

House of Representatives
Twenty-Fourth Legislature
Regular Session of 2008

COMMITTEE ON AGRICULTURE
and
COMMITTEE ON WATER, LAND, OCEAN RESOURCES & HAWAIIAN AFFAIRS

Hearing
Wednesday, January 30, 2008
8:30 a.m.

Testimony by: Ralph C. Boyea, Legislative Advocate, Hawai'i County Council

Testimony relating to HB 2810 RELATING TO WATER RATES

Chairperson Tsuji
Chairperson Ito
Honored Representatives,

On behalf of the Hawai'i County Council, I would like to raise the following concerns regarding House Bill 2810. House Bill 2810's stated intent is to establish a process for just and reasonable water rates for farming operations with PUC oversight, but it excludes the water supplier from the definition of a "public utility."

Last session HB1121 RELATING TO WATER RATES FOR AGRICULTURAL USES was introduced. The House Committee on Agriculture and the Committee on Water, Land, Ocean Resources and Hawaiian Affairs both passed HB 1121, HD1 with 7 Ayes and 0 Noes. HB1121, HD1 was then referred to the House Committee on Commerce and Consumer Protection. It passed that Committee with amendments. The vote was 12 Ayes and 0 Noes.

HB1121, HD2 was passed over to the Senate where it was referred to Senate Committees Agriculture & Hawaiian Affairs and, Water and Land. The Senate passed Senate Concurrent Resolution #3, S.D. 1 – REQUESTING THE PUBLIC UTILITIES COMMISSION TO STUDY THE RATE STRUCTURES OF PRIVATE ENTITIES THAT FURNISH WATER USED FOR AGRICULTURAL PURPOSES.

The above referenced study was completed and a report was submitted to the Legislature in November 2007. The Summary and Recommendation of this report states:

“The rate structures of the county water boards and some privately-owned water

companies currently provide for relatively lower agricultural water rates, as compared with residential user rates. According to their responses, these entities have priced agricultural rates low by having other customer segments subsidize the costs to serve the agricultural customers, based on an effort to sustain the local agricultural industry. The counties are able to design their rates in this manner without significant burdens on these other customers by spreading costs over the large numbers of total customers they serve throughout their respective counties, while the private water companies are apparently having their parent companies provide the support.

Those privately-owned companies that have relatively higher rates based on cost have expressed concerns that a requirement to lower those rates to levels comparable to their local county water board may mean others – non-agricultural customers or the companies themselves – would have to make up for the loss in revenues.

If it is the Legislature's objective to encourage and foster growth in the agricultural industry by providing all agricultural water users with more favorable water rates, as compared with rates of other water customers, the Commission recommends that the Legislature establish a state policy expressly calling for such favorable treatment. The policy must include clear direction on (1) how and from whom the providers of water to agricultural users will recover the loss in revenues as a result of discounted agricultural rates (e.g. subsidies from other types of water customers, government or other funding); and (2) the criteria by which water providers will determine whether a customer qualifies for the discounted agricultural rates. Guided by such a clearly-defined state policy, the water service providers and the Commission, in its regulation of water utilities, would then be able to act and set rates accordingly." My emphasis.

The question becomes, is it the Legislature's objective to encourage and foster growth in the agricultural industry? If so, is providing favorable water rates to agricultural users a means to meet this objective?

Hawaii's agricultural industry provides home-grown products. Products that foster our self-sufficiency, sustainability and reduce the overall adverse effect on our environment by reducing our dependence on products shipped from distant locations. A significant portion of our agricultural industry has been surviving on reduced water rates by obtaining their "subsidized" water from the county water systems.

HB2810 appears to remove those agricultural industries from the current system that is working in their favor to a separate class of water users – "water rates for farming operations." HB2810 removes direct oversight by the public utility commission. The commission would step in if the farmers and suppliers were unable to negotiate a rate for the water. The commission would then step in to "establish a just and reasonable rate for the water supplier." Currently, the commission establishes "just and reasonable rates" for water for public utilities. The commission allows suppliers to recover cost and earn a 'small' amount of income beyond the cost of obtaining and providing the water. The overall cost of water for all users reflects that criteria. "Subsidized" agricultural users are given rates, by the suppliers, that are lower than those costs. If the commission uses the same criteria in implementing this Bill and water for farmers is considered

separate and apart from all users [public utilities], the water rates will most likely go up for the farmers.

We ask that you consider the possible adverse consequences of this Bill.

We ask that the Legislature consider the report of the Public Utilities Commission relating to water rates for agricultural purposes.

And, if it is the intent of the Legislature to foster the growth of our agricultural industry, we ask that the Legislature adopt and implement the recommendations of the Public Utilities Commission as printed in their report.

LINDA LINGLE
Governor



SANDRA LEE KUNIMOTO
Chairperson, Board of Agriculture

DUANE K. OKAMOTO
Deputy to the Chairperson

State of Hawaii
DEPARTMENT OF AGRICULTURE
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TESTIMONY OF SANDRA LEE KUNIMOTO
CHAIRPERSON, BOARD OF AGRICULTURE

BEFORE THE HOUSE COMMITTEE
ON
AGRICULTURE
AND
WATER, LAND, OCEAN RESOURCES & HAWAIIAN AFFAIRS

JANUARY 30, 2008, 8:30 A.M.

HOUSE BILL NO. 2810
RELATING TO WATER RATES

Chairpersons Tsuji and Ito and Members of the Committees:

Thank you for the opportunity to comment on House Bill No. 2810. The purpose of this bill is to establish a process for just and reasonable water rates for farming operations with PUC oversight, but excludes the water supplier from the definition of a "public utility". The department recognizes the intent of this bill, however, defers to the PUC regarding the feasibility of this measure.

The Department of Agriculture supports agricultural production and any assistance that can be provided to make agriculture more successful. We also are very cognizant of the role that water plays in the growth of crops. We appreciate the language in this bill that allows the farming operation and supplier to negotiate acceptable terms first, prior to the PUC stepping in. However, we also recognize that

TESTIMONY OF SANDRA LEE KUNIMOTO
HOUSE BILL NO. 2810
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many of these private utilities are small and have a limited customer base which need to collectively contribute a certain dollar amount in order to operate and maintain the system. Mandating reduced agricultural rates may affect the overall economy of the region.



LINDA LINGLE
GOVERNOR

JAMES R. AIONA, JR.
LT. GOVERNOR

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TO THE HOUSE COMMITTEES ON AGRICULTURE AND
WATER, LAND, OCEAN RESOURCES & HAWAIIAN AFFAIRS

THE TWENTY-FOURTH LEGISLATURE
REGULAR SESSION OF 2008

Wednesday, January 30, 2008
8:30 a.m.

TESTIMONY OF CATHERINE P. AWAKUNI, EXECUTIVE DIRECTOR,
DIVISION OF CONSUMER ADVOCACY, DEPARTMENT OF COMMERCE AND
CONSUMER AFFAIRS TO THE HONORABLE REPRESENTATIVES TSUJI
AND ITO, CHAIRS AND MEMBERS OF THE COMMITTEES

HOUSE BILL NO. 2810 – RELATING TO WATER RATES.

DESCRIPTION:

This measure establishes a process for just and reasonable water rates for “farming operations” with Hawaii Public Utilities Commission (“Commission”) oversight, but excludes the water supplier from the definition of a “public utility” set forth in section 269-1, HRS.

POSITION:

The Division of Consumer Advocacy (“Consumer Advocate”) appreciates the intent of this measure, which provides that water rates for a “farming operation” shall be established by agreement between the farming operation and the supplier, subject to approval by the Commission. Exempting the water provider from Commission regulation – if it meets the definition of a “public utility” – may impair the Consumer Advocate’s and Commission’s abilities to adequately review the proposed rates. We offer the following comments for these Committees’ consideration.

H.B. No. 2810
House Committees on Agriculture and
Water, Land, Ocean Resources & Hawaiian Affairs
Wednesday, January 30, 2008, 8:30 a.m.

COMMENTS:

By exempting providers of water to "farming operations" from Commission regulation under chapter 269, HRS, it appears that the measure intends to provide fewer regulations with which such providers must comply. Requiring such water providers to submit water agreements with "farming operations" for Commission approval will likely prove to be challenging for the Consumer Advocate (ex officio a party to every proceeding before the Commission), the Commission, and the water provider.

Many of the other provisions within chapter 269, HRS, (to which such water provider will be exempted) are intended to provide the Consumer Advocate and the Commission with adequate information to render a sound recommendation and a reasoned decision, respectively. The absence, then, of such standard information, likely would extend the approval process, since the Consumer Advocate and the Commission may need to ask numerous questions and data requests to determine whether the rates charged are just and reasonable.

It would appear that the existing law is adequate to protect both the "farming operation" customer and the provider of the water service. If the water provider is a public utility, any rates charged must be approved by the Commission. After approval, the customer is charged a just and reasonable rate and the public utility is assured an opportunity to earn a fair rate of return.

If, however, the water provider is not furnishing water service to the public (for example, when a water provider supplies water to itself), it would not be subject to Commission regulation. In the event of a dispute as to the reasonable rate, the parties of a non-regulated service could merely engage in typical dispute resolution measures to resolve their disagreement.

Thank you for this opportunity to testify.

**TESTIMONY OF CARLITO P. CALIBOSO
CHAIRMAN, PUBLIC UTILITIES COMMISSION
DEPARTMENT OF BUDGET AND FINANCE
STATE OF HAWAII
TO THE
HOUSE COMMITTEES ON
AGRICULTURE
AND
WATER, LAND, OCEAN RESOURCES & HAWAIIAN AFFAIRS
JANUARY 30, 2008**

MEASURE: H.B. No. 2810
TITLE: Relating to Water Rates.

Chairs Tsuji and Ito and Members of the Committees:

DESCRIPTION:

This bill proposes to establish a new section in Chapter 269, Hawaii Revised Statutes ("HRS") that would require the Public Utilities Commission ("Commission") to approve agreements on water rates between farming operations and suppliers of water, and where agreements cannot be reached, the Commission would establish just and reasonable rates for the supply of water. The bill would also exclude suppliers of water to farming operations from coverage under the term "public utility" as defined in § 269-1, HRS.

POSITION:

The Commission has some concerns with the bill as drafted and offers the following comments and recommendations.

COMMENTS:

- **By excluding suppliers of water to farming operations from coverage under the term "public utility" as defined in § 269-1, HRS, the Commission is limited in terms of its powers and authority over such suppliers.**
 - For example, the Commission would not have the powers to conduct investigations and examinations into fares and rates charged by a supplier of water or to require the supplier to furnish any information the Commission may deem necessary in approving a water rate. It would also not be able to assess penalties.

- The Commission recommends that the proposed subsection (b) be deleted and that suppliers of water to farming operations not be excluded from the definition of “public utility” as set forth in § 269-1, HRS.
- **If the objective of this bill is to provide farming operations with more favorable rates as compared with rates of other classes of water customers, then the bill should expressly state that water rates should be set with that objective in mind.**
 - Such an express policy statement would guide the Commission in implementing this policy as it carries out the requirements of this bill to approve water rate agreements and establish just and reasonable rates for water suppliers to farming operations.

Thank you for the opportunity to testify.

HAWAII FARM BUREAU FEDERATION
2343 ROSE STREET
HONOLULU, HI 96819

JANUARY 30, 2008

HEARING BEFORE THE
HOUSE COMMITTEE ON AGRICULTURE AND
COMMITTEE ON WATER, LAND & HAWAIIAN AFFAIRS

TESTIMONY ON HB 2810
RELATING TO WATER RATES

Chairs Tsuji and Ito and committee members:

My name is Alan Takemoto, Executive Director, of the Hawaii Farm Bureau Federation, which is the largest non-profit general agriculture organization representing approximately 1,600 farm and ranch family members statewide.

The Hawaii Farm Bureau Federation supports HB 2810. The intent of this bill is to give the Public Utility Commission the ability to provide discounted water rates for agriculture.

The Hawaii State Constitution, Article XI, section 3, states that agriculture should be promoted and protected and, thus we believe that giving the PUC the ability to provide discounted agricultural water rates is justified and necessary to ensure the viability of Hawaii's agricultural industry. Furthermore, as our agricultural industry makes this transition and the irrigation systems once servicing large mono-crop industry begin to service other smaller farm operations, we need to ensure that affordable and reasonable agricultural rates are provided.

We respectfully ask that you support the passage of this measure.

Thank you.



Maui County Farm Bureau

*An Affiliate of the American Farm Bureau Federation and Hawaii Farm Bureau Federation
Serving Maui's Farmers and Ranchers*

TESTIMONY

HB 2810 RELATING TO WATER RATES

HEARING BEFORE THE HOUSE COMMITTEE ON AGRICULTURE AND COMMITTEE ON WATER, LAND & HAWAIIAN AFFAIRS

Chair Tsuji and Ito and Committee Members:

My name is Warren Watanabe, Executive Director of the Maui County Farm Bureau, a non-profit general agriculture organization and an affiliate of the Hawaii Farm Bureau Federation.

MCFB on behalf of our member farmers, ranchers and agricultural organizations, supports HB2810, requiring the PUC to establish agricultural water rates.

Private water companies, applying to the PUC are sometimes faced with a situation of being required to provide for fully compensatory rates. Consumer water rates are for personal use. Agricultural water is used for growing crops or raising livestock at affordable prices for everyone. As such, the water is not used for personal benefit but for public good. The State Constitution also recognizes agriculture to be critical to long term sustainability.

Requiring PUC to provide agricultural rates for companies under their jurisdiction is reasonable and supports the Constitutional mandate.

We respectfully request your support towards the passage of this measure as an investment to the future.

Respectfully submitted,

Warren K. Watanabe
Executive Director
MCFB

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**TESTIMONY BEFORE THE HOUSE COMMITTEES
ON AGRICULTURE
AND
WATER LAND OCEAN RESOURCES & HAWAIIAN AFFAIRS**

HOUSE BILL 2810

RELATING TO WATER RATES

January 30, 2008

Chairmen Tsuji and Ito and Members of your respective Committees:

My name is Stephanie Whalen. I am President and Research Director of the Hawaii Agriculture Research Center (HARC). I am testifying today on behalf of the center, our research and support staff, and our members and clients.

HARC supports House Bill 2810 Relating to Water Rates which provides the opportunity for a farmer to have input into the rate charged by a water supplier. Many agricultural subdivisions have few bone fide agricultural businesses operating within their boundaries. Where agricultural operation exists the rates charges may be prohibited with respect to the economic viability of the agricultural operation. This measure interjects the PUC into the water rate agreement if one of the parties feels aggrieved.

Thank you for the opportunity to testify.

**Hawaii
Crop
Improvement
Association**

Adolph Helm, President-Elect
19 Hua'ai Road, PO Box 339
Hoolehua, Hi 96729
Phone: 808-567-9421

HB2810, Water Rates
House AGR/WLH Committees
Wednesday, Jan. 30, 2008
Room 325: 8:30 am

Position: Support

Chairs Tsuji and Ito, and Members of the Hse AGR/WLH Committees:

My name is Adolph Helm. I am a Molokai resident, and Project Manager of Dow Agro-Science, an HCIA member company. The HCIA represents seed production and research facilities operating in Hawaii for nearly 40 years. The HCIA is comprised of five member companies that farm an estimated 8,000 acres on four islands, valued at \$97.6 million in operating budget (2006/2007 HASS). We are proud members of Hawaii's diversified agriculture and life sciences industries.

As Hawaii looks towards a more sustainable presence, focus on strengthening our agricultural industry is needed. The high cost of land, water, workforce and housing adds to the challenges of farming, from too much or too little rain, pest management, getting product to market and the consumer.

This measure proposes that there be an agricultural discount for services regulated by the Public Utilities Commission, which oversees areas such as water rates, inter-island shipping rates, and electrical rates. There is already a discounted rate for inter-island shipping and this discounted rate should be made available to other regulated areas of the PUC.

Thank you for the opportunity to testify.



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House Committees on Agriculture and
Water, Land, Ocean Resources & Hawaiian Affairs

Hearing
Wednesday, January 30, 2008

Testimony relating to: HB 2810

“Establishes a process for just and reasonable water rates for farming operations with PUC oversight, but excludes the water supplier from the definition of a ‘public utility’”

Testimony by: Peter W. Eising

Chairman Tsuji, Chairman Ito and Committee members:

I came before your two committees last year to discuss HB1121, which would provide agricultural water rates to the viable agricultural businesses, such as our company, that operate on land zoned – agriculture, and have no choice but to pay residential water rates, because the private water companies that provide irrigation water to them are not directed by the PUC to provide agricultural rates. The House recognized this problem and passed HB1121. The bill then crossed over to the Senate.

My name is Peter Eising. I, along with my partner, Galo Fernandez, a life-long resident of the Big Island, have developed what has become the largest grower of grapefruit on the Big Island, and, perhaps, in the State.

Our orchard consists of over 300 trees. The land is zoned – Agriculture. We sell to grocers and hotels, and have sold in excess of 63,000 lbs of fruit in the last five years. Needless to say, we are not a “fake” farm.

Agricultural water rates provided by both county and some private water systems average about \$1.00 per thousand gallons plus a power cost factor, which varies from month to month. If we could connect to the Hawaii County water system, we would qualify for their current agricultural water rate, which is \$0.85 per thousand gallons plus the power cost factor. Last year the PUC approved an increase in the rate for the private company that provides our water. They offer only a residential water rate. That rate, which we are now having to pay, is \$5.63 per thousand gallons, plus the power factor - over six times what Hawaii County would charge. As a result, all of our receipts from selling our fruit go just to pay for water. There is nothing left to pay our other expenses. Therefore, if we do not receive a reasonable agricultural water rate, we will have to close our doors. It seems very wrong if a viable agricultural business, producing a highly desired and unique product on agricultural land, and providing steady employment for local people, is put out of business because of lack of an agricultural water rate.

As I mentioned, last session the House passed HB1121. It did so without a “no” vote and it crossed over to the Senate. The Senate, then, sponsored a reso that the Legislature enacted, SCR3, SD1, which requested that the PUC study the rate structures of private entities that furnish water for agricultural purposes. That study was completed and published, and it describes in detail the very sizeable difference between residential and agricultural water rates. It also states that if it is the Legislature’s objective to encourage and foster growth in the agricultural industry through favorable agricultural water rates, the Legislature needs to establish a state policy expressly calling for such favorable treatment. It goes on to ask for direction as to how the providers of water to agricultural users will recover the loss in revenues as a result of discounted agricultural rates. The PUC also asks for guidance as to the criteria by which water providers will determine whether a customer qualifies for the agricultural rates. It finishes by saying, “Guided by such a clearly defined state policy, the water service providers and the Commission would then be able to act and set rates accordingly”. It seems to me that the bill that you are considering needs to be responsive to the findings of the study.

The effect of an agricultural water rate on the residential users will be minimal, since there are far more residential users than there are agricultural users over which to spread the relatively small difference in revenue, while still providing the private water companies with the return on investment deemed suitable by the PUC. The county water companies have recognized this fact. Furthermore, the County water systems have very specific criteria that they require a user to meet before an agricultural water rate is granted. The private water companies can utilize similar criteria.

I am certainly in support of the intent of HB2810. However, the bill takes the responsibility of establishing “just and reasonable rates” away from the PUC. Under the bill the PUC would step in only if the water supplier and the consumer could not agree on a rate. Secondly, the bill needs to respond fully to the expressed needs of the PUC as described in their study. Furthermore, the bill needs to provide the PUC with the specific legislative authority, that they have requested. It also needs to set a workable deadline by which time agricultural water rates will be in place, without which it might be years before any particular private utility refiles for adjusted water rates. Also, I am unclear as to the reason for excluding suppliers of water to farming operations from the term “Public Utility as defined in Section 269-1” of the Hawaii State Code. I am submitting to you a draft of an amended bill that we feel is responsive to the recommendations of the PUC study as well as both the needs of private water companies and the agricultural water users. It is comprehensive and should help to avoid conflict between the parties.

Please note, also, that this is one bill that will not cost the State a penny.

Proposed

H.B. NO. 2810

Draft 1

Report Title:

Agricultural Water Rates; Public Utilities Commission

Description:

Directs the Public Utilities Commission to require private utilities that furnish water used for agricultural purposes in areas zoned for agricultural use to establish a reduced water rate for qualified agricultural water users.

From: PEising@aol.com

"Water Josh's Bill Revised.doc"

A BILL FOR AN ACT

RELATING TO AGRICULTURAL WATER RATES.

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

SECTION 1. The legislature finds that access to affordable water is one of the biggest challenges facing Hawaii's farmers. Although many farmers enjoy lower rates provided by the counties for agricultural water, other farmers who are unable to access the county water systems are forced to use more expensive water provided by private utilities at residential rates, since agricultural rates are not offered.

The purpose of this act is to encourage appropriate use of agricultural lands and to establish fair water rates for all of Hawaii's farmers by directing the Public Utilities Commission to require private utilities that furnish water used for agricultural purposes in areas zoned

for agricultural use to establish a reduced water rate for qualified agricultural water users.

SECTION 2. Chapter 269, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"§269- **Ratemaking; furnishing of water for agricultural use.** (a) The Public Utilities Commission shall have the authority to require private utilities furnishing water to differentiate in ratemaking between agricultural and other water usage. The Public Utilities Commission shall require private utilities that furnish water used for agricultural purposes in areas zoned for agricultural use to establish a reduced water rate structure for qualified agricultural water users. The Public Utilities Commission shall have further authority to set criteria that will determine those agricultural users that qualify for reduced rates. These criteria must assure that only true agribusinesses qualify. In providing reduced water rates for qualified agricultural users, the Public Utilities Commission will assure that non-agricultural rates are adjusted to maintain agreed-upon return to the private water utilities. All private utilities furnishing water used for agricultural purposes to qualified agricultural users in areas zoned for agricultural use shall establish a

water rate structure for agricultural users on or before
July 1, 2009."

(b) The Public Utilities Commission shall adopt rules
pursuant to chapter 91 to effect this section."

SECTION 3. New statutory material is underscored.

Section 4. This act shall take effect upon its
approval.

INTRODUCED BY: _____