

JAN 25 2017

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# A BILL FOR AN ACT

RELATING TO IRRIGATION.

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

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

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

- (1) To acquire by eminent domain, water and water sources either above or underground, watershed, reservoir sites, rights-of-way over lands and property for paths, trails, roads, and landing sites, ditches, tunnels, flumes, reservoirs, and pipelines necessary or proper for the construction and maintenance of water facilities for conveying, distributing, and transmitting water for irrigation and ~~[domestic use]~~ other agricultural uses, and for such other purposes as may properly fall within the scope of its 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[, ] for human consumption, gas, or oil; for the  
10 storage or warehousing of goods; or for the disposal  
11 of sewage; provided that 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





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

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

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

(iv) The facility may distribute and sell recycled or reclaimed water to entities not covered by a state or county service contract; provided that, in the absence of regulatory oversight and direct competition, the distribution and sale of recycled or reclaimed water shall be voluntary and its pricing fair and reasonable. For purposes of this subparagraph, "recycled water" and "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:



(i) An interconnection, as defined in section 269-141, is maintained with an electric public utility to preserve the lessees' or tenants' ability to be served by an electric utility;

(ii) ~~[Such]~~ The person does not use an electric public utility's transmission or distribution lines to provide, sell, or transmit electricity to lessees or tenants;

(iii) At the time that the lease agreement is signed, the rate charged to the lessee or tenant for the power generated by the renewable energy system shall be no greater than the effective rate charged per kilowatt hour from the applicable electric utility schedule filed with the public utilities commission;

(iv) The rate schedule or formula shall be established for the duration of the lease, and the lease agreement entered into by the



lessee or tenant shall reflect such rate  
schedule or formula;

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

(vi) The lease agreement shall disclose: (1) the  
rate schedule or formula for the duration of  
the lease agreement; (2) that, at the time  
that the lease agreement is signed, the rate  
charged to the lessee or tenant for the  
power generated by the renewable energy  
system shall be no greater than the  
effective rate charged per kilowatt hour  
from the applicable electric utility  
schedule filed with the public utilities  
commission; (3) that the lease agreement  
shall not abrogate any terms or conditions  
of applicable tariffs for termination of  
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."



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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.

4

INTRODUCED BY: *N.M.N. III.*  
By Request



# S.B. NO. 1275

**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" in chapter 269, HRS, to include the production, conveyance, etc. of water for human consumption.

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