

SENATE COMMITTEE ON PUBLIC SAFETY, INTERGOVERNMENTAL, AND
MILITARY AFFAIRS

The Honorable Clarence K. Nishihara, Chair
The Honorable Glenn Wakai, Vice Chair

H.B. NO. 460, H.D. 1, RELATING TO THE COUNTIES

Hearing: Tuesday, March 19, 2019, 1:20 p.m.

The Office of the Auditor has **no position** regarding H.B. No. 460, H.D. 1, which prohibits counties from accepting “discounted payments” on fines levied by county planning and permitting departments/agencies and requires that the Office of the Auditor conduct annual audits of the fines assessed and collected by those same departments/agencies. **However, we offer the following comments.**

With the exception of the Honolulu Authority for Rapid Transportation, our audits are of state departments, agencies, and programs. The counties (except Kaua‘i) each have their own auditors who audit their respective counties’ departments, agencies, and programs. We suggest that the county auditors are the more appropriate agencies to audit the county planning and permitting departments.

We also note that, although characterized as an audit, the requested work does not appear to be an audit. The purpose of the resolutions seems to be for an annual accounting of the fines assessed and collected by the county planning and permitting departments to confirm that the departments are collecting the full amount of the fines that they levy. The performance audits we perform evaluate a program’s activities against appropriate criteria, such as relevant statutes, administrative rules, policies, procedures, and best practices. We contract with independent certified public accountant firms to audit the financial statements of various state departments and programs.

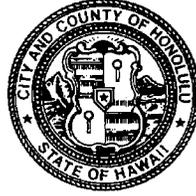
Thank you for considering our testimony related to H.B. No. 460, H.D. 1.

DEPARTMENT OF PLANNING AND PERMITTING
CITY AND COUNTY OF HONOLULU

650 SOUTH KING STREET, 7TH FLOOR • HONOLULU, HAWAII 96813
PHONE: (808) 768-8000 • FAX: (808) 768-6041
DEPT. WEB SITE: www.honolulu.dpp.org • CITY WEB SITE: www.honolulu.gov

LATE

KIRK CALDWELL
MAYOR



KATHY K. SOKUGAWA
ACTING DIRECTOR

TIMOTHY F. T. HIU
DEPUTY DIRECTOR

EUGENE H. TAKAHASHI
DEPUTY DIRECTOR

March 19, 2019

The Honorable Clarence K. Nishihara, Chair
and Members of the Committee on Public Safety,
Intergovernmental, and Military Affairs
Hawaii State Senate
Hawaii State Capitol
415 South Beretania Street
Honolulu, Hawaii 96813

Dear Chair Nishihara and Committee Members:

**Subject: House Bill No. 460, HD 1
Relating to the Counties**

The Department of Planning and Permitting **opposes** House Bill No. 460, HD1, which would prohibit the City from authorizing or accepting a discounted payment of a county-levied fine.

DPP administers a civil fine program for zoning, building and grading types of permits. There are other civil fines programs under other city departments. A blanket prohibition on the adjustment of fines is counterproductive for five reasons:

1. **Creates hardships.** This Bill prevents a county from exercising its discretion in the application of fines where special circumstances exist. In many cases, the entity responsible for the violation is unable to correct the violation in a timely manner.

For example, a Waianae farm owned by a church incurred a fine of about \$700,000 for building minor structures without permits. It took a while for church leaders to take charge and they had to hold fund-raisers to pay the fine.

Often times, substantial fines are accrued because the property owners are elderly and can no longer care properly for their land. They are cited for a damaged roof or overgrown yard, but have done nothing to correct the violation. They may even let property tax assessments go unpaid. It takes a significant amount of fines to accrue before a family member takes charge, perhaps in light of other outstanding issues.

The Honorable Clarence K. Nishihara, Chair
and Members of the Committee on Public Safety,
Intergovernmental, and Military Affairs
Hawaii State Senate
March 19, 2019
House Bill No. 460, HD1
Page 2

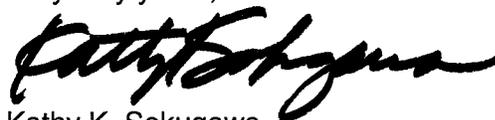
A final example is the outstanding fine assessed to the Hawaii Community Development Authority for stockpiling without a permit in Kalaehououe. The permit has been obtained, but the fine of \$350,000 is still outstanding. Although the violation was committed by its tenant, the landowner (HCDA) is ultimately liable for any fines that may have been accrued. This Bill would not allow us to negotiate the fine amount and will cost taxpayers the full \$350,000.

2. Infringes on a county's homerule authority. County fines are instituted to help enforce county regulations. The counties are best able to determine how to manage their programs. Both the city council and the department have looked at updating fine amounts for certain egregious violations, such as illegal short-term rentals, and continuing construction despite of a stop-work order. We are better capable of determining how best to incentivize compliance with our own codes.
3. Lack of Clarity. The Bill references "planning and permitting fines." As the City and County of Honolulu is the only county with a Department of Planning and Permitting, is this Bill only to apply to the City? In the alternative, is the intent that the Bill apply to either planning fines permit fines?
4. Inconsistencies. We note that House Bill No. 460 would only apply to the City's fines program for zoning violations. Given that State agencies have similar programs, this Bill should apply to their civil fines program as well.
5. No leniency. Occasionally, to be corrected, a violation needs an approval from the city council or other decision-making body. Examples include a shoreline management use permit, and zoning variance, or a conditional use permit. These processes can take several months, once an application is accepted. Under our current civil fines program, we deduct this time from the assessed daily fines. Under House Bill No. 40 HD1 this tolled time could not be dropped, but included in the civil fines owed.

Lastly, we object to a state audit of a county matter that does not involve state funding or programmatic responsibilities.

To sum, we respectfully ask that House Bill No. 460, HD 1, be held in committee.
Thank you for the opportunity to testify.

Very truly yours,

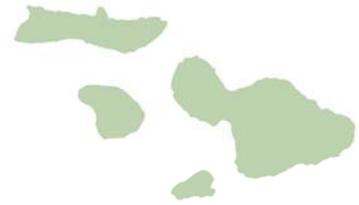
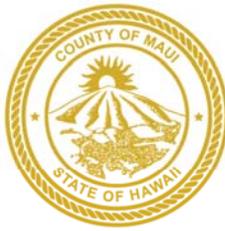


Kathy K. Sokugawa
Acting Director

MICHAEL P. VICTORINO
MAYOR

MICHELE CHOUTEAU MCLEAN, AICP
DIRECTOR

JORDAN E. HART
DEPUTY DIRECTOR



DEPARTMENT OF PLANNING
COUNTY OF MAUI
ONE MAIN PLAZA, 2200 MAIN STREET, SUITE 315
WAILUKU, MAUI, HAWAII 96793



March 18, 2019

TESTIMONY OF MICHELE CHOUTEAU MCLEAN, AICP
PLANNING DIRECTOR
COUNTY OF MAUI

THE SENATE COMMITTEE ON PUBLIC SAFETY, INTERGOVERNMENTAL, AND MILITARY
AFFAIRS

Tuesday, March 19, 2019, 1:20 P.M.
Conference Room 229

HB460 HD1 RELATING TO THE COUNTIES.

Senator Clarence K. Nishihara, Chair
Senator Glenn Wakai, Vice Chair
Honorable Members of the Senate Committee on Public Safety, Intergovernmental, and Military Affairs

Thank you for this opportunity to offer **comments** on HB460 HD1.

This measure prohibits a county from accepting a discounted payment of a fine levied by the county planning and permitting department or agency. It also requires the State Auditor to conduct an annual audit of the fines levied and collected by the counties.

The Maui County Planning department's goal is compliance with our zoning codes. Usually, high fines are needed to achieve this goal. Often there are extenuating circumstances that call for reductions or reconsideration, and that option should not be taken away from the County's enforcement strategies. We would request the language in Section 1 of the bill be removed. The Maui County Planning department has no comment on the language in Section 2.

Thank you for this opportunity to offer my comments on HB460 HD1.

Sincerely,

Michele Chouteau McLean, AICP
Department of Planning
County of Maui