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TO THE HOUSE COMMITTEE ON FINANCE

THE TWENTY-FOURTH LEGISLATURE  
REGULAR SESSION OF 2008

Thursday, February 21, 2008  
10:30 a.m.

TESTIMONY OF CATHERINE P. AWAKUNI, EXECUTIVE DIRECTOR,  
DIVISION OF CONSUMER ADVOCACY, DEPARTMENT OF COMMERCE AND  
CONSUMER AFFAIRS TO THE HONORABLE REPRESENTATIVE OSHIRO,  
CHAIR AND MEMBERS OF THE COMMITTEE

**HOUSE BILL NO. 2965, HOUSE DRAFT 2 – RELATING TO AGRICULTURAL  
WATER SECURITY.**

**DESCRIPTION:**

This measure allows the negotiation of agreements for the production of emergency power for agricultural water systems following a disaster declared by the Governor.

**POSITION:**

The Division of Consumer Advocacy (“Consumer Advocate”) offers the following comments on the measure for this Committee’s consideration.

H.B. No. 2965, H.D. 2  
House Committee on Finance  
Thursday, February 21, 2008, 10:30 a.m.

COMMENTS:

The measure provides persons who control, operate, or manage an agricultural water system that has been damaged in a disaster to negotiate an agreement for the production of emergency power for the agricultural water system. The measure does not, however, address who may provide such emergency power and how such provision of energy should be treated by the Hawaii Public Utilities Commission ("Commission"). If the person providing power is not already considered a "public utility" subject to Commission regulation, the provision of such energy to the public likely will trigger such Commission jurisdiction.

If the intent is to expedite such agreements and exempt them from Commission regulation, since they arise out of emergency disaster situations, appropriate language effecting that intent and providing for appropriate care to ensure the safe provision of such energy is necessary. The Consumer Advocate, the Commission, and Hawaiian Electric Company, Inc. agreed upon language that may expedite the provision of energy to agricultural water systems in an emergency arising out of a declared disaster. The language agreed upon immediately prior to decision making in the last Committee – the House Committee on Consumer Protection and Commerce – is attached for your consideration.

Thank you for this opportunity to testify.

\_\_\_\_.B. NO.\_\_\_\_

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# A BILL FOR AN ACT

RELATING TO AGRICULTURAL WATER SECURITY.

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

SECTION 1. In accordance with the strategic plan developed by the United States Department of Agriculture, the legislature finds that agricultural water security is essential to maintaining public health and well-being, cultivate food, fiber, and energy crops in the future, and enhancing rural recreation and community aesthetics. On October 15, 2006, the Kiholo Earthquake caused considerable damage to irrigation systems in the Waimea and Hamakua areas on the island of Hawaii, causing the agricultural water users to depend on ground water to supply water to the ditch systems entailing costs for transmission of water and energy to run pumps.

On October 15, 2006, the Governor proclaimed these areas to be disaster areas and directed government agencies to take such action and employ such measures for water supply and other emergency functions as may be necessary.

Further, in the proclamation the Governor suspended statutes relating to procurement, public lands management, water development, the state water code, and public utilities among others allowed by federal law. These emergency measures are to continue until an appropriate time for termination determined by the Governor.

The legislature further finds that agricultural water systems are critical for agricultural production and that measures have to be implemented to allow appropriate response to conditions caused by natural disasters, such earthquakes.

The purpose of this Act is to ensure the security of the agricultural water supply by implementing emergency measures to respond to damages caused by natural disaster, such as the damage to the Waimea and Hamakua agricultural water systems.

SECTION 2. Chapter 209, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**"§209- Agricultural water systems; emergency power.**

(a) When the governor has declared that a disaster has occurred for any portion of the State, pursuant to section 209-2, that results in damage to an agricultural water system and requires the temporary use of electrical power

or back-up generators to pump ground water for irrigation until the system can repaired, the person who owns, controls, operates, or manages the system may negotiate an agreement with an electric utility company, or with a person, who owns, controls, operates, or manages a plant or facility for the production of power primarily or entirely from nonfossil fuel sources, if there is no electrical interconnection between the pumps for the agricultural water system and the electric utility system, to provide emergency power for the agricultural water systems.

(b) If the agreement is with a person, other than an electric utility company, who owns, controls, operates, or manages a plant or facility for the production of power primarily or entirely from nonfossil fuel sources, and such plant or facility is electrically interconnected to the electric utility system, then such person shall coordinate with the electric utility company to ensure that the utility company can satisfy its safety, regulatory and operating requirements.

(c) If the agreement is with an electric utility company, the electric utility company, under circumstances that it deems exigent and in its judgment require a response that rapidly provides emergency power for the agricultural water system, may enter into an agreement

described in subsection (a) and transfer, assign, or otherwise dispose of its property without prior approval from the public utilities commission as may be required under chapter 269; provided that in so doing:

- (1) The electric utility company does not unduly hinder or degrade the utility's operation with respect to its services or other customers;
- (2) The electric utility company is duly compensated for its property; and
- (3) The electric utility company reports in detail to the public utilities commission within thirty days of any such action unless otherwise approved by the public utilities commission for good cause shown.

For purposes of this subsection, "property" does not include real property.

(d) The agreement shall terminate when the governor determines that the disaster emergency relief period is terminated."

SECTION 3. New statutory material is underscored.

SECTION 4. This Act shall take on July 1, 2008.



Legislative Testimony  
**HB 2965, HD 2, RELATING TO AGRICULTURAL WATER SECURITY**  
House Committee on Finance

February 211, 2008  
Room: 308

10:30 a.m.

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The Office of Hawaiian Affairs **SUPPORTS** HB 2965, HD 2, which would allow for the negotiation of agreements for the production of emergency power for agricultural water systems, following a disaster declared by the Governor

As the recent October 2006 earthquake demonstrated, there is a need to ensure and further protect the security of the water supply for agriculture in our state. Many farmers are still trying to recover from the effects of that event. Also, Article XI, section 3, of the Hawai'i State Constitution; Hawaii Revised Statutes, Chapter 205; and even county ordinances all address the need to protect our agricultural lands.

These multiple layers of concern mandate that we take such simple and reasonable steps as the ones that this bill proposes to ensure that the agricultural viability in our state is secure in the event of an emergency.

Therefore, OHA urges the Committee to PASS HB 2965. Thank you for the opportunity to testify.



## KAMEHAMEHA SCHOOLS

TESTIMONY TO THE HOUSE COMMITTEE ON FINANCE

By

Kaeo Duarte  
Water Resources Manager  
Kamehameha Schools

February 21, 2008

The Honorable Marcus R. Oshiro, Chair and Members  
Committee on Finance  
Hawaii State Capitol  
415 South Beretania Street  
Honolulu, Hawaii 96813

Hearing Date: Thursday, February 21, 2008  
10:30 a.m., Conference Room 308

Dear Representative Oshiro and Committee Members:

**Subject: Support for HB 2965 HD2, Relating to Agricultural Water Security**

As the Kamehameha Schools' (KS) representative to Kohala and Hamakua, I have seen firsthand the serious effects of the October 15, 2006 Kiholo Earthquake on the agricultural community and infrastructure of those regions. As private and public entities and individuals have united to repair the important water systems of these regions, numerous lessons have been learned and weaknesses exposed. The lack of energy sources necessary to effectively utilize backup water sources at Kohala and Hamakua is at the top of the list. HB 2965 HD2 recognizes this need and will provide the opportunity to negotiate agreements for the production of emergency power to provide backup water under the Governor's current emergency declaration.

Thank you for the opportunity to testify in support of HB2965 HD2.



**Island Resources Ltd.***"Resource management with imagination"***Water Land Energy****Stephen P. Bowles***President**Cell (808)937-2826*e-mail [iresources@interpac.net](mailto:iresources@interpac.net)**Telephone***Office (808) 885-5941**Home (808) 885-4759**Fax (808) 885-7851*

February 20, 2008

**RE: House Bill 2965, H.D. 2, Relating to Agricultural Water Security  
Conference Room 308 – February 21, 2008; 10:30 a.m.**

Dear Representative Oshiro and Members of the Committee on Finance:


A major drawback to Hawaii's agricultural production is adequate and inexpensive water for irrigation. Our present system lacks the cohesiveness in water supply of our former major agribusiness – sugar. We have abundant water resources and no way to pump the water for agriculture inexpensively as sugar did using biomass (bagasse). Today we must buy our power from the electric monopolies at retail prices while Independent Power Producers (IPP's) have surplus generating capacity lying idle. Wind farms, geothermal wells, solar power, wave energy, hydroelectric and other sources of power are or will be available but remain idle much of the time. They can be made more efficient and more valuable.

The recent Kiholo earthquake caused many agricultural gravity ditch systems to fail at a critical time in our agricultural future. Some seventeen farmers in North Kohala have depended on a costly pumping project that provides only .5 mgd in lieu of the 8-10 mgd provided by the Kohala Ditch. The estimated timeline for repairs to the Kohala Ditch now extends to October, 2008, fully two years after the Kiholo earthquake. During this prolonged emergency, many farmers have incurred disastrous losses, including one of our state's last remaining milk producers, the Cloverleaf Dairy. When such disruption of irrigation systems occurs, we need provisions for affordable emergency power. H.B. 2965, as amended, begins to address this issue.

I urge your committee to pass this bill. I also hope that the Legislature will quickly revisit the larger issue of agricultural water security as it was addressed in the first draft of HB2965. We need comprehensive and reliable support for essential agricultural infrastructure. We need to explore how the many sources of renewable energy developed by Independent Power Producers can serve the interests of productive agriculture and food security. These issues will not go away. Hopefully, Hawaii Electric Industries and its neighbor island subsidiaries will see the light and join the community in collaborative problem-solving without heavy handedness or obfuscation.

Presently, expensive pumping of wells using fossil fuels is our only option. All this while nearby IPP generating power plants were idle, worldwide oil reserves are dwindling, and the price of oil tops \$100/barrel. Without a secure and adequate low cost water supply, Hawaii's agriculture is neither sustainable nor competitive. According to USDA statistics, California pays an average of \$79/acre/year for irrigation water. In Hawaii the average cost is \$175/acre. We are neither affordable nor competitive. We cannot have Important Ag. Lands, nor can we have sustainable agriculture, without addressing this fundamental. Buying subsidized water from operating potable water utilities is wrong and diverts attention from the real farming needs of the future. For these reasons, H.B. 2965 is a critical first step to address water security for Hawaii farmers.

Mahalo,



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