Testimony of
Michael W Macdonald, Vice President
Macdonald & Porter Inc.
Wednesday, June 5, 2019 8:30am
HCDA Hearing
Regarding Kakaako Land Company

I am testifying in support of HCDA’s enforcement of the fines/penalties on the Kakaako Land Company for failure to follow Act 009. The roads in question have been used openly and continuously by the public since their implied dedication in the late 1800’s through 2009. Even as recently as 2004, when the HCDA was proposing ID11 to widen and renovate Queen St, Kakaako Land Company was silent as to their ownership claim.

Their opportunistic handling of the ownership issue has netted them thousands of dollars in parking rental fees all while allowing these roads to fall into further disrepair and become increasingly unsafe for pedestrians and drivers due to their neglect. If they are going to profit from rental of these roads, they should be required to be brought up to the construction and maintenance standards that City/State have laid out for vehicle and pedestrian safety. I support the enforcement of the levied fines against the Kakaako Land Company.

Michael Macdonald
Macdonald & Porter Inc.
**From:** ScottSaiki <repsaiki@capitol.hawaii.gov>  
**Sent:** Wednesday, June 5, 2019 8:17 AM  
**To:** DBEDT HCDA Contact  
**Subject:** Public Testimony Website Submission Kakaako Business

<table>
<thead>
<tr>
<th>Name</th>
<th>Scott Saiki</th>
</tr>
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<tbody>
<tr>
<td>Organization</td>
<td>Speaker of the Hawaii House of Representatives</td>
</tr>
</tbody>
</table>
| Address | State Capitol  
415 South Beretania Street  
Honolulu, HI 96813  
[Map It](#) |
| Email | repsaiki@capitol.hawaii.gov |
| Project Name | Kakaako Business |
| Comment | JOINT TESTIMONY: Speaker Scott K. Saiki and Senator Sharon Y. Moriwaki  
RE: Agenda Item 5 - Kakaako Land Company's Petition for a Contested Case Hearing  
June 5, 2019 at 9:00 a.m. |

**File Upload**  
- [Saiki.Moriwaki-Testimony-to-HCDA-Chair-and-Board-on-June-5,-2019-re-Kakaako-Roads.pdf](#)
June 5, 2019

Mr. John Whalen, Chair, and Board Members
Hawaii Community Development Authority ("HCDA")
547 Queen Street
Honolulu, Hawaii 96813

RE: Kakaako Land Company's Petition for a Contested Case Hearing

Dear Chair Whalen and HCDA Board Members:

Thank you for the opportunity to submit testimony regarding this matter.

As you are aware, Kakaako Land Company ("KLC") has not been in compliance with applicable state law for several years. Therefore, the Notice of Violation and $250,000 fine contained in the Notice of Order is proper. KLC has obviously requested a contested case hearing to delay proceedings while it seeks to quiet title and its purported ownership of remaining Kakaako roadways with the goal of increasing roadway valuation for eminent domain purposes.

If a contested case hearing is held, we request that it be held expeditiously. HCDA should make clear that KLC's petition does not suspend any provisions in the Notice of Order, including the imposition of civil fines. HCDA should also make clear that KLC carries the burden of establishing the key elements of this dispute. Specifically, KLC must prove that it owns the subject roadways without relying on a quitclaim deed that carries no warranties or assurance that title is valid. In fact, the circumstances surrounding the execution of the quitclaim deed in 1985 are suspect.

Thank you for considering our comments.

Sincerely,

Scott K. Saiki  
Speaker of the House, District 26

Sharon Y. Moriwaki  
State Senator, District 12
To Whom it may Concern,
I oppose any concessions to Kakaako Land Company. They are greedy and have no respect to the community. We have undergone injustice for too long it must come to an end.

Thank you,
Judith Campollo Emami
June 4, 2019

Chair John Whalen and Board Members
Hawaii Community Development Authority
547 Queen Street
Honolulu, Hawaii 96813

RE: Agenda Item 5: Shall the Authority Assign Kakaako Land Company LLC’s Petition for a Contested Case Hearing for the Notice of Order Dated April 18, 2019 (NOO01-2019) for Further Proceedings Before the Authority or a Hearings Officer?

Dear Chair Whalen and Board Members:

Thank you for the opportunity to submit our comments regarding Agenda Item 5. Since Chapter 91, Hawaii Revised Statutes, and the HCDA’s own rules governing appeal procedures relating to board action, authorize the HCDA board to conduct a contested case hearing upon receipt of a petition request, our testimony focuses on the urgency of hearing/resolving the contested case as expeditiously as possible.

For more than 5 years, the Kakaako Land Company’s assertion of ownership claims over certain roadways resulted in the City administration’s termination of its repair and maintenance of these private roadways. In 2014, the City published a public notice stating that the Department of Facility Maintenance would no longer maintain Waimanu Street, from Dreier to Kamakee Streets; Kawaihao Street, from Cooke to Kamakee Streets; and Queen Street, from Ward Avenue to Kamakee Street because of the posting of numerous restrictive parking signs posted by the Kakaako Land Company. This has negatively impacted many central Kakaako businesses and their clients.

The hazardous roadway conditions that have ensued from 2014 to 2019 also generated numerous complaints to our offices regarding unsafe roadway conditions, damages to private vehicles, and other vehicular obstructions/negative conditions associated with lack of roadway maintenance and police enforcement to improve public safety.
Chair Whalen and Board Members
Hawaii Community Development Authority
Page 2
June 4, 2019

The Honolulu City Council and Hawaii State Legislature have adopted the following legislation to address this problem, most of which has proceeded too slowly to offer relief to impacted businesses and roadway users:


- Council Resolution 16-213 For Condemnation (2016): Providing for the Acquisition of Land for Public Use, to Wit: Public Streets, Situate at Kakaako, Honolulu, Oahu, Hawaii, and Determining and Declaring the Necessity of the Acquisition Thereof by Eminent Domain (for proceedings in eminent domain to acquire the privately owned portions of Curtis, Dreier, Cummins, and Ilaniwai Streets and portions of: Kamakee Street from Waimanu Street to Kawaiahao Street, Waimanu Street from Dreier Street to the intersection of the unnamed street segment connecting Queen Street and Waimanu Street, Kawaiahao Street from Cooke Street to parcel TMK: 2-3-003:103, and Queen Street from Cooke Street to parcel TMK: 2-3-003-087).

- Act 232, SLH 2016 (HB 2604, HD1, SD1, CD1) Relating to the Acquisition of Real Property which clarified that acceptance by the Territorial Legislature or Legislature of a dedication of land in HCDA by a private owner is sufficient to convey title to the State). In 2019, Attorney General Connors accepted the conveyance of title for the above-mentioned private roadways on behalf of the City and County of Honolulu. Councilmembers have asked City Corporation Counsel to act upon the state’s title to restore maintenance services for these private roadways.

- Act 9, SLH 2018 (HB2275, HD2, SD2 Relating to the Hawaii Community Development Authority which required that private roadway owners maintain roads to city standards or face HCDA penalties), now codified as Section 206E-36, Hawaii Revised Statutes.

In light of the substantial penalties associated with HCDA fines assessed upon the Kakaako Land Company, which started accruing on January 16, 2019, through May 15, 2019, we urge that the HCDA Board schedule and conduct the contested case hearing as quickly as possible.
Chair Whalen and Board Members  
Hawaii Community Development Authority  
Page 3  
June 4, 2019  

We owe Central Kakaako businesses impacted by the actions of the Kakaako Land Company a timely resolution of this long-standing problem. Thank you for the opportunity to comment on this matter. 

Sincerely,  

Carol Fukunaga  
Councilmember, District 6  

Ann Kobayashi  
Councilmember, District 5  

Attachments:  
1. Council Resolution 15-45, CD1, FD1  
3. Council Resolution 16-213, CD1, FD1  
4. Act 232, SLH 2016 (HB 2604, HD1, SD1, CD1)  
5. Act 9, SLH 2018 (HB2275, HD2, SD2) now codified as Section 206E-36, Hawaii Revised Statutes.
RESOLUTION

ESTABLISHING AN ADVISORY WORKING GROUP TO ADDRESS PUBLIC INFRASTRUCTURE ISSUES RESULTING FROM CONFLICTS OVER PRIVATE AND PUBLIC ROAD OWNERSHIP IN THE KAKAAKO COMMUNITY.

WHEREAS, the Kakaako Community Development District is a 600-acre area bounded by Pilkoi, King, and Punchbowl Streets and Ala Moana Boulevard, including the waterfront area from Kewalo Basin to Forrest Avenue and the Hawaiian Electric Company power plant site adjacent to Honolulu Harbor Piers 6, 7 and 8; and

WHEREAS, once primarily known as an area with auto repair shops, industrial and warehouse uses, Kakaako today is an area that is also home to retail shopping complexes, movie theaters, residential condominiums, public housing developments and an eclectic street culture/arts scene; and

WHEREAS, the State of Hawaii, Department of Business, Economic Development and Tourism’s Hawaii Community Development Authority (HCDA) is working to bring together private enterprise and government to establish Kakaako as an economically and socially viable community that can provide a range of public benefits; and

WHEREAS, the HCDA-approved Kamehameha Schools "Our Kakaako" master plan, if fully implemented, will result in seven new residential towers, 2,750 units, and 300,000 square feet of commercial space on 29 Kakaako acres over the next 10 to 20 years. The Howard Hughes Corporation’s HCDA-approved master plan, called "Ward Village," includes as many as 22 new towers and more than a million square feet of retail and commercial space, to be built in Kakaako within the next 15 years; and

WHEREAS, the State of Hawaii has previously invested over $217 million on improvement projects in Kakaako and may continue substantive investment for long-term development in the Kakaako District; and

WHEREAS, the extensive planned development in the Kakaako District, calculated to continue over the next 15 years, has resulted in significant concern regarding the issue of private road ownership, maintenance and the need for coherent infrastructure development in Kakaako; and

WHEREAS, the existence of a patchwork of private roads whose ownership is disputed hinders HCDA’s plans for orderly redevelopment of Kakaako Mauka and the City’s efforts to develop "complete streets" approaches to improve pedestrian walkability within transit-oriented development zones surrounding the Kakaako transit stations; and
RESOLUTION

WHEREAS, the Council finds that there is a need for a comprehensive examination of private roads in Kakaako, including Queen Street (south of South Street), Kawaiahao Street, Cooke Street, Ward Avenue, Cummins Street, Ilianiwal Street, Curtis Street, Dreier Street, Koula Street (Ala Moana Boulevard to Auahi Street), Lana Lane (Ala Moana Boulevard to Auahi Street), Ohe Lane (Ala Moana Boulevard to Auahi Street), Ohe Lane (Pohukaina Street to Halekauwila Street), Walmanu Street (Dreier Street to Kamakee Street), and Kamakee Street (Queen Street to Waimanu Street) to facilitate appropriate infrastructure planning, upgrades, maintenance, and assignment of responsibilities to the appropriate State or City agencies to support planned growth and the expected estimated increase to 30,000 residents by 2030; and

BE IT RESOLVED by the Council of the City and County of Honolulu that it hereby establishes a working group, to be known as the Kakaako Public Infrastructure and Facilities Working Group, to conduct a comprehensive examination of the private roads in Kakaako and recommend solutions and appropriate actions for City or State acquisition of these private roads, as necessary; and

BE IT FURTHER RESOLVED that the Council Chair invite individuals to participate in the working group who represent the following:

- Public Works, Infrastructure and Sustainability Committee of the Honolulu City Council;
- Water and Land Committee in the State House of Representatives;
- Human Services and Housing Committee in the State Senate;
- City Department of Transportation Services;
- City Department of Facility Maintenance;
- City Department of Planning and Permitting;
- City Department of Corporation Counsel;
- State Department of Land and Natural Resources;
- State Office of Planning;
- State Hawaii Community Development Authority;
RESOLUTION

- State Department of the Attorney General;
- A resident and a business owner with an entrance or exit on a Kakaako private road;
- A member of the Ala Moana/Kakaako Neighborhood Board No. 11;

and

BE IT FINALLY RESOLVED that copies of this Resolution be sent to the Chair of the Honolulu City Council, the Speaker of the State House of Representatives, the President of the State Senate, the Attorney General, the Mayor, the Managing Director, the Director of Transportation Services, the Director of Facility Maintenance, the Director of Planning and Permitting, the Corporation Counsel, the Director of Land and Natural Resources, the Acting Director of the Office of Planning, the Executive Director of the Hawaii Community Development Authority, Kakaako community members and the Ala Moana/Kakaako Neighborhood Board No. 11.

INTRODUCED BY:

Carol Fukunaga

DATE OF INTRODUCTION:

February 19, 2015
Honolulu, Hawaii

Councilmembers
RESOLUTION 15-45, CD1, FD1
PUBLIC WORKS,
Committee: INFRASTRUCTURE AND SUSTAINABILITY

Introduced: 02/19/15 By: CAROL FUKUNAGA

Title: RESOLUTION ESTABLISHING AN ADVISORY WORKING GROUP TO ADDRESS PUBLIC INFRASTRUCTURE ISSUES RESULTING FROM CONFLICTS OVER PRIVATE AND PUBLIC ROAD OWNERSHIP IN THE KAKAAKO COMMUNITY.

Voting Legend: * = Aye w/Reservations

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<td>PUBLIC WORKS, INFRASTRUCTURE AND SUSTAINABILITY</td>
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<td>03/11/15</td>
<td>COUNCIL</td>
<td>RESOLUTION AMENDED TO FD1. 8 AYES: ANDERSON, ELEFANTE, FUKUNAGA, KOBAYASHI, MANAHAN, MARTIN, MENOR, OZAWA. 1 ABSENT: PINE. CR-84 AND RESOLUTION 15-45, CD1, FD1 WERE ADOPTED. 8 AYES: ANDERSON, ELEFANTE, FUKUNAGA, KOBAYASHI, MANAHAN, MARTIN, MENOR, OZAWA. 1 ABSENT: PINE.</td>
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I hereby certify that the above is a true record of action by the Council of the City and County of Honolulu on this RESOLUTION.

GLEN Y. TAKAHASHI, ACTING CITY CLERK

ERNEST Y. MARTIN, CHAIR AND PRESIDING OFFICER
REQUESTING THE HAWAII COMMUNITY DEVELOPMENT AUTHORITY TO
INVESTIGATE THE OWNERSHIP OF ROADS BEING CHALLENGED IN THE
KAKAAKO DEVELOPMENT DISTRICT.

WHEREAS, within the past few years, certain private sector
persons and entities have surfaced and claimed ownership of
certain roads in the Kakaako Development District; and

WHEREAS, the effect of claimed private ownership has been
restrictions on public parking and charging for on-street
parking and disclaimer of maintenance responsibilities by the
city; and

WHEREAS, the ownership of the roads is being challenged by
small businesses and residents negatively impacted by such
claims; and

WHEREAS, it is unclear how the Hawaii Community Development
Authority can act upon development applications without making
determinations as to the ownership of the roads in question;
now, therefore,

BE IT RESOLVED by the House of Representatives of the
Twenty-eighth Legislature of the State of Hawaii, Regular
Session of 2015, that the Hawaii Community Development Authority
is requested to investigate the ownership of roads whose
ownership is being challenged in the Kakaako Development
District; and
HR80

REQUESTING THE HAWAII COMMUNITY DEVELOPMENT AUTHORITY TO INVESTIGATE
THE OWNERSHIP OF ROADS BEING CHALLENGED IN THE KAKAAKO DEVELOPMENT
DISTRICT.

Report Title: Investigation into Ownership of Roads Being Challenged in the Kakaaako Development
District

Description:

Companion:

Package: None

Current Referral: FIN

Introducer(s): SAIKI, BELATTI, BROWER

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<td>3/13/2015</td>
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<tr>
<td>3/16/2015</td>
<td>H Referred to WAL, FIN, referral sheet 33</td>
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<tr>
<td>3/27/2015</td>
<td>H Re-referred to FIN, referral sheet 41</td>
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<td>4/2/2015</td>
<td>H Resolution scheduled to be heard by FIN on Tuesday, 04-07-15 2:00PM in conference room 308.</td>
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<td>4/7/2015</td>
<td>The committees on FIN recommend that the measure be PASSED, UNAMENDED. The votes were as follows: 15 Ayes: Representative(s) Luke, Nakamoto, Cachola, Gullen, DeCosta, Johanson, Jordan, Ko, Kobayashi, LOWEN, CRIST, Toludke, Yasakita, Pouha, Ward; Ayes with reservations: none; NOES: none; and EXCUSED: none.</td>
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<td>4/9/2015</td>
<td>H Adopted with none voting aye with reservations; none voting no (0) and Representative(s) Toludke excused (1).</td>
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<td>4/9/2015</td>
<td>H Resolution adopted in final form.</td>
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S = Senate  | H = House  | D = Data Systems  | $ = Appropriation measure | ConAm = Constitutional Amendment

Some of the above items require Adobe Acrobat Reader. Please visit Adobe's download page for detailed instructions.
RESOLUTION

(FOR CONDEMNATION)

PROVIDING FOR THE ACQUISITION OF LAND FOR PUBLIC USE, TO WIT: PUBLIC STREETS, SITUATE AT KAKAAKO, HONOLULU, OAHU, HAWAII, AND DETERMINING AND DECLARING THE NECESSITY OF THE ACQUISITION THEREOF BY EMINENT DOMAIN.

BE IT RESOLVED by the Council of the City and County of Honolulu:

I.

That for public use and purpose, to wit: public streets, situate at Kakaako, Honolulu, Oahu, Hawaii, proceedings in eminent domain as provided by law be instituted for the acquisition of the privately owned portions of Curtis, Dreier, Cummins, and Ilaniwai Streets and portions of: Kamakee Street from Waimanu Street to Kawaihao Street, Waimanu Street from Dreier Street to the intersection of the unnamed street segment connecting Queen Street and Waimanu Street, Kawaihao Street from Cooke Street to parcel TMK: 2-3-003:103, and Queen Street from Cooke Street to parcel TMK: 2-3-003-087, as shown on the map designated as Exhibit "A," attached hereto and by reference made a part hereof.

That Corporation Counsel of the City and County of Honolulu be and is hereby authorized and encouraged to start said proceedings.

That acquisition by eminent domain is necessary for the aforesaid public use and purpose.

II.

That in the process of said proceedings in eminent domain, the Corporation Counsel be and is hereby authorized and empowered to negotiate the terms of settlement, subject to the approval of this Council and/or of the Court before which such proceedings are commenced.

III.

That the City Administration is urged to complete the following steps in preparation of the acquisition of the streets and street segments listed in part I of this clause:
RESOLUTION

1. Land surveys of the subject properties;
2. Land survey maps of the subject properties;
3. Metes and bounds descriptions of the subject properties;
4. Title searches for the subject properties; and
5. Appraisals of the fair market value of the subject properties; and
RESOLUTION

BE IT FINALLY RESOLVED that copies of this Resolution be transmitted to the Mayor, the Managing Director, the Director of Design and Construction, and the Corporation Counsel.

INTRODUCED BY:

Carol Fukunaga

DATE OF INTRODUCTION:

August 18, 2016
Honolulu, Hawaii

COUNCILMEMBERS

APPROVED this 16th day of December, 2016.

KIRK CALDWELL, Mayor
City and County of Honolulu
RESOLUTION 16-213, CD1, FD1

Introduced: 08/18/16 By: CAROL FUKUNAGA Committee: EXECUTIVE MATTERS AND LEGAL AFFAIRS

Title: RESOLUTION (FOR CONDEMNATION) PROVIDING FOR THE ACQUISITION OF LAND FOR PUBLIC USE, TO WIT: PUBLIC STREETS, SITUATE AT KAKAako, HONOLULU, OAHU, HAWAII, AND DETERMINING AND DECLARING THE NECESSITY OF THE ACQUISITION THEREOF BY EMINENT DOMAIN.

Voting Legend: * = Aye w/Reservations

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I hereby certify that the above is a true record of action by the Council of the City and County of Honolulu on this RESOLUTION.

GLEN I. TAKAHASHI, CITY CLERK

ERNEST Y. MARTIN, CHAIR AND PRESIDING OFFICER
A BILL FOR AN ACT

RELATING TO THE ACQUISITION OF REAL PROPERTY.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

SECTION 1. Section 171-30, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) The board of land and natural resources shall have the exclusive responsibility, except as provided herein, of acquiring, including by way of dedications:

(1) All real property or any interest therein and the improvements thereon, if any, required by the State for public purposes, including real property together with improvements, if any, in excess of that needed for such public use in cases where small remnants would otherwise be left or where other justifiable cause necessitates the acquisition to protect and preserve the contemplated improvements, or public policy demands the acquisition in connection with such improvements.

(2) Encumbrances, in the form of leases, licenses, or otherwise on public lands, needed by any state
department or agency for public purposes or for the
disposition for house lots or for economic development.
The board shall upon the request of and with the funds from
the state department or agency effectuate all acquisitions as
provided under this section.
The acceptance by the territorial legislature or the
legislature of a dedication of land in the Kakaako community
development district by a private owner is sufficient to convey
title to the State."
SECTION 2. New statutory material is underscored.
SECTION 3. This Act shall take effect upon its approval.
Report Title:
Public Lands; Acquisition of Real Property

Description:
Clarifies that acceptance by the Territorial Legislature or the Legislature of a dedication of land in the Kakaako Community Development District by a private owner is sufficient to convey title to the State. (HB2604 CD1)

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.
A BILL FOR AN ACT

RELATING TO THE HAWAII COMMUNITY DEVELOPMENT AUTHORITY.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

SECTION 1. Chapter 206E, Hawaii Revised Statutes, is amended by adding a new section to part II to be appropriately designated and to read as follows:

"§206E- Roads; county standards. (a) Any owner or owners who charge a fee for the use of all or any portion of a private street, highway, or thoroughfare that is located within the Kakaako community development district and used continuously by the general public for a period of not less than six months, shall be responsible for the costs of conforming and maintaining that private street, highway, or thoroughfare to meet the construction and maintenance standards established for county highways, pursuant to section 46-1.5(19)(A) and section 265A-1 by the county in which the development district is located.

(b) Private streets, highways, or thoroughfares used solely by the owner or employees of the owner shall be exempt from this section."

SECTION 2. New statutory material is underscored.
SECTION 3. This Act shall take effect upon its approval, and shall be repealed on June 30, 2023.
Report Title:
HCDA; Private Street, Highway, or Thoroughfare; County Standards

Description:
Requires certain private streets, highways, or thoroughfares in a development district of the HCDA to conform to county construction and maintenance standards. Makes owners who charge a fee to use private roads responsible for the costs of conforming and maintaining the private roads. Exempts private roads used solely by the owner or its employees. Repeals on 6/30/2023. (SD2)

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.
§206E-36 Roads county standards. (Section repealed June 30, 2023. L 2018, c 9, §3.) (a) Any owner or owners who charge a fee for the use of all or any portion of a private street, highway, or thoroughfare that is located within the Kakaako community development district and used continuously by the general public for a period of not less than six months, shall be responsible for the costs of conforming and maintaining that private street, highway, or thoroughfare to meet the construction and maintenance standards established for county highways, pursuant to section 46-1.5(19)(A) and section 265A-1 by the county in which the development district is located. (b) Private streets, highways, or thoroughfares used solely by the owner or employees of the owner shall be exempt from this section. [L 2018, c 9, §1]