

SB 1057

Proposed SD1 suggested by Sandie Wong

Report Title:

Detention and Retention Ponds

Description:

Establishes retention and detention pond task force.

THE SENATE
TWENTY-FIFTH LEGISLATURE, 2009
STATE OF HAWAII

S.B. NO. 1057

A BILL FOR AN ACT

RELATING TO DETENTION AND RETENTION PONDS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

SECTION 1. The legislature finds that unregulated and poorly maintained rainwater detention and retention ponds can potentially pose a health and safety risk, particularly to Hawaii's children. Since rainwater retention and detention ponds can sometimes be mistaken for recreational bodies of water, safety features may be prudent to protect children from drowning.

The purpose of this Act is to establish a task force to investigate and examine the dangers of retention ponds and to recommend appropriate safety measures.

SECTION 2. There is established in the department of health a temporary water safety task force to be composed of the following officials or their designee:

- (1) The director of health, as chair of the task force;
 - (2) The attorney general;
 - (3) The chairperson of the board of land and natural resources;
 - (4) The president of the Hawaii chapter of the American Public Works Association, who shall be requested to assist the task force;
 - (5) The mayor of the city and county of Honolulu;
 - (6) The mayor of the county of Maui;
 - (7) The mayor of the county of Kauai;
 - (8) The mayor of the county of Hawaii;
 - (9) The executive director of the Hawaii Association for Justice, who shall be requested to assist the task force;
 - (10) The commander of the United States Army Corps of Engineers Honolulu Engineering District, who shall be requested to assist the task force; and
 - (11) The director of the United States Department of Agriculture's Hawaii field office, who shall be requested to assist the task force.
- (b) The responsibilities of the task force shall be to:

- (1) Collect data and determine the advisability of limiting or defining liability to landowners from persons injured on their land, where the land is made available for the retention of flood waters and runoff;
- (2) Determine minimum safety requirements for the development and maintenance of retention ponds, including but not limited to proper borders, fencing, landscaping, sloping, and warning signs;
- (3) Determine the need for a periodic retention pond inspection program; and
- (4) Consider any other relevant matters pertaining to the safety of retention ponds.

(c) The task force shall submit its findings, including any proposed legislation, to the legislature no later than twenty days prior to the convening of the regular session of 2010.

(d) The task force shall cease to exist on June 30, 2010.

SECTION 3. This Act shall take effect on July 1, 2009.

INTRODUCED BY: _____

From: Allison Schaefer [allischaefer@yahoo.com]
Sent: Monday, February 16, 2009 11:04 AM
To: ENETestimony
Subject: Support for SB 1057

Senators, I come before you today to speak on behalf of my daughter Sharkey Schaefer, who drowned in 2004 while attempting to rescue a friend who had fallen into a poorly built and improperly maintained rainwater pond. In fact, next week, marks the anniversary of her untimely death.

Sharkey would have turned 10 last month if the developers and builders in our Pearl City neighborhood had not favored cost savings over the safety of a human life or consideration for the environment. Sadly, Sharkey's story is not an isolated one. Families all across the country mourn loved ones whose lives were tragically shortened in rainwater ponds.

Unregulated and poorly maintained rainwater detention and retention ponds pose a serious health and safety risk, particularly to Hawaii's children. Hawaii has one of the highest drowning rates in the nation and must take action immediately to improve safety for citizens as well as to improve the state's image as a safe as well as pleasurable visitor destination and place to live. In addition, when rainwater drainage systems are not properly maintained, they also pose environmental risks.

It's a straight forward problem. However, as I learned from last year's attempts at legislation and from meeting with stakeholders this year, the solution is more complex.

I think SB 1057 is a little ahead of its time so I am in agreement with industry stakeholders that we amend this bill to include a government and industry-based task force, without an appropriation. The bill should also include a safety provision requiring landowners to install warning signage on all new builds. In addition, the Department of Health should add retention/detention pond safety to any existing or future drowning prevention curriculum. ENETestimony@Capitol.hawaii.gov While I still believe fencing is an important safety provision, I am willing to leave that requirement as well as the requirement for maintenance plans to the recommendation of the task force.

Establishing a task force to collect data and examine advisability and effectiveness of a detention/retention pond safety program is necessary to ensure the safety of Hawaii's citizens, to protect the environment and to reduce the liability for the city and county of Hawaii, the state and its business owners. However, please take out the funding appropriation for this task force, as I believe that will delay its ability to move through the legislature. In this tight budget year, the task force can use teleconferencing and other creative methods that do not necessitate Neighbor Island trips to get the job done.

If at all possible, I also believe that some of the stakeholders in the building industry and a retention/detention pond victim's advocate should also be added to the task force. Hawaii has a critical need to legislate the construction and management of rainwater ponds; however, I understand that businesses need to have a say so in the legislative process if the laws that will govern them are to work. The unique views of victims and their families should also be represented in any dialogue.

Hawaii needs this task force and here are some of the reasons why:

My daughter's death could have been prevented and as a result my family was awarded a \$2 million settlement, a record in the state of Hawaii for the wrongful death of a child. Those responsible for the construction of the pond were well aware of the hazardous conditions that this particular rain catchment basin presented. Developers knew that the drain pipe that they put into the basin was 89 percent clogged, but choose not to fix it because they said that "the cost to fix it outweighed the liabilities."

Developers also chose to reduce costs by eliminating fencing and proper boundaries from their design and warning signage even though they knew that this pond would be located in a neighborhood where young children lived. While I am not anti-development and I believe that many developers when given the choice will do the right thing, it goes without saying that some will not. The state cannot allow developers to balance their books by taking safety out of the equation, because when they do someone, like my daughter, is going to pay the ultimate price. Establishing a task force and requiring signage would create a basic level of accountability.

Rainwater ponds are designed for water drainage management, not recreation. While in many cases, these ponds can be aesthetically pleasing to the eye, steps must be taken to ensure that people, especially young children, and animals are not attracted to these bodies of water. While in some cases they are necessary for flood control, they often pose environmental and safety hazards.

Drainage ponds are often filled with toxic chemical runoff from surrounding lawns and buildings. They must be monitored so that environmentally toxic sludge and sediment do not build up inside them. If they are not maintained, these ponds also may become breeding grounds for disease carrying mosquitoes and other pests. They may also have potentially adverse affects on water quality, groundwater, cold water, fisheries, or wetlands.

In addition, retention and detention ponds are often deceptive by design, which makes them inherently dangerous for both humans and animals. Retention ponds, often called wet ponds because they are designed to permanently hold water, can be deceptively deep. Many, like the one my daughter died in, have a steep drop at the water's edge. Detention ponds, which are meant to hold storm water for short periods of time before piping the water into surrounding

wetlands or natural water beds, may pose an even greater risk because people may not be aware that they even exist.

While I believe that human costs provide the most compelling support for the need to begin the process of legislating Hawaii's rainwater drainage systems, there are also solid environmental reasons to appoint a task force to study this issue. Above ground rainwater drainage systems are not considered the most proactive drainage solution for our environment. Poorly maintained systems are virtual cess pools where disease and pests can spread. The most progressive green developers across the country now prefer to use porous asphalt or underground rainwater systems which are better for the environment and pose less of a safety risk for citizens.

Now that I have shared my family's tragedy and outlined my concern for Hawaii's people and environment, you must decide what you will do with this information. Just like my daughter, who stood on the banks of a flooded pond and watched her friend struggling, you have a life or death decision to make. Let me remind you that even though the risks were great, my daughter Sharkey didn't hesitate to do the right thing.

I'm deeply saddened that it took the death of my child, to shed light on this dangerous situation. Please take this opportunity to establish a task force that shows that Hawaii cares about our children and our environment.

My daughter was the most amazing person. She was funny, brave and very, very sweet. She had the biggest heart in the world and she always did what she felt was the right thing to do. She made the ultimate sacrifice for a friend. Passing SB 1057 begins the process of reducing the risk that any other child in the state of Hawaii would ever have to do that again.

Sincerely,

Allison Schaefer, Sharkey's Mom
Pearl City, Hawaii

(808)456-0570
(808) 781-4029 cell

###



STATE OF HAWAII
DEPARTMENT OF HEALTH
P.O. Box 3378
HONOLULU, HAWAII 96801-3378

In reply, please refer to:
File:

Committee on Energy and Environment
Committee on Water, Land, Agriculture, and Hawaiian Affairs

SB 1057, Relating to Detention and Retention Ponds

Testimony of Chiyome Leinaala Fukino, M.D.
Director of Health

February 17, 2009, 2:45pm

1 **Department's Position:** The Department shares the public's concern to minimize the number of
2 drownings but cannot support SB1057 since it needs to prioritize its water safety prevention resources,
3 and focus on ocean and pool-related drownings that pose the greatest risk to Hawaii's population.
4 However, many of our current prevention efforts include the population addressed in this measure, as
5 well.

6 **Fiscal Implications:** There is funding for a taskforce on detention and retention pond safety.

7 **Purpose and Justification:** This bill requests that the Department of Health create a program for
8 monitoring and enforcing the safety of Hawaii's rainwater detention and retention ponds to prevent
9 drowning, and appropriates funds for a detention and retention pond taskforce.

10 Drowning is the fifth leading cause of injury-related deaths in Hawaii with 333 drownings
11 occurring in Hawaii's ocean (n=271), swimming pools (n=27), rivers and streams (n=17), bathtubs
12 (n=13), and other environments (n=3) in the five-year period between 2003 and 2007. Two of the total
13 drownings during this period (in 2003 and 2004) occurred in detention, retention, or catchment ponds.
14 All drownings that could have been prevented are tragic, especially when they involve young children.

1 However, individuals, including children, are at much greater risk of drowning in the ocean (n=81% of
2 all drownings) and swimming pools (8 % of all drownings), and are therefore the focus of our
3 prevention efforts and available resources. Although the Department, as stated, needs to focus the
4 resources available for the prevention of ocean and pool drowning, the Department will work to help
5 ensure that drowning prevention includes the population addressed in this measure. Although this bill is
6 well intended, we respectfully recommend that it be held.

7 Thank you for the opportunity to testify.

LINDA LINGLE
GOVERNOR OF HAWAII



**STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES**

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

LAURA H. THIELEN
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

RUSSELL Y. TSUJI
FIRST DEPUTY

KEN C. KAWAHARA
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
LAURA H. THIELEN
Chairperson**

**Before the Senate Committees on
ENERGY AND ENVIRONMENT
and
WATER, LAND, AGRICULTURE, AND HAWAIIAN AFFAIRS**

**Tuesday, February 17, 2009
2:45 PM
State Capitol, Conference Room 225**

**In consideration of
SENATE BILL 1057
RELATING TO DETENTION AND RETENTION PONDS**

Senate Bill 1057 regulates detention and retention ponds, and establishes a retention and detention pond task force. The Department of Land and Natural Resources (Department) comments are limited to SECTION 5 of the measure, and defers to the appropriate agencies on all other sections of the bill. The Department acknowledges the intent of this measure, however, the Department is concerned about whether it is the appropriate agency to convene the task force. And given the budgetary cuts the Department has had to absorb this fiscal year and further cuts proposed in the Executive Biennium Budget request, the Department is equally concerned that this measure will severely impact departmental priorities. As such, the Department does not support SECTION 5 of this bill.

DEPARTMENT OF PLANNING AND PERMITTING
CITY AND COUNTY OF HONOLULU

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MUFI HANNEMANN
MAYOR



DAVID K. TANQUE
ACTING DIRECTOR
ROBERT M. SUMITOMO
DEPUTY DIRECTOR

February 17, 2009

The Honorable Mike Gabbard, Chair
and Members of the Committee on Energy
and Environment

The Honorable Clayton Hee, Chair
and Members of the Committee on Water, Land,
Agriculture and Hawaiian Affairs
State Senate
State Capitol
Honolulu, Hawaii 96813

Dear Chairs Gabbard, Hee and Members:

**Subject: Senate Bill No. 1057
Related to Detention and Retention Ponds**

Although we greatly sympathize with the family who lost their child by accidental drowning in a detention pond in a Pearl City naval housing complex, the Department of Planning and Permitting opposes this bill due to the overly restrictive requirements imposed by the bill as a remedy for this tragic occurrence.

We believe that this bill generalizes the situation implying that drowning is a frequent occurrence in detention or retention ponds. This is simply not true as drowning in retention and detention ponds in Hawaii are rare.

Further, the bill, which will require a one hundred foot land buffers and setbacks, may be impracticable at times and will create an unnecessary hardship to developers which will result in an increase in cost to the future homeowners. As part of the design of any new retention/detention facility, safety is always a consideration of the developer's engineer. Protective fencing or equivalent measures are considered whenever necessary and practicable. Ultimately, without further legislation, the responsibility for design and operation of a retention/detention facility in terms of safety is with the owner of the facility.

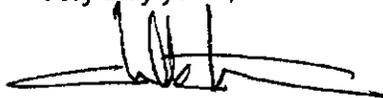
The Honorable Mike Gabbard, Chair
and Members of the Committee on Energy
and Environment

The Honorable Clayton Hee, Chair
and Members of the Committee on Water, Land,
Agriculture and Hawaiian Affairs
State Senate
Re: Senate Bill No. 1057
February 17, 2009
Page 2

In conclusion, we believe that Senate Bill No. 1057 is unnecessary and impracticable.
Thus, we respectfully recommend that it be filed.

Thank you for the opportunity to testify.

Very truly yours,

A handwritten signature in black ink, appearing to read 'David K. Tanoue', with a horizontal line underneath.

David K. Tanoue, Acting Director
Department of Planning and Permitting

DKT: jmf
sb1057-mft.doc

The Twenty-Fourth Legislature
Regular Session of 2008

THE SENATE

Committee on Energy and Environment
Senator Mike Gabbard, Chair
Senator J. Kalani English, Vice Chair

Committee on Water, Land, Agriculture, and Hawaiian Affairs
Senator Clayton Hee, Chair
Senator Jill N. Tokuda, Vice Chair

State Capitol, Conference Room 225
Tuesday, February 17, 2009; 2:45 p.m.

**STATEMENT OF THE ILWU LOCAL 142 ON S.B. 1057
RELATING TO DETENTION AND RETENTION PONDS**

The ILWU Local 142 supports S.B. 1057, which regulates detention and retention ponds and establishes a retention and detention pond task force.

Five years ago, a beautiful young girl named Charlotte Paige Schaefer, known to friends and family as Sharkey, drowned in a retention pond in a Navy housing project next to Pearl Harbor. She was just five years old and died while trying to save a friend who had fallen into an unfenced retention pond just steps away from her home. She is a hero.

Sharkey's death was clearly preventable. If the pond had been fenced, Sharkey's friend would not have been able to get near the pond, would not have fallen in, and would not have needed Sharkey to save her.

Too often, in the name of expedience or cost-effectiveness, steps are taken that have unintended consequences. In this case, the retention pond was intended to provide an inexpensive drainage system--but the unintended consequence was the tragic loss of Sharkey's life.

While developers and possibly even the Department of Health would say that this bill, while serving a good purpose, would itself have the unintended consequence of costs that the Department can ill afford, especially in these tough economic times. However, the life of a child is worth much more than the inconvenience and added expense that will be involved to ensure that the health and safety of people, especially children, are protected.

Unfortunately, nothing will bring Sharkey back, but if even one life is saved because of this proposed law, Sharkey will forever be a hero in the hearts and minds of us all.

The ILWU urges passage of S.B. 1057. Thank you for the opportunity to share our views on this matter.

From: Fukuda, Lester [les.fukuda@hdrinc.com]
Sent: Sunday, February 15, 2009 7:50 PM
To: ENETestimony
Subject: SB 1057 Relating to Retention Ponds; Tuesday Feb 17; 2:45pm; CR225

AMERICAN PUBLIC WORKS ASSOCIATION - HAWAII CHAPTER

Hearing Date: Tuesday, February 17, 2:45 P.m., Conference Room 225

Honorable Senator Mike Gabbard, Chair, J. Kalani English, Vice Chair, and Members of the Senate Committee on Energy & Environment

Honorable Senator Clayton Hee, Chair, Jill K. Tokuda, Vice Chair, and Members of the Senate Committee on Water, Land, Agriculture & Hawaiian Affairs

Subject: SB 1057, Relating to Retention Ponds

The American Public Works Association Hawaii Chapter represents over one hundred engineering design professionals in public and private sector. **We support the Concept of this Bill, however legislation of Codes and Standards is not appropriate. We feel that a Task Force is appropriate. The make up of the task force needs to be revised to include Public Works professionals.**

We (Public Works Professionals) are willing to assist in a task force to assess the risks, investigate appropriate design measures, and to look at the current practices relating to retention pond rules or standards. We do not feel that the Legislature should be looking into design codes and standards, However, we can support a task force or informal study group to look into the retention pond issue.

The make up of the task force needs to include the appropriate State, County, Navy, Corps of Engineers, and A/E design professionals that deal with the issue of floods and retention ponds.

We are also concerned about the liability issues and the cost of unfunded mandates and development of codes that will surely impact costs and shift risks to Developers, State and County Agencies, Federal Agencies and Design Professionals.

Thank you for an opportunity to express our views regarding this bill.

Sincerely,
American Public Works Association, Hawaii Chapter
Lester Fukuda, Legislative Affairs

Les Fukuda, Vice President

**HDR | HP Hawaii Pacific
Engineers, Inc.**

1132 Bishop Street, Suite 1003 | Honolulu, HI 96813

Main: (808) 524-3771 | Fax: (808) 538-0445

Email: Les.Fukuda@hdrinc.com | www.hdrinc.com

From: drgeorge@bellatlantic.net
Sent: Monday, February 16, 2009 10:45 AM
To: ENETestimony
Subject: SB1057

Importance: High

Hawaii Senate's Energy and Environmental Committee:
Water, Land, Agriculture, and Hawaiian Affairs Committee:

Re: SB1057 Hearing,
February 17, 2009 2:45 PM Room 225 State Capitol

I am writing to offer testimony in support of Hawaii's SB1057. I am a Licensed Professional Engineer in the Commonwealth of Pennsylvania (PE016968E) specializing in the safety of the design, construction and operation of nuclear facilities. I recently learned of the tragedy to the Schaefers family on the loss of their daughter, Charlotte, in an unprotected and uninspected retention/detention pond near their family home.

Retention/detention pond safety is well documented in water facility engineering literature. Failure to adhere to best engineering practice in the design of this retention pond permitted the construction and operation of this unprotected facility adjacent to a residential housing area.

If the Engineer/constructors in the State of Hawaii have not adhered to these best practices, then it is incumbent on the State to issue guidance and provide periodic inspection and enforcement to prevent tragedies comparable to the drowning of Charlotte Schaefers.

Sincerely,

G.A. Englesson, P. E., Ph.D
Avenue

2186 Packard
Huntingdon Valley, PA 19006

From: concepgraf@aol.com
Sent: Monday, February 16, 2009 10:39 AM
To: ENETestimony
Subject: Support SB 1057

Dear Senators:

On June the 15th, 1995, my eight-year-old son Michael Shedd, accidentally fell into a retention pond. He died July 22nd, 1995. He was a great little boy that is sadly missed.

My family is now fighting for safer building of these dangerous retention ponds that are in many neighborhoods. These retention ponds need to be built with safer slopes, locations that are not next to playgrounds or common "kid zones", and should have lifeline rescue boxes near by. Most of these ponds have junk in the bottom of them and have dangerous bacteria in them.

With a lot of developers selling these ponds as a water feature, many neighborhoods don't realize they have this huge danger out their back door."

In 2005, after a decade of safety petitioning, the Tippecanoe County Drainage Board adopted safety measures for retention and detention ponds in housing developments. One of the key safety requirements called for placing signs around the ponds to warn people of danger. Rescue boxes are also required. The boxes contain rope that can be used to pull someone that is drowning to safety.

Other provisions mandate that the sides of the ponds slope more gradually and that the ponds be built more than 100 feet away from playgrounds. The new sloping requirements ensure that children realize the ponds are getting deeper and don't have a false sense of security from flat ledges.

The nearby fire departments and other rescuers also have adopted retention/detention pond water safety as a topic they teach to schoolchildren. Curriculum has already been developed by WARN, (Water Awareness in Residential Neighborhoods).

Sergeant Jerry Richert, dive team coordinator of the Franklin Township fire department, founded WARN in 2000 after the drowning of a young child in a retention pond made him aware of the need for a community awareness program that addressed the potential dangers of these ponds and other bodies of water.

These safety efforts and provisions have gone a long way in our community to prevent other needless deaths. For this reason, I support SB 1057. A task force is warranted in Hawaii to look at this issue. In the meantime, signage at a minimum, would go a long way toward stopping further tragedies.

Sincerely,
Kathy Shedd

I offer the following testimony in support of SB 1057:

I urge you to support SB 1057, which relates to retention, detention, and catchment pond safety. Written in memory of a five-year-old girl who drowned in a Pearl City naval housing complex detention pond while trying to save the life of her childhood friend, the resolution seeks to improve the health, safety, and welfare of the citizens of this state.

Hawaii has the highest drowning rate in the nation and must take action immediately to improve safety for citizens as well as to improve the state's image as a safe as well as pleasurable visitor destination and place to live. Unregulated and poorly maintained rainwater detention and retention ponds pose a serious health and safety risk, particularly to Hawaii's children.

Passing legislation that establishes a task force to collect data and examine advisability and effectiveness of a detention pond safety program is necessary for the health and safety of Hawaii's citizens. I also believe that public education and appropriate warning signage are measures that are warranted now.

The death of Sharkey Schaefer, my Goddaughter, could have been prevented. Those responsible for the construction of the pond were well aware of the hazardous conditions that this particular rain catchment basin presented. If regulations had existed to ensure responsible parties had built and maintained a safe system, the Schaefer's family would not have lost their precious child.

Hawaii has many proactive laws that protect the environment, now it seems we need to advocate for laws that afford our citizens the same rights and privileges. I would appreciate your support for SB 1057 and I look forward to hearing a response from your office.

Sincerely,

Darcey Rogers

104 Ridgefield Drive

LaGrange, GA 30241

706-884-0933



From: Tony Lazorko [lazor@mac.com]
Sent: Friday, February 13, 2009 5:11 PM
To: ENETestimony
Subject: RE: I offer the following testimony in support of SB 1057:
Attachments: SB 1057 sample testiomy letter.doc; ATT00001.htm; art2a.jpg; ATT00002.htm

I urge you to support SB 1057, which relates to retention, detention and catchment pond safety. Written in memory of a five-year-old girl who drowned in a Pearl City naval housing complex detention pond while trying to save the life of her childhood friend, the resolution seeks to improve the health, safety and welfare of the citizens of this state.

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Hawaii has many proactive laws that protect the environment, now it seems we need to advocate for laws that afford our citizens the same rights and privileges. I would appreciate your support for SB 1057 and I look forward to hearing a response from your office.

Sincerely,

Tony Lazorko

PO Box 1056

Mesilla, NM 88046

The following individuals have submitted form-letter e-mail, like the previous testimony, in support of SB 1057:

Joleen Oshiro

Bee Tan

Teddi A. Anderson

Lauwa'e Cazimero

Donna Hartley

Becki Cowatch

Captain S.L. Pirtle

Christine and Allen Seta



AIA Hawaii State Council

A Council of The American Institute of Architects

ENE/WTL
2.17.09
2:45 pm

February 17, 2009

Honorable Mike Gabbard, Chair
Senate Committee on Energy & Environment
Honorable Clayton Hee, Chair
Senate Committee on Water, Land, Agriculture & Hawaiian Affairs

Re: **Senate Bill 1057**
Relating to Detention and Retention Ponds

Dear Chair Gabbard, Chair Hee, and Members of the Committees,

My name is Daniel Chun, Government Affairs Chair of The American Institute of Architects (AIA). AIA is providing **COMMENTS** on SB 1057 that establishes requirements for rainwater and storm water retention, detention, and catchment area pond inspection and safety.

Last session AIA had concerns surrounding Senate Bill 2884 that had essentially the same purpose and much of the same text of this bill. Senate Bill 1057 has many of the same negative features and adds more, such as requiring that parking lots retain rainwater up to seven inches deep. SB 1057 contains other features that are of great concern to architects. Among these are:

- The requirements are detrimental to the potential enjoyment of the environment and the physical beauty of Hawaii.
- Regulation, if it is to occur, needs to occur at county-level civil engineering branches that issue permits. Our members tell us that state agency-based approvals are far too slow and can contradict requirements of county-based agencies.
- The list of exempt projects is too short and should be revised into a list of project types that might need to conform – such as multi-family residential.
- The inclusion of numerical setbacks is overly rigid and can be wasteful of developable real estate.
- The legislative mandate for sustainable design features will need “relaxing” if this bill passes as currently drafted.
- The high construction costs caused by this bill.

We are supportive of a task force in Section 5. We wonder why the bill text contravenes the spirit of convening this task force? This task force should include representatives from the engineering, architectural, landscape architectural, planning and development industries. AIA will then consider whether to support or oppose Senate Bill 1057. Thank you for this opportunity to present **COMMENTS**.



AMERICAN COUNCIL OF ENGINEERING COMPANIES
of Hawaii

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February 16, 2009

EMAILED TESTIMONY TO: ENETestimony@Capitol.hawaii.gov

**Hearing Date: Tuesday, February 17, 2:45 p.m., Conference Room 225
(ENE/WTL Committees)**

Honorable Senators Mike Gabbard, Chair, J. Kalani English, Vice Chair, and
Members of the Senate Committee on Energy and Environment

Honorable Senators Clayton Hee, Chair, Jill N. Tokuda, Vice Chair, and Members of
the Senate Committee on Water, Land, Agriculture, and Hawaiian Affairs

Subject: SB 1057, Relating to Detention and Retention Ponds

Dear Chairs Gabbard and Hee, and Senate Committee Members,

The American Council of Engineering Companies of Hawaii (ACECH), representing
70 consulting engineering firms, **opposes SB 1057, Relating to Detention and
Retention ponds, in its current form.**

The bill seeks to set design standards for retention pond safety features through
legislation. ACECH believes that such measures should, if determined to be
necessary, be part of County Design Standards. County Design Standards currently
set other design standards for storm water drainage systems and we believe that is the
appropriate forum for these types of measures. We have reviewed the situation in
Indiana, which we understand served as the model for the measures contained in SB
1057, and find that those measures were put in place at the county level, following a
10-month study by a County Drainage Board.

In the latter part of 2008, we assisted in facilitating a meeting of various agencies to
discuss detention pond safety issues. We feel that a good discussion occurred and
believe that more discussion is needed to evaluate appropriate measures and settings.
The local design professional community is willing to continue to participate in that
effort, either in an informal working group or in a Task Force as proposed by HB 384
HD1.

Thank you for an opportunity to express our views regarding this bill. Please contact
us if you have any questions regarding our testimony.

Sincerely,
American Council of Engineering Companies of Hawaii

Janice C. Marsters
National Director



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Via Capitol Website

February 17, 2009

**Senate Committee on Energy and Environment and
Committee on Water, Land, Agriculture and Hawaiian Affairs
Hearing Date: February 17, 2009, at 2:45 PM in CR 225**

**Testimony in Opposition to SB 1057 Relating to Detention and Retention
Ponds and in Support of establishing a task force.
(Regulates retention and detention ponds and creates a task force.)**

Honorable Chairs Mike Gabbard and Clayton Hee, Vice-Chairs J. Kalani English and
Jill Tokuda and EEP and WTL Committee Members:

My name is Dave Arakawa, and I am the Executive Director of the Land Use Research Foundation of Hawaii (LURF), a private, non-profit research and trade association whose members include major Hawaii landowners, developers and a utility company. 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 Hawai'i's significant natural and cultural resources and public health and safety.

LURF respectfully **opposes the adoption of Sections 2,3 and 4 of SB 1057**, which amend HRS, Chapter 46 and prohibits any retention pond, detention pond, and catchment area pond from being built unless the developer or person proposing the construction meets various requirements. However, LURF is **in support of Section 5, which calls for the establishment of a task force** to study the issues relating to detention and retention ponds in the State, and whether legislation is necessary. We believe that the proposed mandates in Sections 2, 3 and 4 of SB 1057, should be reviewed by the experts in the proposed task force, and thus, we respectfully request **that SB 1057 be held** in both Senate Committees on Energy and Environment and Water, Land, Agriculture and Hawaiian Affairs.

SB 1057. The purpose of this bill is to ensure the health, safety, and welfare of the citizens of the State by creating a program for monitoring and enforcing the safety of Hawaii's rainwater retention and detention ponds to prevent drowning.

This bill proposes to add another section to Chapter 46, which adds the following:

"§46- Retention pond, detention pond, and catchment area pond; requirements; maintenance plan. Beginning January 1, 2010, no retention pond, detention pond, or catchment area pond, as those terms are defined in section 321-B, shall be permitted to be constructed within a county unless the developer or responsible person proposing its construction and maintenance:

(1) Certifies that a retention pond, detention pond, or catchment area pond is necessary for rainwater or storm water mitigation and that there is no other alternative;

(2) Includes a one hundred foot wide buffer in the design surrounding the pond to separate it from schools, child care facilities, homes, parks, athletic fields, or housing projects; provided that trails and sidewalks shall be separated from all storm water detention facilities by not less than twenty five feet, measured from the one hundred year pool of the pond; and

(3) Creates and adopts a maintenance plan pursuant to section 321-E."

Additionally, the bill proposes to amend HRS Chapter 302 A by adding the following:

"§302A- Water safety education; retention pond, detention pond, and catchment area pond. The department shall incorporate retention pond, detention pond, and catchment area pond safety into the department's water safety curriculum."

The bill also adds another section to **HRS, Chapter 321 entitled Rainwater Detention and Retention Pond Safety**, which includes specific technical requirements, inspections and fines.

LURF's Position. LURF and its members support the protection of the health and welfare of our island *keiki* with respect to retention and detention ponds, however, we are concerned whether the mandatory provisions in Sections 2,3 and 4 of the bill are consistent with generally accepted architectural and engineering design and principles relating to floods and retention and detention ponds.

Thus, LURF respectfully recommends that **the proposed technical requirements, government reviews, inspections and fines which are mandated in Sections 2,3 and 4 of SB 1057 should be reviewed by a task force** as proposed in Section 5 of the bill. In addition to the technical requirements, government reviews, inspections and fines proposed in SB 1057, we believe that additional issues could include, among other things, the following:

- We understand that the accident which gave rise to this bill occurred on Federal property in a military housing area. **What are the technical requirements, reviews, inspections and fines applicable for such federal lands, and how are such requirements being enforced?**

- We understand that many families in the Federal housing area were not aware of the existence of the retention pond. **What measures could be implemented to provide information and communicate the existence of such ponds and provide sufficient warnings to the public?**
- We have also been informed that the Federal authorities and consultants knew of the drainage problems in the area which contributed to the accident, and did not take action. **What laws exist or could be implemented to hold such responsible individuals accountable to take corrective action?**
- There are existing State and county laws which relate to drainage and safety. **Do the existing state and county laws provide an adequate or inadequate level of protection under normal circumstances?**
- The Hawaiian Islands are surrounded by the ocean, which clearly presents various risks of drowning. **How do the State and County rules, regulations and government reviews protect against similar risks related to the ocean?** and
- Drowning in retention or detention ponds could involve the responsibility and liability of various parties. **Are there any other measures which could protect children from the risk of drowning under similar circumstances?**

LURF and its members would support the task force proposed in Section 5 ,which would study the issue of retention and detention ponds in the State and suggest appropriate legislation to the legislature, if warranted. LURF would respectfully request to be a part of such a task force, and we have the following comments regarding the proposed task force:

- We are willing to assist the task force to assess the risks, investigate appropriate design measures, and to look at the current practices relating to retention and detention pond rules or standards;
- Task force members should also include State, Counties, Navy, Corps of Engineers, stakeholders in the building industry, land owners, and the architecture and engineering design professionals that deal with the issue of floods and retention and detention ponds; and
- Legal experts to work with the other stakeholders to address liability issues and the cost of unfunded mandates, and impact costs and risks to Developers, State and County Agencies, Federal Agencies and Design Professionals.

We believe that the proposed mandates in Sections 2, 3 and 4 of SB 1057, should be reviewed by the experts in the proposed task force, and thus, we respectfully request **that SB 1057 be held** in both Senate Committees on Energy and Environment and Water, Land, Agriculture and Hawaiian Affairs.

Thank you for this opportunity to express our views.



ENGINEERING SOLUTIONS, INC.
Our Name, Our Mission for a Sustainable Environment

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February 16, 2009

Hearing Date: Tuesday, February 17th, 2:45 pm, Room 225
ENE/WTL Committees

Honorable Senators Mike Gabbard, Chair, J. Kalani English, Vice Chair, and Members of the Senate Committee on Energy and Environment

Honorable Senators Clayton Hee, Chari, Jill N. Tokuda, Vice Chair, and Members of the Senate Committee on Water, Land, Agriculture, and Hawaiian Affairs

RE: SB 1057 "Relating to Detention and Retention Ponds"

We oppose SB 1057 as currently written. Regulations regarding storm water detention should be part of the County Design and Administrative Standards. We support the continuing development of standards as proposed by HB 384.

Thank you for the opportunity to express our views.

ENGINEERING SOLUTIONS, INC.

Vice President

From: II.X.Chun@chase.com
Sent: Tuesday, February 17, 2009 2:23 AM
To: ENETestimony
Subject: "Please Support" -- SB 1057

Hearing Date: February 17, 2009

Time: 2:45 PM

Room: 225

Good morning -

I offer the following testimony in support of SB 1057:

I urge you to support SB 1057, which relates to retention, detention and catchments pond safety. Written in memory of a five-year-old girl who drowned in a Pearl City naval housing complex detention pond while trying to save the life of her childhood friend, the resolution seeks to improve the health, safety and welfare of the citizens of this state.

Hawaii has the highest drowning rate in the nation and must take action immediately to improve safety for citizens as well as to improve the state's image as a safe as well as pleasurable visitor destination and place to live. Unregulated and poorly maintained rainwater detention and retention ponds pose a serious health and safety risk, particularly to Hawaii's children.

Passing legislation that establishes a task force to collect data and examine advisability and effectiveness of a detention pond safety program is necessary for the health and safety of Hawaii's citizens. I also believe that public education and appropriate warning signage are measures that are warranted now.

The death of Sharkey Schaefer could have been prevented. Those responsible for the construction of the pond were well aware of the hazardous conditions that this particular rain catchments basin presented. If regulations had existed to ensure responsible parties had built and maintained a safe system, the Schaefer's family would not have lost their precious child.

Hawaii has many proactive laws that protect the environment, now it seems we need to advocate for laws that afford our citizens the same rights and privileges. I would appreciate your support for SB 1057 and I look forward to hearing a response from your office.

Sincerely,

II Chun
2311 S. Gilinger Rd.
Lafayette Hill, PA 19444

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