

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

February 28, 2023
10:00 AM
State Capitol, Room 308

H.B. 1101 H.D. 1
RELATING TO STORMWATER FEES

House Committee on Finance

The Department of Transportation (DOT) is in strong **support** of this measure. This bill was included in the Governor's Package at the request of DOT and seeks to clarify the authority of the counties to establish and charge user fees to create and maintain any stormwater system.

Over the past two years, the annual stormwater fees proposed by the City and County of Honolulu for Harbors and Airports have ranged vastly and it is unclear what fee schedule is likely to be approved by the City Council. DOT seeks an exemption or a cap on fees to be assessed against itself or other state agencies that maintain stormwater systems that are connected to county stormwater systems.

Like the City and County of Honolulu and the County of Maui, DOT also manages its own Municipal Separate Storm Sewer System (MS4) and National Pollutant Discharge Elimination System (NPDES) permits. DOT aims to reduce, to the maximum extent practicable, the discharge of pollutants to and from the MS4, protect water quality, comply with permit requirements and satisfy the appropriate water quality requirements of the Clean Water Act.

DOT meets its permit responsibilities in managing stormwater including, but not limited to, inspections, preventative maintenance, cleaning drainage structures and outfalls, sweeping facilities to mitigate debris from entering the system during storms, and tenant trainings to promote compliance. DOT spends about \$24 million on an annual basis (Airports \$6 million, Harbors \$2 million, and Highways \$16 million) on its stormwater programs.

During the development of the Airports, Harbors, and Highways stormwater infrastructure, the City and County of Honolulu connected its facilities to DOT's various storm drains with certain outfalls directly onto state facilities before flowing into the ocean waters. DOT currently allows the City and County of Honolulu MS4 to discharge stormwater at various points into the DOT MS4 systems at no cost or expense to the City.

The measure clarifies that the counties may not charge a State department a fee related to maintaining a stormwater system if that department is responsible for the maintenance and operation of a stormwater management system that connects to a county stormwater system. This clarification prevents any extra costs related to stormwater system management and promotes coordination between MS4 NPDES permittees.

Thank you for the opportunity to provide testimony.



CITY COUNCIL
CITY AND COUNTY OF HONOLULU
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February 27, 2023

TO: CHAIR KYLE T. YAMASHITA, COMMITTEE ON FINANCE
VICE CHAIR LISA KITAGAWA, COMMITTEE ON FINANCE

FROM: COUNCILMEMBER CALVIN SAY
HONOLULU CITY COUNCIL, DISTRICT V

SUBJECT: TESTIMONY IN OPPOSITION OF HOUSE BILL 1101, HD 1

Aloha Chair Yamashita, Vice Chair Kitagawa, and Members of the Committee on Water & Land:

I am a current member of the Honolulu City Council representing District 5 and serving as the Chair of the Zoning Committee. I stand in **opposition** of House Bill 1101, HD 1, which would exempt the State and its departments and agencies that maintain or operate a stormwater management system that is interconnected to a county stormwater system from county stormwater user fees. This bill would prohibits each county from denying services to the State or its departments or agencies by reason of nonpayment of user fees.

In my first two years in the Honolulu City Council, I served as Chair of the Committee on Budget, and got an in depth understanding of the financial magnitude the city is faced with when it comes to maintaining our island infrastructure. As our population continues to grow, and developments rise to meet housing needs, our aging infrastructure will need significant new investment to meet current and future storm water challenges. This stormwater utility fee will be used to infrastructure repair and replacement, stream cleaning, and brown water reduction, in addition to continued maintenance and compliance. The fee will be based on each property's amount of impervious area, which directly affects our drainage and runoff systems.

Storm water utilities – or fee-based municipal storm water management programs – have been adopted by over 2,000 municipal governments in the United States (U.S.) and Canada. A storm water utility would support more efficient and consistent capital investments, as well as important improvements in storm water operations. The Fresh Water Initiative at the Hawai'i Community Foundation, in partnership with the Department of Facility Maintenance of the City and County of Honolulu, have studied the feasibility of forming a storm water utility for O'ahu. Guided by an engaged and effective Stakeholder Advisory Group, and incorporating input from two rounds of robust and meaningful community engagement, findings and recommendations of the Feasibility Study found that a fee-funding storm water program is both feasible and desirable for O'ahu.

The Department of Facility Maintenance presented and answered community questions about the fee and numerous Neighborhood Board meetings over the past couple of years, and shared how protecting and enhancing our groundwater, streams, and near-shore environment is a shared responsibility. It is everyone's kuleana. Everyone pays a fair share and everyone has the opportunity to make a difference. I oppose HB 1101, HD 1 because the State is not exempt in caring for our land, streams, and oceans. I believe that the carefully thought-out fee structure intended to promote equity based on impervious land, will place a heavier burden on our residents if the State were to exempt themselves from the fee.

Thank you for this opportunity to testify in **opposition** of House Bill 1101, HD 1. Thank you for your time and consideration.

DEPARTMENT OF FACILITY MAINTENANCE

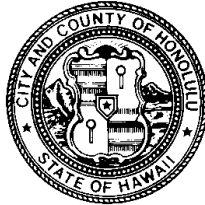
CITY AND COUNTY OF HONOLULU

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RICK BLANGIARDI
MAYOR



DAWN B. SZEWCZYK, P.E.
DIRECTOR AND CHIEF ENGINEER

WARREN K. MAMIZUKA
DEPUTY DIRECTOR

IN REPLY REFER TO:
SWQ-23-039

February 28, 2023

The Honorable Kyle Yamashita, Chair
House of Representatives
415 South Beretania Street, Room 306
Honolulu, Hawaii 96813
Committee on Finance

The Honorable Lisa Kitagawa, Vice Chair
415 South Beretania Street, Room 435
Honolulu, Hawaii 96813
Committee on Finance

**Subject: Department of Facility Maintenance, City and County of Honolulu
Testimony in OPPOSITION to H.B. No. 1101, Relating to Storm Water
Fees**

Dear Representatives Yamashita and Kitagawa and Members of the Committee:

The Department of Facility Maintenance (DFM) of the City and County of Honolulu **strongly OPPOSES** H.B. 1101, "Relating to Stormwater fees", which seeks to exempt the State and its departments and agencies that maintain or operate a stormwater management system that is interconnected to a county stormwater system from county stormwater user fees, and prohibits each county from denying services to the State or its departments or agencies by reason of nonpayment of user fees.

The Department of Facility Maintenance (DFM) of the City and County of Honolulu has primary responsibility for ensuring the County's compliance with storm water regulations under the United States Clean Water Act. In 2015, the Hawaii State Legislature took the proactive and foresighted step of authorizing the counties to establish fee-based funding of storm water services, or "storm water utilities." Over the past three (3) years, DFM has undertaken a comprehensive program to develop a storm water utility and fee for the County pursuant to this State law.

Protecting and enhancing Oahu's groundwater, streams, and near-shore environment is a shared responsibility. Storm water utilities have been adopted by over 2,000 of our peer cities and counties in the United States and Canada, providing stable, equitable funding for these programs including permitting, maintenance and necessary capital improvements. Under a storm water utility, all properties, including United States federal government properties, would pay a fee representing their fair share of the cost of providing services, similar to the water bills charged by the Honolulu Board of Water Supply and sewer fees by the Department of Environmental Services. Storm water fees will be assessed based on impervious area and the total raised may not exceed the demonstrated cost of storm water services, an important check and balance on spending that is not in place today. DFM has determined that it currently spends approximately \$92 million per year on storm water services but is expecting that cost will need to increase upwards to around \$122 Million in order to run a program that can sufficiently execute core services while also addressing aging infrastructure, climate change, and increased regulatory requirements.

A blanket exemption of State facilities, as proposed in H.B. 1101, undermines this important element of equity and fairness. In fact, equity and fairness are the core purposes of adopting a storm water fee: Today, the full cost burden is on taxable properties, with the greatest impact on residential property owners. Under a storm water utility, everyone would pay a fair share based on storm water runoff generated from impervious surfaces. It is notable that the Clean Water Act itself requires all federal agencies (which own nearly 17% of the impervious area on Oahu) to pay duly adopted local storm water fees. Courts across the United States have upheld the appropriateness and legality of state and federal governments paying duly adopted and equitable storm water utility fees, recognizing the burden on local taxpayers with the introduction of any new utility fees. State properties, based on current estimations, makes up around 14% of the total amount impervious area on Oahu.

We recognize that through our shared storm water systems both State and City are able to realize efficiencies and competences, and understand budgetary impacts the storm water utility presents to us and our fellow agencies. However, implementation of a storm water utility fee would include opportunities for all users to apply credits, exemptions and hardship fee reduction opportunities. For example, through applied exemptions, preliminary calculations project that Transportation Harbors and Airport Division could realize an overall reduction in fees by 41% and 85%, respectively. There would also be opportunities for credits and rebates associated with education on storm water and watersheds, including implementation of various green stormwater infrastructure practices within the Department of Education (DOE) schools, University of Hawaii (UH) and Department of Hawaiian Homelands (DHHL) properties. In addition, possessing and actively implementing requirements under the Federal National Pollutant Discharge Elimination System (NPDES) permit program could also qualify certain State agencies with obtaining an automatic credit as well. We are eager and

Letter to The Honorable Kyle Yamashita, Chair
The Honorable Lisa Kitagawa, Vice Chair
February 28, 2023
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willing to work with State agencies to apply appropriate exemptions, credits and rebates that would dramatically reduce projected storm water utility fees incurred. H.B. 1101 would foreclose exploration of appropriate and fair fees and mutually beneficial options, including delayed/phased implementation. Further, H.B. 1101 places the burden on taxable properties, with the greatest impact on residential property owners.

In its 2015 action authorizing counties to adopt storm water fees, the Legislature recognized the need to fund the protection of our waters sufficiently and equitably. H.B. 1101 moves the State away from embracing that shared responsibility. DFM would be happy to conduct a presentation and Q&A on the storm water utility, fee proposals, and potentials for phased implementation to this committee and any other interested legislators whenever convenient. We strongly urge the committee to reject or defer H.B. 1101 at this time to allow for further discussion and collaboration.

Thank you for this opportunity to testify on this measure.

Sincerely,

A handwritten signature in black ink, appearing to read 'Dawn B. Szewczyk', with a long horizontal flourish extending to the right.

Dawn B. Szewczyk, P.E.
Director and Chief Engineer

TAX FOUNDATION OF HAWAII

126 Queen Street, Suite 305

Honolulu, Hawaii 96813 Tel. 536-4587

SUBJECT: MISCELLANEOUS, State Exemption for County Stormwater Fees

BILL NUMBER: HB 1101 HD 1 [TRN-01]

INTRODUCED BY: HB by SAIKI, SB by KOUCHI (Governor's Package)

EXECUTIVE SUMMARY: Exempts the State and its departments and agencies that maintain or operate a stormwater management system that is interconnected to a county stormwater system from county stormwater user fees. Prohibits each county from denying services to the State or its departments or agencies by reason of nonpayment of user fees.

SYNOPSIS: Amends section 46-1.5(5)(E), HRS, to provide that although the counties may establish and charge user fees to create and maintain any stormwater management system or infrastructure, no such user fee shall be charged to or payable to each county by the State or any of the State's departments or agencies and no services shall be denied to the State or its departments and agencies by reason of nonpayment of such fees.

EFFECTIVE DATE: June 30, 3000.

STAFF COMMENTS: This is an Administration bill sponsored by the Department of Transportation and designated TRN-01 (23).

Although this may sound like a heavy-handed thing for a State to do, it appears to be within the State's power. The State created the counties by law, and unless something like the state constitution says otherwise, the State can determine what the counties can or can't do in terms of charging taxes or fees.

We note that in testimony before earlier committees, the measure generated opposition from one or more counties. We suggest that a collaborative solution be agreed upon. If one or more counties does indeed fight the State in court or otherwise, much in resources will be taken up by the battle and **all** of it will be paid by taxpayers. Remember, governments don't pay taxes. Taxpayers pay taxes.

Digested: 2/25/2023



"Advancing the Commercial Real Estate Industry through Education, Networking and Advocacy"

Committee: House Finance
Date: Tuesday, February 28, 2023
Time: 10:00 A.M.
Place: Via Conference Room 308
RE: HB 1101, HD1, Relating to Stormwater Fees

Aloha Chair Yamashita, Vice Chair Kitagawa, and members of the committee:

Thank you for the opportunity to submit testimony on House Bill 1101, HD1.

We are the Building Owners and Managers Association of Hawai'i (BOMA Hawai'i) testifying in **opposition** to HB 1101, HD1, Relating to Stormwater Fees.

Stormwater utilities across the country equitably distribute stormwater fees across properties, including those owned by State and Federal agencies and the private for-profit and non-profit sectors. Exempting the State from the fee would necessarily redistribute costs, which would land heavily on residents and private for-profit and non-profit sector businesses. This bill undermines the very formulation of a broad-based stormwater management program that is meant to engage all of the parties who benefit from storm water management, including State, Federal and local governments, as well as nontaxable property owners. The legislature took strong leadership in 2015 with Act 42. Turning back now would hinder the progress already made, even before any county has implemented a stormwater utility.

We urge the legislature to oppose HB 1101, HD1, and stay committed to taking the necessary action to protect the future of our islands from climate change, water shortages, infrastructure failure and inequities.

BOMA Hawai'i is a non-profit trade association dedicated to advancing the commercial real estate industry through education, networking and advocacy. Please consider BOMA a resource to policy makers. Thank you for the opportunity to testify on this measure.

Sincerely,

Gail M. Abrena-Agas
BOMA Hawai'i Government Affairs Committee Chair, and
Past President



HAWAI'I COMMUNITY
FOUNDATION

To: The Honorable Kyle Yamashita, Chair
The Honorable Lisa Kitagawa, Vice Chair
And Members of the House Committee on Finance

From: Micah Kāne, Chief Executive Officer & President
Hawai'i Community Foundation

Re: Testimony in Opposition to HB 1101, HD1, Relating to Stormwater Fees

Date: Tuesday, February 28, 2023

Time: 10:00 A.M.

Place: Via Conference Room 308

My name is Micah Kāne, Chief Executive Officer & President ("HCF"). I am submitting this testimony in opposition to HB 1101, HD1, which exempts State departments that are responsible for the maintenance and operation of a stormwater management system that connects with the county system.

The exemption provided for under HB1101 may be overly broad and if so, would cause an undue burden to be allocated to resident homeowners and other private landowners. It should be noted that a material portion of the State's revenue comes from tax dollars collected from non-Hawaii residents. Therefore, through the State paying its fair share of stormwater fees, non-residents are helping pay for our stormwater system. If State lands are exempt, the amount of participation by non-residents is significantly reduced and our local residents will have to pay more. Agreements as to credits to the State for the County's use of State infrastructure should be addressed between the County and State departments at the time Counties implement stormwater programs, as opposed to blanket exemptions to the departments as proposed in HB 1101, HD1.

Our islands are experiencing a range of water quality, flooding, aging infrastructure, and fresh water supply issues related to storm water management, climate change and sea level rise. At the same time, federal requirements under the U.S. Environmental Protection Agency's (EPA) Clean Water Act are imposing increasingly stringent permit standards for storm water runoff management that the City & County of Honolulu must meet, or face very costly fines and penalties. Government officials at the State and County levels recognize the need to take steps to strengthen and expand storm water management services.

Managing and improving our stormwater systems is vital to our environment and the long-term future of our communities. As climate change persists, sustainably managing stormwater will become even more important as sea levels rise and rainfall patterns become less predictable. Stormwater user fees that are calculated under a fair formula provide the best policy and revenue development to take care of this much needed effort. In order to achieve a fair and equitable allocation of the necessary costs, no one, including the State, should be exempted from the fees. For any and every group that is exempted, the burden falls disproportionately on the remaining landowners.

Stormwater management will help promote sustainable stormwater practices that enhance water recharge and is a strong component of Hawaii's sustainability goals, notably the 2016 Sustainable Hawai'i Initiative highlighted the need to protect nearshore ocean waters by reducing sediment and pollution and the State of Hawai'i adopted the Aloha+ Challenge goal of minimizing the impacts of land use on the natural environment. Hawai'i Community Foundation's Fresh Water Initiative also adopted the 2030 target of increasing water security by 100 million gallons per day. Part of this target is increasing recharge by 30 million gallons per day by 2030, which will not only result in increased water security but will also reduce runoff pollution and overflows that result in flooding.

Hawai'i Community Foundation has dedicated both time and resources to assist the City & County of Honolulu with community meetings and planning to identify the stormwater system needs and solutions, including development of a fair use fee structure. This public private partnership with the philanthropic community looks to help achieve these environmental and community goals. For Hawai'i to continue being a leader in sustainability, connecting climate change mitigation and the health and prosperity of our communities, we urge you to oppose HB 1101, HD1.