

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 House Committee on  
WATER & LAND**

**Tuesday, February 1, 2022  
8:30 AM**

**State Capitol, Conference Room 430, Via Videoconference**

**In consideration of  
HOUSE BILL 1602  
RELATING TO LAND LIABILITY**

House Bill 1602 proposes to create strict liability for an owner of land with a twenty per cent or more slope for damage or injury to down slope property and persons from falling rocks, debris, and landslides originating from the owner's property. **The Department of Land and Natural Resources (Department) strongly opposes this bill.**

This measure does not exclude the State, which would result in enormous liability and cost to the public, given the amount of sloped land owned by the State that would be subject to this measure. Generally, a landowner is protected from liability from damage or injury resulting from conditions of land in its natural state. The imposition of strict liability would be an extreme, unduly burdensome, and unfair deviation from the current legal standard. Rather, owners of the down slope properties should be accountable as they assumed the risk by choosing to develop and occupy their properties with full knowledge of potential hazards. Furthermore, in many cases, down slope lands were zoned and permitted for development without any input and consent from the State.

The Department notes that many of these sloped areas are in the conservation district, so efforts to alter or modify the land to avoid strict liability would entail significant costs, regulatory requirements, and public scrutiny. Moreover, there is no assurance that any remedial actions taken would prevent damage or injury. Finally, once the land is altered and no longer in its natural state, the landowner would no longer be shielded from liability. Therefore, the Department requests that the committee hold this measure.

Thank you for the opportunity to comment on this measure.

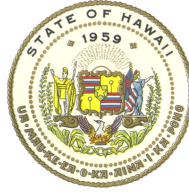
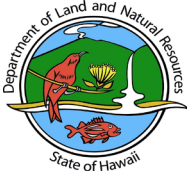
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BOARD OF LAND AND NATURAL RESOURCES  
COMMISSION ON WATER RESOURCE MANAGEMENT

**ROBERT K. MASUDA**  
FIRST DEPUTY

**M. KALEO MANUEL**  
DEPUTY DIRECTOR - WATER

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BOATING AND OCEAN RECREATION  
BUREAU OF CONVEYANCES  
COMMISSION ON WATER RESOURCE MANAGEMENT  
CONSERVATION AND COASTAL LANDS  
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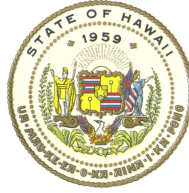
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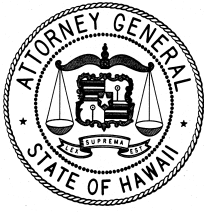
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**TESTIMONY OF  
THE DEPARTMENT OF THE ATTORNEY GENERAL  
THIRTY-FIRST LEGISLATURE, 2022**

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**ON THE FOLLOWING MEASURE:**

H.B. NO. 1602, RELATING TO LAND LIABILITY.

**BEFORE THE:**

HOUSE COMMITTEE ON WATER AND LAND

**DATE:** Tuesday, February 1, 2022                      **TIME:** 8:30 a.m.

**LOCATION:** State Capitol, Via Videoconference, Room 430

**TESTIFIER(S):** Holly T. Shikada, Attorney General, or  
Caron Inagaki, Deputy Attorney General

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Chair Tarnas and Members of the Committee:

The Department of the Attorney General (Department) opposes this bill.

The bill would make any owner of any property with a slope of twenty percent or more strictly liable for any injuries to property or persons caused by the movement of any rocks or earthen material from the owner's property to downslope properties.

"Owner" is defined to include the possessor of a fee interest, a tenant, a lessee, an occupant, or a person in control of the premises.

The Department believes that the bill is overly broad and runs counter to the general principles of tort law. In order to impose liability, tort law generally requires that there be some type of wrongdoing. Strict liability imposes liability without requiring proof of any negligence or fault because it is based on the breach of an absolute duty. The activities for which one may be held strictly liable fall into three categories: (1) possession of dangerous animals; (2) products liability for defective products; and (3) abnormally dangerous activities. All these categories involve a degree of responsibility that can justify the imposition of strict liability. However, simply being on or in possession of land with a twenty percent or greater slope does not fall into any of these categories and should not trigger an absolute duty.

Moreover, in existing tort law, landowners are generally not liable for harm caused by a natural condition of the land. If a twenty percent or greater slope is the natural condition of the land and the landowner or occupant did nothing to create the

slope, there would appear to be no basis to impose liability on the landowner, let alone a tenant, lessee, or other occupant of the land.

In addition, the bill appears to disregard the basic tenet of fundamental fairness. Landowners may be unaware of the percentage of slope of their land, may have no means to determine the slope of their land, and have no foreknowledge of any danger posed by the land. If the landowners themselves are unaware that their property has a slope of twenty percent or greater, it is even less likely that a tenant, lessee, or other occupant would be aware of, or have the means to determine, the slope of the property, or be aware that the slope of the land poses any danger. In those circumstances, they would not even know to try to mitigate any potential risk or danger. Furthermore, this bill would apply to unimproved wilderness, conservation, or protected lands with a twenty percent slope where any alteration or mitigation would be impractical or even prohibited.

The bill also would unfairly punish such a landowner, tenant, lessee, or occupant in a scenario where an upslope non-twenty percent slope landowner took affirmative acts that caused a rockfall or landslide that passed through the twenty percent slope land and caused damage or injury to a downslope property. The innocent property owner (or tenant, lessee, or occupant) in the middle would be strictly liable to the downslope property owner, and the upslope property owner who actually caused the damage could escape liability entirely.

We respectfully request that this bill be held. Thank you for the opportunity to testify.



COMMITTEE ON WATER & LAND  
Rep. David A. Tarnas, Chair  
Rep. Patrick Pihana Branco, Vice Chair

**HB1602**  
Relating to Land Liability

Tuesday, February 1, 2022, 8:30 AM  
VIA VIDEOCONFERENCE

Chair Tarnas, Vice Chair Branco, and Members of the Committee,

The Hawaii Cattlemen's Council (HCC) is the Statewide umbrella organization comprised of the five county level Cattlemen's Associations. Our member ranchers represent over 60,000 head of beef cows; more than 75% of all the beef cows in the State. Ranchers are the stewards of over 750 thousand acres of land in Hawaii, or 20% of the State's total land mass. We represent the interests of Hawaii's cattle producers.

The Hawaii Cattlemen's Council **strongly opposes HB1602** to create strict liability for an owner of land with a twenty per cent or more slope for damage or injury to down-slope property and persons from falling rocks, debris, and landslides originating from the owner's property. This would put undue burden on land owners and lessees to control what is oftentimes an uncontrollable event. There are numerous reasons for why a landslide can happen, many of which are based on natural events. Instead, those who have concerns about the movement of rock and earthen material from upslope properties should work with the property owner to mitigate these events to the best of their ability.

Nicole Galase  
Hawaii Cattlemen's Council  
Managing Director

