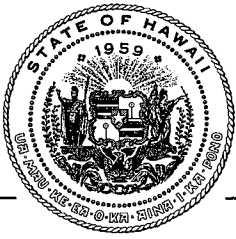


TESTIMONY
HB 1037 HD1
LATE



**DEPARTMENT OF BUSINESS,
ECONOMIC DEVELOPMENT & TOURISM**

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Statement of
ABBAY SETH MAYER
Interim Director, Office of Planning
Department of Business, Economic Development, and Tourism
before the
**SENATE COMMITTEE ON WATER AND LAND
AND
SENATE COMMITTEE ON INTERGOVERNMENTAL
AND MILITARY AFFAIRS
AND
SENATE COMMITTEE ON ENERGY AND ENVIRONMENT**
Monday, March 31, 2008
2:45 PM
State Capitol, Conference Room 414

LATE TESTIMONY

in consideration of
HB 1037, HD 1
RELATING TO COASTAL ZONE MANAGEMENT.

Chairs Hee, Inouye and Menor, Vice Chairs Kokubun, Tsutsui and Hooser and Members of the Senate Committees on Water and Land, Intergovernmental and Military Affairs, and Energy and Environment.

We support the intent of HB 1037, HD 1. HB 1037, HD 1 gives each county the authority to establish shoreline setback lines at a distance not less than the average annual erosion rate based on a fifty-year projection, in addition to the minimum distance established in Section 205A-43, HRS, and makes other changes to Chapter 205A, HRS, the Coastal Zone Management (CZM) Act to mitigate coastal hazards. However, we have the following concerns. We support efforts to mitigate coastal hazards. However, we have the following concerns because the CZM Program is a network program which relies on other state and county agencies for implementation and additional statutes may need to be amended in order to effectuate the purposes of the amendments contained in this bill.

1. Amendments to Sec. 205A-2(b) (9) add references to coastal dunes. There should be corresponding amendments to Chapter 171, Part VIII, HRS, Restoration of Beach Lands, to address dune systems in order to fully carry out the intent of the amendments to Chapter 205A, HRS. For example, amendments could be made under Sec. 171-153, to provide that the DLNR prepare dune restoration and protection plans and other studies to protect beach dune systems.
2. Amendments to Sec. 205A-2(c) (6) (B) pertaining to coastal hazards adds “land use planning” as a measure to control development in areas with coastal hazards. (It also adds hurricanes, wind, storm waves, flooding, and sea level rise as hazards.) Regarding the additions pertaining to land use planning, there should be a review and corresponding amendments to statutes pertaining to the Board of Land and Natural Resources, Land Use Commission and counties in order to effectively carry out the intent of the amendments to Chapter 205A, HRS. The Office of Planning is the lead agency for implementing the Chapter 205A, HRS, the Coastal Zone Management Act, but cannot implement broad provisions pertaining to land use planning without the assistance and statutory authority of other agencies, as specified. The statutory authority of these other agencies should also be amended to assure that they have the policy authority to mitigate for these types of coastal hazards.
3. We have no objections to the comments made by the Department of Land and Natural Resources in their testimony that the City and County of Honolulu and County of Hawaii not be subject to the changes proposed in Section 205A-43, HRS, pertaining to erosion-based setbacks at this time.

Thank you for the opportunity to testify.

testimony

LATE TESTIMONY

From: David Arakawa [darakawa@lurf.org]
Sent: Monday, March 31, 2008 3:23 PM
To: testimony
Cc: 'Jennifer Sano'; 'Dede Mamiya'
Subject: HB 1037, HD1 Coastal Zone Mgt - Shoreline Setbacks (WTL/IGM/ENE) LURF (3.31.08)
Attachments: HB 1037 (2007) Coastal Zone Mgt - Shoreline Setbacks (WTL-IGM-ENE) LURF 080331.doc

Aloha,

Attached please find testimony from the Land Use Research Foundation for:

Bill: HB 1037, HD1
Committees: Senate Water and Land,
Intergovernmental and Military Affairs
Energy and the Environment
Date: Monday, March 31, 2008
Time: 2:45 p.m.

Please feel free to contact me if you have any questions.

Mahalo, Dave

David Z. Arakawa
Executive Director
Land Use Research Foundation
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Via E-mail

March 31, 2008

The Honorable Senator Clayton Hee, Chair and Members
Committee on Water and Land
The Honorable Senator Lorraine R. Inouye, Chair and Members
Committee on Intergovernmental and Military Affairs
The Honorable Senator Ron Menor, Chair and Members
The State Senate
Hawaii State Capitol
415 South Beretania Street, Room 414
Honolulu, Hawaii 96813

Subject: HB 1037, HD1 Relating to Coastal Zone Management

Dear Chair Hee, Chair Inouye, Chair Menor and Members:

My name is Dave Arakawa, and I am the Executive Director of the Land Use Research Foundation of Hawaii (LURF), a private, non-profit research and trade association whose members include major Hawaii landowners, developers and a utility company. One of LURF's missions is to advocate for reasonable and rational land use planning, legislation and regulations affecting common problems in Hawaii.

LURF appreciates the opportunity to provide our testimony **in opposition to HB 1037, HD1 as currently drafted**. LURF is opposed to the current HD1 version of this bill, based on the following: The bill does not state any facts or justification for changing the definition of setbacks along the shoreline from "not less than twenty feet and not more than forty feet" to "not less than forty feet;" changing the setback line by this legislation could result in the unconstitutional taking of property without compensation; establishing a fixed setback line by statute does not allow for unique situations where the setback may not be warranted (such as rocky or hardened and established shorelines); instead of prescribing a minimum setback area (as required in this bill), the Legislature should honor and respect the setbacks established by the Counties based on their historic erosion rates in a particular area or the distinctive shoreline and topography of each County.

HB 1037, HD1. This bill requires the affected County agencies to account for sea-level rise and minimize risks from coastal hazards such as erosion, storm inundation, hurricanes, and tsunamis. Preserves public access and public shoreline access. It also extends shoreline setback

to not less than forty feet from shoreline and requires counties to account for annual erosion rates. In particular, it provides as follows:

- Adds a requirement to §46-6.5, Hawaii Revised Statutes (“HRS”), requiring that the as a condition precedent to final subdivision approval that Counties shall ensure reasonable street parking near public access areas in the special management areas under Chapter 205A;
- Adds various requirements to §205A-2 relating to the Coastal Zone management Program and its objectives and policies;
- Amends the definitions in §205A-22, HRS;
- Changes the criteria in §205A-26, for approval of developments by:
 - Changing no “substantial” adverse environmental or ecological effect, to no “significant” adverse environmental or ecological effect ;
 - Adding a requirement relating to adequate planning to minimize the risk of coastal hazards;
 - Adding a requirement that the development will not impede public access to the shoreline or beach area;
- Alters §205A-43 HRS by changing the definition of setbacks along the shoreline from “not less than twenty feet and not more than forty feet” to “not less than forty feet;”
- Amends §205A-45, HRS, by giving each county the authority to establish shoreline setback lines at a distance not less than the average annual erosion rate based on a fifty-year projection, in addition to the minimum distance established in §205A-43, HRS;
- Makes other various changes to the Program to mitigate coastal hazards and preserve public access to shorelines; and
- Increases the threshold value to waive a public hearing for a variance application for structures at risk of immediate damage from shoreline erosion, from \$20,000 to \$50,000; and

LURF Comments. We cannot support the bill as presently drafted. The bill does not state any facts or justification for changing the definition of setbacks along the shoreline from “not less than twenty feet and not more than forty feet” to “not less than forty feet,” thus, this bill could result in the unconstitutional taking of property without compensation. Having a fixed setback established in the statute does not allow for unique situations where the setback may not be warranted such as rocky or hardened and established shorelines. We also understand that some of the Counties are or have adopted set backs based on historic erosion rates in a particular area or county. Instead of prescribing a minimum setback area (as required in this bill), the Legislature should allow the Counties to use their own County data as a baseline, which would provide some certainty and consistency in determining setbacks within each County, based on the unique shoreline and topography of each County.

Thank you for the opportunity to express our views on this matter.

TESTIMONY
HB 1037 HD1
LATE
(END)