
A BILL FOR AN ACT

RELATING TO IRRIGATION.

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

1 SECTION 1. Section 167-5, Hawaii Revised Statutes, is
2 amended to read as follows:

3 "~~{}~~§167-5~~{}~~ Powers. (a) In addition to any other
4 powers granted to the board of agriculture for the purpose of
5 carrying out all of its functions and duties, the board shall
6 have the following powers for the purposes of this chapter:

7 (1) To acquire by eminent domain, water and water sources
8 either above or underground, watershed, reservoir
9 sites, rights-of-way over lands and property for
10 paths, trails, roads, and landing sites, ditches,
11 tunnels, flumes, reservoirs, and pipelines necessary
12 or proper for the construction and maintenance of
13 water facilities for conveying, distributing, and
14 transmitting water for irrigation and ~~[domestic use]~~
15 other agricultural uses, and for such other purposes
16 as may properly fall within the scope of its
17 activities in creating, managing, controlling,



1 operating, and maintaining irrigation water
2 facilities, any of which purposes shall be held to be
3 for a public use and purpose;

4 (2) To make and execute contracts and other instruments
5 necessary or convenient to the exercise of the powers
6 of the board, including, without prejudice to the
7 generality of the foregoing, contracts and other
8 instruments for the purchase or sale of water and for
9 the purchase or lease of water facilities for
10 irrigation of the area, including but not limited to
11 the production of agricultural products and the land
12 on which the facilities are situated, and for securing
13 to the owners and occupiers of land already using
14 water in a project a priority right to so much water
15 from those of their sources and facilities which are
16 taken over for the project as is required for the
17 purposes or needs of the land, whether agricultural or
18 nonagricultural in nature, as such purposes or needs
19 exist at the inception of the project or are then
20 contemplated in the immediate future;



- 1 (3) To make and from time to time amend and repeal bylaws
2 and rules, not inconsistent with this chapter, which
3 upon compliance with chapter 91 shall have the force
4 and effect of law, to carry into effect the powers and
5 purposes of the board;
- 6 (4) To make surveys for the purposes of determining the
7 engineering and economic feasibility of each project;
- 8 (5) To conduct or have prepared comprehensive studies of
9 the crops, livestock, and poultry which may be
10 profitably grown or produced within each project and
11 the probable market for such crops, livestock, and
12 poultry;
- 13 (6) To conduct feasibility studies of the economic
14 potential of the area;
- 15 (7) To determine the probable costs and value of providing
16 water for irrigation in any proposed project;
- 17 (8) To investigate and make surveys of water resources,
18 including the possibility and feasibility of inducing
19 rain by artificial or other means; and
- 20 (9) To define and redefine the boundaries of projects and
21 to consolidate or separate projects, existing or



1 proposed pursuant to this chapter, provided that in
2 the event the redefinition of the boundaries or the
3 consolidation or separation previously effected
4 increased the total amount required to be derived from
5 acreage assessments upon lands within the existing
6 project or projects by more than five per cent or will
7 require an increase in the tolls charged for water
8 supplied to the lands or will reduce the amount of
9 water normally available for distribution to the
10 lands, then the redefinition, consolidation, or
11 separation may be accomplished only after notice has
12 been published and a public hearing held as required
13 for the formation of a project upon the initiative of
14 the board. At the hearing, right to protest and the
15 procedure relative to protest shall be the same as
16 specified in section 167-17 concerning the formation
17 of projects, and the proposed redefinition of
18 boundaries, consolidation, or separation of projects
19 shall not be accomplished if protests, such as would
20 be sufficient to prevent the action if it were the
21 formation of a project, are filed by owners and



1 lessees of land within the existing projects or
2 projects affected thereby.

3 (b) The board is empowered, upon petition of land
4 occupiers as provided by section 167-13, or upon petition of the
5 Hawaiian homes commission or upon its own initiative, to prepare
6 detailed plans for the acquisition or construction of facilities
7 for irrigation or for economic development which in its opinion
8 are economically feasible, to prepare estimates of the probable
9 cost of each, and to prepare estimates of the water tolls and
10 acreage assessments required for the cost of operation and the
11 amortization of the investment of each project, so that the
12 project shall be self-supporting."

13 SECTION 2. Section 269-1, Hawaii Revised Statutes, is
14 amended by amending the definition of "public utility" to read
15 as follows:

16 "Public utility":

- 17 (1) Includes every person who may own, control, operate,
18 or manage as owner, lessee, trustee, receiver, or
19 otherwise, whether under a franchise, charter,
20 license, articles of association, or otherwise, any
21 plant or equipment, or any part thereof, directly or



1 indirectly for public use for the transportation of
2 passengers or freight; for the conveyance or
3 transmission of telecommunications messages; for the
4 furnishing of facilities for the transmission of
5 intelligence by electricity within the State or
6 between points within the State by land, water, or
7 air; for the production, conveyance, transmission,
8 delivery, or furnishing of light, power, heat, cold,
9 water, gas, or oil; for the storage or warehousing of
10 goods; or for the disposal of sewage; provided that
11 the term shall include:

12 (A) An owner or operator of a private sewer company
13 or sewer facility; and

14 (B) A telecommunications carrier or
15 telecommunications common carrier; and

16 (2) Shall not include:

17 (A) An owner or operator of an aerial transportation
18 enterprise;

19 (B) An owner or operator of a taxicab as defined in
20 this section;



- 1 (C) Common carriers that transport only freight on
2 the public highways, unless operating within
3 localities, along routes, or between points that
4 the public utilities commission finds to be
5 inadequately serviced without regulation under
6 this chapter;
- 7 (D) Persons engaged in the business of warehousing or
8 storage unless the commission finds that
9 regulation is necessary in the public interest;
- 10 (E) A carrier by water to the extent that the carrier
11 enters into private contracts for towage,
12 salvage, hauling, or carriage between points
13 within the State; provided that the towing,
14 salvage, hauling, or carriage is not pursuant to
15 either an established schedule or an undertaking
16 to perform carriage services on behalf of the
17 public generally;
- 18 (F) A carrier by water, substantially engaged in
19 interstate or foreign commerce, that transports
20 passengers on luxury cruises between points



1 within the State or on luxury round-trip cruises
2 returning to the point of departure;

3 (G) Any user, owner, or operator of the Hawaii
4 electric system as defined under section 269-141;

5 (H) A telecommunications provider only to the extent
6 determined by the public utilities commission
7 pursuant to section 269-16.9;

8 (I) Any person who controls, operates, or manages
9 plants or facilities developed [~~pursuant to~~
10 ~~chapter 167~~] for conveying, distributing, and
11 transmitting nonpotable water [~~for irrigation and~~
12 ~~other purposes for public use and purpose,~~] and
13 any irrigation project established pursuant to
14 chapter 167;

15 (J) Any person who owns, controls, operates, or
16 manages plants or facilities for the reclamation
17 of wastewater; provided that:

18 (i) The services of the facility are provided
19 pursuant to a service contract between the
20 person and a state or county agency and at
21 least ten per cent of the wastewater



1 processed is used directly by the state or
2 county agency that entered into the service
3 contract;

4 (ii) The primary function of the facility is the
5 processing of secondary treated wastewater
6 that has been produced by a municipal
7 wastewater treatment facility owned by a
8 state or county agency;

9 (iii) The facility does not make sales of water to
10 residential customers;

11 (iv) The facility may distribute and sell
12 recycled or reclaimed water to entities not
13 covered by a state or county service
14 contract; provided that, in the absence of
15 regulatory oversight and direct competition,
16 the distribution and sale of recycled or
17 reclaimed water shall be voluntary and its
18 pricing fair and reasonable. For purposes
19 of this subparagraph, "recycled water" and
20 "reclaimed water" means treated wastewater



- 1 that by design is intended or used for a
2 beneficial purpose; and
- 3 (v) The facility is not engaged, either directly
4 or indirectly, in the processing of food
5 wastes;
- 6 (K) Any person who owns, controls, operates, or
7 manages any seawater air conditioning district
8 cooling project; provided that at least fifty per
9 cent of the energy required for the seawater air
10 conditioning district cooling system is provided
11 by a renewable energy resource, such as cold,
12 deep seawater;
- 13 (L) Any person who owns, controls, operates, or
14 manages plants or facilities primarily used to
15 charge or discharge a vehicle battery that
16 provides power for vehicle propulsion;
- 17 (M) Any person who:
- 18 (i) Owns, controls, operates, or manages a
19 renewable energy system that is located on a
20 customer's property; and



1 (ii) Provides, sells, or transmits the power
2 generated from that renewable energy system
3 to an electric utility or to the customer on
4 whose property the renewable energy system
5 is located; provided that, for purposes of
6 this subparagraph, a customer's property
7 shall include all contiguous property owned
8 or leased by the customer without regard to
9 interruptions in contiguity caused by
10 easements, public thoroughfares,
11 transportation rights-of-way, and utility
12 rights-of-way; and

13 (N) Any person who owns, controls, operates, or
14 manages a renewable energy system that is located
15 on such person's property and provides, sells, or
16 transmits the power generated from that renewable
17 energy system to an electric utility or to
18 lessees or tenants on the person's property where
19 the renewable energy system is located; provided
20 that:



- 1 (i) An interconnection, as defined in section
2 269-141, is maintained with an electric
3 public utility to preserve the lessees' or
4 tenants' ability to be served by an electric
5 utility;
- 6 (ii) [~~Such~~] The person does not use an electric
7 public utility's transmission or
8 distribution lines to provide, sell, or
9 transmit electricity to lessees or tenants;
- 10 (iii) At the time that the lease agreement is
11 signed, the rate charged to the lessee or
12 tenant for the power generated by the
13 renewable energy system shall be no greater
14 than the effective rate charged per kilowatt
15 hour from the applicable electric utility
16 schedule filed with the public utilities
17 commission;
- 18 (iv) The rate schedule or formula shall be
19 established for the duration of the lease,
20 and the lease agreement entered into by the



1 lessee or tenant shall reflect such rate
2 schedule or formula;

3 (v) The lease agreement shall not abrogate any
4 terms or conditions of applicable tariffs
5 for termination of services for nonpayment
6 of electric utility services or rules
7 regarding health, safety, and welfare;

8 (vi) The lease agreement shall disclose: (1) the
9 rate schedule or formula for the duration of
10 the lease agreement; (2) that, at the time
11 that the lease agreement is signed, the rate
12 charged to the lessee or tenant for the
13 power generated by the renewable energy
14 system shall be no greater than the
15 effective rate charged per kilowatt hour
16 from the applicable electric utility
17 schedule filed with the public utilities
18 commission; (3) that the lease agreement
19 shall not abrogate any terms or conditions
20 of applicable tariffs for termination of
21 services for nonpayment of electric utility



1 services or rules regarding health, safety,
2 and welfare; and (4) whether the lease is
3 contingent upon the purchase of electricity
4 from the renewable energy system; provided
5 further that any disputes concerning the
6 requirements of this provision shall be
7 resolved pursuant to the provisions of the
8 lease agreement or chapter 521, if
9 applicable; and

10 (vii) Nothing in this section shall be construed
11 to permit wheeling.

12 If the application of this chapter is ordered by the
13 commission in any case provided in paragraph (2) (C), (D), (H),
14 and (I), the business of any public utility that presents
15 evidence of bona fide operation on the date of the commencement
16 of the proceedings resulting in the order shall be presumed to
17 be necessary to the public convenience and necessity, but any
18 certificate issued under this proviso shall nevertheless be
19 subject to terms and conditions as the public utilities
20 commission may prescribe, as provided in sections 269-16.9 and
21 269-20."



1 SECTION 3. Statutory material to be repealed is bracketed
2 and stricken. New statutory material is underscored.

3 SECTION 4. This Act shall take effect upon its approval.



Report Title:

Irrigation; Water; BOA; Public Utility

Description:

Clarifies that the BOA has the power to acquire property by eminent domain for the construction and maintenance of water facilities that convey, distribute, and transmit water for agricultural uses, but not for domestic use. Amends the definition of "public utility" to exclude entities that convey, transmit, and distribute nonpotable water. (HB1536 HD1)

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

