

DAVID Y. IGE  
GOVERNOR



**TESTIMONY BY:**

JADE T. BUTAY  
DIRECTOR

Deputy Directors  
LYNN A.S. ARAKI-REGAN  
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ROSS M. HIGASHI  
EDWIN H. SNIFFEN

**STATE OF HAWAII**  
**DEPARTMENT OF TRANSPORTATION**  
869 PUNCHBOWL STREET  
HONOLULU, HAWAII 96813-5097

March 16, 2021  
9:15 a.m.  
State Capitol, Teleconference

**H.B. 357, H.D. 1**  
**RELATING TO STATUTE OF LIMITATIONS**

Senate Committee on Judiciary

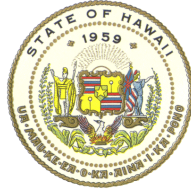
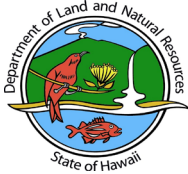
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The Department of Transportation (DOT) **strongly supports** H.B. 357, H.D. 1 which establishes a two-year statute of limitations for all actions asserting an inverse condemnation claim against the State.

This bill would provide a proper incentive for people to provide timely notice to government agencies, such as DOT, if they believe that the State is acting in some way that is adversely impacting their rights. When a regulatory-taking claim is asserted, the DOT can initiate timely action to mitigate damages and prevent further undue interference with private property rights. Without a two-year limit on those claims, the State's potential damages increase substantially.

Thank you for the opportunity to provide testimony.

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 Senate Committee on  
JUDICIARY**

**Tuesday, March 16, 2021  
9:15 AM  
State Capitol, Via Videoconference**

**In consideration of  
HOUSE BILL 357, HOUSE DRAFT 1  
RELATING TO STATUTE OF LIMITATIONS**

House Bill 357, House Draft 1 proposes to amend Chapter 657, Hawaii Revised Statutes, to include a new section that would expressly provide that all actions against the State for a regulatory taking, including those brought under Section 20 of Article I of the Constitution of the State of Hawaii, shall be subject to a two-year statute of limitations. **The Department of Land and Natural Resources (Department) supports this measure.**

The Department believes that claims for regulatory taking against the State should be subject to a time limit in which to commence legal action for purposes of certainty and predictability and to promote the fair administration of justice.

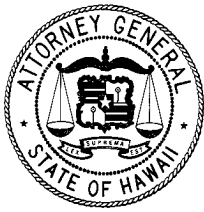
Thank you for the opportunity to comment on this measure.

**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  
THE DEPARTMENT OF THE ATTORNEY GENERAL  
THIRTY-FIRST LEGISLATURE, 2021**

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**ON THE FOLLOWING MEASURE:**

H.B. NO. 357, H.D. 1, RELATING TO STATUTE OF LIMITATIONS.

**BEFORE THE:**

SENATE COMMITTEE ON JUDICIARY

**DATE:** Tuesday, March 16, 2021                      **TIME:** 9:15 a.m.

**LOCATION:** State Capitol, Via Videoconference

**TESTIFIER(S):** Clare E. Connors, Attorney General, or  
David D. Day, Deputy Attorney General

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Chair Rhoads and Members of the Committee:

The Department of the Attorney General (Department) supports this bill and provides the following comments.

The purpose of this bill is to amend chapter 657, Hawaii Revised Statutes (HRS), to include a new section that would expressly provide that all actions against the State for compensation arising from an inverse condemnation, including those brought under section 20 of article I of the Constitution of the State of Hawaii, shall be subject to a two-year statute of limitations.

Section 20 of article I of the Constitution of the State of Hawaii provides: "Private property shall not be taken or damaged for public use without just compensation." Although traditionally associated with eminent domain, where the government literally takes ownership of property, courts have expanded the claim by recognizing the doctrine of "inverse condemnation," which allows suits for compensation alleging that a government action has taken private property by virtue of physical occupation of the property (a physical taking) or by a regulation that severely diminishes the value of the property (a regulatory taking).

Monetary claims against the State—whether based upon contract, statute, rule, a tort theory, or breach of fiduciary duty—are subject to a two-year statute of limitations. See, e.g., sections 661-5, 662-4, and 673-10, HRS. However, the Hawaii Supreme Court ruled in DW Aina Le'a Development, LLC v. State of Hawai'i Land Use Comm'n,

148 Hawai'i 396, 477 P.3d 836 (2020), that the statute of limitations for a regulatory-taking claim is six years pursuant to the "catch all" statute of limitations of section 657-1(4), HRS, but left open the question of the applicable statute of limitations for a physical-taking claim. This bill would establish that all inverse-condemnation claims—whether based upon a physical- or regulatory-taking theory—are subject to the same two-year statute of limitations as other monetary claims against the State.

It is not always immediately obvious to the government that a regulation may have serious adverse effects upon private property owners. Hawaii has unique legal structures for land-use and permitting, including conservation-district permitting, coastal-zone management, shoreline setbacks, historic-preservation laws, the Water Code, and a robust trust doctrine, all of which are intended to protect the 'aina and its resources and natural beauty. Because regulations within these legal structures could potentially limit the development of property, the State could be subject to a variety of regulatory-taking claims. Likewise, whether a physical invasion of private property occurs may not be immediately obvious to the State.

This bill also might be helpful to the State with respect to the COVID-19 pandemic. Laws and regulations imposed for the benefit of public health conceivably could result in lawsuits. Because Hawaii case law on regulatory-taking claims is very limited, the likelihood of the State being found liable for a regulatory-taking claim is difficult to predict, given the myriad of different factual situations. This in turn makes the State's potential financial exposure very high.

When an inverse-condemnation claim is asserted, the State and its agencies can take timely action to mitigate damages and prevent further undue interference with private-property rights. Without a two-year limit on those claims, the State's potential damages increase substantially. A two-year statute of limitations allows the State to timely consider a claim and determine the best course of action to take without allowing potential damages to continue and increase. And, because inverse-condemnation claims usually allege substantial interference with real property and development rights, and routinely seek many millions of dollars, the statute of limitations should be limited to two years to prevent the State from unnecessarily accruing increased financial liability.

We note that this bill accomplishes the same fundamental purpose as Senate Bill No. 1052, which was proposed by the Department. Both bills amend the statute of limitations for inverse-condemnation claims, but use different approaches—this bill adds a new section to chapter 657, HRS, while Senate Bill No. 1052 amends section 661-1, HRS. The substantive difference between the two bills is that, under Senate Bill No. 1052, claims for inverse condemnation would expressly be decided by judges, rather than juries. See, section 661-1, HRS (“The several circuit courts of the State . . . unless otherwise provided by law, shall determine all questions of fact involved without the intervention of a jury[.]”).

The Department respectfully requests that the Committee pass this bill.

**HB-357-HD-1**

Submitted on: 3/14/2021 10:18:36 PM

Testimony for JDC on 3/16/2021 9:15:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Kevin Moore	Testifying for DLNR	Support	No

Comments:

I am available for questions. Please allow me Zoom access. Thank you.