

DAVID Y. IGE  
GOVERNOR OF HAWAII



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

POST OFFICE BOX 621  
HONOLULU, HAWAII 96809

**Testimony of  
SUZANNE D. CASE  
Chairperson**

**Before the House Committee on  
FINANCE**

**Wednesday, February 28, 2018  
12:00 PM  
State Capitol, Conference Room 308**

**In consideration of  
HOUSE BILL 2653, HOUSE DRAFT 1  
RELATING TO SPECIAL SHORELINE ENCROACHMENT EASEMENTS**

House Bill 2653, House Draft 1 proposes to the authorize the Board of Land and Natural Resources (Board) to provide qualified coastal landowners, who have privately owned structures situated on previously private land that has become submerged public land due to erosion and sea level rise, with short duration term easements at values determined by the Board to enable these landowners to consider alternatives to ultimately relocate these private structures landward of the shoreline setback line. **The Department of Land and Natural Resources (Department) strongly supports this measure.**

The structures covered by this measure were originally legally constructed mauka of the shoreline on private property by private landowners to benefit their property, i.e., as shoreline protection structures. Over the years, many of these structures are now encroachments situated within or seaward of the shoreline on submerged public land and thus raise issues of ownership and liability for those structures. In order to resolve the encroachment, the private landowner may obtain an easement from the Board, which requires insurance and indemnity protection. The issue is that under current law the Board must charge fair market value as determined by an appraiser for the easement.

The goal of this measure is to provide a process for the State and coastal property owners to work collaboratively on dealing with the long term impacts of sea level rise through a managed retreat strategy. The property owner would be able to maintain the structure protecting their property for a reasonable amount of time, while the burden of requiring a land owner to pay again for land they once owned is avoided. The limited term duration of the easement provides the Board with greater oversight and the flexibility to implement future policies in regards to shoreline protection structures. Additionally, it provides the Legislature with time to evaluate and enact laws to address the impacts of sea level rise. The State can better focus its limited

**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

resources on working to find a solution of sea level rise rather than in conflict with private landowners.

Considering that the structures were originally legally constructed on private property mauka of the then existing shoreline, waiving the requirement for prior approval of the Governor pursuant to Section 171-53, Hawaii Revised Statutes (HRS), should not compromise any of the government's fiduciary obligations. In addition, given the volume of easements that are expected to be processed, this exemption would greatly expedite the disposition process. Allowing the easements to be granted at less than fair market value via a streamlined process<sup>1</sup> would assist in encouraging compliance from littoral landowners entering into easements with the State. By resolving the liability and indemnity issues, taxpayers will have greater protection from potential legal and financial liability against the State with regard to these structures. By facilitating compliance from landowners, this bill will reduce the burden on staff resources from having to pursue enforcement actions.

Enactment of this measure will not negatively impact beach resources or proliferate shoreline hardening. The bill does not act as a substitute to any permitting requirements as shoreline protection structures will still be subject to all existing state and county regulatory requirements. Furthermore, current Department practice requires that prior to taking any request for a shoreline encroachment easement to the Board for approval all such requests are subject to review by the Department's Office of Conservation and Coastal Lands ("OCCL"). As part of their review criteria, OCCL examines whether the continued presence of the encroachment will detrimentally impact the existing coastal resources. Furthermore, the members of the Board have unanimously signed a letter in support of similar legislation from last Session to address this issue, a copy of which is attached to this testimony.

Thank you for the opportunity to comment on this measure.

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<sup>1</sup> The appraisal process under Section 171-17, HRS, can sometimes be expensive and time consuming.

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SUZANNE D. CASE  
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January 26, 2017

Senator Karl Rhoads  
Chair, Senate Committee on  
Water and Land  
Hawaii State Capitol, Rm 204  
Honolulu, Hawaii 96813

Senator Brian T. Taniguchi  
Chair, Senate Committee on  
Judiciary  
Hawaii State Capitol, Rm 219  
Honolulu, Hawaii 96813

Representative Kaniela Ing  
Chair, House Committee on  
Ocean, Marine Resources &  
Hawaiian Affairs  
Hawaii State Capitol, Rm 427  
Honolulu, Hawaii 96813

SUBJECT: House Bill 1120/Senate Bill 986 Relating to Special Shoreline Encroachment Easements

Dear Committee Chairs,

The Board of Land and Natural Resources strongly endorses the concept of modifying HRS 171 to allow the assessment of less than fair market value by the BLNR when granting easements for shoreline structures that were legally constructed on previously private property but are now on public property seaward of the shoreline due to erosion and other causes.

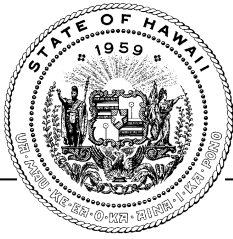
We request that measures such as HB 1120 and SB 986 be heard in committee.

Sincerely,

Suzanne D. Case  
Chairperson

  
Keith Downing  
Member  
Samuel 'Olu Gon III  
Member  
Stanley H. Roehrig  
Member  
James A. Gomes  
Member  
Thomas Oi  
Member  
Chris Yuen  
Member

- C: Senator Donovan Dela Cruz, Chair, Senate Ways & Means Committee
- Representative Sylvia Luke, Chair, House Finance Committee
- Representative Scott Y. Nishimoto, Chair, House Judiciary Committee
- Executive Director, Office of Planning
- Administrator, Coastal Zone Management Program
- Chief Executive Office, Office of Hawaiian Affairs



# OFFICE OF PLANNING STATE OF HAWAII

DAVID Y. IGE  
GOVERNOR

LEO R. ASUNCION  
DIRECTOR  
OFFICE OF PLANNING

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Statement of  
**LEO R. ASUNCION**  
Director, Office of Planning  
before the  
**HOUSE COMMITTEE ON FINANCE**  
Wednesday, February 28, 2018  
12:00 PM  
State Capitol, Conference Room 308

in consideration of  
**HB 2653, HD1**  
**RELATING TO SPECIAL SHORELINE ENCROACHMENT EASEMENTS.**

Chair Luke, Vice Chair Cullen, and Members of the House Committee on Finance.

HB 2653, HD1 proposes to authorize the board of land and natural resources to provide qualified landowners, who have privately owned structures situated on previously private land that has become submerged public land due to erosion and sea level rise, with short duration term easements at values determined by the board to enable these landowners to consider alternatives to ultimately relocate these private structures landward of the shoreline setback line.

The Office of Planning (OP) supports HB 2653, HD1, and respectfully offers the following comments on this measure:

1. OP recommends that the purpose of the special shoreline encroachment easements be modified to include consideration for alternatives to shoreline encroachment structures (e.g. seawalls) and recommends the following amendment to Page 3, Lines 13-14:
  - “§171- Special shoreline encroachment easements. (a) The board may grant a special shoreline encroachment easement to a qualified landowner for a value determined by the board notwithstanding section 171-17 to enable these landowners to remove or relocate a special shoreline encroachment landward of the shoreline setback line, as defined under section 205A-41;”
2. OP recommends replacing the statement on Page 4, Lines 8-10 from:
  - [~~“(d) Special shoreline encroachment easements granted by the board in accordance with this section shall take into account”~~], to  
“No shoreline encroachment easements shall be granted in accordance with this section unless the board takes into account.”

3. OP recommends changing the language on Page 4, Lines 11-13 to:

- “(1) The public policies of protection and preservation of the [~~natural~~] shoreline, the beach processes, [~~public-pedestrian~~] lateral access along the shoreline...”

Thank you for the opportunity to offer comments on this measure.

**HB-2653-HD-1**

Submitted on: 2/27/2018 11:59:37 AM

Testimony for FIN on 2/28/2018 12:00:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Melodie Aduja	OCC Legislative Priorities Committee, Democratic Party of Hawai'i	Support	No

Comments:

**HB-2653-HD-1**

Submitted on: 2/26/2018 10:27:57 PM

Testimony for FIN on 2/28/2018 12:00:00 PM

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

Comments:

We continue to STRONGLY OPPOSE this "SPECIAL LEGISLATION" bill that benefits the affluent homeowners who knew or should have known that they run the risk of someday losing their home to rising sea level & other natural erosion that occurs on the beach. Taxpayers should NOT have to foot the bill for those who took unnecessary risks in building their luxury home on the beach or close to shore. Mahalo.

**HB-2653-HD-1**

Submitted on: 2/26/2018 10:37:24 PM

Testimony for FIN on 2/28/2018 12:00:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Rachel L. Kailianu	Individual	Oppose	Yes

Comments:

In STRING OPPOSITION TO THIS BILL.



**HB-2653-HD-1**

Submitted on: 2/26/2018 4:29:43 AM

Testimony for FIN on 2/28/2018 12:00:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Ted Yamamura	Individual	Support	No

Comments:

As a real estate appraiser conducting shoreline encroachment easement appraisals for DLNR from time to time, I speak in full SUPPORT of the intent of this Bill.

**HB-2653-HD-1**

Submitted on: 2/26/2018 7:35:27 AM

Testimony for FIN on 2/28/2018 12:00:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Jon F. Yamaguchi	Individual	Support	No

Comments: