

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

M. KALEO MANUEL
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
CONSUMER PROTECTION AND COMMERCE

Tuesday, February 12, 2019
2:00 PM

State Capitol, Conference Room 329

In consideration of
HOUSE BILL 1564 HOUSE DRAFT 1
RELATING TO COASTAL ZONE MANAGEMENT

House Bill 1564, House Draft 1 proposes to establish the Hawaii Beach Preservation Revolving Fund within the State Treasury, establishes a low-interest contingent mortgage financing pilot program to encourage certain property owners to relocate mauka of expected sea level rise and erosion hazard zones. The bill proposes to increase the Conveyance Tax rates for oceanfront properties with a value of \$10,000,000 or higher and for which the purchaser is ineligible for a county homeowner's exemption on property tax. The bill also proposes to allocate for deposit into the Hawaii Beach Preservation Revolving Fund 100% of conveyance tax revenues collected on oceanfront property that is not owner-occupied and amends coastal zone management laws to further protect against impacts of sea level rise and coastal erosion. **The Department of Land and Natural Resources (Department) acknowledges the intent of House Bill 1564 but does not support the measure as written.**

As you know, one of the primary missions of the Department is to protect Hawaii's beaches for present and future generations. However, with the onset of sea level rise, it will be very challenging to simultaneously protect beaches and existing shoreline development, so we greatly appreciate a measure such as this, which is intended to provide opportunities for shoreline retreat through non-regulatory financing mechanisms. This measure also introduces regulatory mechanisms such as prohibiting shoreline armoring, which would have the effect of compelling all shoreline development that is impacted by sea level rise to eventually be moved inland.

However, the Department has several concerns with this measure. First, the Department believes that more investigation into financing mechanisms is required to better understand the use of this tool to support managed retreat. Secondly, this measure establishes a mortgage loan program in the Department, but the Department has no expertise or interest in getting into the mortgage loan business.

Another concern with this measure is that the addition of a subsection (3) to Section 247-7, HRS, would provide that "One hundred per cent of the [conveyance] taxes collected on the sale of oceanfront property pursuant to section 247 2(2)(G) shall be paid into the Hawaii beach preservation revolving fund established by section 171-A." Since 10% or \$6.8 million, whichever is less, of the conveyance tax currently goes into the Land Conservation Fund, House Bill 1564, House Draft 1 could have an adverse impact on our existing programs.

Further, the Department questions whether this measure would provide a coastal homeowner with enough of an incentive to relinquish their property to the state in exchange for a low interest loan to invest in property somewhere else. There may be other issues with this measure such as what will happen to mortgages on properties that have been relinquished?

House Bill 1564 also proposes to amend section §205A-44 of the Coastal Zone Management Act by adding a new section (c) that would prohibit all forms of permanent shoreline hardening structures. A more incremental approach would be to improve language in Chapter 205A of the Coastal Zone Management Act to ensure that shoreline armoring does not impact beach processes and public beach access, rather than instituting a total ban on shoreline armoring. Towards this end the Department recommends the following language in various sections:

Under Section 205A-2, HRS, (9) Beach protection;

(B) Prohibit construction of private coastal erosion-protection structures ~~[seaward of the shoreline,]~~, such as seawalls and revetments, except ~~[when they result in improved aesthetic and engineering solutions to erosion]~~ at ~~[the]~~ sites ~~[and]~~ where they [do] will not interfere with beach processes and public beach access, and existing recreational and waterline activities during the expected lifespan of the structure;

Under Section 205A-46

(8) Private facilities or improvements [which] that will neither adversely affect beach processes and public beach access, ~~[nor artificially fix the shoreline; provided that the authority also finds that hardship will result to the applicant if the facilities or improvements are not allowed within the shoreline area;]~~, result in flanking erosion of adjacent properties, or interfere with existing recreational and waterline activities during the expected lifespan of the private facilities or improvements.

(9) Private facilities or improvements that may artificially fix the shoreline; provided that the authority also finds that ~~[shoreline erosion is likely to cause hardship to the applicant if the facilities or improvements are not allowed within the shoreline area, and the authority imposes conditions to prohibit any structure seaward of the existing shoreline]~~ the action will neither adversely affect beach processes and public beach access, result in flanking erosion of adjacent properties, or interfere with existing recreational and waterline activities during the expected lifespan of the private facilities or improvements, unless it is clearly in the public interest[-or], such as in the case of an imminent threat of a road or highway failure, or other critical public infrastructure. In either case, a variance to artificially fix the shoreline shall not be considered unless the private facilities or improvements are in imminent danger of being damaged by erosion; or

The Department recognizes that Section 205A-46(b) referring to “hardship” may have to be removed if the Committee accepts our amendments to Sections 205A-46(8) and (9).

The Department respectfully asks that the proposed amendments on page 14, lines 18-21 of the bill, be reconsidered and not be removed from Section 205A-44, HRS. The Department appreciates the intent to strengthen prohibitions against taking sand or other natural beach or marine deposits from the shoreline area. However, we feel the proposed amendments may be too restrictive.

Finally, we note that the Hawaii Climate Change Mitigation and Adaptation Commission (the Climate Commission), which was established by Act 32, could investigate potential financing mechanisms to support managed retreat. The Climate Commission has identified adaptation to sea level rise as a focus area for its work and would be the best multi-jurisdictional body to deal with the complexities of this issue.

Thank you for the opportunity to comment on this measure.

**TESTIMONY BEFORE THE HOUSE COMMITTEE ON
CONSUMER PROTECTION AND COMMERCE**

**H.B.1564, HD1
Relating to Coastal Zone Management**

Tuesday, February 12, 2019
2:00 p.m. Agenda Item # 8
State Capitol, Conference Room 329

Kerstan J. Wong
Director, Engineering Division
Hawaiian Electric Company, Inc.

Dear Chair Takumi, Vice Chair Ichiyama and Members of the Committee,

My name is Kerstan Wong and I am testifying on behalf of Hawaiian Electric Company and its subsidiaries, Hawaii Electric Light Company and Maui Electric Company (collectively, the “Hawaiian Electric Companies”. The Hawaiian Electric Companies are in opposition of H.B. 1564, HD1 Relating to Coastal Zone Management.

The Bill potentially prohibits the construction of shoreline hardening structures within the shoreline setback area. It also states no existing shoreline hardening structure shall be altered, repaired, or replaced. Hawaiian Electric has facilities within the shoreline setback areas. This Bill would potentially restrict repair of those existing facilities and thus pose a threat to provide electricity.

Although language was added such that hardship may be considered by the appropriate authority, the Bill’s potential restriction to build new or repair existing shoreline hardening structures limits options and the ability to protect critical infrastructure.

As an example, our Kahe Generation Facility on Oahu, which is in the shoreline setback area, produces the most firm and reliable electricity on the island. This facility is

especially critical at night when the electrical load on Oahu is at its peak and all photovoltaic generation shuts down.

The Hawaiian Electric Companies understand the anticipated effects of climate change - including increased storm activity and rising sea levels – therefore these important issues are part of our long-range planning and our ongoing work to enhance the resilience of our infrastructure.

Accordingly, the Hawaiian Electric Companies oppose H.B. 1564, HD1. Thank you for this opportunity to testify.

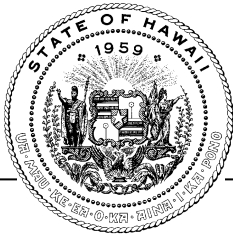
HB-1564-HD-1

Submitted on: 2/11/2019 1:39:31 PM

Testimony for CPC on 2/12/2019 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Melodie Aduja	O`ahu County Committee on Legislative Priorities of the Democratic Party of Hawai`i	Support	No

Comments:



OFFICE OF PLANNING STATE OF HAWAII

DAVID Y. IGE
GOVERNOR

DIRECTOR
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Statement of
LEO R. ASUNCION
Planning Program Administrator
before the
HOUSE COMMITTEE ON CONSUMER PROTECTION AND COMMERCE

Tuesday, February 12, 2019
2:00 PM
State Capitol, Conference Room 329

in consideration of
HB 1564 HD1
RELATING TO COASTAL ZONE MANAGEMENT.

Chair Takumi, Vice Chair Ichiyama, and Members of the House Committee on Consumer Protection and Commerce.

The Office of Planning (OP) respectfully offers the comments on HB 1564 HD1 as follows:

1. Related to the proposed contingent mortgage financing pilot program:
 - Such a program may inadvertently incentivize shoreline real estate speculation by potentially encouraging the investment purchasing of such properties if the State were to assume shoreline property owners' mortgages when the owners relinquish their high value properties to the State and then also providing them with low interest loans backed by the State and administered by the State.
 - The complexities in the area of mortgages, title defects, liens on properties, etc., require specialized knowledge that may exceed the functional responsibilities and capabilities of any one Department/Division/Program at the State.
2. We propose the following technical, nonsubstantive amendments for clarity, consistency, and style.
 - **Page 4**, lines 6-7, **page 11**, lines 9-10, **page 12**, line 18, from HB 1564 HD1 uses the term "oceanfront property(ies)", and, for example, **page 5**, lines 18 and 20, **page 6**, lines 11, 13 and 21 and **page 7**, line 10, the term "oceanfront property", respectively. The OP suggests HB 1564 consistently use one term, and provide the definition of "shoreline property" or "oceanfront property" for the purpose of this measure.

3. The following comments are specific to Part IV of the proposed measure:

- **Page 13, lines 14- 20 and page 14, lines 1-2**, the OP recommends amending HRS §205A-43.5(a)(2) as follows:
 - (2) Protection of a legal structure [~~costing more than \$20,000;~~ or a public facility, which does not fix the shoreline, under an emergency authorization issued by the authority; provided that the structure or facility is at risk of immediate damage from shoreline erosion;

- **Pages 16-17**, the proposed amendments to HRS § 205A-44 prohibit all shoreline hardening structures, and do not allow for repairs to any existing shoreline hardening structures. The OP is concerned that the proposed amendments in HB 1564 HD1 are overly broad and will affect the repairs and maintenance of existing seawalls that protect critical public infrastructure and facilities that may not have alternatives, including relocation, due to geographic or functional constraints.

- **Page 19, lines 1-21, and page 20, lines 1-3**, the OP comments that the proposed amendments to HRS § 205A-46(a) from HB 1564 HD1 leave the discretionary variance to the county authorities to allow private facilities or improvements within the shoreline area, and restrict new shoreline hardening structures.

Thank you for the opportunity to testify on this measure.

DAVID Y. IGE
GOVERNOR



RODERICK K. BECKER
DIRECTOR

ROBERT YU
DEPUTY DIRECTOR

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

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

WRITTEN ONLY
TESTIMONY BY RODERICK K. BECKER
DIRECTOR, DEPARTMENT OF BUDGET AND FINANCE
TO THE HOUSE COMMITTEE ON CONSUMER PROTECTION AND COMMERCE
ON
HOUSE BILL NO. 1564, H.D. 1

February 12, 2019
2:00 p.m.
Room 329

RELATING TO COASTAL ZONE MANAGEMENT

House Bill (H.B.) No. 1564, H.D. 1: establishes the Contingent Mortgage Financing Pilot Program, under the Department of Land and Natural Resources, to encourage qualifying shoreline property owners to relocate mauka of anticipated sea level rise and erosion hazard zones; increases the conveyance tax rates for oceanfront properties valued at \$10,000,000 or more, and for which the purchaser is ineligible for a county homeowner's exemption on property tax; creates the Hawaii Beach Preservation Revolving Fund for the loan program that would generate revenues through legislative appropriations, reimbursements of loan repayments, fees, gifts, donations, grants, moneys from other sources, and interest earnings; and appropriates an unspecified sum of general funds for FY 20 and FY 21 for the pilot loan program.

The department, as a matter of general policy, does not support the creation of any revolving fund which does not meet the requirements of Section 37-52.4, HRS. Revolving 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 H.B. No. 1564, H.D. 1, it is difficult to determine whether the proposed revolving fund would be self-sustaining.

Thank you for your consideration of our comments.

February 12, 2019

The Honorable Roy Takumi, Chair

House Committee on Consumer Protection and Commerce
State Capitol, Room 329
Honolulu, Hawaii 96813

RE: H.B. 1564, HD1, Relating to Coastal Zone Management

HEARING: Tuesday, February 12, 2019, at 2:00 p.m.

Aloha Chair Takumi, Vice Chair Ichiyama, and Members of the Committee,

I am Ken Hiraki Government Affairs Director, testifying on behalf of the Hawai'i Association of REALTORS® (“HAR”), the voice of real estate in Hawai'i, and its over 9,500 members. HAR **strongly opposes the portion of** House Bill 1564, HD1, which increases the conveyance tax from \$1.25 per \$100 to \$1.50 per \$100 for oceanfront properties with a value of \$10 million or higher. Proceeds from this tax increase would be placed within a Hawai'i Beach Preservation Revolving Fund.

CURRENT		
Property Value:	Tax Rate per \$100:	Conveyance Tax Amount:
\$10,000,000	\$1.25	\$125,000
PROPOSED		
Property Value:	Tax Rate per \$100:	Conveyance Tax Due:
\$10,000,000	\$1.50	\$150,000

An oceanfront property valued at \$10 million would have an additional \$25,000 tax.

The Conveyance Tax applies to the conveyance of multi-family rentals, land for residential subdivisions, mixed-income and multi-use properties, commercial properties, resort properties, and agricultural lands, as well as condominium and single-family homes. It applies whether or not a property is sold at a gain or a loss. This measure penalizes and increases the tax rate for properties near the ocean. HAR believes that it is not good policy to tax different land types at a different rate.

Additionally, the tax applies to the entire purchase price, and does not take into account the amount of indebtedness that may be on the property being sold, or whether the seller may be selling at less than what the seller originally acquired the property for. Thus, in certain circumstances the seller may not have the cash to be able to pay the Conveyance Tax, or the amount of tax may be so high relative to the net proceeds that the seller is receiving as to become confiscatory.

Furthermore, the problem linking funding to the Conveyance tax is that when the real estate market is down, there are not enough funds to pay for the programs and special funds it covers. Then, the Conveyance Tax would need to be increased to cover the program. However, when the market is up, there are excess funds over and above the program's needs. This becomes a cyclical issue, and unreliable in forecasting these program's needs.

Mahalo for the opportunity to testify.



Feb. 12, 2019

In Support of HB1564 Relating to Coastal Zone Management
House Committees on Consumer Protection & Commerce (CPC)
Feb. 12, 2019, 2:00pm, Room 329

Aloha, Chair Takumi, Vice Chair Ichiyama and Members of the Committee:

The Surfrider Foundation's Hawaii Chapters strongly support HB1564 to establish the Hawaii Beach Preservation Revolving Fund to help deal with the consequences of climate change and sea level rise. Volunteer leaders from Surfrider's five Hawaii Chapters have played an active role in educating the public about the effects of climate change and sea level rise, and we are working with scientists from the UH Sea Grant Program and environmental groups like Sierra Club and Maui Tomorrow to help mitigate the effects and come up with practical solutions.

As you all know, sea levels are rising, and our beaches are disappearing at an alarming rate. But in the face of increasing erosion rates, many county officials are pressured to hand out seawall permits, which only worsen and accelerate the rate of erosion. This policy is disastrous for the community because vainly trying to protect one person's home only makes it worse for their neighbors. Beaches are part of the public trust, protected by the Hawaii Constitution, and they need to be protected. Years of scientific study have proven that sea walls should not be built, but we do need ways to help homeowners.

This bill prohibits the seawalls and other shoreline hardening structures, but it offers a better solution. HB1564 allows for the temporary, non-hardened protection of highways and other public infrastructures, yet it requires that they be moved inland as soon as possible. The bill also taxes the sale of expensive shoreline properties and uses the proceeds to create a revolving fund to help homeowners move back from the ocean and preserve our beaches by allowing them to move inland as they erode. Our beaches are the best defense against climate change, sea level rise and the increasing threat from major storms and hurricanes.

Mahalo for your consideration of this bill and leadership in helping Hawaii to prepare for the effects of climate change and sea level rise.

Aloha,
Stuart Coleman
Stuart H. Coleman, Hawaii Manager

HB-1564-HD-1

Submitted on: 2/11/2019 8:45:16 PM

Testimony for CPC on 2/12/2019 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Patricia Cadiz	Individual	Oppose	No

Comments:

I oppose this measure because it only provides for the funds to be used for retreat from the coastal zone. Our state constitution calls for preservation and protection of all lands - including coastal lands. In my small neighborhood there are two great examples of eroding beaches that were restored and are now wonderful public resources. Both projects were paid for by the shore front homeowners. The beaches are now wide and healthy and enjoyed by the public as well as providing natural protection of the upland properties.

I suggest that preservation efforts such as this should be encouraged. But bills such as HB 1564 ignore all of the potential engineering and proven coastal science techniques for preservation of our shores. This bill suggests that retreat is the only solution. Why retreat when we can preserve?

HB-1564-HD-1

Submitted on: 2/12/2019 11:22:54 AM

Testimony for CPC on 2/12/2019 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
mike ottman	Individual	Support	No

Comments:

HB-1564-HD-1

Submitted on: 2/12/2019 12:08:42 PM

Testimony for CPC on 2/12/2019 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Jennifer Roberts	Individual	Support	No

Comments:

HB-1564-HD-1

Submitted on: 2/12/2019 1:06:31 PM

Testimony for CPC on 2/12/2019 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Christine Roberson	Individual	Support	No

Comments: