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GOVERNOR OF HAWAII



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
OFFICE OF CONSERVATION AND COASTAL LANDS
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SUZANNE D. CASE
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

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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 Senate Committees on
WATER AND LAND

Friday, February 11, 2022
1:10 pm
State Capitol, Conference Room 229 & Videoconference

In consideration of
SENATE BILL 2519
RELATING TO COASTAL ZONE MANAGEMENT

Senate Bill 2519 proposes to require an emergency shoreline hardening permit for the construction, maintenance, or improvement of a temporary erosion control structure, provided that each permit is valid for a maximum of one year, and provided that the lifetime of the structure may be extended no more than an additional two and a half years upon an applicant demonstrating a concerted effort, as deemed acceptable by the Board of Land and Natural Resources (Board), to develop and implement a long-term solution which will enable the removal of the temporary erosion control structure. This bill also proposes to establish penalties for persons who build, improve, or maintain a temporary erosion control structure without a valid permit, and require the Board to administer and enforce this Act. **The Department of Land and Natural Resources (Department) supports the bill.**

Hawaii Administrative Rules (HAR) Chapter 13-5, entitled "Conservation District," currently allow the Chairperson (Chair) of the Board to issue emergency permits when there is an imminent threat to public health or safety. This has been an important tool for the Department when addressing short-term emergencies such as floods, landslides, tsunamis, and storms.

Emergency permits have been authorized pursuant to HAR §13-5-35, Emergency permits. (a) *Notwithstanding any provision of this chapter, the chairperson or deputy director of the department in the absence of the chairperson may authorize through an emergency permit any land use deemed to be essential to alleviate any emergency that is a threat to public health, safety, and welfare, including natural resources, and for any land use that is imminently threatened by natural hazards. These actions shall be temporary in nature to the extent that the threat to public health, safety, and welfare, including natural resources, is alleviated (e.g., erosion control, rockfall mitigation). The*

emergency action shall include contingencies for removal methods, estimates for duration of the activity, and future response plans if required by the department.

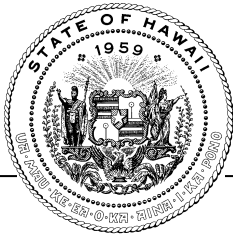
Temporary erosion control devices with sandbag walls and tarp systems can have similar effects as concrete and rock seawalls and other hardening structures. As such, emergency permits are designed to be temporary in nature, and to provide landowners time with the conditioned expectation that they work on short, mid, and long-range options.

SECTION 1 of the bill states that “Although these emergency permits are typically limited to three years, they are often granted endless extensions, and the temporarily permitted structures generally are not removed after the expiration of the permit. What was originally intended to be a stopgap measure to help beachfront homeowners has instead become permanent permission to keep the shoreline hardening in place.”

The Department shares the Legislature’s concern that many of these temporary structures have become de-facto permanent shoreline hardening structures that have led to an obvious degradation of the public beach resources. We would like to note, however, that these structures are not granted endless extensions. The Department’s Office of Conservation and Coastal Lands is currently investigating permit non-compliance with approximately thirty erosion control structures whose emergency permits have expired. As enforcement actions frequently lead to contested case requests, or become involved in litigation, our capacity to act quickly on them is constrained.

The tools and the resources that the Department has have proven inefficient in addressing the current environmental crisis triggered by climate change, rising seas, and coastal erosion. We acknowledge that the issuance of emergency permits for shoreline structures has not been an effective tool in responding to sea level rise and associated shoreline erosion, nor has it expedited the implementation of sustainable sea level rise adaptation that reduces the potential loss of life and property while protecting Hawaii’s natural resources. Senate Bill 2519 will offer the Department a stronger framework for managing and regulating work in the shoreline, and in protecting the State’s public trust resources.

Thank you for the opportunity to comment on this measure.



**STATE OF HAWAII
OFFICE OF PLANNING
& SUSTAINABLE DEVELOPMENT**

DAVID Y. IGE
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MARY ALICE EVANS
DIRECTOR

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Statement of
MARY ALICE EVANS
Director, Office of Planning and Sustainable Development
before the
SENATE COMMITTEE ON WATER AND LAND
Friday, February 11, 2022
1:10 PM
Conference Room 229 & Videoconference

in consideration of
SB 2519
RELATING TO COASTAL ZONE MANAGEMENT.

Chair Inouye, Vice Chair Keith-Agaran, and Members of the Senate Committee on Water and Land.

The Office of Planning and Sustainable Development (OPSD) serves as the lead agency of the Hawaii Coastal Zone Management (CZM) Program, pursuant to Hawaii CZM Law, Hawaii Revised Statutes (HRS) Chapter 205A.

The OPSD notes that **SB2519**, does not amend HRS Chapter 205A, rather it proposes amendments to HRS Chapter 183C, Conservation District. However, we respectfully offer the following technical non-substantive amendments:

1. The State has a “no tolerance” policy for new private shoreline hardening at sites with beaches. OPSD recommends replacing the term “Emergency shoreline hardening” with “Emergency shoreline stabilizing” to avoid confusion and misleading in State’s beach protection policy.
2. **Page 4, lines 1-20**
 - “Concerted effort” means a [~~bona fide~~] planning effort involving the [~~employment~~] work of professional planners, engineers, or consultants to develop and implement a long-term solution, [~~whether it~~] which involves relocation[~~, abandonment~~] or removal of structures, beach restoration, or [~~some~~] other [~~form~~] alternatives of shoreline management.
 - “Emergency shoreline [~~hardening~~] stabilizing” means the installation of temporary erosion control structures, as authorized by the chairperson of the board of land and natural resources by rules that are designed to [~~prevent land~~]

~~loss~~ stabilize the shoreline while long-term [~~management~~] solutions are devised and implemented by the landowner.

- “Temporary erosion control structure” means any structure or project that [~~intended to~~] will stabilize sediment and [~~prevent~~] mitigate erosion or provide flood protection, including [~~seawalls, revetments~~] rocks, sandbags, and geotextile fabric.

Inclusion of seawalls and revetments into “temporary erosion control structure” will violate State’s “no tolerance” policy for new shoreline hardening at sites with beaches.

- “Unmanaged hazardous condition” means an imminently dangerous situation [~~of~~] due to coastal hazards with a duration [~~greater~~] more than one year that poses a substantial threat to public health and safety as declared by the chairperson, or deputy director of the department in the absence of the chairperson.”

3. **Page 7, lines 14-16**

- (h) The lifetime of a temporary erosion control structure permitted by the department may be extended [~~for more than one year~~] no more than an additional two and a half years; provided that:

4. **Page 8, lines 8-11**

- (5) The board may require the permittee to obtain a surety bond or provide other legal or financial assurance to guarantee removal of temporary [~~land uses at the expiration of the permitted time period~~] erosion control structure by expiration of an emergency shoreline stabilizing permit; and

Thank you for the opportunity to testify on this measure.



2/9/2022

WTL Committee
Hawai'i State Capitol
Honolulu, Hawai'i 96813

Dear Chair Inouye, Vice Chair Keith-Agaran, and members of the Senate Committee on Water and Land

Position: Support SB2519.

The Surfrider Foundation is a national nonprofit organization dedicated to the protection and enjoyment of our ocean, waves, and beaches. Surfrider maintains a network of over 150 chapters and academic clubs nationwide, including 4 chapters in the Hawaiian Islands. The Surfrider Foundation focuses on many aspects of the environment such as coastal protection, plastic pollution, and water quality.

is an important step towards limiting the length of time emergency shoreline structures can remain in place along eroding coastlines. While emergency permits are, in theory, limited to 3 years, sandbags and other emergency shoreline stabilization projects are rarely removed when expired due to lax enforcement or being granted extensions. Furthermore, sandbags interact with the coastline similar to seawalls and result in the disappearance of sandy beaches.

Despite shoreline hardening being outlawed in Hawai'i (since 2020), more than 230 environmental exemptions have been granted to coastal property owners to install, repair, or replace shoreline hardening structures in the last 20 years. More than 60 of these exemptions involved permitting emergency sandbags. In some cases, emergency sandbags are still in place and negatively impacting the coastal environment more than a decade after their original installation.

Surfrider Foundation strongly believes that limiting the length of time emergency shoreline structures are allowed is a critical step towards protecting the public shoreline. We are losing our sandy coastlines at an unprecedented rate. The chronic erosion is being exacerbated by climate change and the resultant sea level rise. The only long-term solution is that we strategically relocate critical public infrastructure, businesses, and homes further away from the shoreline.

With this in mind, we strongly support SB2519 to limit the length of time emergency shoreline structures are allowed to remain installed on our coastlines.

Thank you for your consideration of this testimony in support of SB2519, submitted on the behalf of the Surfrider Foundation's 4 Chapters in Hawai'i and all of our members who live in the state and visit to enjoy the many coastal recreational opportunities offered by all of the islands' coastlines.

Sincerely,

Lauren Blickley
Hawai'i Regional Manager
Surfrider Foundation