

DAVID Y. IGE
Governor

SHAN S. TSUTSUI
Lt. Governor



State of Hawaii
DEPARTMENT OF AGRICULTURE
1428 South King Street
Honolulu, Hawaii 96814-2512
Phone: (808) 973-9600 FAX: (808) 973-9613

SCOTT E. ENRIGHT
Chairperson, Board of Agriculture

PHYLLIS SHIMABUKURO-GEISER
Deputy to the Chairperson

**TESTIMONY OF SCOTT E. ENRIGHT
CHAIRPERSON, BOARD OF AGRICULTURE**

BEFORE THE SENATE COMMITTEES ON JUDICIARY & LABOR & WAYS & MEANS

**MARCH 30, 2017
9:50 A.M.
CONFERENCE ROOM 211**

**HOUSE BILL NO. 1536 HD2
RELATING TO IRRIGATION**

Chairpersons Keith-Agaran and Tokuda and Members of the Committees:

Thank you for the opportunity to testify on House Bill No. 1536 HD2. The purpose of this bill is to clarify that the Board of Agriculture 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. It also amends the definition of "public utility" in chapter 269, HRS to exclude entities that convey, transmit, and distribute non-potable water. The department supports the intent of this bill.

Irrigation water is a vital component to the growth of diversified agriculture. The clarifications provided in this bill ensure that the classification of agricultural water remains safe from challenges that try to combine it with potable water. This will provide the department with additional tools in our efforts to increase agriculture's role in Hawaii's food security and economy.

Thank you for the opportunity to testify on this measure.



TESTIMONY OF RANDY IWASE
CHAIR, PUBLIC UTILITIES COMMISSION
STATE OF HAWAII
TO THE
SENATE COMMITTEES ON
JUDICIARY AND LABOR
&
WAYS AND MEANS

March 30, 2017
9:50 a.m.

MEASURE: H.B. No. 1536, H.D. 2

TITLE: Relating to Irrigation

Chair Keith-Agaran, Chair Tokuda, and Members of the Committees:

DESCRIPTION:

This measure expands the list of exemptions from the definition of “public utility” under 269-1, HRS, to exempt entities providing non-potable water service as well as any county board of water supply. This measure also amends the Board of Agriculture’s powers.

POSITION:

The Public Utilities Commission (“Commission”) offers the following comments for the Committees’ consideration.

COMMENTS:

The Commission’s comments on this measure are limited to the proposed exemptions from the definition of “public utility” under 269-1, HRS.

The Commission notes that currently 11 regulated utilities offer non-potable water service. The non-potable water service offered by these utilities can be used for both agricultural purposes and non-agricultural purposes such as landscaping. This measure appears to exempt all non-potable water service from Commission regulation, whether used for agricultural or non-agricultural purposes.

H.B. No. 1536, H.D. 2

Page 2

Regarding the proposed exemption for any county board of water supply (see p. 14, Ins. 12 - 15), the Commission notes that the Commission does not currently regulate the service provided by the Honolulu Board of Water Supply or any other county water supply.

Thank you for the opportunity to testify on this measure.

BOARD OF WATER SUPPLY

CITY AND COUNTY OF HONOLULU
630 SOUTH BERETANIA STREET
HONOLULU, HI 96843
www.boardofwatersupply.com




March 30, 2017

KIRK CALDWELL, MAYOR

BRYAN P. ANDAYA, Chair
ADAM C. WONG, Vice Chair
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KAPUA SPROAT
KAY C. MATSUI

ROSS S. SASAMURA, Ex-Officio
FORD N. FUCHIGAMI, Ex-Officio

ERNEST Y. W. LAU, P.E.
Manager and Chief Engineer

ELLEN E. KITAMURA, P.E.
Deputy Manager and Chief Engineer 

The Honorable Gilbert S.C. Keith-Agaran, Chair
and Members
Committee on Judiciary and Labor
State Senate
Hawaii State Capitol, Room 221
Honolulu, Hawaii 96813

and

The Honorable Jill N. Tokuda, Chair
and Members
Committee on Ways and Means
State Senate
Hawaii State Capitol, Room 207
Honolulu, Hawaii 96813

Dear Chair Keith-Agaran, Chair Tokuda, and Members:

Subject: House Bill 1536, HD2 Relating to Irrigation

We support House Bill 1536, HD2 as it relates to the Board of Water Supply and take no position on the substantive provisions of this bill relating to the Board of Agriculture. This measure, in relevant part, excludes from the definition of “public utility” in Chapter 269, Hawaii Revised Statutes (HRS), the various boards of water supply statewide and thereby cures an ambiguity regarding this chapter’s application to these boards.


As the definition of “public utility” includes “the production, conveyance, etc. of water...” (see page 6, lines 7 to 9) this could be interpreted to mean that the various boards of water supply could subsequently be within the jurisdiction and oversight of the Hawaii Public Utilities Commission. Whereas, statewide, our management, control, and operation of the water systems are embodied in Chapter 54, HRS, and on the island of Oahu, Article VII of the Revised Charter of the City and County of Honolulu, we believe the word “water” in the definition of public utility may lead to this unintended result.

The proposed amendment on page 14, lines 11 to 15, excludes the boards of water supply from the definition of “public utility” and remedies any ambiguity regarding the application of Chapter 269, HRS, to the various boards of water supply.

The Honorable Gilbert S.C. Keith-Agaran, Chair
and Members
The Honorable Jill N. Tokuda, Chair
and Members
March 30, 2017
Page 2

Thank you for your consideration of our written testimony on House Bill 1536, HD2.

Very truly yours,


ERNEST Y.W. LAU, P.E.
Manager and Chief Engineer



DAVID Y. IGE
GOVERNOR
SHAN S. TSUTSUI
LT. GOVERNOR

STATE OF HAWAII
OFFICE OF THE DIRECTOR
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
335 MERCHANT STREET, ROOM 310
P.O. Box 541
HONOLULU, HAWAII 96809
Phone Number: 586-2850
Fax Number: 586-2856
www.hawaii.gov/dcca

CATHERINE P. AWAKUNI COLÓN
DIRECTOR
JO ANN M. UCHIDA TAKEUCHI
DEPUTY DIRECTOR

TO THE SENATE COMMITTEE ON JUDICIARY AND LABOR
AND
TO THE SENATE COMMITTEE WAYS AND MEANS

THE TWENTY-NINTH LEGISLATURE
REGULAR SESSION OF 2017

THURSDAY, MARCH 30, 2017
9:50 A.M.

TESTIMONY OF DEAN NISHINA, EXECUTIVE DIRECTOR, DIVISION OF
CONSUMER ADVOCACY, DEPARTMENT OF COMMERCE AND CONSUMER
AFFAIRS, TO THE HONORABLE GILBERT S.C. KEITH-AGARAN, CHAIR,
TO THE HONORABLE JILL N. TOKUDA, CHAIR,
AND MEMBERS OF THE COMMITTEES

HOUSE BILL NO. 1536, H.D. 2 - RELATING TO IRRIGATION

DESCRIPTION:

This measure proposes to clarify that the Board of Agriculture has the power to acquire property by eminent domain for the construction and maintenance of water facilities that convey, distribute, and transmit water for agriculture uses, but not for domestic use and amend the definition of "public utility" to exclude entities that convey, transmit, and distribute non-potable water and any board of water supply that manages, controls, and operates the waterworks of a county for the purpose of supplying water to the public in that county.

POSITION:

The Division of Consumer Advocacy ("Consumer Advocate") offers the following comments.

COMMENTS:

The Consumer Advocate understands that the proposed measure is to make clear that facilities or projects that are developed pursuant to Hawaii Revised Statutes (“HRS”) Chapter 167 should not be regulated by the Public Utilities Commission. In addition, the measure, through the HD2 version, is clarifying that municipal water operations that are meant to serve the public should also not be regulated by the Public Utilities Commission.

The Consumer Advocate contends that exempting all non-potable water facilities from Commission review, especially when such services are also offered in conjunction with regulated water or wastewater services could adversely expose customers to various rate issues, quality and access issues, as well as possible subsidization issues for the customers of the regulated operations. To be clear, the Consumer Advocate does not believe that irrigation or nonpotable water systems developed pursuant to chapter 167 should be regulated by the Commission. The Consumer Advocate’s concern is related to currently regulated companies that may now seek exemption from Commission oversight due to the proposed language.

Based on the understanding that the legislature’s intent is to exempt only projects related to HRS Chapter 167, the Consumer Advocate would respectfully ask the Committees to consider revising the current exemption language under HRS § 269-1(2)(l) on page 8, lines 8-14 of the bill to further clarify this intent as follows, “Any person who controls, operates, or manages plants, facilities, or projects developed, pursuant to chapter 167, for conveying, distributing and transmitting nonpotable or irrigation water[.]”

Further, regarding the language on page 14, lines 12-15 that exempts “[a]ny board of water supply that manages, controls, and operates the waterworks of a county for the purpose of supplying water to the public in that county” from Commission regulation as a public utility, the Consumer Advocate notes that use of the term “board” may be too narrow because the counties of Kauai, Maui, and Hawaii Island refer to their municipal water supply entities as departments. The Consumer Advocate respectfully suggests the insertion of “or department” after “board” so that the exempting language would read, “Any board or department of water supply that manages. . . .”

Thank you for this opportunity to testify.



HB1536 HD2
Relating to Irrigation
Senate Committee on Judiciary and Labor
Senate Committee on Ways and Means

March 30, 2017

9:50 a.m.

Room 211

The Office of Hawaiian Affairs (OHA) offers the following **COMMENTS** on HB1536 HD2, which would exempt all purveyors of nonpotable water from the regulatory protections of the Public Utilities Commission.

The Public Utilities Commission (PUC) plays an important role in protecting public consumers from unreasonable rates and arbitrary disruptions in service, by regulating and providing oversight over utility providers that consumers depend upon for their most basic needs. **Such protections can be critical in instances where a private, for-profit entity is the sole purveyor of essential services, and no market exists to otherwise ensure competitive rates and services.**

PUC protection may be especially important for agricultural consumers of nonpotable water. For many farmers, access to nonpotable water is critical to their livelihood and way of life; often, a single private entity may also be the sole provider of the water they need to farm their crops and livestock. **In such cases, the PUC may be the only means by which farmers can be assured that they are charged sufficiently reasonable rates that allow them to continue their farming activities.** Notably, in recognition of this concern, the PUC has recently published draft administrative rules specifically for private nonpotable water purveyors; these rules seek “to establish uniform and reasonable regulatory and service standards to ensure that safe, adequate, reliable, and efficient nonpotable water service is provided to customers at just and reasonable rates.”¹ Such regulatory standards may be particularly appropriate in the case of irrigation water, to minimize the chance of undue private exploitation of our public trust water resources.

OHA does recognize that PUC regulation may be less necessary where a nonpotable water purveyor is a state entity also subject to the protections and processes found under Chapter 167. **Accordingly, if the intent of this measure is to clarify that state irrigation systems should not be subject to PUC oversight, OHA urges the Committees to consider the language found on page 8, lines 4-9, of the amended draft of the companion to this bill, SB1275 SD1.**

Thank you for the opportunity to testify on this measure.

¹ Proposed HAR § 16-620-1.



March 24, 2017

Senator Gilbert S.C. Keith-Agaran, Chair
Senator Karl Rhoads, Vice Chair
Senate Committee on Judiciary and Labor

Senator Jill N. Tokuda, Chair
Senator Donovan M. Dela Cruz, Vice Chair
Senate Committee on Ways and Means

Comments in Support of HB 1536, H.D. 2 Relating to Irrigation. (Clarifies that the Board of Agriculture [BOA] has the power to acquire property for the construction and maintenance of water facilities for agricultural uses. Amends definition of “public utility” to exclude entities that convey, transmit, and distribute nonpotable water and any irrigation project established pursuant to Hawaii Revised Statutes [HRS] Chapter 167; and any board of water supply that manages, controls, and operates the waterworks of a county for the purpose of supplying water to the public in that county.)

Thursday, March 30, 2017, at 9:50 a.m., in Conference Room 211

The Land Use Research Foundation of Hawaii (LURF) is a private, non-profit research and trade association whose members include major Hawaii landowners, developers and a utility company. LURF’s mission is to advocate for reasonable, rational and equitable land use planning, legislation and regulations that encourage well-planned economic growth and development, while safeguarding Hawaii’s significant natural and cultural resources, and public health and safety.

LURF appreciates the opportunity to express its **support of HB 1536, H.D. 2**, and of the various agricultural stakeholder groups who defend the goals of viable agricultural operations and the conservation and protection of agriculture, including important agricultural lands in Hawaii.

HB 1536, H.D. 2. This bill clarifies that BOA has the authority to acquire property by eminent domain for the construction and maintenance of water facilities that convey, distribute and transmit water for agricultural purposes, but not for domestic use. HB 1536, H.D. 2 also amends the definition of “public utility” in HRS Chapter 269 to exclude entities that convey, transmit, and distribute nonpotable water and any

irrigation project established pursuant to Chapter 167; and any board of water supply that manages, controls, and operates the waterworks of a county for the purpose of supplying water to the public in that county.

LURF's Position. The purpose of this measure is to assist agricultural stakeholders by clarifying that the BOA possesses the power to acquire property for agricultural water facilities; and amending the defined term "public utility" over which the Public Utilities Commission (PUC) exercises control pursuant to HRS Chapter 269, to exclude nonpotable water and any irrigation project established under HRS Chapter 167; and any board of water supply that manages, controls, and operates the waterworks of a county for the purpose of supplying water to the public in that county.

Since large amounts of prime agricultural lands and irrigation systems became available for conversion to diversified agriculture due to the plantation closures in the 1990s, the State has had the opportunity to strengthen and expand Hawaii's diversified agriculture industry, but agricultural lands require significant quantities of water to support and maintain productivity. It is therefore imperative that local agricultural producers may continue to receive, at affordable rates, a dependable supply of water for crops, as well as for research and development operations. LURF understands, however, that the PUC has maintained its position that waters delivered within a private system, regardless of quality (i.e., even if not for human consumption), must be charged at a compensatory rate, thus unreasonably increasing costs for agricultural stakeholders.

Local farmers and ranchers who rely on water and irrigation systems to service their agricultural lands consider such resources critical to conduct their agricultural operations and to sustain their businesses. These agricultural stakeholders believe measures such as HB 1536, H.D. 2 will greatly assist by allowing nonpotable and irrigation water suppliers to provide much-needed water at affordable rates, thereby enabling work toward the expansion of diversified agriculture and promotion of agricultural self-sufficiency of the State.

For the above reasons, LURF **supports HB 1536, H.D. 2**, and respectfully urges your favorable consideration.

Thank you for the opportunity to provide comments in support of this important measure.



P.O. Box 253, Kunia, Hawai'i 96759
Phone: (808) 848-2074; Fax: (808) 848-1921
e-mail info@hfbf.org; www.hfbf.org

March 29, 2017

HEARING BEFORE THE
SENATE COMMITTEE ON JUDICIARY AND LABOR
SENATE COMMITTEE ON WAYS AND MEANS

**TESTIMONY ON HB 1536, HD2
RELATING TO IRRIGATION**

Room 211
9:50 AM

Aloha Chairs Keith-Agaran and Tokuda, Vice Chairs Rhoads and Dela Cruz, and Members of the Committees:

I am Randy Cabral, President of the Hawaii Farm Bureau (HFB). Organized since 1948, the HFB is comprised of 1,900 farm family members statewide, and serves as Hawaii's voice of agriculture to protect, advocate and advance the social, economic and educational interests of our diverse agricultural community.

Hawaii Farm Bureau **strongly supports HB 1536, HD2**, clarifying water infrastructure eminent domain provisions and PUC authority of non-potable water.

Affordable and reliable waters for irrigation is a basic requirement for sustainable agriculture. Across the country, irrigation systems are heavily subsidized. Currently, new infrastructure investments are occurring in the West to ensure water will be available for agriculture. Hawaii's farmers face expenses far beyond that of their continental or foreign counterparts due to input costs, utility costs and water. Non potable systems will require farmers to take additional measures that will increase costs.

Farmers and ranchers, based on their operations have varied needs for water. The amount they can pay will vary greatly. Individual tariff rates would be very time consuming for the PUC. A one size fits all cost structure will not encourage agriculture. The complex process required to establish unique rate structures will require significant amounts of time. Time is money to farmers and ranchers. Enabling farmers/ranchers to work with water purveyors to agree on a fair arrangement is a better use of State resources and enables timely processing of agreements.

HFB respectfully requests your strong support of HB 1536, HD2, removing PUC control of non-potable water systems.

Thank you for this opportunity to provide comment on this important subject.



Testimony of
Kirk Saiki, P.E.
Manager and Chief Engineer
Before the Senate Committee on Ways and Means
And Committee on Judiciary and Labor
Thursday, March 30, 2017
9:50 AM
State Capitol, Conference Room 211

March 28, 2017

The Honorable Senator Jill N. Tokuda
24th Senatorial District
Chair, Senate Committee on Ways and Means

and

The Honorable Senator Gilbert S.C. Keith-Agaran
5th Senatorial District
Chair, Senate Committee on Judiciary and Labor

RE: HB 1536 HD2, RELATING TO IRRIGATION

The County of Kaua'i, Department of Water (DOW), respectfully submits this testimony **supporting** House Bill 1536 HD2, as it relates to DOW in its exclusion from the definition of "public utility". House Bill 1536 HD2 may alleviate any misinterpretations that the county boards of water supply should be under the jurisdiction of the Hawai'i Public Utilities Commission.

Thank you for the opportunity to testify.

Respectfully,

Kirk Saiki P.E.
Manager and Chief Engineer

CC: Honorable Bernard P. Carvalho, Mayor, County of Kaua'i
Sherman Shiraishi, Chairperson, Kaua'i Board of Water Supply
Ernest Lau, Manager and Chief Engineer, Honolulu Board of Water Supply
Dave Taylor, Director, Maui Department of Water Supply
Keith Okamoto, Manager and Chief Engineer, County of Hawai'i, Department of Water Supply



MAUI
CHAMBER OF COMMERCE
VOICE OF BUSINESS

**HEARING BEFORE THE SENATE COMMITTEE ON JUDICIARY & LABOR
AND THE COMMITTEE ON WAYS & MEANS
HAWAII STATE CAPITOL, SEMATE CONFERENCE ROOM 211
THURSDAY, MARCH 30, 2017 AT 9:50 A.M.**

To The Honorable Gilbert S.C. Keith-Agaran, Chair;
The Honorable Karl Rhoads, Vice Chair; and
Members of the Committee on Judiciary & Labor

To The Honorable Jill N. Tokuda, Chair;
The Honorable Donovan M. Dela Cruz, Vice Chair; and
Members of the Committee on Ways & Means

TESTIMONY IN SUPPORT FOR HB 1536 RELATING TO IRRIGATION

Aloha, my name is Pamela Tumpap and I am the President of the Maui Chamber of Commerce representing approximately 600 businesses and 16,000 employees. I am writing share our strong support of HB1536.

Farmers and ranchers in our state agriculture industry are extremely important to our local economy, but they face a number of obstacles. The agriculture industry is both costly and unpredictable so we support initiatives that assist our local farmers and ranchers as this our one of our legislative priorities this year. We support this bill because we see that local farmers and ranchers feel it is important to have an adequate water supply as this is crucial for their operations and business.

We appreciate the opportunity to testify on this matter and therefore ask that this bill be passed.

Mahalo for your consideration of our testimony and we hope you will move this bill forward.

Sincerely,

Pamela Tumpap
President

To advance and promote a healthy economic environment for business, advocating for a responsive government and quality education, while preserving Maui's unique community characteristics.

From: mailinglist@capitol.hawaii.gov
To: [JDLTestimony](#)
Cc:
Subject: *Submitted testimony for HB1536 on Mar 30, 2017 09:50AM*
Date: Tuesday, March 28, 2017 10:13:29 AM

HB1536

Submitted on: 3/28/2017

Testimony for JDL/WAM on Mar 30, 2017 09:50AM in Conference Room 211

Submitted By	Organization	Testifier Position	Present at Hearing
Warren Watanabe	Maui County Farm Bureau	Support	No

Comments:

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

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Cc: *Submitted testimony for HB1536 on Mar 30, 2017 09:50AM*
Date: Saturday, March 25, 2017 1:57:51 PM

HB1536

Submitted on: 3/25/2017

Testimony for JDL/WAM on Mar 30, 2017 09:50AM in Conference Room 211

Submitted By	Organization	Testifier Position	Present at Hearing
Benton	Individual	Oppose	No

Comments:

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Subject: Submitted testimony for HB1536 on Mar 30, 2017 09:50AM
Date: Wednesday, March 29, 2017 1:54:07 PM

HB1536

Submitted on: 3/29/2017

Testimony for JDL/WAM on Mar 30, 2017 09:50AM in Conference Room 211

Submitted By	Organization	Testifier Position	Present at Hearing
J Ashman	Individual	Support	No

Comments: Please vote yes to support all of Hawaii's farmers, including small family farmers who rely on these systems for their irrigation needs. This bill provides important clarifications and is necessary to keep farming viable in Hawaii. Thank you.

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Cc:
Subject: *Submitted testimony for HB1536 on Mar 30, 2017 09:50AM*
Date: Monday, March 27, 2017 10:05:11 AM

HB1536

Submitted on: 3/27/2017

Testimony for JDL/WAM on Mar 30, 2017 09:50AM in Conference Room 211

Submitted By	Organization	Testifier Position	Present at Hearing
Mae Nakahata	Individual	Support	No

Comments:

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Subject: *Submitted testimony for HB1536 on Mar 30, 2017 09:50AM*
Date: Tuesday, March 28, 2017 8:24:31 PM

HB1536

Submitted on: 3/28/2017

Testimony for JDL/WAM on Mar 30, 2017 09:50AM in Conference Room 211

Submitted By	Organization	Testifier Position	Present at Hearing
Randy Cabral	Individual	Support	No

Comments:

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