

SB 2353

DAVID Y. IGE
GOVERNOR OF
HAWAII



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

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FIRST DEPUTY

JEFFREY T. PEARSON, P.E.
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
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COMMISSION ON WATER RESOURCE MANAGEMENT
CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCES ENFORCEMENT
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FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

**STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES**

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

**Testimony of
SUZANNE D. CASE
Chairperson**

**Before the Senate Committee on
WATER, LAND, AND AGRICULTURE**

**Wednesday, February 10, 2016
2:45 p.m.
State Capitol, Conference Room 224**

**In consideration of
SENATE BILL 2353
RELATING TO COASTAL ZONE MANAGEMENT**

Senate Bill 2353 proposes to amend Hawaii Revised Statutes (HRS) §205A-2, Coastal Zone Management Program; Objectives and Policies, to require new development to plan for the impacts of projected sea level rise and prohibits development in areas significantly affected by projected sea level rise. The bill also transitions to long-term annual shoreline erosion based setback by 1/1/2019 for counties with erosion rate data and requires the setback to be sixty feet from the shoreline for a new development. **The Department of Land and Natural Resources (Department) supports Senate Bill 2353 and offers the following comments on the measure.**

The Department is engaged in a wide range of management and conservation efforts in the coastal zone. These efforts include managing and conserving public beach and coastal resources throughout the State through the Department's Office of Conservation and Coastal Lands (OCCL), managing the State's marine resources and protecting aquatic habitat and reefs through the Division of Aquatic Resources (DAR), and managing ocean recreation through the Division of Boating and Ocean Recreation (DOBOR).

As an island state, land use and development in Hawaii is concentrated on our low-lying coastal plains. In many communities the densest development is right up against the shoreline. This pattern of coastal development is resulting in major impacts to our public beaches and marine resources and increasing community exposure to hazards of beach erosion and coastal flooding.

The science is clear that rates of sea-level rise will increase in the coming decades. This will result in increasing severity and frequency of coastal erosion and flooding events. Moving new development back from the shoreline by requiring increased setbacks and planning for sea-level

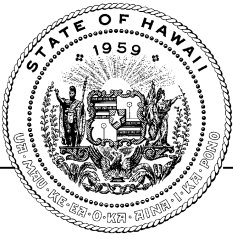
rise is vital, given the present risk of coastal hazards and scientific consensus that these hazards will worsen in coming decades.

The Department and the Office of Planning (OP) are presently engaged in assessing potential impacts and planning for climate change and sea level rise for the State as directed by the Hawaii Climate Adaptation Initiative Act (Act 83, 2014, codified as HRS Chapter 225P). Act 83 establishes an Interagency Climate Adaptation Committee (within the Department, co-chaired by the Department and OP), which will initially focus on developing a Sea Level Rise Vulnerability and Adaptation Report (due December, 2017). The Report will help drive implementation of Objectives and Policies in HRS §205A-2, including the proposed amendments requiring new development to plan for the impacts of projected sea level rise.

The Department notes that a minimum 60 foot setback and updated erosion rate based setback policy for new development was successfully adopted by Kauai County in 2014 (County of Kauai Ordinance 979). Erosion rate based setbacks are also required by Maui County (Shoreline Rules for the Maui Planning Commission §12-203) as well as in State Conservation District lands (Chapter 13-5 HAR). An increased minimum shoreline setbacks of 60 feet and adopting erosion rate based setbacks statewide will provide improved “buffer space” between new development and highly dynamic beach environments, reducing exposure to coastal hazards and improving the State’s ability to protect beaches and coastal environments.

The Department is coordinating with OP, which administers the State Coastal Zone Management Program under HRS Chapter 205A, on our testimony for this bill. We generally support the detailed comments and proposed amendments to HRS Chapter 205A in OP’s testimony.

Thank you for the opportunity to testify on this measure.



**OFFICE OF PLANNING
STATE OF HAWAII**

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DAVID Y. IGE
GOVERNOR

LEO R. ASUNCION
DIRECTOR
OFFICE OF PLANNING

Statement of
LEO R. ASUNCION
Director, Office of Planning
before the
**SENATE COMMITTEE ON WATER, LAND AND AGRICULTURE
AND
SENATE COMMITTEE ON PUBLIC SAFETY, INTERGOVERNMENTAL, AND
MILITARY AFFAIRS**

Wednesday, February 10, 2016
2:45 PM

State Capitol, Conference Room 224

in consideration of
SB 2353
RELATING TO COASTAL ZONE MANAGEMENT.

Chairs Gabbard and Nishihara, Vice Chairs Nishihara and Espero, and Members of the Senate Committees on Water, Land and Agriculture and Public Safety, Intergovernmental, and Military Affairs.

The Office of Planning (OP) administers Hawaii Revised Statutes (HRS) Chapter 205A, the Coastal Zone Management (CZM) law. The purpose of Hawaii CZM Act is to “provide for the effective management, beneficial use, protection, and development of the coastal zone.” See L. 1977, c 188, § 1.

SB 2353 requires new developments to plan for the impacts of projected sea level rise, prohibits development in areas significantly affected by projected sea level rise, and proposes various amendments to HRS Chapter 205A.

OP supports the intent of SB 2353, and respectfully offers the following comments on this measure:

1. Pages 3, 8, 9 and 10 of SB 2353 make various amendments pertaining to coastal hazards. We recommend adding the definition of “coastal hazards” to HRS § 205A-1 Definitions to read as follows:

“Coastal hazards” include tsunamis, hurricanes, wind, storm waves, flooding, erosion, sea level rises, subsidence, and point and nonpoint source pollution.

The proposed definition of “coastal hazards” ensures that the term is used consistently, and avoids the redundant use of a list of coastal hazards throughout Chapter 205A.

2. Page 3, lines 12-14, amends § 205A-2(b)(9) by adding “coastal dunes,” “environmental services” and “natural barriers to the coastal hazards” to the objective of beach protection. Protecting coastal dunes for public use and recreation, rather than as sensitive and vital coastal ecosystems, is an inappropriate objective. We recommend amending HRS § 205A-2(b)(4)(A) to protect “coastal dunes”, as follows:

(A) Protect valuable coastal ecosystem, including coral reefs [;] and coastal dunes, from disruption and minimize adverse impacts on all coastal ecosystems.

3. Page 4, lines 9-17: We support the term “restoration” to replace “replacement” in HRS § 205A-2(c)(1)(B). The connotation of “restoration” in dealing with coastal resources is meaningful and appropriate. We do not object to the addition of “coral reefs” as an example of coastal resources, although the existing objective and policy on coastal ecosystems already include “reefs” as a factor in preserving coastal ecosystems.
4. Page 8, lines 15-17: The amendment adds “transportation infrastructure, residential and commercial development” as coastal related development. Adding this specific example list may result in misunderstanding that residential and commercial development are coastal related although they are not always so.
5. Page 10, lines 7-11: We agree with the housekeeping change to use the term “National Flood Insurance Program” to replace “Federal Flood Insurance Program.”

The addition of “Avoid grading of and damage to coastal dunes” to the subsection of policies for coastal hazards, HRS § 205A-2(c)(6) appears to be misplaced. We suggest adding language to protect “coastal dunes” by amending the policies of “Coastal ecosystems” HRS § 205A-2(c)(4)(C), as follows:

(C) Preserve valuable coastal ecosystems, including coral reefs [;] and coastal dunes, of significant biological or economic importance;

6. Page 14, line 18: We agree with the amendment to delete “demolition” from HRS § 205A-22. This amendment will avoid confusion of whether “demolition” is considered a “development” or “not development” in the special management area. Demolitions will still require building permits which minimize the adverse environmental and ecological impacts of activities and are obligated to comply with the CZM statute.
7. Page 17, lines 4-9: we support the amendment to require the subdivision of a parcel of land to take into account impacts of projected sea level rises on future developments on the resulting parcels. Special management area (SMA) permit does not determine land uses, but regulates permissible land uses. We recommend to amend HRS § 205A-22 for such excluded development as follows:

(13) Subdivision of a parcel of land into four or fewer parcels when no associated construction activities are proposed; provided that any land which is so

subdivided shall not thereafter qualify for this exception with respect to any subsequent subdivision of any of the resulting parcels; provided further that no developments on the resulting parcels shall be significantly affected by sea level rises over the period of at least fifty years from the subdivision;

8. Page 18, lines 9-15: We agree with housekeeping amendments.
9. Page 20, line 6: We do not object to replacing the term "substantial" with "significant." We note that "significant effect" is defined in HRS Chapter 343. If this is the case, the definitions of "Special management area minor permit" and "Special management area use permit" set forth in HRS § 205A-22, need to be amended accordingly with the term "significant".
10. Page 21, lines 4-7: The proposed amendment is not consistent with the purpose of the SMA permit. The SMA permit does not determine land uses, but regulates permissible land uses that are already allowed by land use policies including zoning designations, development plans and county general plans. Even under the effect of projected sea level rises, a development may be still allowed if such adverse effect is minimized to the extent practicable and clearly outweighed by public health, safety, or compelling public interests pursuant to HRS § 205A-26(2)(A). We recommend amending HRS § 205A-26(2) by adding HRS § 205A-26(2)(D) as follows:
 - (D) That the development has adequate mitigation, including location, adaptive or resilient design, to reduce the risk of coastal hazards.
11. Page 22, lines 14-17: We agree with the housekeeping amendment that adds the definition of "Department."
12. Page 23, lines 1-11: We encourage the use of annual shoreline change rates in determining shoreline setbacks. This approach should better protect beach processes and reduce the threat from coastal hazards. The purpose of shoreline setbacks is to prohibit structures within the shoreline area. Shoreline setback variance is not a permit for "development" as defined in HRS § 205A-22, but an exception to the prohibition. Given that 20 feet is the existing minimum shoreline setback, we suggest to amend HRS § 205A-43(a) as follows:

(a) Setbacks along the shorelines are established of not less than twenty feet ~~and not more than forty feet~~ inland from the shoreline. No later than January 1, 2019, in each county where shoreline erosion rate data is available for use after review by the department, the shoreline setback line shall be established using a method, including but not limited to not less than fifty years annual shoreline erosion rate, and shall be at least sixty feet inland from the shoreline provided that the depth of lot is considered. The department shall adopt rules pursuant to chapter 91[;] prescribing procedures for determining the shoreline setback line and shall enforce the shoreline setbacks and rules pertaining thereto.

13. Page 24, lines 4-7: The meaning of “any exemption or waiver to the shoreline setback line by a county or the State” is not clear. Within the shoreline area, as defined in HRS § 205A-41, except for permitted structures under § 205A-44, or structures with a shoreline setback variance, there is no concept of exemption or wavier of a shoreline setback line pursuant to Part III of Chapter 205A. In addition, the intent of the proposed amendment is redundant to HRS § 205A-46 Variance.
14. Page 24, lines 20-21, we do not object to the proposed amendment to minimize adverse environmental or ecological impacts to coastal ecosystems and marine resources, which are consistent with the CZM objectives and policies defined in HRS § 205A-2.

Thank you for the opportunity to testify on this measure.



UNIVERSITY OF HAWAII SYSTEM

Legislative Testimony

Testimony Presented Before the
Senate Committees on Water, Land, and Agriculture
and
Public Safety, Intergovernmental, and Military Affairs
Wednesday, February 10, 2016 at 2:45pm

By

Robert Bley-Vroman, Chancellor

And

Charles Fletcher, Associate Dean and Professor of Geology and Geophysics
University of Hawai'i at Mānoa

SB 2353 – RELATING TO COASTAL ZONE MANAGEMENT

Chairs Gabbard and Nishihara, Vice Chair Espero, and members of the committees:

We support this SB 2353 provided that its passage does not replace or adversely impact priorities as indicated in our BOR Approved Budget for the University of Hawai'i.

This bill alters chapter 205A by taking several strong steps in recognition of the impacts of future sea level rise. It would transition counties to a calculation of long-term historical shoreline change as a means of establishing the construction setback. The bill establishes a minimum setback of 60 ft for all new development. The bill requires a covenant for homeowners with a setback exemption or waiver preventing coastal armoring – essentially a “build at your own risk” clause. It also prohibits development in areas exposed to projected sea level rise.

The latest published research (Kopp et al., 2014) concludes that projected future heights of sea level for Honolulu will reach a mean of 1 ft by 2050 and 2.8 ft by 2100, and potentially a maximum of over 4.5 ft by end of the century.

In recognition of the threat of sea level rise, the U.S. Congress in their FY2016 omnibus package made it a law that federal agencies plan for rising seas in all projects. Executive Order 11988 is now amended that all projects using federal funding must meet a federal flood risk standard that either:

- 1) Use data and methods “informed by best-available, actionable climate science”;
- 2) Build 2 ft above the 100-year flood elevation for standard projects, and 3 ft above for critical buildings (hospitals and evacuation centers); or
- 3) Build to the 500-year flood elevation.

The action proposed in this bill is consistent with these important steps and will result in significant savings and hazard reduction for the state of Hawai'i if implemented. It will also move Hawai'i forward in preserving beaches, building more resilient communities, improving real estate investment, decreasing homeowner insurance through the FEMA community rating system, adapting to impacts of sea level rise, and other significant results.

BIA-HAWAII

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Testimony to the Senate Committee on Water, Land & Agriculture, and Senate Committee on Public Safety, Intergovernmental, & Military Affairs The Honorable Mike Gabbard, Chair The Honorable Clarence Nishihara, Vice-Chair & Chair The Honorable Will Espero, Vice-Chair Members of the Committees Wednesday, February 10, 2016

RE: SB 2353: Relating to Coastal Zone Management.

Dear Chairs Gabbard & Nishihara, Vice-Chair Espero, and members of the Committees:

My name is Gladys Marrone, Chief Executive Officer for the Building Industry Association of Hawaii (BIA-Hawaii), the Voice of the Construction Industry. We promote our members through advocacy and education, and provide community outreach programs to enhance the quality of life for the people of Hawaii. BIA-Hawaii is a not-for-profit professional trade organization chartered in 1955, and affiliated with the National Association of Home Builders.

BIA-HAWAII has concerns regarding the language in the subject bill, and we offer the following comments:

The bill provides that no later than January 1, 2019, in each county where shoreline erosion rate data is available, the shoreline setback line shall be established using a method, including but not limited to a long-term annual shoreline erosion rate and shall be at least sixty feet from the shoreline for a new development. This essentially moves the shoreline set back further mauka from the current 20 feet to the proposed 60 feet and would apply to new development.

Our concern is how the bill would impact existing structures or developments along the shoreline.

The bill adds the following to the definition of "Structure" includes but is not limited to any building, road, pipe, flume, conduit, siphon, aqueduct, telephone line, electrical power transmission and distribution line, wall, revetment, and groin."

The bill states that any construction, reconstruction, or alteration of the size of any structure is considered a "Development" in the Special Management Area.

The bill also amends Chapter 205A-26 to state: "No development shall be approved unless the authority has first found that the development is not located in areas significantly affected by projected sea level rise over the typical lifespan of the structure or facility, or fifty years, whichever is later."

Thus, it appears that as worded, by law, no one will be able to repair any existing wall, revetment or groin.

We understand the intent of moving developments out of shoreline areas which experience erosion and/or will be subject to sea level rise. However, we believe a more inclusive process needs to be vetted of how existing developments along the shoreline will be addressed. Eliminating landowner's ability to protect their property by repairing existing shoreline structures without adequate input from these impacted landowners seems a bit extreme.

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



**Conservation Council
for Hawai'i**

Hawai'i's voice for wildlife

Kō Hawai'i leo no nā holoholona lōhiu



Testimony Submitted to the Senate Committee on Water, Land, and Agriculture
And Senate Committee on Public Safety, Intergovernmental, and Military Affairs
Hearing: Wednesday, February 10, 2016 2:45 pm
Conference Room 224

In Support of SB 2353 Relating to Coastal Zone Management

Chairs Gabbard and Nishihara, Vice Chair Espero, and Members of the Committees.

Aloha. Conservation Council for Hawai'i supports SB 2353, which requires new developments to plan for the impacts of projected sea level rise and prohibits development in areas significantly affected by projected sea level rise, and transitions to long-term annual shoreline erosion based setback by 1/1/2019 for counties with erosion rate data and requires the setback to be sixty feet from the shoreline for a new development.

In addition to protecting public safety and development from sea level rise, SB 2353 protects habitat for pupping, nursing, and resting federally designated critical habitat for the endangered Hawaiian monk seal, and nesting and resting habitat for endangered hawksbill sea turtles and threatened green sea turtles.

Please support SB 2353 and help recover these imperiled species by protecting their coastal habitats. Do not allow any more development along the coast.

Mahalo nui loa for the opportunity to testify.

Marjorie Ziegler

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**Testimony to the Senate Committee on Water, Land, & Agriculture and
Committee on Transportation & Energy
Tuesday, February 9, 2016 at 2:45 P.M.
Conference Room 224, State Capitol**

RE: SENATE BILL 2353 RELATING TO COASTAL ZONE MANAGEMENT

Chairs Gabbard and Nishihara, Vice Chairs Nishihara and Espero, and Members of the Committees:

The Chamber of Commerce Hawaii ("The Chamber") **expresses concerns** regarding SB 2353, which requires new developments to plan for the impacts of projected sea level rise and prohibits development in areas significantly affected by projected sea level rise. Transitions to long-term annual shoreline erosion based setback by 1/1/2019 for counties with erosion rate data and requires the setback to be sixty feet from the shoreline for a new development.

The Chamber is Hawaii's leading statewide business advocacy organization, representing about 1,000 businesses. Approximately 80% of our members are small businesses with less than 20 employees. As the "Voice of Business" in Hawaii, the organization works on behalf of members and the entire business community to improve the state's economic climate and to foster positive action on issues of common concern.

The bill provides that no later than January 1, 2019, in each county where shoreline erosion rate data is available, the shoreline setback line shall be established using a method, including but not limited to a long-term annual shoreline erosion rate and shall be at least sixty feet from the shoreline for a new development. This essentially moves the shoreline set back further mauka from the current 20 feet to the proposed 60 feet and would apply to new development.

Our concern is how the bill would impact existing structures or developments along the shoreline. The bill adds the following to the definition of "Structure": includes but is not limited to any building, road, pipe, flume, conduit, siphon, aqueduct, telephone line, electrical power transmission and distribution line, wall, revetment, and groin. The bill states that any construction, reconstruction, or alteration of the size of any structure is considered a "Development" in the Special Management Area.

The bill also amends Chapter 205A-26 to state: "No development shall be approved unless the authority has first found that the development is not located in areas significantly affected by projected sea level rise over the typical lifespan of the structure or facility, or fifty years, whichever is later."



Chamber of Commerce HAWAII

The Voice of Business

Thus, it appears that as worded by law, no one will be able to repair any existing wall, revetment or groin.

We understand the intent of moving developments out of shoreline areas which experience erosion and/or will be subject to sea level rise. However, we believe a more inclusive process needs to be vetted of how existing developments along the shoreline will be addressed. Eliminating landowner's ability to protect their property by repairing existing shoreline structures without adequate input from these impacted landowners seems a bit extreme.

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

From: mailinglist@capitol.hawaii.gov
To: [WLA Testimony](#)
Cc: verno@hawaii.rr.com
Subject: *Submitted testimony for SB2353 on Feb 10, 2016 14:45PM*
Date: Friday, February 05, 2016 9:50:56 PM

SB2353

Submitted on: 2/5/2016

Testimony for WLA/PSM on Feb 10, 2016 14:45PM in Conference Room 224

Submitted By	Organization	Testifier Position	Present at Hearing
Vernon Hinsvark	Individual	Support	No

Comments:

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Date: Thursday, February 04, 2016 3:33:50 PM

SB2353

Submitted on: 2/4/2016

Testimony for WLA/PSM on Feb 10, 2016 14:45PM in Conference Room 224

Submitted By	Organization	Testifier Position	Present at Hearing
Laurie Freed	Individual	Support	No

Comments:

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Subject: Submitted testimony for SB2353 on Feb 10, 2016 14:45PM
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SB2353

Submitted on: 2/4/2016

Testimony for WLA/PSM on Feb 10, 2016 14:45PM in Conference Room 224

Submitted By	Organization	Testifier Position	Present at Hearing
Lois Crozer	Individual	Support	No

Comments: Climate change is real. The ocean is rising. We are an island. Therefore, we should stop developing areas which will be underwater or subject to storms. It's common sense.

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Subject: Submitted testimony for SB2353 on Feb 10, 2016 14:45PM
Date: Thursday, February 04, 2016 1:25:51 PM

SB2353

Submitted on: 2/4/2016

Testimony for WLA/PSM on Feb 10, 2016 14:45PM in Conference Room 224

Submitted By	Organization	Testifier Position	Present at Hearing
Charles Prentiss	Individual	Support	No

Comments: This bill is critical for the future of Kailua. Homes are currently being built in the sea level rise areas. People who live in these homes will be in danger, and the State and county may incur liability.

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