TESTIMONY BY:

EDWIN H. SNIFFEN DIRECTOR

Deputy Directors DREANALEE K. KALILI TAMMY L. LEE ROBIN K. SHISHIDO JAMES KUNANE TOKIOKA



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

March 22, 2023 1:00 PM State Capitol, Room 224

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

Senate Committees on Water and Land & Agriculture and Environment

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.

As a compromise, DOT is open to amending this measure to establish a reasonable cap on the stormwater fees to be assessed to a State department that is responsible for the maintenance and operation of a stormwater management system that connects to our county system.

Thank you for the opportunity to provide testimony.

DEPARTMENT OF FACILITY MAINTENANCE

CITY AND COUNTY OF HONOLULU

1000 Ulu`ohia Street, Suite 215, Kapolei, Hawaii 96707 Phone: (808) 768-3343 • Fax: (808) 768-3381 Website: www.honolulu.gov



RICK BLANGIARDI MAYOR



March 21, 2023

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

> WARREN K. MAMIZUKA DEPUTY DIRECTOR

IN REPLY REFER TO: SWQ-23-050

TESTIMONY OF DAWN B. SZEWCZYK, P.E. DIRECTOR AND CHIEF ENGINEER OF FACILITY MAINTENANCE CITY AND COUNTY OF HONOLULU

BEFORE THE SENATE COMMITTEE ON AGRICULTURE AND ENVIRONMENT and SENATE COMMITTEE ON WATER AND LAND March 22, 2023, 1:00 PM, Via Conference Room 224 and Videoconference

- TO: Senator Mike Gabbard, Chair, Senator Herbert M. "Tim" Richards, III, Vice Chair and Members of the Committee on Agriculture and Environment Senator Lorraine R. Inouye, Chair, Senator Brandon J.C. Elefante, Vice Chair and Members of the Committee on Water and Land
- RE: TESTIMONY IN <u>OPPOSITION</u> TO H.B. 1101, HD 1 RELATING TO STORMWATER FEES

The Department of Facility Maintenance (DFM) **OPPOSES** H.B. No. 1101, Relating to Stormwater Fees.

In 2015, the Hawaii Legislature took the proactive and foresighted step of authorizing the counties to establish fee-based funding of stormwater services, or "stormwater utilities." Over the past three (3) years, the Department has undertaken a comprehensive program to develop a stormwater 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. 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 stormwater fee: Today, the full cost burden is on taxable properties, with the greatest impact on residential property owners. Under a stormwater utility, everyone would pay a fair share based on stormwater 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 stormwater fees. Courts across the United States have upheld the appropriateness and legality of state, local and federal Senator Mike Gabbard, Chair and Senator Herbert M. "Tim" Richards, III Chair and Members of the Committee on Agriculture and Environment
Senator Lorraine R. Inouye, Chair and Senator Brandon J.C. Elefante, Vice Chair and Members of the Committee on Water & Land
March 21, 2023
Page 2

governments paying duly adopted and equitable stormwater 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.

DFM has determined that it currently spends approximately \$92 million per year on stormwater services but is expecting that cost will need to increase upwards to around \$122 Million in order to run a right-sized program. However, there are multiple opportunities for each state agency to reduce its fees and to cooperate with DFM in finding mutually beneficial means of providing these services. Under the proposed structure of the stormwater utility, all State agencies would have the opportunity to reduce their fees through credits by up to 60%, by implementing beneficial water capture, green infrastructure and stormwater management practices on site, which most State agencies are doing.

In addition, the current draft fee proposals exempt all public roadways, and it is possible that other surfaces, such as State airport runways and harbor docks, can be considered fundamentally part of the public transportation systems and also be exempt from fees. The City recently met with the State of Hawaii, Department of Transportation (HDOT) to present those partnership opportunities. During that discussion, it was presented that the HDOT Harbors and Airport Division could realize an overall reduction in fees by 58% (~\$1.37 Million/year) and 85% (~\$5.96 Million/year), respectively. H.B. 1101 would foreclose exploration of appropriate and fair fees and mutually beneficial options, including delayed/phased implementation based upon economic recovery.

In its 2015 action authorizing counties to adopt stormwater fees, the Legislature recognized the need to fund the protection of our waters sufficiently and equitably. H.B. No. 1101 moves the State away from embracing that shared responsibility. We urge the committee to reject H.B. No. 1101 at this time to allow for further discussion and collaboration. Thank you for this opportunity to testify on this measure.

Sincerely,

Dawn B. Szewczyk, P.E. Director and Chief Engineer Department of Facility Maintenance DEPARTMENT OF FACILITY MAINTENANCE

CITY AND COUNTY OF HONOLULU

1000 Ulu`ohia Street, Suite 215, Kapolei, Hawaii 96707 Phone: (808) 768-3343 • Fax: (808) 768-3381 Website: www.honolulu.gov



DAWN B. SZEWCZYK, P.E.

DIRECTOR AND CHIEF ENGINEER WARREN K. MAMIZUKA DEPUTY DIRECTOR

> IN REPLY REFER TO: SWQ-23-050

RICK BLANGIARDI MAYOR



March 22, 2023

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Sincerely,

Digitally signed by Mamizuka, Warren K Date: 2023.03.22 08:30:28 -10'00'

~for~ Dawn B. Szewczyk, P.E. **Director and Chief Engineer Department of Facility Maintenance**

Attachment

Welcome

Honolulu Storm Water Fee Proposal Implications for State of Hawai'i Agencies and Properties



S OF H DOT AIRPORTS DIV 5.31% **STATE OF HAWAII** 3.95% HAWAIIAN HOME LANDS 2.03% **S OF H DOT HARBORS DIV** 1.37% **UNIVERSITY OF HAWAII** 0.48% **S OF H DLNR** 0.41% HAWAII HOUSING FINANCE AND DEV. CORP. 0.37% HAWAII PUBLIC HOUSING AUTHORITY 0.31% HAWAII COMM DEV AUTHORITY 0.26% **DEPARTMENT OF EDUCATION** 0.20% S OF H DLNR LAND DIV 0.18% **OFFICE OF HAWAIIAN AFFAIRS** 0.09% S OF H DLNR STATE PARKS DIV 0.03% STATE OF HAWAII/DEPT OF AGRICULTURE 0.03% CONVENTION CTR AUTHORITY 0.02% S OF H DOT HIGHWAYS DIV 0.02% S OF H DLNR BOATING & OCEAN REC. DIV 0.02% STATE OF HAWAII/DEPARTMENT OF AGRICULTUR 0.01%

Pct. Total IA

State of Hawaii Properties as Share of total impervious area on Oahu

O'AHU STORM WATER UTILITY STUDY

Proposal: Reduce area of DOT Harbors/Airport/Highways

(Assumes reduced billable impervious area excluding harbor roads, docks, shipment container storage areas, airport taxiways and roadways, used to convey people & goods, similar to proposed exemption for public Rights-of-Way)

					W/	/ Exemptior	n, B	ase Rate inc	rea	sed to \$6.58								
					\$	6.58				0.6								
						Fee per Month (@ \$6.58/1,000 sf)												
	Total Impervious Area (sf)	Exempted Impervious Area (sf)	% Exempted	Net Area billed (sf)	Fe	Monthly es before xemption		onthly Fees after Exemption		Nonthly Fee th Exemption 60% credit			Annual Fees Before Exemption	Annual Fees After Exemption	Ex	nnual Fees After emption + 0% Credit	Re	eduction in fees
HDOT-Airports	80,371,332	68,100,624	84.7%	12,270,708	\$	528,843	\$	80,741	\$	32,297	per month	\$	6,346,120	\$ 968,895	\$	387,558	\$	5,958,562
HDOT-Harbors	20,779,834	12,078,629	58.1%	8,701,205	\$	136,731	\$	57,254	\$	22,902	per month	\$	1,640,776	\$ 687,047	\$	274,819	\$	1,365,957
HDOT-Highways	333,561		0.0%	333,561	\$	2,195	\$	2,195	\$	878	per month	\$	26,338	\$ 26,338	\$	10,535	\$	15,803
TOTAL					\$	667,770	\$	140,190	\$	56,076	per month	\$	8,013,234	\$ 1,682,280	\$	672,912	\$	7,340,322
			ANN	ANNUAL TOTALS		8,013,234	\$	1,682,280	s	672,912	ANNUAL TOTALS							

State of Hawaii – Department of Transportation Revised Cost Breakdown

LEGISLATIVE TAX BILL SERVICE

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: House Committee on Finance

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

Testimony of the Hawaii Harbor Users Group Support of HB1101, HD1 Before the Committee on Agriculture and Environment and Water and Land March 22, 2023

Dear Chair Gabbard, Chair Inouye, Vice Chair Richards, Vice Chair Elefante, and Members of the Committees:

The Hawaii Harbor Users Group (HHUG) is a non-profit maritime transportation industry group comprised of key commercial harbor users statewide. HHUG supports HB1101, HD1, which clarifies the authority of the counties to establish and charge user fees to create and maintain a stormwater system.

As an island state, Hawaii is very dependent upon our commercial harbors to ensure the continued and unimpeded flow of cargo in and out of our State. It is estimated that over 90 percent Hawaii's imported goods pass through our commercial harbors, including consumer goods, motor vehicles, construction materials, and fuel. Given the critical role of our commercial harbors, it is imperative that the State support dependable and efficient cargo transportation and handling to service our residents and businesses.

The Department of Transportation Harbors Division allows the City and County of Honolulu to discharge stormwater at various points of the Hawaii harbor system at no cost to the City. This 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 Municipal Separate Storm Sewer System and National Pollutant Discharge Elimination System permitees.

Thank you for considering our testimony in support.

Testimony of Matson Navigation Company, Inc. Support of HB1101, HD1 Before the Committees on Agriculture and Environment and Water and Land March 22, 2023

Dear Chair Gabbard, Chair Inouye, Vice Chair Richards, Vice Chair Elefante, and Members of the Committees:

Matson Navigation Company, Inc. (Matson) supports HB1101, HD2, which clarifies the authority of the counties to establish and charge user fees to create and maintain a stormwater system.

As an island state, Hawaii is very dependent upon our commercial harbors to ensure the continued and unimpeded flow of cargo in and out of our State. It is estimated that over 90 percent Hawaii's imported goods pass through our commercial harbors, including consumer goods, motor vehicles, construction materials, and fuel. Given the critical role of our commercial harbors, it is imperative that the State support dependable and efficient cargo transportation and handling to service our residents and businesses.

The Department of Transportation Harbors Division allows the City and County of Honolulu to discharge stormwater at various points of the Hawaii harbor system at no cost to the City. This 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 Municipal Separate Storm Sewer System and National Pollutant Discharge Elimination System permitees.

Thank you for considering our testimony in support.



To: The Honorable Mike Gabbard, Chair The Honorable Herbert "Tim" Richards, Vice Chair And Members of the Senate Committee on Agriculture and Environment

The Honorable Lorraine Inouye, Chair The Honorable Brandon Elefante, Vice Chair And Members of the Senate Committee on Water and Land

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

> Re: Testimony in Opposition to HB 1101, HD1, Relating to Stormwater Fees Date: Wednesday, March 22, 2023 Time: 1:00 P.M. Place: Via Conference Room 224

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.



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

Committee:	Senate Agriculture and Environment						
	Senate Water and Land						
Date:	Wednesday, March 22, 2023						
Time:	1:00 P.M.						
Place:	Via Conference Room 224						
RE:	HB 1101, HD1, Relating to Stormwater Fees						

Aloha Chair Gabbard, Chair Inouye, Vie Chair Richards, Vice Chair Elefante, and members of the committees:

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

HB-1101-HD-1

Submitted on: 3/17/2023 12:23:54 PM Testimony for WTL on 3/22/2023 1:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Barbara Barry	Individual	Oppose	Written Testimony Only

Comments:

Aloha,

Who bears the cost of the state using the County's waste water management system? The County?

It seems like the state would want to help support the County's waste water system if they were using it.

Mahalo,