

STAND. COM. REP. NO.

3101

Honolulu, Hawaii

MAR 24 2006

RE: H.B. No. 3056
H.D. 2
S.D. 1

Honorable Robert Bunda
President of the Senate
Twenty-Third State Legislature
Regular Session of 2006
State of Hawaii

Sir:

Your Committees on Water, Land, and Agriculture and Intergovernmental Affairs, to which was referred H.B. No. 3056, H.D. 2, entitled:

"A BILL FOR AN ACT RELATING TO KAWAI NUI MARSH,"

beg leave to report as follows:

The purpose of this measure is to transfer jurisdiction of Kawai Nui Marsh from the City and County of Honolulu to the State.

Testimony in support of this measure was submitted by the Office of Hawaiian Affairs, the Hawaii Audubon Society, and Ho`olaulima Ia Kawai Nui. Testimony in opposition to this measure was submitted by the Windward Ahupua`a Alliance. Comments were also submitted by the `Ahahui Mālama I Ka Lōkahi and the Kawai Nui Heritage Foundation.

Both the Department of Land and Natural Resources and the City and County of Honolulu's Department of Design and Construction submitted testimony that suggested amendments to this measure. Specifically, your Committees noted that the Department of Land and Natural Resources testified that its expertise and experience lies in wildlife habitat and restoration and management of the natural and cultural resources in the marsh. Thus, the Department of Land and Natural Resources believes that the responsibility to maintain and operate the Kawai Nui Marsh flood control project, which includes the levee and the Oneawa Canal, should remain with the City and County of Honolulu.

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However, the City and County of Honolulu in its testimony represents that the legislation enacted sixteen years ago envisioned the entire marsh, including the flood control improvements, would be managed and preserved by the State. The City and County believes that it has made the necessary improvements to the flood control measures in the marsh, and the federal government, including both the U.S. Fish and Wildlife Service and the U.S. Army Corp. of Engineers, is prepared to work with the State. Thus, the City and County believes that further maintenance and operation of flood control measures is not the City and County's long-term responsibility; however, the City and County also states that it is willing to continue maintaining the Kawai Nui Marsh flood control project under an agreement with the State.

Your Committees find that Act 314, Session Laws of Hawaii 1990, directed the transfer of a parcel from the City and County of Honolulu to the State. That parcel encompassed the bulk of Kawai Nui Marsh. However, there are portions of the wetland ecosystem at the Kawai Nui Marsh that the City and County of Honolulu and the State own separately.

Your Committees find that this "shared" ownership approach, by both the State and the City and County of Honolulu, has led to disputes over their respective management responsibilities of Kawai Nui Marsh. Your Committees further find that these disputes have delayed restoration and rehabilitation of the marsh, jeopardizing its native wildlife population and overall well being. This measure:

- (1) Transfers all of the City and County of Honolulu's portion of Kawai Nui Marsh and the Oneawa canal widening project to the State;
- (2) Provides that the State and the City and County of Honolulu may enter into an agreement for maintenance or operations of Kawai Nui Marsh;
- (3) Clarifies that the State has an easement in perpetuity over the transferred parcels to allow the Department of Land and Natural Resources to manage the Kawai Nui Marsh;
- (4) Requires the land transfer to be completed by September 1, 2006; and



- (5) Makes an appropriation for the Department of Land and Natural Resources to maintain the Kawai Nui Marsh.

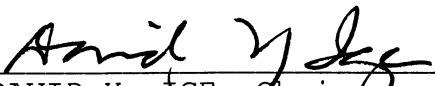
Your Committees note that under section 46-1.5, Hawaii Revised Statutes (HRS), the county has the general power to use appropriate measures to protect the general public against floods and flood water. Under section 46-11.5, HRS, counties are specifically tasked with the maintenance of, among other things, drainageways. However, section 46-11.5 has a caveat that precludes the counties from maintaining those drainageways that are privately owned or owned by the State.

Currently, the Department of Land and Natural Resources would like the City and County of Honolulu to be tasked with flood control and prevention, and the Kawai Nui Marsh is a drainageway that may be entirely owned by the State. Based on this, your Committees finds that a better understanding of these two sections is necessary to determine appropriate responsibilities over the marsh. Your Committees believe that the responsibilities that this measure distributes need to be clear and concise, as all interested parties will look to it for guidance in the future.

Your Committees have amended this measure by inserting the effective date of July 1, 2050 to ensure further discussion on the issues noted above.

As affirmed by the records of votes of the members of your Committees on Water, Land, and Agriculture and Intergovernmental Affairs that are attached to this report, your Committees are in accord with the intent and purpose of H.B. No. 3056, H.D. 2, as amended herein, and recommend that it pass Second Reading in the form attached hereto as H.B. No. 3056, H.D. 2, S.D. 1, and be referred to the Committee on Ways and Means.

Respectfully submitted on
behalf of the members of the
Committees on Water, Land, and
Agriculture and
Intergovernmental Affairs,



DAVID Y. IGE, Chair

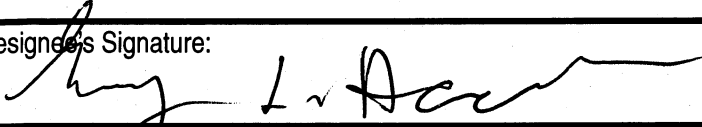


RUSSELL S. KOKUBUN, Chair



The Senate
Twenty-Third Legislature
State of Hawaii

Record of Votes of the
Committee on Water, Land and Agriculture
(Bills and Resolutions)

Measure:* HB 3056 HD2	Committee Referral: WLA/IGA, WAM	Date: 3/22/06		
<input type="checkbox"/> The committee is reconsidering its previous decision on this measure. If so, then the previous decision was to: _____				
The Recommendation is to: <input type="checkbox"/> Pass, unamended (2312) <input checked="" type="checkbox"/> Pass, with amendments (2311) <input type="checkbox"/> Hold (2310) <input type="checkbox"/> Recommit (2313)				
Members	Ayes	Ayes(WR)	Nays	Excused
KOKUBUN, Russell S. (C)	✓			
HOOSER, Gary L. (VC)	✓			
ENGLISH, J. Kalani	✓			
FUKUNAGA, Carol				✓
HEMMINGS, Fred	✓			
TOTAL	4			1
Recommendation: <input checked="" type="checkbox"/> Adopted <input type="checkbox"/> Not Adopted				
Chair's or Designee's Signature: 				
Distribution: <input checked="" type="checkbox"/> Original <input type="checkbox"/> Yellow <input type="checkbox"/> Pink <input type="checkbox"/> Goldenrod File with Committee Report Clerk's Office Drafting Agency Committee File Copy				

*Do not list more than one measure per Record of Votes.

