1.

My name is Erik Kaneshiro. **I am writing in support of Senate Bill 1468 SD1** as a licensed surveyor because it grants Hawai'i 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. Senate Bill 1468 SD 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 1(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 SB1468 SD1 grants will allow surveyors to do their jobs without fear of lengthy litigation. Therefore, I humbly request that you vote in favor of SB1468 SD1 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.