

DAVID Y. IGE
GOVERNOR OF
HAWAII



SUZANNE D. CASE
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

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LAND
STATE PARKS

**STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES**

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**Testimony of
SUZANNE D. CASE
Chairperson**

**Before the Senate Committee on
WAYS AND MEANS**

**Friday, February 23, 2018
10:30 AM
State Capitol, Conference Room 211**

**In consideration of
SENATE BILL 641
RELATING TO THE CHAIRPERSON OF THE HAWAIIAN HOMES COMMISSION**

Senate Bill 641 proposes to amend Section 174C-7, Hawaii Revised Statutes (HRS), to add an eighth member, the Chairperson of the Hawaiian Homes Commission or the Chairperson's designee, to serve as an ex-officio voting member on the Commission on Water Resource Management (Commission) of the Department of Land and Natural Resources (Department). **The Department offers the following comments.**

The Commission is committed to fulfill its mandate to incorporate and protect adequate reserves of water for current and foreseeable development and use of Hawaiian home lands as set forth in Section 221 of the Hawaiian Homes Commission Act, as provided in the State Water Code, Section 174C-101, HRS.

Towards that end, the Commission has worked closely with the Department of Hawaiian Home Lands (DHHL) and the Department's Engineering Division to update the State Water Projects Plan, focusing exclusively on DHHL's lands and water needs. Based on the preliminary findings of the 2017 final report, DHHL submitted a reservation request for the Keauhou Aquifer System Area (Kona, Hawaii) on December 5, 2014, and on August 15, 2015, the Commission approved DHHL's full request. The 2017 final report was also used to support DHHL's needs for surface water from the Waimea River (Kauai), and in April 2017, the Commission established its first surface water reservation for DHHL as part of the mediated settlement on an amended instream flow amendment for the Waimea River. More recently, DHHL and Commission staff have been in discussions to establish additional water reservations for DHHL based on the 2017 report, and additional reservations will be proposed in 2018 for adoption by the Commission.

All Commission members have constitutional and statutory responsibilities to protect and preserve the rights of DHHL. Adding a member for this specific interest may create a perception that the other Commissioners have no obligation to consider these important rights. The Hawaii Supreme Court has made it clear that in the context of water, the entire Commission has a responsibility to respect and protect native Hawaiian rights, including those of DHHL, and to carry out the State's public trust duties. This responsibility does not rest on a single member.

DHHL is often a party before the Commission, including important contested case hearings. Any member appointed by an organization would be required to recuse him or herself on any matter in which the organization has an interest. If the interest represented is broader than DHHL (as an organization), then the individual might be barred from a whole range of issues. This might actually defeat the very purpose of the appointment.

Thank you for the opportunity to comment on this measure.



SB641

RELATING TO THE CHAIRPERSON OF THE HAWAIIAN HOMES COMMISSION

Senate Committee on Ways and Means

February 23, 2018

10:30 a.m.

Room 211

The Office of Hawaiian Affairs (OHA)s **SUPPORTS** SB641, which would better ensure that the Commission on Water Resources Management (CWRM) understands the unique rights and needs of the Department of Hawaiian Home Lands, in its oversight of our public trust water resources.

Both the constitution and the state water code provide the Department of Hawaiian Home Lands (DHHL) with unique rights to our public trust water resources. These rights may be critical to fulfilling the State's and DHHL's critical responsibilities, to serve the beneficiaries and manage the assets of the Hawaiian Home Lands Trust; such rights include the right to reserve water for future DHHL needs, as well as the right to enjoy a priority for water use in designated water management areas, among others.

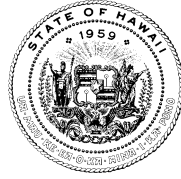
Unfortunately, the actual enforcement and practical implementation of DHHL's water rights may be often overlooked in CWRM decisionmaking. For example, while DHHL may apply for and receive reservations for water, CWRM has in the past failed to ensure that new private wells do not impair DHHL's future ability to actually use such reservations. Similarly, CWRM decisionmaking on whether or not to designate water management areas may not necessarily reflect a full consideration of how designation can better protect DHHL's rights and interests, particularly in aquifer areas where substantial future development may be planned.

By adding the Chairperson of the Hawaiian Homes Commission to CWRM, this measure may allow CWRM to more fully understand DHHL's unique water rights and needs, and better ensure that CWRM decisionmaking properly considers DHHL's historical and practical challenges and concerns relating to its water rights.

Accordingly, OHA urges the Committee to **PASS** SB641. Mahalo for the opportunity to testify on this measure

DAVID Y. IGE
GOVERNOR
STATE OF HAWAII

SHAN S. TSUTSUI
LT. GOVERNOR
STATE OF HAWAII



JOBIE M. K. MASAGATANI
CHAIRMAN
HAWAIIAN HOMES COMMISSION

WILLIAM J. AILA, JR.
DEPUTY TO THE CHAIRMAN

**STATE OF HAWAII
DEPARTMENT OF HAWAIIAN HOME LANDS**

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**TESTIMONY OF JOBIE M. K. MASAGATANI, CHAIRMAN
HAWAIIAN HOMES COMMISSION
BEFORE THE SENATE COMMITTEES ON WAYS AND MEANS**

IN SUPPORT OF

**SB 641 RELATING TO THE CHAIRPERSON OF THE HAWAIIAN HOMES
COMMISSION**

February 23, 2018

Aloha Chair Dela Cruz and members of the Committee:

The Department of Hawaiian Home Lands (DHHL) supports this bill that amends the membership of the Commission on Water Resource Management to add the Chairperson of the Hawaiian Homes Commission or the Chairperson's designees to serve as an ex officio voting member. The Hawaiian Homes Commission (HHC) approved a Water Policy Plan in 2014 after conducting a series of statewide Beneficiary Consultation Meetings on the draft plan. One of the goals in the Water Policy Plan is to "aggressively, proactively, consistently and comprehensively advocate for the kuleana of the beneficiaries, the DHHL and the HHC to water before all relevant agencies and entities." While DHHL has been working closely with the Commission on Water Resource Management, this bill would allow for greater advocacy for beneficiaries of the Hawaiian Homes Commission Act. In addition, this bill would allow for the Chairperson or the Chairperson's designee to serve as an ex officio voting member of the Commission on Water Resource Management similar to the Director of Health or the Director's designee.

Thank you for your consideration of our testimony.

SB-641

Submitted on: 2/20/2018 7:40:33 PM

Testimony for WAM on 2/23/2018 10:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
De MONT R. D. CONNER	Testifying for Ho'omanapono Political Action Committee (HPAC)	Support	Yes

Comments:

We STRONGLY SUPPORT this bill. Mahalo.

SB-641

Submitted on: 2/22/2018 1:44:48 AM

Testimony for WAM on 2/23/2018 10:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Melodie Aduja	Testifying for OCC Legislative Priorities Committee, Democratic Party of Hawai'i	Support	No

Comments:

SB-641

Submitted on: 2/21/2018 1:17:41 PM

Testimony for WAM on 2/23/2018 10:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Rachel L. Kailianu	Individual	Support	Yes

Comments:

I am in support in another commissioner, but against giving the chair person the choice to choose a voting member in to have leverage over a leasee or Hawaiian homeland community.