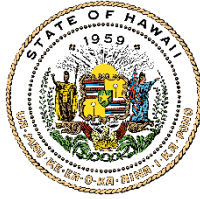


JOSH GREEN, M.D.  
GOVERNOR | KE KIA'ĀINA

SYLVIA LUKE  
LIEUTENANT GOVERNOR | KA HOPE KIA'ĀINA



STATE OF HAWAII | KA MOKU'ĀINA 'O HAWAII'  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
KA 'OIHANA KUMUWAIWAI 'ĀINA

P.O. BOX 621  
HONOLULU, HAWAII 96809

DAWN N.S. CHANG  
CHAIRPERSON  
BOARD OF LAND AND NATURAL RESOURCES  
COMMISSION ON WATER RESOURCE  
MANAGEMENT

RYAN K.P. KANAKA'OLE  
FIRST DEPUTY

DEAN D. UYENO  
ACTING 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  
DAWN N. S. CHANG  
Chairperson

Before the House Committee on  
FINANCE

Monday, February 26, 2024  
3:30 PM

State Capitol, Conference Room 308 & Videoconference

In consideration of  
HOUSE BILL 1544 HOUSE DRAFT 1  
RELATING TO STATE WATER CODE PENALTIES

House Bill 1544, House Draft 1, proposes to: add a minimum penalty and a maximum penalty per violation of the State Water Code; expand the types of potential violations of the State Water Code; and make each day that a violation exists or continues to exist a separate offense. This bill also requires the Commission on Water Resource Management (Commission) to consider certain factors when imposing penalties and makes the setting, charging, and collecting of administrative fines by the Commission mandatory, rather than discretionary. **The Department of Land and Natural Resources (Department) strongly supports this measure.**

The Department has found that the current maximum penalty of \$5,000 per violation in Hawai'i Revised Statutes (HRS) Section 174C-15 does not have a sufficient deterrent effect anymore. For example, even a one-time violation of an interim instream flow standard can lead to the diversion of millions of gallons of water and if the violating entity is charging end-users for the delivery of this stream water, \$5000 will simply be the cost of doing business. Such violations have extreme detrimental effects on public trust uses, which are water in its natural state, i.e. the stream itself and native aquatic life, domestic uses dependent on the stream, and traditional and customary Native Hawaiian practices.

HRS Section 174C-15 has only been amended once since its adoption by Act 45, Session Laws of Hawai'i (SLH) 1987 (Act 45). In 2004, Act 142 raised the maximum penalty from \$1,000 to \$5,000 and added subsection (d). However, in its 1994 Report to the State Legislature, the Review Commission on the State Water Code, pursuant to Section 5 of Act 45, had already proposed a maximum fine of \$25,000 for reckless, knowing, or intentional violations.

The Hawai‘i Supreme Court held that the Hawai‘i State Constitution in Article XI Section 7 designated the Commission as the “*primary guardian*” of the public trust resource - water.<sup>1</sup> To be consistent with the Department of Health’s (DOH) authority to issue penalties for violations that affect water, arguably the state’s most precious public trust resource, and to increase deterrence, the Department would appreciate the raising of the penalty ceiling from \$5,000 to \$60,000 per violation. The Department believes that violations of the State Water Code and the Commission’s rules and orders regarding water quantity are as detrimental to the resource as violations of DOH’s statutes and rules regarding water quality and thus the same deterrent maximum fine is necessary and justified.

Furthermore, this proposal aligns with Act 233, SLH 2023, which increased DOH’s maximum penalty to \$60,000 to conform with federal inflation adjusted civil penalty amounts pursuant to the Clean Water Act.<sup>2</sup> In the initial draft of House Bill 1079<sup>3</sup>, which was signed into law by Governor on July 6, 2023, and became Act 233, DOH asked for an increase of the maximum penalty in Hawai‘i Revised Statutes (HRS) § 342D-30 to \$59,973. This amount was proposed to match the federal inflation adjusted penalty amount. The federal penalty amount for violations of the Clean Water Act is provided for in the Federal Regulation 33 C.F.R. § 326.6. This federal regulation is adjusted *annually to improve its effectiveness and maintain its deterrent effect*, as required by the Federal Civil Penalties Adjustment Act Improvements Act of 2015, Public Law 114–74, sec. 701, November 2, 2015 (Inflation Adjustment Act). The current maximum federal penalty is \$64,619.

These tables show the history of the federal and state maximum fine:

**Federal Regulation 33 C.F.R. § 326.6 - Class I administrative penalties.**

Regulation	Year	Max. Penalty	Notes
54 FR 50709	1989	\$ 25,000	
69 FR 35518	2004	\$ 27,500	The Federal Civil Penalties Inflation Adjustment Act of 1990 restricted initial increases to 10%.
78 FR 5726	2013	\$ 32,500	
82 FR 47628	2017	\$ 52,414	The Inflation Adjustment Act required agencies to do adjust the level of civil monetary penalties with an initial “catch-up” adjustment, hence the increase from \$32,500 to \$52,414.
83 FR 19184	2018	\$ 53,484	
84 FR 18982	2019	\$ 54,833	
85 FR 35005	2020	\$ 55,801	
86 FR 37249	2021	\$ 56,461	
87 FR 62989	2022	\$ 59,974	
88 FR 51236	2023	\$ 64,619	

<sup>1</sup> *In re Water Use Permit Applications*, 94 Hawai‘i, 97, 141, 9 Pd.3, 409, 453 (2000). (*Waiāhole I*)

<sup>2</sup> The federal penalty amount for violations of the Clean Water Act is provided for in the federal regulation 33 C.F.R. § 326.6. This regulation is adjusted *annually to improve its effectiveness and maintain its deterrent effect*, as required by the Federal Civil Penalties Adjustment Act Improvements Act of 2015, Public Law 114–74, sec. 701, November 2, 2015. The current maximum federal penalty is \$64,619. See <https://www.federalregister.gov/documents/2023/08/03/2023-16025/civil-monetary-penalty-inflation-adjustment-rule>

<sup>3</sup>[https://www.capitol.hawaii.gov/session/archives/measure\\_indiv\\_Archives.aspx?billtype=HB&billnumber=1079&year=2023](https://www.capitol.hawaii.gov/session/archives/measure_indiv_Archives.aspx?billtype=HB&billnumber=1079&year=2023)

## HRS § 342D-30 Civil penalties (Water Pollution)

Act	Year	Max. Penalty	Notes
212	1989	\$ 10,000	
147	1997	\$ 25,000	The amendment was made to match the federal maximum penalty at the time.
233	2023	\$ 60,000	

In consultation with the counties, the Department recommends a maximum fine of **\$25,000** to match the recommendations of the Review Commission.

The Department appreciates the clarification of a continuing violation and the addition of mandatory factors for the determination of the penalty amount in the newly added subsection (c) to HRS Section 174C-15, which are identical to the factors DOH considers in HRS Section 342D-31. The Department would like to propose the inclusion of the language of HRS Section 342D-31 (c) for further clarification (grey highlight):

(c) When imposing a penalty, the commission shall consider the following factors, including but not limited to:

(1) The nature, circumstances, extent, gravity, and history of the violation and of any prior violations;

(2) The economic benefit to the violator, or anticipated by the violator, resulting from the violation;

(3) The opportunity, difficulty, and history of corrective action;

(4) Good faith efforts to comply;

(5) Degree of culpability; and

(6) Such other matters as justice may require.

It is presumed that the violator's economic and financial conditions allow payment of the penalty, and the burden of proof to the contrary is on the violator.

Furthermore, these factors in subsection (c) correspond with the Commission's Administrative and Civil Penalty Guideline (G14-01)<sup>4</sup> that the Commission adopted on October 1, 2014<sup>5</sup>. The Department notes that G14-01 provides for an initial administrative fee of \$500, if the Commission issued a written notice of alleged violation, in addition to any fine.

This bill will support the Commission in its affirmative duty "to protect, control and regulate the use of Hawaii's water resources" as articulated in Article XI Section 7 of the Constitution of the State of

<sup>4</sup> [https://files.hawaii.gov/dlnr/cwrm/planning/wrpp2019update/WRPP\\_AppP\\_201907.pdf](https://files.hawaii.gov/dlnr/cwrm/planning/wrpp2019update/WRPP_AppP_201907.pdf)

<sup>5</sup> <https://files.hawaii.gov/dlnr/cwrm/submittal/2014/sb201410D1.pdf>

Hawai'i. Currently, the Commission is overseeing 5,334 groundwater wells, 1,226 surface water diversions, and 376 perennial streams, approximately 100 of which have a measurable interim instream flow standard that requires monitoring and enforcement. The Commission regulates the use of water in water management areas on the islands of O'ahu, Moloka'i and Maui with the total amount of 411 groundwater use permits and 176 surface water use permits.

Thank you for the opportunity to testify in strong support of this measure.



DEPARTMENT OF WATER SUPPLY • COUNTY OF HAWAII

345 KEKŪANAŌ'A STREET, SUITE 20 • HILO, HAWAII 96720

TELEPHONE (808) 961-8050 • FAX (808) 961-8657

February 26, 2024

TESTIMONY OF KEITH K. OKAMOTO, MANAGER-CHIEF ENGINEER  
DEPARTMENT OF WATER SUPPLY, COUNTY OF HAWAII

HEARING BEFORE THE HOUSE COMMITTEE ON FINANCE

DATE: Monday, February 26, 2024

TIME: 3:30 p.m.

PLACE: Conference Room 308 & Videoconference

**HB 1544 HD1 - RELATING TO STATE WATER CODE PENALTIES**

Honorable Chair Yamashita, Vice-Chair Kitagawa, and committee members,

The County of Hawaii, Department of Water Supply (DWS) submits this letter to respectfully express its comments regarding House Bill (HB) 1544 HD 1.

This bill proposes to enable the Department of Land and Natural Resources (DLNR) and the Commission on Water Resource management (CWRM or Commission) to set the water code's penalties, at a "no less than" amount to a "shall not exceed" amount, to serve as a deterrence to violators of the State Water Code in section 174C-15, Hawaii Revised Statutes (HRS). The proposed language lists factors to be considered when the Commission is determining the penalty amounts. DWS requests to be included in the Rule making and/or evaluation process to determine the penalty amounts. It is DWS' belief that an open and transparent Rule making process would result in equitable and consistent application and enforcement of these penalties in the future. And thus, could avoid the potential for arbitrary and inconsistent applications.

We thank you for your attention to this matter, and for your dedication and commitment to serving our State.

Please feel free to contact me at (808) 961-8050 or via email at [dws@hawaiidws.org](mailto:dws@hawaiidws.org) with any questions you may have regarding DWS' comments. Thank you for your time and consideration of our testimony on HB 1544 HD1.

**HB-1544-HD-1**

Submitted on: 2/24/2024 9:22:48 PM

Testimony for FIN on 2/26/2024 3:30:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Testify</b>
Ted Bohlen	Hawaii Reef and Ocean Coalition	Support	Written Testimony Only

Comments:

**STRONG SUPPORT!**

I worked as an attorney representing DOH on water enforcement cases for 15 years. I observed that the Water Commission was hampered by a lack of enforcement authority. I believe that CWRM badly needs this penalty authority to protect our water supplies!

Hawai'i Reef and Ocean Coalition supports an effective Water Commission.

Please pass this bill!

Hawai'i Reef and Ocean Coalition (by Ted Bohlen)



# SIERRA CLUB OF HAWAI'I

## HOUSE COMMITTEE ON FINANCE

February 26, 2024      3:30 PM      Conference Room 308

**In SUPPORT of HB1544 HD1: Relating to State Water Code Penalties**

---

Aloha Chair Yamashita, Vice Chair Kitagawa, and Members of the Committee,

On behalf of our 20,000 members and supporters, the Sierra Club of Hawai'i **SUPPORTS** HB1544 HD1, to allow the Commission on Water Resource Management (“CWRM”) to more meaningfully enforce laws concerning the management and allocation of our public trust water resources.

HB1544 HD1 would allow CWRM to impose meaningful fines against powerful entities who could otherwise over pump our aquifers and drain our streams dry with impunity, notwithstanding the law or the needs of our communities. CWRM's current \$5,000 maximum daily fine is wholly insufficient to hold multinational corporations or the Department of Defense accountable if and when their water code violations impact priority public needs – such as, but not limited to, affordable housing, or fire prevention.

**Without the increased fines authorized under this measure, millions of gallons of water per day could be illegally monopolized by deep pocket entities for a fraction of a cent per gallon in penalties, harming our precious water resources and the houses, schools, farms, small businesses, and others that rely on them.**

Notably, this measure requires CWRM to consider an explicit set of factors in setting and imposing fines, such as the gravity of a violation, any economic benefit realized by the violator, and degree of culpability. This will ensure that fines are appropriate to the circumstances of each case. Concerns about automatic and excessive fines that ignore the realities of any given situation, including mitigating and extenuating circumstances and impacts to local residents, would therefore appear unfounded.

Accordingly, the Sierra Club respectfully urges the Committee to **PASS** this measure.

Mahalo nui for the opportunity to testify.



Email: [communications@ulupono.com](mailto:communications@ulupono.com)

HOUSE COMMITTEE ON FINANCE  
Monday, February 26, 2024 — 3:30 p.m.

**Ulupono Initiative supports HB 1544 HD 1, Relating to State Water Code Penalties.**

Dear Chair Yamashita and Members of the Committee:

My name is Micah Munekata, and I am the Director of Government Affairs at Ulupono Initiative. We are a Hawai'i-focused impact investment firm that strives to improve the quality of life throughout the islands by helping our communities become more resilient and self-sufficient through locally produced food, renewable energy, clean transportation choices, and better management of freshwater resources.

**Ulupono supports HB 1544 HD 1**, which adds a minimum penalty and amends the maximum penalty per violation of the State Water Code, expands the types of potential violations of the State Water Code, and makes each day that a violation exists or continues to exist a separate offense. This bill also requires the Commission on Water Resource Management (CWRM) to consider certain factors when imposing penalties and makes the setting, charging, and collecting of administrative fines by CWRM mandatory, rather than discretionary.

The Red Hill crisis illustrated the inability of CWRM's current penalty system to deter the Navy from exceeding its water allocation by over 1 million gallons a day. This was occurring when much of the population of O'ahu was asked to conserve water due to the contamination from the Navy's negligence in managing its underground fuel storage tanks. In addition to the proposed amendments, we hope this measure will result in a penalty amount that is significant enough to deter the abuse of our fresh water resources. We applaud the legislature for underscoring the immeasurable value of *wai* by considering this measure for passage.

Thank you for the opportunity to testify.

Respectfully,

Micah Munekata  
Director of Government Affairs

*Investing in a Sustainable Hawai'i*





Testimony of  
MAHI PONO, LLC

Before the House Committee on  
FINANCE

Monday, February 26, 2024  
3:30 PM  
State Capitol, Room 308

Comments and Concerns in Opposition of  
House Bill 1544, House Draft 1  
Relating to State Water Code Penalties

Chair Yamashita, Vice Chair Kitagawa, and members of the House Committee on Finance:

Mahi Pono has strong concerns and joins the Hawaii, Kauai, and Honolulu County Departments of Water Supply to express those shared concerns and respectfully offers testimony **in opposition** to House Bill 1544, House Draft 1, which mirrors a similar bill from the 2023 session that was vetoed by Governor Green.

Mahi Pono is a Maui-based diversified farming company committed to improving food security and creating economic opportunity for Hawaii through responsible agriculture. Since 2019, and with 300-plus local employees, we have been actively working to transform 41,000 fallow acres of former sugarcane land into a productive, diversified agriculture operation. We aim to produce high-quality local food products, create good-paying jobs, partner with local businesses and the community, and respect Hawaii's natural resources and environment.

Over the past five years of Mahi Pono's operations, more than \$630M has been invested in land preparation, farming, construction, equipment, new technology, and staffing. Thus far, we have planted over 2 million trees on approximately 10,000 acres of land. Almost 8,000 acres of those plantings consist of citrus varieties. Using significantly less water than our sugar predecessors, we work daily to meet the State Water Code and Commission on Water Resource Management (CWRM) requirements.

While the stated purpose of the measure is to ensure that all violators of the Code are held accountable for their violations, the proposed legislation, as drafted, seeks to expand the commission's authority to subjectively and unilaterally determine the amount of any mandatory penalties imposed for any provision, rule, order, or permit condition adopted pursuant to the Code. Additionally, this measure adds that each day that a violation exists or continues to exist constitutes a separate offense.

The Honorable Kyle Yamashita  
and Members  
February 26, 2024  
Page 2

The Land Use Research Foundation, in its most recent testimony before the House Committee on Judiciary and Hawaiian Affairs, stated:

“Proposed expansion of the Commission’s authority without critical safeguards (including, but not limited to established criteria for the implementation of different types of Code violations as well as the corresponding dollar amounts of penalties to be implemented), as well as without sufficient information, facts, and findings to support the need to mandatorily impose such penalties in subjective amounts upon water users and existing water permittees, would be to allow circumvention and disregard of important established protections contained in existing laws and the Code which were judiciously and collaboratively developed and vetted by all essential stakeholders.

LURF believes that this type of arbitrary, unregulated, and potentially unmonitored action is dangerous and may actually pose a threat to the health and safety of the public, as well as to the economy of the State.”

The mandatory minimum fine and the separate infraction for each day requirement means that CWRM will lose its autonomy and flexibility to issue warnings in the event of minor infractions or good-faith ignorance regarding the existence of a violation.

Thank you for your consideration and the opportunity to testify on HB 1544, HD 1.



February 26, 2024

Representative Kyle T. Yamashita, Chair  
Representative Lisa Kitagawa, Vice Chair  
House Committee on Finance

**Comments and Concerns in Opposition to HB 2364, H.D. 1, Relating to the Conveyance Tax (Increases the conveyance tax rate for certain properties. Exempts conveyances of certain real property from the conveyance tax. Establishes a new conveyance tax rate for multifamily residential properties. Eliminates the cap on the amount of conveyance tax collections allocated to the Land Conservation Fund and Rental Housing Revolving Fund. Allocates ten percent of conveyance tax collections to the Dwelling Unit Revolving Fund [DURF] for the purpose of funding infrastructure programs in transit-oriented development [TOD] areas. Effective 7/1/3000.)**

**Monday, February 26, 2024, at 12:30 p.m.; State Capitol, Conference Room 308 Via Videoconference**

The Land Use Research Foundation of Hawaii (LURF) is a private, non-profit research and trade association whose members include major Hawaii landowners, developers, and utility companies. One of LURF's missions is to advocate for reasonable, rational, and equitable land use planning, legislation and regulations that encourage well-planned economic growth and development, while safeguarding Hawaii's significant natural and cultural resources and public health and safety.

LURF appreciates the opportunity to provide **comments and concerns in opposition** to this bill.

**HB 2364, H.D. 1.** This bill itself does not expressly include a purpose clause, however, the measure is intended as a method to generate revenue to be paid into the state treasury to the credit of the general fund of the State, and seventy percent of said revenue is intended to be directed into three designated special and revolving funds: the Land Conservation Fund established pursuant to Hawaii Revised Statutes (HRS) Section 173A-5; the rental housing revolving fund established by HRS Section 201H-202 (for both of which funds the maximum dollar amount to be paid into each fiscal year is proposed to be removed); and the DURF for the purpose of funding infrastructure

programs in transit-oriented development areas. To do so, this bill proposes to increase the conveyance tax rate for certain properties and establish a new conveyance tax rate for multifamily residential properties. The proposed measure also exempts conveyances of certain real property from the conveyance tax.

**LURF's Position.** The proposed increase of the conveyance tax rate for the transfer or conveyance of certain properties is arguably inappropriate, improper, and illegal, given the following:<sup>1</sup>

**1. The Hawaii conveyance tax was never intended to be and should not operate as a revenue-generating tax.**

Chapter 247 (Conveyance Tax) of the HRS was purposefully enacted in 1966 to provide the State Department of Taxation ("DoTax") with informational data for the determination of market value of properties transferred, and to assist the DoTax in establishing real property assessed values. In short, the sole intent of the conveyance tax was originally to cover the administrative costs of collecting and assessing said informational data, which necessarily entails the recording of real estate transactions, as performed by the Bureau of Conveyances.

Since the enactment of HRS Chapter 247, however, the State Legislature has proposed, and has managed to implement changes to the law 1) to allow application of conveyance tax revenue to a number of non-conveyance type uses (land conservation fund; rental housing trust fund; and natural area reserve fund) to the point where there is no longer any clear nexus between the benefits sought by the original Act and the charges now proposed to be levied upon property-holding entities transferring ownership; and 2) also to increase the tax rates to the point where said revenues now far exceed the initially stated purpose of the Act. Moreover, supplemental funding for some of those expanded uses for which conveyance tax revenues were subsequently authorized has since been determined to be unnecessary, and recommended to be discontinued, creating an even stronger basis for legal objection and challenge.

Such expansions and deviations, including the allocation of conveyance tax to DURF specifically for the purpose of funding infrastructure programs in TOD areas as proposed by the current measure, go beyond the scope of the original intent of the conveyance tax law, and are concerning to LURF since the proposed bill, **particularly if unlawfully targeting specific types of transactions or groups of property owners, could be characterized as imposing an improper penalty, hidden tax, or surcharge, which may be subject to legal challenge.**

---

<sup>1</sup> Further opposition to HB 2364, H.D. 1 may be warranted but shall be reserved until the actual purpose of the measure and details regarding disposition and use of the revenues to be collected are disclosed, as is proper and appropriate with any proposed bill for which the intended purpose is to generate revenue.

**2. HB 2364, H.D. 1 is arguably illegal and in violation of Sections 37-52.3 and 37-52.4, HRS, because it attempts to use the conveyance tax to subsidize or increase subsidies to special and revolving funds which do not have a clear link between the program and the sources of revenue.**

Special funds are subject to HRS Sections 37-52.3 and 37-52.4. Criteria for the establishment and continuance of special and revolving funds was enacted by the 2002 Legislature through Act 178, SLH 2002, Sections 37-52.3 and 37-52.4, HRS. To be approved for continuance, a special fund must:

- a. serve the purpose for which it was originally established;
- b. reflect a clear nexus between the benefits sought and charges made upon the users or beneficiaries of the program *or a clear link between the program and the sources of revenue*, as opposed to serving primarily as a means to provide the program or users with an automatic means of support that is removed from the normal budget and appropriation process;
- c. provide an appropriate means of financing for the program or activity; and
- d. demonstrate the capacity to be financially self-sustaining.

The first and second criteria are nearly identical to those in Act 240, SLH 1990, codified in Section 23-11, HRS, requiring the Auditor to review all legislative bills in each session to establish new special or revolving funds. It appears that the intent of HB 2364, H.D. 1 is to find an additional source of funding for infrastructure programs in TOD areas by increasing conveyance tax revenues for the transfer of certain properties, primarily “luxury” properties. However, the State Auditor has in the past concluded that such an arrangement where there is no *clear link* with the funding source (individuals and companies involved in particular types of real estate transactions) should be repealed.

**3. Other legal and voluntary alternatives may be available to increase funding or incentivize support for infrastructure programs in TOD areas.**

In lieu of improperly imposing increases of conveyance taxes to increase the State’s general fund, or to subsidize or increase revenue for certain unrelated special funds with no clear link to the conveyance tax purposes or beneficiaries, proponents of those special funds or programs are urged to look to other possible legitimate means to do so, including funding support through other “related” or “linked” state and county charges, federal funding - particularly for transit-related purposes, fees, or taxes.

Given the “*clear nexus*” requirement for special and revolving funds, and also given that general funding and alternative methods to secure revenues for these funds exist, expansions and deviations of HRS Chapter 247 which go beyond the scope of the original intent of the conveyance tax law are again concerning since this proposed bill, particularly if it unlawfully targets transactions involving the sale of interests by a particular group of individuals or entities which own real property in the State, **could**

**be characterized as imposing an improper penalty, hidden tax, or surcharge, which may be subject to legal challenge.**

**4. Attempts to utilize the State conveyance tax as a revenue generating tax without meeting the “*clear nexus*” requirement and without rightful justification based on necessary fact-finding, research, and expert consultation will likely cause serious unintended negative consequences.**

**a. Hawaii’s working-class residents, long-time property owners, and large *kama`aina* landowners will likely be negatively affected.**

The fact that the Hawaii conveyance tax was never intended to be and should not operate as a revenue-generating tax aside, given the recent increase in property values in Hawaii which have escalated over the past years, it is not at all inconceivable for Hawaii’s middle-income working class homeowners, particularly local senior citizens on fixed incomes to own property currently valued at more than \$2,000,000, to be negatively impacted by this measure upon sale of their long-time residences. These types of proposed bills would also affect *kama`aina* landowners who may be transferring large properties for agricultural farms, housing developments, environmental programs, or other developments that would serve the community and create needed employment.

As far as LURF has been able to ascertain, proponents of this bill have never consulted with housing, commercial, and agricultural developers (e.g., NAIOP, Land Use Foundation of Hawaii), or experts in the real estate industry (e.g., Hawaii Association of Realtors), as to the impact of this bill. Neither have proponents likely consulted with or addressed the comments and concerns of tax and economic experts (e.g., DoTax, the Tax Foundation, the University of Hawaii, and other independent experts) relating to the underlying intent and legal purpose of the conveyance tax and what legal and economic effects and consequences may result from the proposed improper and inappropriate use of conveyance tax revenues.

As a result, it appears that proponents of this bill have not offered any information or provided any factual data regarding the number and types of property owners and transactions which would be impacted by, as well as the expected dollar amounts which will actually be generated by this measure, which is necessary to support this bill. Also unknown at this time is whether said amounts would even be close to sufficient for DURF and the other funds identified and for the purposes specified, and whether those amounts would weigh against and warrant the consequences which may be suffered by property owners and other stakeholders.

**b. Such measures would create significant disincentive for business in Hawaii.**

At a time when the State continues to reel from the effects of the Covid pandemic, and is still attempting to encourage business expansion in, and attract

business operations to Hawaii, measures implemented to utilize the State conveyance tax as a revenue generating tax would create a disincentive and will have a substantial - negative impact on persuading new and existing businesses to open or expand in Hawaii, or to relocate their operations to this State. The proposed additional cost of doing business in Hawaii would certainly appear to negatively outweigh any positive revenue impact resulting from the imposition of conveyance taxes pursuant to these types of measures.

**c. This type of legislation would drive up the cost of lands for agricultural production, affordable and market homes, and commercial development.**

This Committee should be aware that the impact of this proposed measure would not only affect owners of “luxury” properties or non-residents but may **impact many industries and harm broad segments of Hawaii’s economy**. The imposition of an increase of conveyance tax on transfers which affect **agricultural lands** will be passed on to farmers and other agricultural operators, making it even harder for agriculture to survive in Hawaii; the proposed imposition of the tax on transfers which affect **land intended for non-government assisted housing developments** will be passed on to home buyers and will thus increase the price of homes and exacerbate the affordable housing problem in Hawaii; the proposed imposition of the conveyance tax onto transfers which affect **commercial properties** will also be passed on to small businesses, creating yet another substantial financial burden on them. In addition, the proposed imposition of conveyance tax on transfers of **properties for health care-related facilities** may increase the cost of health care, and properties needed to be transferred for other facilities such as **renewable energy and sustainable tourism** may impact those industries and raise related costs for the public as well.

**d. In addition to the exemption proposed to be established by this bill, exemptions should also be created for all landowners and developers that support needed housing, and for those that otherwise already provide substantial support for the programs that are intended to benefit from conveyance tax revenues.**

Curiously, a previous proposal made in 2023 attempting to use conveyance tax revenues for government assisted affordable housing was not passed and has been replaced in this bill with a proposed allocation to DURF which is allegedly similarly aimed at addressing Hawaii’s affordable housing crisis by helping to “increase the state’s inventory of affordable rental housing to provide more housing options” - although no details describing how or to what extent the proposed allocation to DURF would actually result in such an increase have been offered in the bill. It is also interesting that the proposed allocation of conveyance tax revenues to DURF is stated to be justified by a report which the “Hawaii TOD Infrastructure Financing and Delivery Strategy for Pilot Areas” has not yet even made, but reportedly will be making to the Legislature in the 2024 regular session. (see, Justification Sheet for S.B. 3053). Such “future” justification for this measure would seem speculative at best.

LURF further emphasizes the irony and inequity of the fact that among the entities which will be hardest hit by these types of measures are Hawaii's large landowners that have already been building housing (including affordable housing) and have already been serving as excellent stewards of our lands, and are the leading partners in, and contributors to the purposes funded by conveyance tax revenues. At the very least, exemptions to these types of measures should be written in, or established for those entities that lend to all housing needs in the State, as well as support and participate in conservation and watershed programs.

### **Conclusion.**

Given the incontrovertibly clear and express intent of Hawaii's conveyance tax law (HRS Chapter 247), which is to use State conveyance tax revenue to specifically cover administrative costs incurred by DoTax to collect and assess informational data, any use of State conveyance tax revenue must be strictly limited to that purpose as set out in the original Act. Use of conveyance tax revenue for any other purpose is subject to scrutiny and legal challenge.

There is also significant concern that proposed measures which attempt to utilize the conveyance tax as a revenue generating tax will likely cause unintended negative consequences which would be detrimental to the State.

In view of these issues, legislators should be advised to act with caution, and to proceed judiciously when considering measures which propose to utilize or apply the conveyance tax as a revenue generating tax, especially to support the establishment or continuance of special, revolving and trust funds – some of which have not even adequately justified the need for such funding.

Due to the significance of the conveyance tax issues raised by HB 2364, H.D. 1, **LURF respectfully requests that this bill be deferred by this Committee** to allow proponents to consult with experts to obtain and provide needed information and factual data as described above prior to proposing expanded and improper use of the Hawaii conveyance tax which was never intended to be and should not operate as a revenue-generating tax. At the very least, all stakeholders, including, but not limited to private landowners, the public, government agencies, legal and economic experts, and other interested parties should be allowed to work together to come to a consensus regarding the intent of the conveyance tax, as well as this bill's purpose and alternatives to subsidizing the general fund, including other broad-based supplemental funding by Hawaii's taxpayers and visitors.

Thank you for the opportunity to provide comments and concerns in **opposition** to this proposed measure.



**HB-1544-HD-1**

Submitted on: 2/23/2024 8:26:39 PM

Testimony for FIN on 2/26/2024 3:30:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Testify</b>
B.A. McClintock	Individual	Support	Written Testimony Only

Comments:

Please support this bill. Mahalo.



Monday, February 26, 2023, 3:30 pm

House Committee on Finance

HOUSE BILL 1544 – RELATING TO STATE WATER CODE PENALTIES.

Position: Comment

Me ke Aloha, Chair Yamashita, Vice-Chair Kitagawa, and Members of the House Committee on Finance:

HB1544 Makes official Water Commission policy a statute. It wants to identify a minimum penalty and a maximum penalty per violation of the State Water Code, identifies the potential violations of the State Water Code, with each day that a violation exists or continues to exist being a separate offense. The Commission on Water Resource Management already analyzes circumstances, extenuating circumstances, and evaluates seriousness of offenses against the public trust waters of the State when it recommends imposing penalties.

It is not at all clear that there is a distinction between discretionary and mandatory fines. As it is, the Commission staff makes detailed recommendations, with all considerations noted, and the Commission offers proposed violators the chance to speak to the questions. The Commission makes a decision, period. It is not a matter of “discretionary” or “mandatory”, just a legal decision.

The earlier testimony of the Commission Chair indicates that paying a fine is often considered simply the cost of doing business, but that does not seem relevant to this subject. What has always been clear is that the Commission needs enforcement capabilities. There are two logical places to start: 1) placing a lien on the property of a violator, or a judgment with escalating interest on unpaid fines, something which the Attorney General’s Office has been unwilling to undertake;

2) More relevant to the perceived problem is the potential to curtail or extinguish the supposed “rights” to water of a given property. As Hawaii is a public trust state, requiring all uses to be reasonable-beneficial, a violation judgment that use is unreasonable or unreasonable makes it subject to curtailment or extinguishment. Water use in Hawaii under the Public Trust Doctrine bears responsibilities in addition to any underlying “rights”, and the “rights” disappear if responsibilities to the public trust are violated. Ancient Hawaiian custom included capital punishment, for example.

The transfer of property to a new owner offers the underlying right to resurrect a right to reasonable-beneficial use, as may be adjudicated.

Mahalo for the opportunity to address this issue,

/s/ Charley Ice

Planner, Department of Hawaiian Home Lands and liaison to the Water Commission (10 years) and Hydrologist, Commission on Water Resource Management (25 years) (retired)

**Building the new normal with People and Land: Food Security Health Care Public Banking  
Regenerating Soils Cutting Waste Eliminating GHG emissions**