

DAVID Y. IGE
GOVERNOR OF HAWAII



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

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**Testimony of
SUZANNE D. CASE
Chairperson**

**Before the House Committees on
WATER & LAND
and
OCEAN, MARINE RESOURCES, & HAWAIIAN AFFAIRS**

**Tuesday, February 6, 2018
9:15 AM
State Capitol, Conference Room 312**

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

House Bill 2653 proposes to 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 sea level rise exposure area. **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

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

ROBERT K. MASUDA
FIRST DEPUTY

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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

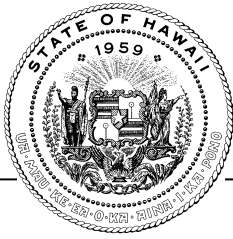
and enact laws to address the impacts of sea level rise. The State can better focus its limited resources on working to find a solution of sea level rise rather than conflict with private landowners.

Considering that the structures were originally legally constructed on private property mauka of the then existing shoreline, waiving the requirements for prior approval of the Governor and prior authorization from the Legislature 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 processⁱ 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.

ⁱ The appraisal process under Section 171-17, HRS, can sometimes be expensive and time consuming.



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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, AND HAWAIIAN
AFFAIRS**
Tuesday, February 6, 2018
9:15 AM
State Capitol, Conference Room 312

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

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

HB 2653 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 sea level rise exposure area.

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

1. OP recommends changing the term "Special shoreline encroachment easements" into "Temporary shoreline encroachment easements", which best matches the purpose of HB 2653.
2. OP recommends changing the term of "landward of the sea level rise exposure area" into "landward of the shoreline setback line, as defined under section 205A-41." We note that the "sea level rise exposure area" was developed as a result of modeling work done in the *Hawaii Sea Level Rise Vulnerability and Adaptation Report* (December 2017) "to determine the potential future exposure of each island to multiple coastal hazards as a result of sea level rise." The footprints of three chronic flooding hazards (passive "bathtub" flooding, annual high wave flooding, and coastal erosion) "were combined to define the projected extent of chronic flooding due to sea level rise, [and] called the sea

level rise exposure area." The report includes "Recommendation 1.1 Recognize the SLR-XA as a state-wide vulnerability zone." It further states: "State and County agencies may consider officially recognizing the SLR-XA as a state-wide vulnerability zone through legislative or executive action. (p. 217). As such, there presently is no sea level rise exposure area officially designated by the state or county authorities at this time.

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

HB-2653

Submitted on: 2/3/2018 4:26:17 PM

Testimony for WAL on 2/6/2018 9:15:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Ted Yamamura		Support	No

Comments:

I speak in SUPPORT of the intent of this Bill.

HB-2653

Submitted on: 2/5/2018 1:25:44 PM

Testimony for WAL on 2/6/2018 9:15:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Zachary LaPrade	Quicksilver Charters	Support	No

Comments:

HB-2653

Submitted on: 2/5/2018 1:40:15 PM

Testimony for WAL on 2/6/2018 9:15:00 AM

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

Comments:

We STRONGLY OPPOSE this bill. The State is NOT the caretaker of the affluent homeowners who knew or should have known that natural shoreline erosion was inevitable & that their property would be subject to reduction in the size of their real estate. These shoreline homeowners, especially in Kailua & Lanikai have harassed & erected illegal gates to keep Hawaiians from accessing "their" (the affluent shoreline homeowners), beaches. This BILL is a purely special interest bill to favor the affluent shoreline homeowners & may be unconstitutional. We seek this committee to defer or hold this bill.