

DAVID Y. IGE
GOVERNOR OF
HAWAII



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

ROBERT K. MASUDA
FIRST DEPUTY

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

AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
BUREAU OF CONVEYANCES
COMMISSION ON WATER RESOURCE MANAGEMENT
CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCES ENFORCEMENT
ENGINEERING
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
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Testimony of
SUZANNE D. CASE
Chairperson

Before the House Committee on
OCEAN, MARINE RESOURCES, & HAWAIIAN AFFAIRS

Tuesday, February 6, 2018
2:45 P.M
State Capitol, Conference Room 312

In consideration of
HOUSE BILL 2468
RELATING TO ENVIRONMENTAL PROTECTION

House Bill 2468 proposes to amend Chapter 225M Hawaii Revised Statutes (HRS), to establish a beach preservation special fund to purchase lands threatened by sea level rise or beach erosion, and create a task force within the Office of Planning (OP) to identify the most effective funding mechanism for the special fund. **The Department of Land and Natural Resources (Department) acknowledges the intent of this measure and offers the following comments.**

- The Department of the Attorney General (AG) recently issued a legal opinion noting that when private property erodes, land title automatically reverts to the State. Thus, purchasing private property that is simultaneously becoming submerged public land could be counter to the State's interest (opinion attached). Moreover, it is unrealistic to suggest that the State will have the resources to purchase any significant amount of coastal lands undergoing submersion or erosion.
- OP might have concerns about managing a special fund and making land purchases.
- In addition, the Board of Land and Natural Resources must approve any acquisition pursuant to Section 171-30, HRS. The AG must also approve acquisitions pursuant to Sections 26-7 and 107-10, HRS. OP cannot unilaterally purchase land and give to the Department to manage with no oversight.
- In some instances, private land that is acquired under the auspices of this measure, could also be managed by an agency other than the Department.

- The Department recommends that any property that is being considered for acquisition must undergo a “public purpose” test and that the State not be expected to acquire property just to compensate landowners for losses related to sea level rise.

Thank you for the opportunity to comment on this measure.



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
TWENTY-NINTH LEGISLATURE, 2018**

ON THE FOLLOWING MEASURE:

H.B. NO. 2468, RELATING TO ENVIRONMENTAL PROTECTION.

LATE

BEFORE THE:

HOUSE COMMITTEE ON OCEAN, MARINE RESOURCES, & HAWAIIAN AFFAIRS

DATE: Tuesday, February 6, 2018 **TIME:** 9:45 a.m.

LOCATION: State Capitol, Room 312

TESTIFIER(S): Russell A. Suzuki, Acting Attorney General, or
Dawn T. Apuna, Deputy Attorney General

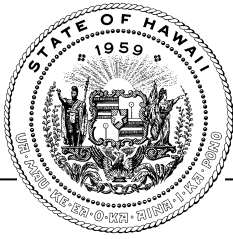
Chair Ing and Members of the Committee:

The Department of the Attorney General provides the following comments on this bill.

The purposes of this bill are to establish within the Office of Planning (OP) a Hawaii beach preservation task force, to establish a Hawaii beach preservation special fund, and to authorize OP to expend moneys from the fund to purchase lands threatened by sea level rise or beach erosion. Additionally, this bill makes an appropriation into the special fund, and requires the Department of Land and Natural Resources to manage the purchased lands.

OP does not have the authority to purchase and hold title to lands as required under this bill. Therefore, this bill should be amended to either provide OP with the authority to purchase and hold title to land under chapter 225M, Hawaii Revised Statutes, which establishes OP, or designate a state agency that does have the authority to purchase and hold title to lands as specified in this bill.

We respectfully ask the Committee to consider these comments.



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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
HOUSE COMMITTEE ON OCEAN, MARINE RESOURCES, & HAWAIIAN AFFAIRS
Tuesday, February 6, 2018
9:45 AM
State Capitol, Conference Room 312

in consideration of
HB 2468
RELATING TO ENVIRONMENTAL PROTECTION.

Chair Ing, Vice Chair DeCoite, and Members of the House Committee on Ocean, Marine Resources, and Hawaiian Affairs.

HB 2468 proposes to establish a Hawaii beach preservation special fund to purchase lands threatened by sea level rise or beach erosion for the protection of adjacent public beaches, and create a task force within the office of planning to identify the most effective funding mechanism for the Hawaii beach preservation special fund.

The Office of Planning (OP) supports the intent HB 2468, provided that its passage does not replace or adversely impact priorities indicated in our Executive Budget.

The OP respectfully offers the following comments on this measure:

1. The term “Hawaii beach preservation special fund” may be misleading, as the activities proposed in this measure describe buy-out activities. As presently described, there may be potential misunderstanding that this special fund is established for beach restoration or renourishment activities or other common methods performed for beach preservation.
2. The State is not automatically the land manager for property. The State and the counties work cooperatively to assess the private lands and building structures that are threatened by coastal hazards, such as beach erosion, storm, wave and tsunami, for purchase and for land use management. Depending upon the land that is purchased, the County Planning Departments and/or Departments of Parks and Recreation may have a role in land use management after a purchase.
3. The OP is not a regulatory agency, and does not have the infrastructure, staff, and finances to effectuate the purpose of this special fund by adopting rules in accordance

with HRS Chapter 91 as proposed from HB 2468, to regulate the purchase of private lands adjacent to beaches.

4. Section 5 of the proposed measure establishes within the OP a Hawaii beach preservation task force and defines specific members. The task force may benefit from additional representation from interest groups representing the real estate industry and environmental groups, to name a few.

The OP appreciates the intent of the proposed measure and feels that it warrants further discussion. Thank you for the opportunity to offer these comments.



SIERRA CLUB OF HAWAII
MĀLAMA I KA HONUA. *Cherish the Earth.*

HOUSE COMMITTEE ON OCEAN, MARINE RESOURCES, & HAWAIIAN AFFAIRS

Tuesday, February 6, 2018 9:45AM Conference Room 312

In **SUPPORT of HB 2468** Relating to environmental protection

Aloha Chair Ing, Vice Chair DeCoite, and members of the Committee,

On behalf of our 20,000 members and supporters, the Sierra Club of Hawai'i, a member of the Common Good Coalition, **supports HB 2468**, and our testimony includes suggestions for strengthening it.

The Sierra Club of Hawai'i has participated in the workshops held by the Intergovernmental Climate Adaptation Committee and its successor, the Hawai'i Climate Change Mitigation and Adaptation Commission (Climate Commission) which culminated in the adoption and release of the Hawai'i Sea Level Rise Vulnerability and Adaptation Report¹. This report includes recommendations, many of which require legislation to implement, for adaptation to sea level rise and other climate hazards.

These recommendations were three years in the making, and the urgency for implementing them grows daily. We welcome initiatives such as HB 2468, to make progress in the 2018 legislative session. The measure will help implement the Climate Commission's ***Recommendation 4: Enable legacy beaches to persist with sea level rise***, by designating a Hawaii beach preservation special fund and establishing (1) a process to identify revenue sources for the fund and (2) responsibilities for acquiring and managing properties as needed to preserve beaches threatened by sea level rise or beach erosion.

Where beaches can migrate inland as sea level rise and erosion occurs those beaches, which are public trust resources to be protected for future generations, can be preserved. In many coastal areas of the state, however, inland migration of the shoreline is blocked by

¹ https://climateadaptation.hawaii.gov/wp-content/uploads/2017/12/SLR-Report_Dec2017.pdf

coastal highways, seawalls, buildings, and other forms of coastal hardening. In such situations managed retreat strategies, which include, but are not limited to, purchases of properties are required to remove barriers to inland coastal migration. These strategies can be phased to take place over time based on sea level rise projections and rates of coastal erosion.

In its current form, HB 2468 authorizes purchases of land as the sole managed retreat strategy. There may be some situations where other, or additional, managed retreat strategies such as relocation assistance, may be appropriate. **We recommend that HB 2468 be amended to authorize other forms of managed retreat in addition to land purchases.**

While we are considering this important bill, current news coverage of the severe erosion affecting the legacy beaches of North Shore of O'ahu provide dramatic evidence of the need to act now to address the emergency conditions there. **Accordingly, we recommend amending this bill to authorize a North Shore O'ahu Pilot Project, initially funded from general funds in the interim until permanent funding is determined.** This would focus needed attention on beaches having both economic and cultural value and would provide an opportunity to carefully explore managed retreat options, including buyouts, which could set a precedence for future uses of the fund.

We have two additional amendments to suggest:

1. **Use a Working Group of the Climate Commission** to identify the funding mechanisms for the special fund, rather than have the Office of Planning create a Hawaii beach preservation task force for that purpose. The Climate Commission membership provides an appropriate structure for such a working group, including representatives from county planning agencies, and would be a logical extension of the Commission's duties for implementing their recommendations with legislation as needed. The general functions, duties, and powers of the Commission include the following under **HRS §225P-3(j)**: "The commission shall assess the capacity and availability of existing resources and **identify new sources of revenue necessary to address climate change mitigation and adaptation** and shall advise the governor, legislature, and counties on the economic and budgetary ramifications of climate change impacts, mitigation, and adaptation."

2. **Consolidate purchase and management of lands under DLNR.** HB 2468 authorizes the Office of Planning to purchase lands, with the Department of Land and Natural Resources

managing them. We recommend that the Department of Land and Natural Resources be designated to both purchase, and manage, such lands. DLNR has the staff and experience to do both. The legal mandate for The Office of Planning, as defined in Chapter 225M appears to be limited to administering planning functions, not purchasing lands.

Thank you very much for this opportunity to provide testimony on this important issue.

Dave Raney
Climate Change Volunteer Leader
Capitol Watch

HB-2468

Submitted on: 2/3/2018 4:06:35 PM

Testimony for OMH on 2/6/2018 9:45:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Benton Kealii Pang, Ph.D.	Hawaiian Civic Club of Honolulu	Support	No

Comments:

HB-2468

Submitted on: 2/5/2018 9:26:03 AM

Testimony for OMH on 2/6/2018 9:45:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Melodie Aduja	OCC Legislative Priorities	Support	No

Comments:

HB-2468

Submitted on: 2/2/2018 2:56:37 PM

Testimony for OMH on 2/6/2018 9:45:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
caren diamond		Support	No

Comments:

Aloha,

This testimony is in strong support of HB 2468, and preservation of our beaches by giving the State the ability to acquire adjacent private lands to ensure space exists for beaches and dune system to survive.

Mahalo for your support of this important tool.

HB-2468

Submitted on: 2/5/2018 7:42:08 AM

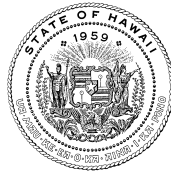
Testimony for OMH on 2/6/2018 9:45:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Nathan Yuen		Support	No

Comments:

I strongly support HB2468 which develops a plan for the managed retreat from our coastlines in areas affected by sea level rise and severe beach erosion. Rising sea levels, stronger storms, and coastal erosion is a reality we are facing. This bill attempts to create a means to address this situation. I support HB2648.

DAVID Y. IGE
GOVERNOR



LAUREL A. JOHNSTON
ACTING DIRECTOR

EMPLOYEES' RETIREMENT SYSTEM
HAWAII EMPLOYER-UNION HEALTH BENEFITS TRUST FUND
OFFICE OF THE PUBLIC DEFENDER

**STATE OF HAWAII
DEPARTMENT OF BUDGET AND FINANCE**

P.O. BOX 150
HONOLULU, HAWAII 96810-0150

ADMINISTRATIVE AND RESEARCH OFFICE
BUDGET, PROGRAM PLANNING AND
MANAGEMENT DIVISION
FINANCIAL ADMINISTRATION DIVISION
OFFICE OF FEDERAL AWARDS MANAGEMENT (OFAM)

WRITTEN ONLY

TESTIMONY BY LAUREL A. JOHNSTON
ACTING DIRECTOR, DEPARTMENT OF BUDGET AND FINANCE
TO THE HOUSE COMMITTEE ON OCEAN, MARINE RESOURCES,
AND HAWAIIAN AFFAIRS
ON
HOUSE BILL NO. 2468



**February 6, 2018
9:45 a.m.
Room 312**

RELATING TO ENVIRONMENTAL PROTECTION

House Bill No. 2468 establishes the Hawaii Beach Preservation Special Fund (HBPSF); appropriates an unspecified amount of general funds in FY 19 for deposit into the HBPSF; appropriates an unspecified amount from the HBPSF in FY 19 for the Office of Planning to purchase property from landowners threatened by sea level rise or beach erosion; requires the Department of Land and Natural Resources to manage the purchased lands; and creates a task force within the Office of Planning to determine appropriate funding mechanisms for the HBPSF.

While the Department of Budget and Finance takes no position on beach preservation, as a matter of general policy, the department does not support the creation of any special fund which does not meet the requirements of Section 37-52.3, HRS. Special funds should: 1) serve a need as demonstrated by the purpose, scope of work and an explanation why the program cannot be implemented successfully under the general fund appropriation process; 2) reflect a clear nexus between the benefits sought and charges made upon the users or beneficiaries or a clear link between the

program and the sources of revenue; 3) provide an appropriate means of financing for the program or activity; and 4) demonstrate the capacity to be financially self-sustaining. In regards to House Bill No. 2468, it is difficult to determine whether the proposed special fund would be self-sustaining.

Thank you for your consideration of our comments.

HB-2468

Submitted on: 2/5/2018 1:57:29 PM

Testimony for OMH on 2/6/2018 9:45:00 AM

LATE

Submitted By	Organization	Testifier Position	Present at Hearing
De MONT R. D. CONNER	Ho'omanapono Political Action Committee (HPAC)	Support	Yes

Comments:

We STRONGLY SUPPORT this bill, and seek an amendment to add OHA & DHHL as members of the task force, to preserve the rights of its beneficiaries in the event that such lands are ceded lands.



UNIVERSITY OF HAWAII SYSTEM

Legislative Testimony

Testimony Presented Before the
House Committee on Ocean Marine Resources, & Hawaiian Affairs
Tuesday, February 6, 2018 at 9:45 a.m.

By
Darren T. Lerner, Director
Dolan Eversole, Extension Agent
Sea Grant College Program
And
Michael Bruno
Interim Vice Chancellor for Academic Affairs
University of Hawai'i at Mānoa

LATE

HB 2468 – RELATING TO ENVIRONMENTAL PROTECTION

Chair Ing, Vice Chair DeCoite, and members of the committee:

The University of Hawai'i Sea Grant College Program (Hawai'i Sea Grant) supports the intent of House Bill 2468 provided that its passage does not replace or adversely impact priorities as indicated in the University's Board of Regents approved executive biennium budget. This legislation establishes a Hawai'i beach preservation special fund, authorizes the office of planning to expend moneys from the Hawai'i beach preservation special fund to purchase lands threatened by sea level rise or beach erosion, requires the Department of Land and Natural Resources to manage the purchased lands. Creates a task force within the office of planning to determine appropriate funding mechanisms for the Hawai'i beach preservation special fund.

Here we offer some suggestions for further strengthening this important legislation:

1. Use a Working Group of the Climate Commission, Legacy Land Commission or similar existing task force. Rather than creating a new task force within the Office of Planning to identify the funding mechanisms for the Hawai'i beach preservation fund. The Climate Commission membership provides an appropriate structure for such a working group, including representatives from county planning agencies, and would be a logical extension of the Commission's duties for implementing their recommendations with legislation as needed.
2. Expand the language of the bill to include other managed retreat strategies in addition to buyouts. This would complement and be consistent with a Managed Retreat Symposium the Office of Planning convened in January, 2018. Currently HB 2468 amends Chapter 225M to authorize the Office of Planning to expend moneys from the fund for "purchase from landowners any lands threatened by sea level rise or beach erosion for the protection of adjacent public beaches." As written, this is a buyout bill, not a managed retreat bill.

3. Add the North Shore of O‘ahu as a pilot project for this new fund. With the recent high-profile severe erosion around Sunset Beach, O‘ahu the last couple of winters, there is much attention and community interest on developing alternative solutions to erosion for what many consider to be some of the most valuable and important “Legacy Beaches” on O‘ahu.
4. SB 3063 is a complimentary Bill related to developing an economic valuation study of the North Shore beaches. SB 3063 will assist local decision-makers regarding critical issues, such as coastal land use, shoreline management, and applications for armoring of the shoreline for private development. Other applications of natural resource valuation estimates include assessing long-range planning options including managed retreat.

Hawai‘i’s beaches have become increasingly threatened by coastal erosion. According to the United States Geological Service (USGS) National Assessment of Shoreline Change for the Hawaiian Islands, 70% of Hawai‘i’s beaches are eroding and 13 miles of beach have been lost over the last century. Beach erosion effects shoreline access, recreation and cultural activities, coastal environments, and our economy. Beaches are the backbone of Hawai‘i’s \$15 Billion tourism industry and are central to Hawai‘i’s unique culture and lifestyle. With sea-level rise and chronic coastal erosion, the state is challenged to find effective and efficient ways to preserve and maintain our naturally occurring sand beaches. We believe the proposed legislation will help support the long-term preservation and protection of our coastal resources.

North Shore beaches are at increasing risk of deterioration from intensive shorefront development and chronically retreating beaches and rising water levels with climate change and sea level rise. The North Shore is host to championship surfing contests throughout the winter season, bringing millions of dollars into the local economy. It is also an invaluable public and cultural resource for residents from all over O‘ahu. While the beaches of the North Shore of O‘ahu are highly regarded, the true economic value of North Shore beaches is currently unquantified and therefore, likely undervalued.

Managed retreat strategies, are among some of the most effective long-term coastal policy tools. Managed retreat can employ a range of tools including, but not limited to, purchase of conservation easements, assistance with relocation of current property owners, and other means for allowing the coastline to migrate inland over time. These are the best alternative for preserving North Shore beaches as a public trust resource in the long-term. A managed retreat strategy needs to also take into account the total value of the public resource including the beaches, and natural coastal resources.

Hawai‘i Sea Grant supports HB 2468 in the effort to establish alternative options for coastal land management to conserve legacy beaches statewide. Thank you for the opportunity to testify on this measure.



O'ahu
Chapter

[Surfrider Foundation O'ahu Chapter](#)

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HB 2468

In Support w/comments

Hearing Date: February 6th 2018; 9:45 AM

House OMH Committee

LATE

Aloha Chair Ing and Member of the OHM Committee,

I am writing to you today on behalf of the Surfrider Foundation O'ahu Chapter in support of HB 2468: Establishing a Hawai'i Beach Preservation Special Fund. Sea level rise is an immediate, real, and tangible threat to the State of Hawai'i and we are best served to begin taking mitigating action now. Our beaches and shorelines are a vital part of the public trust, a foundation to our way of life, an engine to our economy, and a natural resource that must be protected. The conversation has already begun in regard to a planned and well executed retreat from the shorelines that returns built lands to public trust resources that buffer our community from the impacts of higher seas and allow for the shorelines to remain intact.

HB 2468 is the beginning steps to moving the above topics forward in a meaningful way. Hawai'i's beaches have become increasingly threatened by coastal erosion. According to the United States Geological Service (USGS) National Assessment of Shoreline Change for the Hawaiian Islands, 70% of Hawaii's beaches are eroding and 13 miles of beach have been lost over the last century. It is widely known that methods of armoring that include sea walls and other stop-gap measures to protect property only exacerbate the problems, often times accelerating erosion and causing damage to adjacent properties. Using these methods often times reduces or eliminates shorelines over time as the natural ebb and flow of sand is constricted (Stanford 2015). Even where seawalls do not exist, the history of waterfront building has created hardened shorelines already and thus the need to consider the removal of these structures and move away from the ocean.

As stated by the researchers and outreach specialists at Hawai'i Seagrant, "Managed retreat strategies, are among some of the most effective long-term coastal policy tools. Managed retreat can employ a range of tools including, but not limited to, purchase of conservation easements, assistance with relocation of current property owners, and other means for allowing the coastline to migrate inland over time." Surfrider highly encourages the State to begin an action plan with these methods included. As we migrate mauka over time it will also be necessary to return the coastlines to a state that resembles a functioning ecosystem service, where dune plants hold sand in place and wetlands buffer from storm surge.



Our comments and suggestions on this bill are listed in the bullet points below:

- A funding mechanism should be generated from the visitors coming to the islands, who's large increase in numbers are greatly challenging the resources that we have. As we surge towards 10 million visitors each year, the State should consider a \$10 airport fee for all visitors to fill the beach preservation special fund. This type of annual generation will provide huge relief to the residents of Hawai'i who are bearing the impact of increased use from the tourist industry. Visitors can be informed on their flights of the necessity of this fund for protecting the shorelines and infrastructure that they are coming to enjoy and that without it our beaches will be lost.
- While Surfrider believes that buyouts and restructuring state land is an important piece to the managed retreat strategy, it is also imperative to have the beach preservation fund be used dynamically. Of dire importance are immediate infrastructure upgrades – specifically roads being moved out of harm's way in places like Laniakea, Ka'awa, and Kualoa, where water, sand, and debris already washes over the road during high tide and large wave events. If this is not addressed immediately the State Department of Transportation will have to deal with a crisis of lost connections to major sections of the islands.
- Surfrider also agrees with Hawai'i Seagrant that the Climate Commission or Legacy Land Commission should be used as existing mechanisms for convening the working group and that non-profit stakeholders and citizen science groups be considered as vital stakeholders in such a group. Within this group the funding mechanism discussion is of great importance, however it should also include an immediate conversation of a diversified and dynamic action plan for retreat that moves beyond just buyouts.

Surfrider is grateful that this conversation is underway at our State Capitol, but cannot stress enough the necessity for immediate action. The projections that once seemed to be into a distant future are upon us now. Please look over the next section of picture from O'ahu's North Shore and understand that there is no time to waste in taking action on this topic.



O'ahu
Chapter

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Mahalo for your time and consideration,
Rafael Bergstrom, Surfrider Foundation O'ahu Chapter Coordinator