

SB 1275

DAVID Y. IGE
Governor

SHAN S. TSUTSUI
Lt. Governor



State of Hawaii
DEPARTMENT OF AGRICULTURE
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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 AGRICULTURE & ENVIRONMENT &
COMMERCE, CONSUMER PROTECTION, & HEALTH**

FEBRUARY 10, 2017
1:20 P.M.
CONFERENCE ROOM 224

SENATE BILL NO. 1275
RELATING TO IRRIGATION

Chairpersons Gabbard and Baker and Members of the Committees:

Thank you for the opportunity to testify on Senate Bill No. 1275. 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 include the production, conveyance, etc. of water for human consumption. 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
AGRICULTURE AND ENVIRONMENT
&
COMMERCE, CONSUMER PROTECTION AND HEALTH

February 8, 2017
9:00 am

MEASURE: S.B. No. 1275
TITLE: RELATING TO IRRIGATION

Chair Gabbard, Chair Baker, and Members of the Committees:

DESCRIPTION:

This measure proposes to reduce the scope of the Public Utilities Commission's ("Commission's") jurisdiction over public utilities providing water service by amending the definition of "public utility" in Chapter 269, HRS, to include entities who provide for the production, conveyance, transmission, delivery, or furnishing of water "for human consumption[" This measure also 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 67, 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:

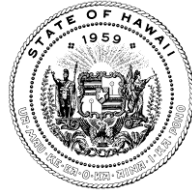
The Commission currently regulates 24 privately-owned utilities that provide water service throughout the State. The Commission notes that a portion of these regulated utilities provide non-potable water service that is used for non-agricultural purposes, like landscaping and

S.B. No. 1275

Page 2

irrigation of golf courses. This measure would exempt from Commission regulation all non-potable uses of water, whether used for agricultural or non-agricultural purposes.

Thank you for the opportunity to testify on this measure.



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

STATE OF HAWAII
OFFICE OF THE DIRECTOR
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS

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CATHERINE P. AWAKUNI COLÓN
DIRECTOR

JO ANN M. UCHIDA TAKEUCHI
DEPUTY DIRECTOR

TO THE SENATE COMMITTEE ON AGRICULTURE AND ENVIRONMENT
AND
TO THE SENATE COMMITTEE ON COMMERCE, CONSUMER PROTECTION,
AND HEALTH

THE TWENTY-NINTH LEGISLATURE
REGULAR SESSION OF 2017

FRIDAY, FEBRUARY 10, 2017
1:20 P.M.

TESTIMONY OF DEAN NISHINA, EXECUTIVE DIRECTOR, DIVISION OF
CONSUMER ADVOCACY, DEPARTMENT OF COMMERCE AND CONSUMER
AFFAIRS, TO THE HONORABLE MIKE GABBARD, CHAIR,
THE HONORABLE ROSALYN H. BAKER, CHAIR
AND MEMBERS OF THE COMMITTEES

SENATE BILL NO. 1275 - 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 agricultural uses, but not for domestic use and amends 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 a number of water and wastewater companies that also offer non-potable or irrigation water services. If passed, the proposed modifications to HRS § 269-1 would exempt such services from Commission oversight.

The Consumer Advocate contends that exempting all non-potable and/or irrigation services from Commission review, especially when such services are also offered in conjunction with regulated water and/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.

However, if the legislature’s intent was primarily housekeeping in nature and sought to better distinguish that irrigation and/or non-potable water projects established pursuant to HRS Chapter 167 should be exempt from Commission oversight, the Consumer Advocate respectfully suggests that alternative modifications may avoid unnecessary confusion and unintended consequences. By itself, the inclusion of the phrase, “for human consumption” in HRS § 269-1(1), causes potential confusion as many of the water companies regulated by the Commission provide potable water for both human consumption as well as irrigation purposes. Thus, the Consumer Advocate suggests that the proposed insertion of “for human consumption” should be deleted. Further, 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) read, “Any person who controls, operates, or manages plants, facilities, or projects developed, pursuant to HRS Chapter 167, for conveying, distributing and/or transmitting nonpotable or irrigation water;”

Thank you for this opportunity to testify.



**East Kauai
Water Users' Cooperative**

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

February 7, 2017

TO: Senate Committee on Agriculture and Environment
Sen. Mike Gabbard, Chair
Sen. Gil Riviere, Vice Chair
Committee on Commerce, Consumer Protection, and Health
Senator Rosalyn H. Baker, Chair
Senator Clarence K. Nishihara, Vice Chair

RE: **Testimony on SB1275 Relating to Irrigation
February 10, 2017, Conference Room 224**

Chairpersons Gabbard and Baker, and Members of the Committees:

My name is Jerry Ornellas and I support HB1536. 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 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



Maui County

February 10, 2017

HEARING BEFORE THE

SENATE COMMITTEE ON AGRICULTURE AND ENVIRONMENT
AND

SENATE COMMITTEE ON COMMERCE, CONSUMER PROTECTION, AND HEALTH

TESTIMONY ON
SB1275: RELATING TO IRRIGATION

Room 224
1:20 PM

Aloha Chair Gabbard, Chair Baker, and Members of the Committees:

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 SB1275** 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.

From: mailinglist@capitol.hawaii.gov
Sent: Thursday, February 9, 2017 10:58 AM
To: AEN Testimony
Cc: dale@hicattle.org
Subject: *Submitted testimony for SB1275 on Feb 10, 2017 13:20PM*

SB1275

Submitted on: 2/9/2017

Testimony for AEN/CPH on Feb 10, 2017 13:20PM in Conference Room 224

Submitted By	Organization	Testifier Position	Present at Hearing
Dale Sandlin	Hawaii Cattlemens Council	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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February 6, 2017

Representative Ryan I. Yamane, Chair
Representative Sam Satoru Kong, Vice Chair
House Committee on Water & Land

Comments in Support of HB 1536 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 clarify application to water “for human consumption.”)

Wednesday, February 8, 2016, at 9:00 a.m., in Conference Room 325

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**, 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 (IAL) in Hawaii.

HB 1536. 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 also amends the definition of “public utility” in Hawaii Revised Statutes (HRS) Chapter 269 to clearly limit the application of said definition to the production, conveyance, etc. of water for “human consumption.”

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 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**, and respectfully urges your favorable consideration.

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



Kalepa Koalition

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

February 7, 2017

TO: Senate Committee on Agriculture and Environment
Sen. Mike Gabbard, Chair
Sen. Gil Riviere, Vice Chair
Committee on Commerce, Consumer Protection, and Health
Senator Rosalyn H. Baker, Chair
Senator Clarence K. Nishihara, Vice Chair

**RE: Testimony on SB1275 Relating to Irrigation
February 10, 2017, Conference Room 224**

Chairpersons Gabbard and Baker, and Members of the Committees:

My name is Les Milnes and I support SB1276. 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.

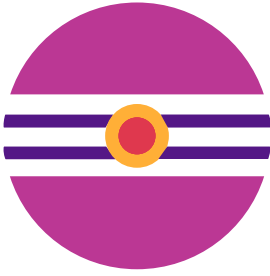
The East Kauai Water Cooperative System services a large portion of the Kalepa lands; most of the farmers, ranches and the huge Green Energy Team biomass project on a 1,000 acres utilize the system through Hanamaulu Ditch or off the Upper and Lower Aahoaka Reservoirs.

We believe HB1536 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 cursive script, appearing to read "Les Milnes".

Leslie P. Milnes, President
Kalepa Koalition



Saiva Siddhanta Church

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

February 7, 2017

Senate Committee on Agriculture and Environment

Sen. Mike Gabbard, Chair

Sen. Gil Riviere, Vice Chair

Committee on Commerce, Consumer Protection, and Health

Senator Rosalyn H. Baker, Chair

Senator Clarence K. Nishihara, Vice Chair

Testimony on SB1275 Relating to Irrigation February 10, 2017, Conference Room 224

Chairpersons Gabbard and Baker, and Members of the Committees:

We are writing today in favor of HB1536. 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 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 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: Thursday, February 9, 2017 11:16 AM
To: AEN Testimony
Cc: alan@prloffice.com
Subject: *Submitted testimony for SB1275 on Feb 10, 2017 13:20PM*

SB1275

Submitted on: 2/9/2017

Testimony for AEN/CPH on Feb 10, 2017 13:20PM in Conference Room 224

Submitted By	Organization	Testifier Position	Present at Hearing
Alan Gottlieb	Ponoholo Ranch Limited	Support	No

Comments:

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From: mailinglist@capitol.hawaii.gov
Sent: Monday, February 6, 2017 11:33 AM
To: AEN Testimony
Cc: jkimof@msn.com
Subject: Submitted testimony for SB1275 on Feb 10, 2017 13:20PM

SB1275

Submitted on: 2/6/2017

Testimony for AEN/CPH on Feb 10, 2017 13:20PM in Conference Room 224

Submitted By	Organization	Testifier Position	Present at Hearing
james Kimo Falconer	MauiGrown Coffee, Inc	Support	No

Comments: Chair Baker and Chair Gabbard and members, Please support Bill SB 1275. Mahalo Kimo Falconer, President MauiGrown Coffee, Inc.

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From: mailinglist@capitol.hawaii.gov
Sent: Sunday, February 5, 2017 8:38 PM
To: AEN Testimony
Cc: begoniabarry@gmail.com
Subject: *Submitted testimony for SB1275 on Feb 10, 2017 13:20PM*

SB1275

Submitted on: 2/5/2017

Testimony for AEN/CPH on Feb 10, 2017 13:20PM in Conference Room 224

Submitted By	Organization	Testifier Position	Present at Hearing
Barbara Barry	Individual	Support	No

Comments:

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From: mailinglist@capitol.hawaii.gov
Sent: Saturday, February 4, 2017 9:26 AM
To: AEN Testimony
Cc: john@olsontrust.com
Subject: *Submitted testimony for SB1275 on Feb 10, 2017 13:20PM*

SB1275

Submitted on: 2/4/2017

Testimony for AEN/CPH on Feb 10, 2017 13:20PM in Conference Room 224

Submitted By	Organization	Testifier Position	Present at Hearing
John C. Cross	Individual	Support	No

Comments:

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From: mailinglist@capitol.hawaii.gov
Sent: Tuesday, February 7, 2017 2:37 PM
To: AEN Testimony
Cc: spawaikiki@gmail.com
Subject: Submitted testimony for SB1275 on Feb 10, 2017 13:20PM

SB1275

Submitted on: 2/7/2017

Testimony for AEN/CPH on Feb 10, 2017 13:20PM in Conference Room 224

Submitted By	Organization	Testifier Position	Present at Hearing
dennis boyd miller	Individual	Support	No

Comments: Dear Senators, I'm Dennis Miller, a Waikiki resident. Regarding SB1275, Committee AEN/CPH Room 224 Feb 10, 2017 I'm writing to urge you to support this bill. We need to be able to manage our water resources. Thank you, Dennis Miller

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From: mailinglist@capitol.hawaii.gov
Sent: Thursday, February 2, 2017 8:28 AM
To: AEN Testimony
Cc: jerryo@hawaii.edu
Subject: *Submitted testimony for SB1275 on Feb 10, 2017 13:20PM*

SB1275

Submitted on: 2/2/2017

Testimony for AEN/CPH on Feb 10, 2017 13:20PM in Conference Room 224

Submitted By	Organization	Testifier Position	Present at Hearing
Jerry Ornellas	Individual	Support	No

Comments:

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From: mailinglist@capitol.hawaii.gov
Sent: Monday, February 6, 2017 1:32 PM
To: AEN Testimony
Cc: kona3gurl@yahoo.com
Subject: *Submitted testimony for SB1275 on Feb 10, 2017 13:20PM*

SB1275

Submitted on: 2/6/2017

Testimony for AEN/CPH on Feb 10, 2017 13:20PM in Conference Room 224

Submitted By	Organization	Testifier Position	Present at Hearing
Melodie Reyes	Individual	Oppose	No

Comments:

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