

**SB 3067**

DAVID Y. IGE  
GOVERNOR OF  
HAWAII



SUZANNE D. CASE  
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BOARD OF LAND AND NATURAL RESOURCES  
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CONSERVATION AND COASTAL LANDS  
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LAND  
STATE PARKS

STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES

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Testimony of  
SUZANNE D. CASE  
Chairperson

Before the Senate Committee on  
WATER, LAND, AND AGRICULTURE

Monday, February 8, 2016  
10:00 A.M  
State Capitol, Conference Room 224

In consideration of  
SENATE BILL 3067  
RELATING TO REAL PROPERTY TRANSACTIONS

Senate Bill 3067 proposes to amend Chapter 508 Hawaii Revised Statutes (HRS), to add a new section requiring a purchaser or transferee to execute an oceanfront purchaser statement with every sale or transfer of oceanfront real estate. The bill would require the statement to be recorded with the bureau of conveyances, establishes mandatory provisions for every oceanfront purchaser statement and requires the department of land and natural resources to develop an oceanfront purchaser statement form. **The Department of Land and Natural Resources (Department) supports the measure and offers the following comments.**

As you know, it is the mission of the Department to manage public lands and ocean resources, including beaches throughout the State. The Department is very much at the forefront of addressing impacts related to coastal erosion and beach loss in Hawai'i. Beaches are central to our culture and economy, yet our beaches are being lost at alarming rates due natural processes and human impacts, threatening alongshore public access and upland development.

When shore-front property and homes are threatened by coastal erosion and flooding, the Department often faces intense pressure from land owners to permit shoreline protection such as seawalls and rock revetments, even though shoreline armoring is discouraged by Chapter 205A HRS, DLNR administrative rules, and county rules. The science is clear that installing coastal armoring on a chronically eroding beach typically leads to beach narrowing and loss.

Beaches and dunes are highly dynamic natural environments. Beach width and shoreline location can vary dramatically with seasonal waves and storms. In many locations, we have chosen to develop too close to this variable and hazard-prone shoreline environment.

Coastal properties are vulnerable to erosion (i.e., shoreline recession and land loss) and flooding from high waves, storms and tsunamis. The Department believes that it is critical that buyers understand the hazards and risks they are assuming in purchasing oceanfront property, in the spirit of transparency and disclosure and to support informed decision making by buyers and government agencies.

The Department offers the following suggested revisions to Section 1 of the Bill. We feel the use of the term “prohibitive” in the following may be interpreted as having a negative connotation and should be removed, while adding some explanation of the intent of coastal zone management policies. Suggested material for removal is bracketed and stricken. Suggested material for inclusion is underscored.

SECTION 1, Page 1, line 17 through page 2, line 4: When shoreline retreat occurs, obtaining a permit to repair or install shoreline protection structures such as seawalls, revetments, geotextile sandbags, or groins can be challenging due to Hawaii's [~~prohibitive~~] coastal zone management policies, which protect coastal natural resources and shoreline public access.

The Department offers the following comments and suggested revisions to the proposed amendments §508 HRS in SECTION 2. Suggested material for removal is bracketed and stricken. Suggested material for inclusion is double underscored.

1. Page 2, lines 19-20 through page 3, lines 1-2 amends §508 by adding part (b)(1) to include a requirement within the proposed “oceanfront purchaser statement” regarding the risk of property loss due to coastal erosion and shoreline recession. We suggest replacing the word “flooding” with “the upper reach of the wash of the waves” to be more consistent with the Definition of “Shoreline” in §205A HRS.
  - (1) Oceanfront property is at risk of losing square footage if the shoreline retreats due to erosion and [~~flooding~~]the upper reach of the wash of the waves, which may affect future permitting decisions;
2. Page 3, line 3 we suggest replacing “coastal inundation hazard maps” with “historical erosion rate maps” to the list of maps and information sources that exist for public use. Flood insurance rate maps are presently the best available resource for assessing coastal inundation hazards.
  - (2) Historical coastal erosion rate maps[~~Coastal inundation hazard maps~~] and flood insurance rate maps exist for public use;
3. Page 3, line 7 we suggest adding “the upper reach of the wash of the waves” to be consistent with the Definition of “Shoreline” in §205A.
  - (3) Shoreline setback is determined pursuant to chapter 205A and the location of the shoreline setback may be affected by shoreline retreat and the upper reach of the wash of the waves;

4. Page 4, part (c), the Department has concerns about being the agency that is directed to develop the oceanfront purchaser statement. The Department can provide information on coastal hazards and natural resource management. However, the Department should not be answering questions from prospective buyers about purchasing particular coastal properties or the value of oceanfront real estate that may arise if DLNR develops and hosts the purchaser statement on the Department's website.
5. Page 4, part (e), states that "The department of land and natural resources may adopt rules pursuant to chapter 91 necessary for the purposes of this section, including but not limited to defining oceanfront property." The Department is unclear what purpose adopting rules would serve in regards to an oceanfront purchaser statement.

Thank you for the opportunity to testify on this measure.

February 8, 2016

**The Honorable Mike Gabbard, Chair**

Senate Committee on Water, Land, and Agriculture  
State Capitol, Room 224  
Honolulu, Hawaii 96813

**RE: S.B. 3067, Relating to Real Property Transactions**

**HEARING: Monday, February 8, 2016 at 10:00 a.m.**

Aloha Chair Gabbard, Vice Chair Nishihara, and Members of the Committee:

I am Myoung Oh, Government Affairs Director, here to testify on behalf of the Hawai'i Association of REALTORS® (“HAR”), the voice of real estate in Hawai'i, and its 8,800 members. HAR **expresses concerns** on S.B. 3067 which:

1. Requires the Department of Land and Natural Resources to develop an oceanfront purchaser statement form;
2. Establishes mandatory provisions for every oceanfront purchaser statement;
3. Requires a purchaser or transferee to execute an oceanfront purchaser statement with every sale or transfer of oceanfront real estate; and
4. Requires the statement to be recorded with the bureau of conveyances.

HAR has created an Oceanfront Property Addendum which discloses pertinent information specific to the ownership of oceanfront property. It is HAR's industry practice to create forms that exceed what is called for via laws, rules and regulation. As such, HAR believes that having a set Statement crafted by DLNR may not be able to adequately address current industry practices, thereby potentially exposing sellers, buyers, and real estate licensees to risk. Additionally, having set terms and conditions of the Statement contained within Statute becomes less flexible when laws, rules, or regulations change.

However, if the Committee is inclined to pass this measure, HAR respectfully requests a November 1, 2016, effective date. This would allow HAR to look at discontinuing its Oceanfront Property Addendum; adding language or information about the new Statement document to the Seller's Real Property Disclosure Statement; and educating our members on this new Statement requirement for all oceanfront real estate.

Mahalo for the opportunity to testify.



**OCEANFRONT PROPERTY ADDENDUM**  
**Hawaii Association of REALTORS® Standard Form**  
**Revised 6/14 (NC) For Release 11/15**



**COPYRIGHT AND TRADEMARK NOTICE:** This copyrighted Hawaii Association of REALTORS® Standard Form is licensed for use by the entire real estate industry on condition that there shall be no alteration of the printed portions, pagination, or paragraph numbers or breaks. The use of this form is not intended to identify the real estate licensee as a REALTOR®. REALTOR® is a registered collective membership mark which may be used only by real estate licensees who are members of the National Association of REALTORS® and who subscribe to its Code of Ethics.

OCEANFRONT PROPERTY ADDENDUM is made a part of Purchase Contract:

Reference Date: \_\_\_\_\_

Property Reference or Address: \_\_\_\_\_

Tax Map Key: Div. \_\_\_\_\_/Zone \_\_\_\_\_/Sec. \_\_\_\_\_/Plat \_\_\_\_\_/Parcel \_\_\_\_\_/CPR \_\_\_\_\_ (if applicable).

Buyer and Seller agree as follows:

A. Buyer is aware that:

- A-1 Property fronts the ocean and may be in a Special Management Area in accordance with the State and County laws, rules and regulations.
- A-2 The location of the shoreline boundary of Property (including both Land Court and Regular System properties) may be subject to change because of coastal processes in adding to or taking away land along the shoreline and is subject to redetermination according to the laws of the State of Hawaii. For example, the shoreline boundary may move inland due to erosion or seaward due to accretion, and the square footage of Property may change accordingly.
- A-3 The conveyance document will typically contain a reference to the location of the seaward boundary in accordance with the laws of the State of Hawaii. In addition, the conveyance document may also include a reference to the certified shoreline boundary in accordance with the laws, rules and regulations of the State and County.
- A-4 Property is subject to shoreline setback and flood control requirements as determined by Federal, State and County laws, rules and regulations.
- A-5 Identification of certified shoreline boundaries is governed by Title 13, Sub-Title 10, Chapter 222 of the Hawaii Administrative Rules, "Shoreline Certifications," and that shoreline certifications by the State can be challenged by the private and/or public sector.

B. Buyer acknowledges that neither Seller nor Brokerage Firm(s) involved in this transaction, have made any representations or warranties concerning the actual or State Shoreline Certification, seaward boundary, and/or square footage of Property. Buyer agrees to make no claim against Seller or Brokerage Firm(s) involved in this transaction regarding any matters which concern the shoreline boundary of Property or the square footage of Property.

C. Neither Seller nor Brokerage Firm(s) involved in this transaction make any representations or warranties concerning any actions Buyer may take with respect to erosion control. In particular, no representations are made about seawalls, retaining walls, piers, docks or re-vegetation. Buyer is advised to determine the effect of the proximity of the shoreline to the improvements, and should seek professional advice from Buyer's contractors, engineers, attorneys, or appropriate government agencies, etc.

D. Properties located in certain flood zones, high wave, and/or tsunami inundation areas, may be subject to damage, additional building, engineering and elevation requirements as well as insurance rates/limits. Buyer should consult with the appropriate County agencies to determine the current elevation requirements. If there is a structure on the Property, the State of Hawaii or County agencies may require surveying to determine if the structure conforms to Federal, State and County requirements.

E. Existing and future improvements may now be or may become encroachments on State of Hawaii property. Property owners, including the Buyer after closing, may be found to be in violation of the rules and laws governing shorelines. Buyer may be held responsible by the State of Hawaii to remove and/or remedy any encroachments such as, but not limited to, any sign of induced vegetation, any evidence of private use of the land, any structures which may include seawalls, revetments, shoreline hardening, sandbags, or anything else on the ocean side of the anticipated property boundary line. Seller agrees to provide Buyer with all information known to Seller on seawalls, or any other such manmade structures or vegetation.

F. A State Shoreline Certification establishes a boundary from which the buildable area may be calculated and setbacks established which may be required to obtain building permits. "Shoreline" as defined in HRS 205A-1 means "the upper reaches" of the wash of the waves, other than storm and seismic waves, at high tide during the season of the year in which the highest wash of the waves occurs, usually evidenced by the edge of vegetation growth, or the upper limit of debris left by the wash of the waves.

A State Shoreline Certification does not necessarily establish a seaward boundary of Property. State Shoreline Certification does not establish the exact square footage of the property. State Shoreline Certification is a lengthy process that may take an extended period of time from six (6) months to several years, and is valid for a limited period of time from the date of certification.

\_\_\_\_\_  
BUYER'S INITIALS & DATE

\_\_\_\_\_  
SELLER'S INITIALS & DATE



- G. Seller shall deliver to Buyer copies of all past and existing State Shoreline Certification(s) in Seller's possession as part of Seller's Real Property Disclosure Statement.
- H. Buyer and Seller agree that a new State Shoreline Certification [ ] will or [ ] will not be obtained and shall be paid by [ ] Seller or [ ] Buyer. (Use Paragraph J for Special Terms). State Shoreline Certification shall be completed no later than \_\_\_\_\_ . If the State Shoreline Certification is not obtained within the time frame, Buyer may elect to terminate the Purchase Contract pursuant to Paragraph O-3. If Buyer elects not to terminate the Purchase Contract, then Buyer agrees to proceed to closing without the State Shoreline Certification.
- I. Buyer's lender for the Property may require flood insurance as a condition of the mortgage. Buyer is aware that Buyer may be required to obtain a Flood Elevation Certificate in order to obtain flood insurance. Buyer is advised to verify flood designation and consult the National Flood Insurance Program for the availability of flood insurance and flood insurance premiums based on the risk of flooding in the area where Property is located.  
  
[ ] An Elevation Certificate shall be paid for by [ ] Seller [ ] Buyer.
- J. SPECIAL TERMS (Please number J-1, J-2, etc.)

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Property is subject to governmental oversight regarding specific oceanfront requirements, and Buyer is advised to contact governmental agencies to determine specific requirements for Property.

Buyer and Seller acknowledge that Buyer/Seller have read, understand and agree to the terms and conditions of this OCEANFRONT PROPERTY ADDENDUM, and have not relied upon any advice from Brokerage Firm(s) involved in this transaction, and further acknowledge receipt of a completed copy of this Addendum. Buyer is advised to seek legal and other professional advice regarding the complex nature of Oceanfront Property.

BUYER	DATE	SELLER	DATE
BUYER	DATE	SELLER	DATE

**NOTE:** THERE IS NO WARRANTY ON PLAIN LANGUAGE. An effort has been made to put this agreement into plain language. But there is no promise that it is in plain language. In legal terms, THERE IS NO WARRANTY, EXPRESSED OR IMPLIED, THAT THIS AGREEMENT COMPLIES WITH CHAPTER 487A OF THE HAWAII REVISED STATUTES, AS AMENDED. This means that the Hawaii Association of REALTORS® is not liable to any Buyer, Seller, or other person who uses this form for any damages or penalty because of any violation of Chapter 487A. People are cautioned to see their own attorneys about Chapter 487A (and other laws that may apply).