

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 HOUSE COMMITTEE ON CONSUMER PROTECTION & COMMERCE

**FEBRUARY 28, 2017
2:00 P.M.
CONFERENCE ROOM 329**

**HOUSE BILL NO. 1536 HD1
RELATING TO IRRIGATION**

Chairperson McKelvey and Members of the Committee:

Thank you for the opportunity to testify on House Bill No. 1536 HD1. 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.





**HB1536 HD1
RELATING TO IRRIGATION**

House Committee on Consumer Protection & Commerce

February 28, 2017

2:00 p.m.

Room 329

The Office of Hawaiian Affairs (OHA) offers the following **COMMENTS** on HB1536 HD1, 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 Committee 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.

TESTIMONY OF RANDY IWASE
CHAIR, PUBLIC UTILITIES COMMISSION
STATE OF HAWAII
TO THE
HOUSE COMMITTEE ON
CONSUMER PROTECTION AND COMMERCE

February 28, 2017
2:00 p.m.

MEASURE: H.B. No. 1536, H.D. 1
TITLE: RELATING TO IRRIGATION

Chair McKelvey and Members of the Committee:

DESCRIPTION:

This measure amends the list of exemptions from the definition of “public utility” in Chapter 269, HRS, to exempt entities providing non-potable water service as well as any irrigation project established pursuant to Chapter 167, HRS.

This measure also amends the Board of Agriculture (“BOA”) powers to specify 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.

POSITION:

The Commission offers the following comments for the Committee’s consideration.

COMMENTS:

The Commission notes that a portion of the water utilities regulated by the Commission offer non-potable water service, which can be used for non-agricultural purposes, like landscaping and irrigation of golf courses. This measure would exempt all non-potable uses of water, whether used for agricultural or non-agricultural purposes, from Commission regulation.

Thank you for the opportunity to testify on this measure.



LATE

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 HOUSE COMMITTEE ON CONSUMER PROTECTION & COMMERCE

THE TWENTY-NINTH LEGISLATURE
REGULAR SESSION OF 2017

TUESDAY, FEBRUARY 28, 2017
2:00 P.M.

TESTIMONY OF DEAN NISHINA, EXECUTIVE DIRECTOR, DIVISION OF
CONSUMER ADVOCACY, DEPARTMENT OF COMMERCE AND CONSUMER
AFFAIRS, TO THE HONORABLE ANGUS L.K. McKELVEY, CHAIR,
AND MEMBERS OF THE COMMITTEE

HOUSE BILL NO. 1536, H.D. 1 - 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” in Chapter 269, Hawaii Revised Statutes (“HRS”), to include the production, conveyance, etc. of water for human consumption.

POSITION:

The Division of Consumer Advocacy (“Consumer Advocate”) has concerns with this bill and offers these comments.

COMMENTS:

If this measure is passed, it could result in unintended consequences. The Public Utilities Commission (“Commission”) regulates certain water and wastewater companies and some of those companies also offer non-potable or irrigation water services. If passed, the proposed modifications to HRS § 269-1 could exempt such services from Commission oversight.

The Consumer Advocate contends that exempting all non-potable water facilities and 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.

However, if the legislature's intent is to exempt only projects related to HRS Chapter 167, that result might be more efficiently accomplished if the exemption listed under HRS § 269-1(2)(l) were to read as, "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;"

Thank you for this opportunity to testify.

BOARD OF WATER SUPPLY

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



LATE

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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 *EW*

February 28, 2017

The Honorable Angus L. K. McKelvey, Chair
and Members
Committee on Consumer Protection & Commerce
House of Representatives
Hawaii State Capitol, Room 320
415 Beretania Street
Honolulu, Hawaii 96813

Dear Chair McKelvey and Members:

Subject: House Bill 1536, HD1 Relating to Irrigation

The Board of Water Supply takes no position on the substantive provisions of this bill as it relates to the Board of Agriculture. However, even though House Bill 1536, as introduced, proposed an amendment to the definition of "public utility" in chapter 269, Hawaii Revised Statutes (HRS), to include the production, conveyance, etc., of water "for human consumption" which term was subsequently removed by the House Committee on Water & Land, the definition of "public utility" retains the original reference to "the production, conveyance, etc. of water...". (See page 6, lines 7 to 9).

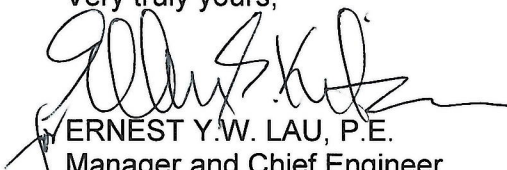
We believe this could be interpreted to mean that the various boards of water supply statewide could subsequently be within the jurisdiction and oversight of the Hawaii Public Utilities Commission. Whereas, statewide, our management, control, and operation of the water systems are embodied in chapter 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.

With the prior concurrence of the Chair of the House Committee on Water & Land, we respectively request that House Bill 1536, HD1 be amended on page 14, lines 10-11, by amending subparagraph (vii) and inserting a new paragraph (O) to read:

"(vii) Nothing in this section shall be construed to permit wheeling[-]; and
(O) Any board of water supply managing, controlling, and operating the water works of the county for the purpose of supplying water to the public in the county."

We believe this proposed amendment will clearly exclude the boards of water supply from the definition of "public utility" and remedy any ambiguity regarding its application. Thank you for your consideration of our testimony on House Bill 1536, HD1.

Very truly yours,


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



February 23, 2017

Representative Angus L.K. McKelvey, Chair
Representative Linda Ichiyama, Vice Chair
House Committee on Consumer Protection & Commerce

Comments in Support of HB 1536, H.D. 1 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.)

Tuesday, February 28, 2017, at 2:00 p.m., in Conference Room 329

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. 1**, 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. 1. 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. 1 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.

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.

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. 1 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. 1**, and respectfully urges your favorable consideration.

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



**East Kauai
Water Users' Cooperative**

4334 Rice Street, Suite 202
Lihue, Kauai Hawaii 96766
Phone: 808-246-6962
Fax: 808-245-3277

LATE

February 27, 2017

TO: COMMITTEE ON CONSUMER PROTECTION & COMMERCE
Rep. Angus L.K. McKelvey, Chair
Rep. Linda Ichiyama, Vice Chair
COMMITTEE ON WATER & LAND
Rep. Ryan I. Yamane, Chair
Rep. Sam Satoru Kong, Vice Chair

RE: **Testimony on HB1536 HD1 Relating to Irrigation
February 28, 2017, Conference Room 328**

Chairpersons McKelvey and Yamane and Members of the Committees:

My name is Jerry Ornellas and I support HB1536 HD1. I am the president of the East Kauai Water Users' Cooperative which has managed the State-owned reservoir and ditch system in the Kapaa/Kalepa area for the past 14 years under a revocable permit from DLNR. Now with recent court decisions, the Coop will be required to seek a long-term water license to operate the system. A better, long-term solution is for the Department of Agriculture to add the system to its inventory of water systems. It is an agency far more responsive to the needs of farmers. Other agricultural irrigation systems in the state are in the same situation.

HB1536 HD1 clears several possible regulatory obstacles to DOA doing so, specifically clarifying its authority to acquire and run irrigation systems—something it has done already for years. In particular, it eliminates the possibility that PUC regulations intended for privately owned utilities such as water and electricity—which essentially operate as monopolies in a specific area—be applied to state-owned agricultural irrigation systems already overseen by the state's Commission on Water Resource Management. We'd also point out that the PUC has not previously attempted to regulate any irrigation system, state-owned or private. This bill therefore only makes formal what has been followed all along.

I respectfully ask that you pass this bill.

East Kauai Water Users' Cooperative

Jerry Ornellas, President



LATE

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

February 28, 2017

HEARING BEFORE THE
HOUSE COMMITTEE ON CONSUMER PROTECTION AND COMMERCE

TESTIMONY ON HB 1536, HD1
RELATING TO IRRIGATION

Room 329
2:00 PM

Aloha Chair McKelvey, Vice Chair Ichiyama, and Members of the Committee:

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, HD1**, 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 costs 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. PUC has consistently insisted that waters delivered within a private system, regardless of quality, requires to be charged at a compensatory rate. If we are serious about moving the needle on agriculture, State policy should support measures to enable water purveyors to provide water at affordable rates.

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. Enabling farmers/ranchers to work with water purveyors will be a better use of resources.

HFB respectfully requests your strong support of HB 1536, HD1, removing PUC control of non-potable water systems.

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



Kalepa Koalition

5868 Kini Place
Kapaa, Hawaii 96746
Phone/Fax: 808-639-0152

LATE

February 27, 2017

TO: COMMITTEE ON CONSUMER PROTECTION & COMMERCE
Rep. Angus L.K. McKelvey, Chair
Rep. Linda Ichiyama, Vice Chair
COMMITTEE ON WATER & LAND
Rep. Ryan I. Yamane, Chair
Rep. Sam Satoru Kong, Vice Chair

**RE: Testimony on HB1536 HD1 Relating to Irrigation
February 28, 2017, Conference Room 328**

Chairpersons McKelvey and Yamane and Members of the Committees:

My name is Les Milnes and I support HB1536 HD1. I am the president of the Kalepa Koalition, an Hawaii agricultural cooperative of the farmers and ranchers who hold long-term licenses on 6,500 acres of State land behind Kalepa Ridge on Kauai and under the administration of ADC.

The East Kauai Water Cooperative System services a large portion of the Kalepa lands; most of the farmers, ranches and the huge Green Energy Team biomass project on a 1,000 acres utilize the system through Hanamaulu Ditch or off the Upper and Lower Aahoaka Reservoirs.

We believe this bill will facilitate the Department of Agriculture's potential management of our system without unnecessary regulatory complications.

I respectfully request that this bill be passed.

A handwritten signature in black ink, appearing to read "Les Milnes".

Leslie P. Milnes, President
Kalepa Koalition



LATE

Maui County

February 28, 2017

HEARING BEFORE THE

HOUSE COMMITTEE ON CONSUMER PROTECTION AND COMMERCE

TESTIMONY ON

HB1536: RELATING TO IRRIGATION

Room 329

2:00 PM

Aloha Chair McKelvey, Vice -Chair Ichiyama, and Members of the Committee::

I am Warren Watanabe, Executive Director of Maui County Farm Bureau. We are a County Chapter of the Hawaii Farm Bureau, representing 200 farm families and organizations on the island. Our mission seeks to protect and increase the viability of farms and ranches while ensuring the social and environmental wellbeing of the island.

MCFB strongly supports HB1536 clarifying BOA eminent domain provisions and exempting non potable water from PUC requirements..

Irrigation water is critical for many areas across the State. While State and County ag park systems exist outside of the PUC regulatory system, private water systems need to comply with PUC requirements.

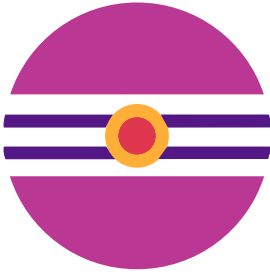
Several years ago, after Pioneer Mill exited sugar operations, developers entered into the picture, creating agricultural subdivisions. Real farmers bought lands and started farming with the understanding that they would receive an agricultural water rate. When the land owner finally submitted the request before the PUC, his proposal of an ag water rate for the farming sections of his development was refused. PUC declared that rates had to be compensatory. One of the farmers had already spent hundreds of thousands of dollars preparing the land, installing a greenhouse and beginning operations. He could not turn back. His efforts towards viability was challenged. The farmer called me for help but we could not do anything as the authority lay with the PUC. The farm is gone today, and we often wonder what could have happened if he did not have to pay the compensatory rates. It frustrates me that we could not have done more to help him.

There are many non-potable systems across the State. All of them only involve agriculture. It seems that negotiations between farmer and water purveyor is the most prudent method to establish rates. Conditions vary and trying to create a one size fits all model that would be inevitable in a PUC system will be difficult.

We respectfully request your support of this measure. Our farmers already face many regulatory challenges. Streamlining their access to water would be of great assistance.

Thank you.

Maui County Farm Bureau • Box 148 • Kula, Hawaii 96790 • (808)2819718
info@mauicountyfarmbureau.org



Saiva Siddhanta Church

Kauai's Hindu Monastery
107 Kaholalele Road
Kapaa, Hawaii 96746-9304•USA
Phone: (808) 822-3012

LATE

February 27, 2017

COMMITTEE ON CONSUMER PROTECTION & COMMERCE

Rep. Angus L.K. McKelvey, Chair

Rep. Linda Ichiyama, Vice Chair

COMMITTEE ON WATER & LAND

Rep. Ryan I. Yamane, Chair

Rep. Sam Satoru Kong, Vice Chair

Testimony on HB1536 HD1 Relating to Irrigation February 28, 2017, Conference Room 328

Chairpersons McKelvey and Yamane and Members of the Committees:

We are writing today in favor of HB1536 HD1. We are a founder member of the East Kauai Water Users' Cooperative Board of Directors which maintains 22 miles of ditch and several reservoirs in and around Kapaa.

HB1536 HD1 provides necessary authority and powers to the Department of Agriculture to take over and operate a number of irrigation systems across the state originally built by the sugar industry. Now these systems serve a growing number of farmers and ranchers.

HB 1536 HD1 also eliminates any possible regulatory confusion with the Public Utilities Commission by clarifying their kuleana is potable water systems, and not agricultural irrigation systems which are already overseen by the Commission on Water Resource Management.

Saiva Siddhanta Church

Acharya Arumuganathaswami

Acharya Arumuganathaswami
Farm Manager

From: mailinglist@capitol.hawaii.gov
Sent: Monday, February 27, 2017 8:23 AM
To: CPCtestimony
Cc: jkimof@msn.com
Subject: *Submitted testimony for HB1536 on Feb 28, 2017 14:00PM*

HB1536

Submitted on: 2/27/2017

Testimony for CPC on Feb 28, 2017 14:00PM in Conference Room 329

Submitted By	Organization	Testifier Position	Present at Hearing
james Kimo Falconer	Individual	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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From: mailinglist@capitol.hawaii.gov
Sent: Monday, February 27, 2017 2:58 PM
To: CPCtestimony
Cc: begoniabarry@gmail.com
Subject: *Submitted testimony for HB1536 on Feb 28, 2017 14:00PM*

HB1536

Submitted on: 2/27/2017

Testimony for CPC on Feb 28, 2017 14:00PM in Conference Room 329

Submitted By	Organization	Testifier Position	Present at Hearing
Barbara Barry	Individual	Oppose	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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