

DAVID Y. IGE  
GOVERNOR OF  
HAWAII



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

POST OFFICE BOX 621  
HONOLULU, HAWAII 96809

**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

**Testimony of  
SUZANNE D. CASE  
Chairperson**

**Before the House Committees on  
WATER, LAND & HAWAIIAN AFFAIRS  
and  
ENERGY & ENVIRONMENTAL PROTECTION**

**Wednesday, February 6, 2019  
10:30am  
State Capitol, Conference Room 325**

**In consideration of  
HOUSE BILL 565  
RELATING TO DISCLOSURE OF COASTAL HAZARDS**

House Bill 565 proposes to require that a vulnerable coastal property statement accompany the sale of a vulnerable coastal property and that mandatory seller disclosures in real property transactions include identification of residential real properties located within a sea level rise exposure area. The Department of Land and Natural Resources (Department) supports the measure and offers the following comments.

House Bill 565 proposes to amend Chapter 508D, Hawaii Revised Statutes (HRS), to add a new section requiring that with the sale of a vulnerable coastal property, the purchaser and buyer execute an oceanfront vulnerable coastal property statement. For the purposes of the proposed amendment, the bill defines vulnerable coastal property as residential real property within a sea level rise vulnerability area as officially designated by the Hawaii Climate Change Mitigation and Adaptation Commission or its successor. The bill establishes mandatory language for every vulnerable coastal property statement and would require the statement to be notarized by a notary public and recorded with the bureau of conveyances. It also adds a requirement that, along with maps of special flood hazard areas, commercial and military aircraft noise areas, and tsunami inundation hazard areas, sellers disclose maps of the sea level rise exposure area when residential real property lies in that area.

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 Hawaii. 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.

Coastal properties are vulnerable to erosion (i.e., shoreline recession and land loss) and flooding from high waves, storms and tsunami. 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.

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, Department 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.

In December 2017, the Hawaii Climate Change Mitigation and Adaptation Commission (Climate Commission) accepted the Hawaii Sea Level Rise Report (Report) and accompanying Hawaii Sea Level Rise Viewer (Viewer). The Report and Viewer provide maps of a Sea Level Rise Exposure Area (SLR-XA) incorporating models of passive flooding, shoreline erosion, and annual high wave run-up with 3.2 feet of sea level rise. Recent science points to a likelihood of three feet or more of sea level rise in the second half of this century - within the expected lifespan of most existing and new development. A 2017 study by the U.S. Global Climate Change Research Program finds that global mean sea level rise (GMSL) is very likely (90 to 100% confidence) to rise 1.0 to 4.3 feet by 2100. A 2017 report “Global and Regional Sea Level Rise Scenarios for the United States” from the National Oceanic and Atmospheric Association (NOAA) projects 3 feet of sea level rise by 2100 in their “Intermediate” scenario and as early as the 2060s in their “Extreme” scenario. It is critical that sea level rise vulnerabilities are disclosed with the sale of a vulnerable coastal property to support informed decision making by buyers and government agencies.

At its September 2018 meeting, the Climate Commission agreed to five priority recommendations for countering impacts of sea level rise, **including supporting legislation for disclosure for private property and public offerings in areas with potential exposure to sea level rise**. A copy of a press release from the Department regarding the Climate Commission recommendations is attached for your convenience.

Thank you for the opportunity to comment on this measure.

Enclosure.



## DEPARTMENT OF LAND AND NATURAL RESOURCES

**DAVID Y. IGE**  
GOVERNOR

**SUZANNE D. CASE**  
CHAIRPERSON

### FOR IMMEDIATE RELEASE

Sept. 5, 2018

### STATE CLIMATE COMMISSION ADOPTS RECOMMENDATIONS FOR COUNTERING IMPACTS OF SEA LEVEL RISE

(Honolulu) – The Hawai'i Climate Change Mitigation and Adaptation Commission (Climate Commission) at its regular quarterly meeting yesterday adopted a series of recommendations and finalized a mission statement to help guide Hawai'i's response to the impacts of climate change.

The Climate Commission is led by the DLNR Chair and the Director of the State Office of Planning and includes members from key state and county agencies. The group's mission statement formalized and approved at the meeting is as follows:

"Hawaii's Climate Commission recognizes the urgency of climate threats and the need to act quickly. It promotes ambitious, climate-neutral, culturally responsive strategies for climate change adaptation and mitigation in a manner that is Clean, Equitable & Resilient."

The recommended strategies or steps agreed upon by the Climate Commission include:

- Support legislation for disclosure for private property and public offerings located in areas with potential exposure to sea level rise.
- Request all new development, redevelopment and modifications be directed away from beach areas.
- Urge counties to incorporate the 3.2 ft. sea level rise exposure area (SLR-XA) into their general and development plans.
- Encourage agencies and non-governmental utility providers to identify and prioritize assets within the 3.2 ft SLR-XA or more as described in the State's Sea Level Rise report, identify adaptation measures, and to provide a status update on this activity annually to the Climate Commission.
- Support legislation that funds State programs to meet mitigation goals, and to bring resources to assist in planning and implementation for sea level rise and other climate related impacts.

The next quarterly meeting of the Climate Commission is scheduled for Tuesday, Nov. 27, 2018 from 1:00 – 4:00 p.m. at the Board of Land and Natural Resources meeting room, Kalanimoku Building, 1151 Punchbowl Street in Honolulu. All meetings are open to the public.

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### **RESOURCES**

(All video/images courtesy: DLNR)

Hawai'i Climate Change Portal:

<http://climate.hawaii.gov/>

Rising Seas in Hawai'i television special:

<https://vimeo.com/249760017>

HD video-Sea level rise adaptation media clips:

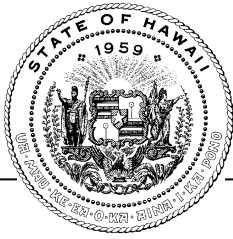
<https://vimeo.com/197533871>

#### **Media Contact:**

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# OFFICE OF PLANNING STATE OF HAWAII

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Statement of  
**LEO R. ASUNCION**  
Planning Program Administrator  
before the  
**HOUSE COMMITTEES ON WATER, LAND, & HAWAIIAN AFFAIRS  
AND ENERGY & ENVIRONMENTAL PROTECTION**

Wednesday, February 6, 2019  
10:30 AM  
State Capitol, Conference Room 325

in consideration of  
**HB 565**  
**RELATING TO DISCLOSURE OF COASTAL HAZARDS.**

Chairs Yamane and Lowen, Vice Chairs Todd and Wildberger and Members of the Committees on Water, Land & Hawaiian Affairs and Energy & Environmental Protection.

The Office of Planning appreciates the intent of HB 565, and provides comments for the Committees' consideration.

- **Page 4, Lines 12-13** refer to a sea level rise vulnerability area. For consistency with the Hawaii Sea Level Rise Vulnerability and Adaptation Report, 2017 adopted by the Hawaii Climate Change Mitigation and Adaptation Commission, OP recommends the following amendment:

(c) For the purposes of this section, “vulnerable coastal property” means residential real property within a sea level rise [~~vulnerability~~] exposure area

- **Page 5, Line 16** refers to a sea level rise exposure area as officially designated by the Hawaii climate change mitigation and adaptation commission or its successor. The Hawaii Sea Level Rise Vulnerability and Adaptation Report and its associated Hawaii Sea Level Rise Viewer present scenarios of 0.5 ft, 1.1 ft, 2.0 ft, and 3.2 ft of sea level rise. The OP recommends clarifying a specific scenario(s) for this measure.

Thank you for the opportunity to testify on this measure.



# UNIVERSITY OF HAWAII SYSTEM

## Legislative Testimony

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Testimony Presented Before the  
House Committees on Water, Land, & Hawaiian Affairs and  
Energy & Environmental Protection  
Wednesday, February 6, 2019 at 10:30 a.m.

By

Charles (Chip) Fletcher  
Professor and Associate Dean  
School of Ocean and Earth Science and Technology  
Vice-Chair, Honolulu Climate Change Commission

And

Makena Coffman  
Professor, Urban and Regional Planning  
Director, Institute for Sustainability and Resilience  
Chair, Honolulu Climate Change Commission

And

Michael Bruno, PhD  
Vice Chancellor for Research and Interim Chancellor for Academic Affairs  
University of Hawai'i at Mānoa

### HB 565 – RELATING TO DISCLOSURE OF COASTAL HAZARDS

Chairs Yamane and Lowen, Vice Chairs Todd and Wildberger, and members of the committees:

The University of Hawai'i is in strong favor of this legislation, provided that its passage does not replace or adversely impact priorities as indicated in our BOR Approved Budget.

House Bill 565 would require mandatory disclosure in real property transactions to include identification of residential real properties located within the “sea level rise exposure area,” based initially on the State of Hawai'i Sea Level Rise Vulnerability and Adaptation Report and as officially designated by the Hawai'i climate change mitigation and adaptation commission.

Disclosure of sea level rise and coastal erosion within real estate transactions is critically important to increasing awareness of coastal hazards. It provides new buyers of coastal property with better information on which to make their purchase decisions and makes explicit within the process our existing policies and programs that aim to protect beaches.



**Testimony to the House Committees on Water, Land & Hawaiian Affairs,  
& Energy and Environmental Protection  
Wednesday, February 5, 2019 at 10:30 A.M.  
Conference Room 325, State Capitol**

**RE: HOUSE BILL 565, RELATING TO THE DISCLOSURE OF COASTAL HAZARDS**

Chairs Yamane and Lowen, Vice Chairs Todd and Wildberger, and members of the committees:

The Chamber would like enter comments on HB 565 which proposes to require that a vulnerable coastal property statement accompany the sale of a vulnerable coastal property. It will also require that mandatory seller disclosures in real property transactions include identification of residential real properties located within a sea level rise exposure area.

The Chamber is Hawaii's leading statewide business advocacy organization, representing about 2,000+ businesses. Approximately 80% of our members are small businesses with less than 20 employees. As the "Voice of Business" in Hawaii, the organization works on behalf of members and the entire business community to improve the state's economic climate and to foster positive action on issues of common concern.

The bill defines "vulnerable coastal property" as "residential real property within a sea level rise vulnerability area as officially designated by the Hawaii climate change mitigation and adaptation commission or its successor." We understand the desire to inform prospective buyers of the possible impacts to their property caused by sea level rise. To formally identify the properties identified as "vulnerable coastal property," perhaps the Hawai'i Climate Change Mitigation & Adaptation Commission should adopt maps, similar to Conservation Zoned lands. This would allow affected landowners to be informed of the possible designation and raise any concerns they may have through the Administrative Rule making process used to adopt the maps.

Thank you for the opportunity to testify.

February 6, 2019

**The Honorable Ryan Yamane, Chair**

House Committee on Water, Land & Hawaiian Affairs

**The Honorable Nicole E. Lowen, Chair**

House Committee on Energy & Environmental Protection

State Capitol, Room 211

Honolulu, Hawaii 96813

**RE: H.B. 565, Relating to Disclosure of Coastal Hazards**

**HEARING: Wednesday February 6, 2019, at 10:30 a.m.**

Aloha Chair Yamane, Chair Lowen and Members of the Joint Committees:

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 **opposes** H.B. 565, which requires that a Vulnerable Coastal Property Statement (“Statement”) accompany the sale of a vulnerable coastal property. Requires that mandatory seller disclosures in real property transactions include identification of residential real properties located within a sea level rise exposure area.

Under Hawai'i Revised Statutes §508-D, the law imposes a broad obligation upon sellers of residential property to disclose all material facts that are within the knowledge or control of the seller. However, this measure places an unreasonable burden upon sellers because the typical seller does not have the capacity or ability to know whether their property has been designated a, “vulnerable coastal property” as officially designated by the Hawai'i Climate Mitigation and Adaptation Commission or its successor.

Additionally, this measure requires a notarized statement and recordation of the Statement at the Bureau of Conveyances. This will add to the administrative burden upon the parties in a real estate transaction, Escrow and the Bureau of Conveyances.

HAR has also 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, this measure seems unnecessary.

Mahalo for the opportunity to testify.





# SIERRA CLUB OF HAWAI'I

## MĀLAMA I KA HONUA. *Cherish the Earth.*

### HOUSE JOINT COMMITTEE ON WATER, LANDS, AND HAWAIIAN AFFAIRS/ENERGY AND ENVIRONMENTAL PROTECTION

February 6, 2019 10:30 a.m. Room 325

#### In **SUPPORT** of **HB 565**: Relating to Disclosure of Coastal Hazards

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Aloha Co-Chairs Yamane and Lowen, Co-Vice Chairs Todd and Wildberger, and members of the committees,

On behalf of our 20,000 members and supporters, the Sierra Club of Hawai'i **strongly supports passage of HB 565**, Relating to Disclosure of Coastal Hazards. We note also that the Hawaii Climate Change Mitigation and Adaptation Commission's statement of priorities for 2019 includes a recommendation to require mandatory disclosure for private properties and public offerings in areas with potential exposure to sea level rise.<sup>1</sup>

Climate Change impacts, especially sea level rise, create a new type of coastal hazard affecting coastal properties now and increasingly in the future. Our statutes must be updated accordingly. HRS Chapter 508D requires a written disclosure statement prepared by the seller, or at the seller's direction, that purports to fully and accurately disclose all material facts relating to residential real property being offered for sale. A "material fact" is defined under section 508D-1 as "any fact, defect, or condition, past or present, that would be expected to measurably affect the value to a reasonable person of the residential real property being offered for sale."

Act 32 (2017) established the Hawaii Climate Change Mitigation and Adaptation Commission and directed the commission to develop a sea level rise vulnerability and adaptation report<sup>2</sup> showing areas at risk under sea level rise. The commission completed its report in December 2017 and submitted it to the legislature in 2018. It includes identification, with maps at tax map key detail, of areas that are susceptible to sea level rise impacts based on a 3.2-foot increase in sea level projected to occur by mid-century or earlier. These areas are designated as sea level rise exposure areas (SLR-XA), shown in the Hawaii Sea Level Rise Vulnerability and Adaptation

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<sup>1</sup> Hawai'i Climate Change Mitigation and Adaptation Commission Report to the Thirtieth Legislature, State of Hawai'i, 2019 Regular Session. Page 2.

<https://dlnr.hawaii.gov/wp-content/uploads/2018/12/OCCL19-Hawaii-Climate-Change-Rpt-FY18.pdf>

<sup>2</sup> Hawai'i Climate Change Mitigation and Adaptation Commission. 2017. Hawai'i Sea Level Rise Vulnerability and Adaptation Report. Prepared by Tetra Tech, Inc. and the State of Hawai'i Department of Land and Natural Resources, Office of Conservation and Coastal Lands, under the State of Hawai'i Department of Land and Natural Resources Contract No: 64064.

[https://climateadaptation.hawaii.gov/wp-content/uploads/2018/01/SLR-Report\\_-January-2018.pdf](https://climateadaptation.hawaii.gov/wp-content/uploads/2018/01/SLR-Report_-January-2018.pdf)

Report, and can be viewed online using the Hawaii Sea Level Rise Viewer.<sup>3</sup> The value of a property lying within the boundaries of a sea level rise exposure area likely will be affected over time as the sea level rises. This is a material fact that should be included in mandatory seller disclosure statements in real property transactions. Disclosure of properties within officially designated hazard areas, including tsunami zones and federal flood insurance maps, are already required. HB 565 adds sea level rise exposure areas as officially designated by the Hawaii climate change mitigation and adaptation commission to the existing list of mandatory disclosures.

This bill also adds a new section to HRS 508D requiring mandatory disclosure by purchasers of properties in sea level rise exposure areas, and recording such disclosure with the bureau of conveyances. The Sierra Club of Hawai'i strongly supports implementing a mandatory purchaser disclosure.

In summary, sea level rise disclosures are needed **now** to protect buyers, sellers and governmental agencies from future litigation and other hardships as the impacts of sea level rise become apparent in future years. As stated in a Nova Southeastern University (Florida) presentation titled "The Lawyers Role in Creating Solutions," "As sea level rise ascends to a priority issue for the general population, legislatures and real estate professionals need to consider fair and reasonable SLR notice statutes in residential and even commercial realty transactions. The failure to take on such an initiative can result in litigation, not to mention broken dreams of residential property purchasers and business owners."<sup>4</sup>

Thank you very much for this opportunity to provide testimony in **strong support of HB 565**.

Mahalo,

Dave Raney  
Senior Adviser, Sierra Club Marine Team  
Volunteer, Sierra Club of Hawai'i

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<sup>3</sup> <http://www.pacioos.hawaii.edu/shoreline/slr-hawaii/>

<sup>4</sup>

<https://www.law.nova.edu/alumni/docs/Chester%20NSU%20Law%20Symp%2004-08-16%20The%20lawyers%20role%20in%20creating%20solutions.pdf>



**TESTIMONY TO THE HOUSE COMMITTEES ON WATER, LAND, & HAWAIIAN AFFAIRS,  
AND ENERGY AND ENVIRONMENTAL PROTECTION  
State Capitol, Conference Room 325  
415 South Beretania Street  
10:30 AM**

February 6, 2019

RE: HOUSE BILL NO. 565, RELATED TO THE DISCLOSURE OF COASTAL HAZARDS

Chairs Yamane and Lowen, Vice Chairs Todd and Wildberger, and members of the committees:

My name is Gladys Quinto-Marrone, CEO of the Building Industry Association of Hawaii (BIA-Hawaii). Chartered in 1955, the Building Industry Association of Hawaii is a professional trade organization affiliated with the National Association of Home Builders, representing the building industry and its associates. BIA-Hawaii takes a leadership role in unifying and promoting the interests of the industry to enhance the quality of life for the people of Hawaii. Our members build the communities that people call home.

BIA-Hawaii has the following **comments** on H.B. 565, which proposes to require that a vulnerable coastal property statement accompany the sale of a vulnerable coastal property. It will also require that mandatory seller disclosures in real property transactions include identification of residential real properties located within a sea level rise exposure area.

The bill defines "vulnerable coastal property" as "residential real property within a sea level rise vulnerability area as officially designated by the Hawaii climate change mitigation and adaptation commission or its successor."

We understand the desire to inform prospective buyers of the possible impacts to their property caused by sea level rise. To formally identify the properties identified as "vulnerable coastal property," perhaps the Hawai'i Climate Change Mitigation & Adaptation Commission should adopt maps, similar to Conservation Zoned lands. This would allow affected landowners to be informed of the possible designation and raise any concerns they may have through the Administrative Rule making process used to adopt the maps.

We appreciate the opportunity provide comments on H.B. 565.



**HOUSE JOINT COMMITTEE ON WATER, LANDS, AND HAWAIIAN AFFAIRS/ENERGY AND ENVIRONMENTAL PROTECTION**

February 6, 2019 10:30 a.m. Room 325

**In SUPPORT of HB 565:** Relating to Disclosure of Coastal Hazards

Aloha Co-Chairs Yamane and Lowen, Co-Vice Chairs Todd and Wildberger, and members of the committees.

The HAWAI'I REEF AND OCEAN COALITION – HIROC– was formed in 2017 by coral reef scientists, educators, local Hawai'i environmental organizations, elected officials, and others to address a crisis facing Hawaii's coral reefs and ocean, including those related to sea level rise.

**HIROC strongly supports HB565-Relating to Disclosure of Coastal Hazards.**

Sea level rise creates a new type of coastal hazard affecting coastal properties now, and increasingly in the future. Many of our existing statutes related to coastal properties assume a fixed sea level. Our statutes must be updated to incorporate consideration of the impacts of sea level rise, including those which may affect the value of coastal properties over time as the sea level rises and encroaches on such properties.

Chapter 508D, Hawaii Revised Statutes, requires a written disclosure statement prepared by the seller or the seller's agent to disclose all material facts relating to residential real property being offered for sale. A "material fact" is defined as "any fact, defect, or condition, past or present, that would be expected to measurably affect the value to a reasonable person of the residential real property being offered for sale." Detailed maps, and an online viewer, were developed as part of the work of the Hawai'i Climate and Mitigation Commission made available in their Hawai'i Sea Level Rise Vulnerability and adaptation Report, released in 2018<sup>1</sup>. Those maps, and the online Hawai'i Sea Level Rise Viewer developed since then, show projected impacts on individual parcels of land and constitute material facts requiring disclosure.

HB565 revises Chapter 508D to require disclosure by sellers of coastal properties within sea level rise exposure areas. It also requires purchasers of properties within sea level rise exposure areas to include a statement acknowledging the purchaser is aware of risks associated with such properties, including recognition that state policy discourages coastal hardening through the use of seawalls, revetments, and other protective structures for which property owners may seek permits. This is important to protect governmental agencies from future claims of liability as sea levels rise and more properties are impacted.

In summary, we strongly support this bill and urge its passage.

Submitted by Dave Raney on behalf of the Hawai'i Reef and Ocean Coalition.

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<sup>1</sup> [https://climateadaptation.hawaii.gov/wp-content/uploads/2018/01/SLR-Report\\_-January-2018.pdf](https://climateadaptation.hawaii.gov/wp-content/uploads/2018/01/SLR-Report_-January-2018.pdf)

**HB-565**

Submitted on: 2/5/2019 10:28:45 AM

Testimony for WLH on 2/6/2019 10:30:00 AM

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

Comments:

**HB-565**

Submitted on: 2/5/2019 11:37:15 AM

Testimony for WLH on 2/6/2019 10:30:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Phaethon Keeney	Individual	Support	No

Comments:

Mandatory disclosure of sea level rise affected properties before sale in real estate transactions is essential to protect the general public from the hidden costs of Climate Change. Climate Change is real, and it has real impacts we need to be aware of. Please support this bill.

**HB-565**

Submitted on: 2/5/2019 2:19:25 PM

Testimony for WLH on 2/6/2019 10:30:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Chezlani Casar	Individual	Support	No

Comments:

**LATE**

**HB-565**

Submitted on: 2/5/2019 3:33:58 PM

Testimony for WLH on 2/6/2019 10:30:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Pablo Beimler	Individual	Support	No

Comments: