

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 Senate Committee on  
WATER & LAND  
Wednesday, February 13, 2019  
1:20pm  
State Capitol, Conference Room 229**

**In consideration of  
SENATE BILL 1126  
RELATING TO REAL ESTATE DISCLOSURE**

Senate Bill 1126 proposes to require all real property sales or transfers to include a sea level rise hazard exposure statement and requires sellers to include whether the property is within a sea level rise hazard zone to ensure that new property owners and transferees understand the special hazards, requirement. **The Department of Land and Natural Resources (Department) supports the measure and offers the following comments.**

Senate bill 1126 proposes to amend Chapter 508D, Hawaii Revised Statutes (HRS), to add a new section requiring that every sale or transfer of real property shall include a sea level rise hazard exposure statement executed by the purchaser or transferee acknowledging that they have reviewed available sea level rise exposure maps and accepts the risks of purchasing property at is at risk of climate-related exposure. This measure also proposes to amend Chapter 508D, HRS, to add a requirement that, along with maps of special flood hazard areas, commercial and military aircraft noise areas, and tsunami inundation hazard areas, sellers disclose available maps sea level rise hazard zones.

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 to 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 tsunamis. The Department believes that it is critical that buyers understand the hazards and risks they are assuming in purchasing oceanfront property, in the

**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

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, departmental 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 their 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.

The Department recommends that the sea level rise exposure statement only be required for vulnerable coastal properties defined as follows. The Department offers the following suggested amendments on page 2, lines 16 through 19. Suggested language for removal and inclusion below is highlighted in gray.

§508D- Sea level rise hazard exposure statement. (a)  
Beginning November 1, 2019, every sale or transfer of  
"vulnerable coastal property" [~~real property~~] shall include  
a sea level rise hazard exposure statement executed by the  
purchaser [~~or~~] and transferee. For the purposes of this  
section, "vulnerable coastal property" means residential

real property within a sea level rise exposure area as  
officially designated by the Hawaii climate change  
mitigation and adaptation commission or its successor.

Following this, the Department recommends that the sea level rise hazard exposure statement focus on the sea level rise exposure areas as designated by the Hawaii Climate Change Mitigation and Adaptation Commission offers the following suggested amendments on page 3, line 1 and 2 of the bill. Suggested language for removal below is highlighted in gray.

(b) Every sea level rise hazard exposure statement  
shall include acknowledgement by the purchaser or  
transferee that the purchaser or transferee has reviewed  
[the National Oceanic and Atmospheric Administration sea  
level rise hazard exposure map or] maps of the sea level  
rise exposure area and accepts the risks of purchasing or  
accepting a transfer of property that is at risk of  
climate-related exposure.

Following the suggested amendments above, the Department suggests the following amendments to page 4, lines 16 through 18, and on page 4, lines 15 and 17 for clarity. Suggested language for removal and inclusion below is highlighted in gray.

(5) Within a sea level rise exposure area as officially  
designated by the Hawaii climate change mitigation and  
adaptation commission or its successor; subject to the  
availability of maps that designate the four areas by  
tax map key (zone, section, parcel), the seller shall  
include the material fact information in the  
disclosure statement provided to the buyer subject to  
this chapter. Each county shall provide, where

available, maps of its jurisdiction detailing the [~~four~~] five designated areas specified in this subsection. The maps shall identify the properties situated within the [~~four~~] five designated areas by tax map key number (zone, section, parcel) and shall be of a size sufficient to provide information necessary to serve the purposes of this section. Each county shall provide legible copies of the maps and may charge a reasonable copying fee.

The Department also provided testimony in support of House Bill 565, Senate Bill 1339, and Senate Bill 1339, which would make similar amendments to Chapter 508D HRS but with substantial differences in language.

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>

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# SIERRA CLUB OF HAWAII<sup>ʻI</sup>

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

### SENATE COMMITTEE ON WATER AND LAND

February 13, 2019 1:20 p.m. Room 229

#### In **SUPPORT** of **SB 1126**: Relating to Real Estate Disclosure

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Aloha Chair Kahele, Vice Chair Keith-Agaran, and committee members,

The Sierra Club of Hawai'i **supports the intent of SB 1126, Relating to Real Estate Disclosure, but we prefer the language of SB 1339 heard previously by this committee.**

Both bills require disclosure by purchasers of real property within an area vulnerable to sea level rise, as well as written acknowledgement by the purchaser that they are aware of the risks inherent in ownership of such properties. We find, however, that SB 1339 provides a more precise definition of what properties should be included in the scope of the legislation, i.e. properties within the sea level rise exposure area (the SLR-XA 3.2 foot projections available through use of the Hawaii Sea Level Rise Viewer<sup>1</sup>).

SB 1126 requires a written statement that a purchaser or transferee has reviewed the National Oceanic and Atmospheric Administration (NOAA) sea level rise viewer<sup>2</sup> or the Hawaii Sea Level Rise Viewer and accepts the risks of purchasing or accepting a transfer of property that is at risk of climate-related exposure.

Section 1 of the bill identifies some of those risks, including the following:

“When oceanfront property experiences landward retreat, building setbacks, property values, and insurance availability can be adversely impacted. Another challenge property owners face in Hawai'i is the stringent permit requirements imposed by the counties and State for shoreline protection. When shoreline retreat occurs, obtaining a permit to repair or install shoreline protection structures, such as seawalls, revetments, geotextile sandbags, or groins, can be challenging due to Hawai'i's coastal zone management policies, which protect coastal natural resources and shoreline public access.”

That cautionary language is not, however, included in the language of the statutory amendments of the bill. In contrast, SB 1339 includes similar descriptions of the risks to properties within an area exposed to sea level rise as part of the text of the amendments to

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<sup>1</sup> <https://www.pacioos.hawaii.edu/shoreline/slr-hawaii/>

<sup>2</sup> <https://coast.noaa.gov/slr/>

Chapter 508D, and requires written acknowledgment, recorded in the bureau of conveyances that the purchaser is aware of those risks.

SB 1226 requires that a purchaser acknowledge viewing a sea level rise map from the NOAA or Hawaii Sea Level Rise Viewer “and accepts the risks of purchasing or accepting a transfer of property that is at risk of climate-related exposure.” Neither of the two viewers mentions the risks associated with the areas being displayed, so it is not clear how the purchaser would be aware of them.

Also, the two viewers do not produce the same mapping results. The Hawaii Sea Level Rise Viewer’s SLR-XA map shows coastal hazard exposure areas with sea level rise including passive flooding (still water high tide flooding), annual high wave flooding (over wash during the largest wave events of the year), and coastal erosion.” It is more comprehensive than the maps produced by the NOAA Sea Level Rise Viewer, which show only areas of passive flooding.

The user will also get different maps depending on the amount of sea level rise being shown, i.e. 0.5, 1.1, 2.1, or 3.2 in the case of SLR-XA projections, or 1 ft, 2 ft, 3 ft, etc. in the case of the NOAA sea level rise viewer. To assure consistency in defining sea level rise exposure areas, SB 1339, and SB 1340 (seller disclosure), require use of the sea level rise exposure maps as officially adopted by the Hawaii Climate Mitigation and Adaptation Commission, which are those produced by SLR-XA 3.2 foot projections.

Finally, we note that SB 1226 would amend the existing language of 508D-15 to add a new category, a “sea level rise hazard zone” defined as being based on the NOAA or Hawaii Sea Level Viewer, to the list of maps required to be included in a seller’s disclosure statement. The other categories of maps are very specific published maps, e.g. the federal flood insurance maps, whereas SB 1226 specifies no specific, published, map for the new category. We prefer the language of SB 1340 for sellers disclosure, which specifies use of the SLR-XA sea level exposure map (3.2 ft).

In summary, we support mandatory sea level rise disclosure bills, but would highly recommend inserting language regarding the risks associated from purchasing the property within the disclosure document itself, eliminating the language relating to the NOAA Viewer, and specifying use of the SLR-XA maps as officially adopted by the Hawaii Climate Change Mitigation and Adaptation Commission to determine which properties are required to have these real estate disclosures.

Mahalo for the opportunity to testify on this important measure.

Mahalo,



Jodi Malinoski, Policy Advocate



February 13, 2019

**Senator Kaiali'i Kahele, Chair**  
Senate Committee on Water and Land  
State Capitol, Room 229  
Honolulu, Hawaii 96813

**LATE**

**RE: S.B. 1126, Relating to Real Estate Disclosure**

**HEARING: Wednesday, February 13, 2019, at 1:20 p.m.**

Aloha Chair Kahele, Vice Chair Keith-Agaran, 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 **opposes** S.B. 1126, which requires sellers to include whether property is within a sea level rise hazard zone in the disclosure statement provided to the buyer. Additionally, this measure requires all real property sales or transfers to include a sea level rise hazard exposure statement.

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 is within a sea level rise hazard zone as officially designated by the Hawai'i Climate Mitigation and Adaptation Commission or its successor.

HAR has created and continuously updates an Oceanfront Property Addendum that contains a comprehensive disclosure of 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. Given the dynamic, ever-changing nature of real estate disclosures, the voluntary inclusion of sea level rise information in the HAR Oceanfront Addendum appears to be the most effective method to address this issue.

Mahalo for the opportunity to testify.

**SB-1126**

Submitted on: 2/12/2019 11:03:58 PM

Testimony for WTL on 2/13/2019 1:20:00 PM

**LATE**

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Thorne Abbott	Testifying for Coastal Planners, LLC	Support	No

Comments:

**LATE**

**SB-1126**

Submitted on: 2/13/2019 12:34:05 PM

Testimony for WTL on 2/13/2019 1:20:00 PM

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

Comments: