

SB 223

DAVID Y. IGE
Governor

JOSH GREEN
Lt. Governor



DENISE ALBANO
Chairperson, Board of Agriculture

PHYLLIS SHIMABUKURO-GEISER
Deputy to the Chairperson

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

**TESTIMONY OF DENISE ALBANO
CHAIRPERSON, BOARD OF AGRICULTURE**

BEFORE THE SENATE COMMITTEE ON AGRICULTURE & ENVIRONMENT

**JANUARY 30, 2019
1:15 P.M.
CONFERENCE ROOM 224**

**SENATE BILL NO. 223
RELATING TO IRRIGATION**

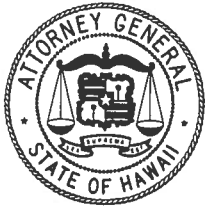
Chairperson Mike Gabbard and Members of the Committee:

Thank you for the opportunity to testify on Senate Bill 223. This bill transfers operation authority over the portions of the East Kauai Irrigation System to the Department of Agriculture, establishes positions, and makes an appropriation. The Department of Agriculture supports this measure provided it does not impact the priorities listed in the Executive Budget.

This bill provides much needed support for a system that has been operated and maintained by volunteer farmers in East Kauai for many years. The need for continued irrigation access for farmers in the region is of utmost importance and directly supports the State's goal to double local food production.

Thank you for the opportunity to testify on this measure.





**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
THIRTIETH LEGISLATURE, 2019**

ON THE FOLLOWING MEASURE:
S.B. NO. 223, RELATING TO IRRIGATION.

BEFORE THE:
SENATE COMMITTEE ON AGRICULTURE AND ENVIRONMENT

DATE: Wednesday, January 30, 2019 **TIME:** 1:15 p.m.

LOCATION: State Capitol, Room 224

TESTIFIER(S): Clare E. Connors, Attorney General, or
Valerie M. Kato, Deputy Attorney General

Chair Gabbard and Members of the Committee:

The Department of the Attorney General offers the following technical correction regarding the lapsing date.

The bill, among other things, authorizes the director of finance to issue general obligation bonds in the sum of \$2,000.000 for fiscal year 2019-2020 for the purpose of assisting the agricultural resource management division to increase state irrigation system capacity statewide. The funds are to be expended by the Department of Agriculture. "[A]ll moneys from the appropriation unencumbered as of June 30, 2024, shall lapse as of that date."

This lapsing date violates article VII, section 11 of the Hawai'i State Constitution. Article VII, section 11, of the Hawai'i State Constitution states: "All appropriations for which the source is general obligation bond funds or general funds shall be for specified periods. No such appropriation shall be made for a period exceeding three years[.]" The provision in section 11 has been interpreted to mean that the lapse date shall be no more than one year beyond the close of the biennial period. *See attached* Attorney General Opinion 81-2, dated March 9, 1981.

In order to conform this bill to the State Constitution, we recommend that on page 3, line 19, the year "2024" be changed to "2022".

We respectfully ask the Committee to make the recommended amendment.

GEORGE R. ARIYOSHI
GOVERNOR



STATE OF HAWAII
DEPARTMENT OF THE ATTORNEY GENERAL
STATE CAPITOL
HONOLULU, HAWAII 96813
(808) 548-4740

Tany S. Hong
~~WAYNE M. HANAU~~
ATTORNEY GENERAL

LARRY L. ZENKER
ASSISTANT ATTORNEY GENERAL

March 9, 1981

The Honorable Tony T. Kunimura
Chairman, Committee on Finance
House of Representatives
Eleventh Legislature
Room 306, State Capitol
Honolulu, Hawaii 96813

Dear Representative Kunimura:

This is in response to your request for our opinion as to whether the inclusion of the following lapsing provision in the General Appropriations Act of 1981 would be in compliance with Article VII, Section 11 of the State Constitution:

"(a) (A)ll appropriations made for capital investment projects for fiscal year 1981-82 which are unencumbered as of June 30, 1984 shall lapse as of that date; and (b) all appropriations made for capital investment projects for fiscal year 1982-83 which are unencumbered as of June 30, 1985 shall lapse as of that date."

We answer in the negative.

Article VII, Section 11 of the State Constitution, which was added by the 1978 Constitutional Convention, provides in pertinent part that:

Op. No. 81-2

The Honorable Tony T. Kunimura
March 9, 1981
Page 2

All appropriations for which the source is general obligation bond funds or general funds shall be for specified periods, and no such appropriation shall be for a period exceeding three years. Any such appropriation or any portion of any such appropriation which is unencumbered at the close of the fiscal period for which the appropriation is made shall lapse; . . .

Construing the above constitutional provision literally, it would appear that all appropriations for capital investment projects for the fiscal biennium 1981-1983 should lapse on June 30, 1983, the close of the fiscal period for which the appropriations were made.

However, in a prior opinion, dated March 9, 1979, this office concluded that funds appropriated for the fiscal biennium 1979-81, could be made lapsable at the close of fiscal year 1982, but no later than one year beyond the biennial period covered by the appropriation.

In reaching this conclusion, we stated as follows:

[Article VII, Section 11] must be read in the light of well established principles of constitutional law.

Constitutional provisions should be construed so as to effectuate their purposes. In Re Application of Pioneer Mill, 53 Haw. 496, 500 (1972); Employees' Retirement System v. Ho, 44 Haw. 154, 171 (1960); United States v. Classic, 313 U.S. 299, 317 (1941). And every provision in a state constitution must be read in the light of the entire document in order to determine its intent. Carter v. Gear, 16 Haw. 242, 244 (1904). No provision should be construed so as to nullify or substantially impair other provisions, and if

The Honorable Tony T. Kunimura
March 9, 1981
Page 3

there is an apparent conflict between different provisions, they should be harmonized, is possible. 16 A. Jur.2d, Constitutional Law, § 66.

Further, in the interpretation of an ambiguous provision, we may look to the proceedings in the convention that drafted the document. State v. Anderson, 56 Haw. 566, 577 (1976); see also Anno:- Debates, Etc. As Aids To Constitution, 70 A.L.R. 5, 19.

Section 11 is a part of Article VII, relating to taxation and finance. The principal sections in Article VII dealing with appropriation periods are Sections 8 and 9.

Section 8 provides for the submission by the Governor of a budget for legislative consideration every odd-numbered year covering the proposed expenditures of the Executive Branch, estimates of the expenditures of the Judicial and Legislative Branches of the State Government, and anticipated State receipts "for the ensuing fiscal biennium." It also provides that the Chief Justice shall submit in every odd-numbered year for legislative consideration a "complete plan of proposed expenditures to the judicial branch for the ensuing fiscal biennium."

Section 9 provides that "[i]n each regular session in an odd-numbered year the legislature shall transmit to the governor an appropriation bill or bills providing for the total anticipated expenditures for the ensuing fiscal biennium." It also provides for amending "any appropriation for operating expenditures of the current fiscal biennium" and "any appropriations for capital expenditures of the current fiscal biennium"

in a regular session in an even-numbered year. Section 9 further provides for the introduction of bills in an even-numbered year "to amend any appropriation act or bond authorization act of the current fiscal biennium or prior fiscal periods."

In summary, Section 8 requires budgeting to be made on a biennial basis, and with the exception of bills to amend appropriation acts of prior fiscal periods, Section 9 provides for appropriations being made for a biennial period--for the "ensuing fiscal biennium" or the "current fiscal biennium."

The biennial budgeting and appropriation provisions were adopted by the 1968 Constitutional Convention. The drafters of Section 9 (then Section 5 of Article VI) explained that "[T]he intent of this section is to require biennial appropriations." Standing Committee Report No. 52, Vol. I, Proceedings of the Constitutional Convention of Hawaii of 1968, p. 220, 224. See also Committee of the Whole Debates, Vol. II, Proceedings of the Constitutional Convention of Hawaii of 1968, p. 401.

* * *

The 1978 Constitutional Convention did not make any substantive change to Section 4 of Article VI (redesignated as Section 8 of Article VII) and to Section 5 of Article VI (redesignated as Section 9 of Article VII). We may, therefore, assume that the 1978 Convention did not intend to change the intent of Sections 8 and 9 of providing for budgeting and appropriations both on a "fiscal biennium" basis.

The Honorable Tony T. Kunimura
March 9, 1981
Page 5

A review of the 1978 Constitutional Convention proceedings indicates that the purpose of Section 11 was not to change the two year (biennial) appropriation period, but rather to permit the expenditure of biennial appropriations one year beyond the biennial period.

Section 11 was a part of Committee Proposal No. 14 of the Committee on Taxation and Finance of the 1978 Constitutional Convention. That proposal read in part:

"All appropriations for which the source is general obligation bond funds or general funds shall be for specified periods, and no such appropriation shall be made for a period exceeding two years. Any such appropriation or any portion of any such appropriation which is unencumbered at the close of the fiscal period for which the appropriation is made shall lapse. Where general obligation bonds have been authorized for an appropriation, the amount of the bond authorization shall be reduced in an amount equal to the amount lapsed." (Emphasis added.)

As so worded, the clause "no such appropriation shall be made for a period exceeding two years" would provide for an appropriation period which would coincide with the budgeting period in Section 4 (now Section 8) and the appropriation period in Section 5 (now Section 9). The Committee felt that appropriations should lapse at the end of the period for which they were made. Standing Committee Report No. 66, p. 10. The Committee also stated that:

The Honorable Tony T. Kunimura
March 9, 1981
Page 6

"A longer lapsing period was considered but your Committee agreed that a two year period which corresponds with the State's biennial budgeting system was adequate. . . ." (Id., p. 11; underscoring added.)

The Committee of the Whole of the 1978 Convention changed the clause which in the proposal as submitted by the Committee on Taxation and Finance, read:

"no such appropriation shall be made for a period exceeding two years"

to read:

"no such appropriation shall be made for a period exceeding three years" (Under-scoring added.)

In support of the change, the Committee of the Whole, in Committee Whole Report No. 14, at pp. 5, 6, said:

"Recommendation: Your Committee recommends the adoption of this amendment [to Committee Proposal No. 14], which extends the lapsing period applicable to appropriations financed by general obligation bond funds or general funds from two years to three years. It does not, however, preclude the legislature from setting a shorter lapsing period for a particular appropriation. This amendment is not an attempt to weaken the lapsing provision but rather is a recognition of the practical difficulties encountered in complying with various governmental regulations and coordinating

the efforts of numerous governmental agencies. It was feared that a two-year lapsing period would result in the curtailment of funds for some worthwhile projects, particularly complex capital improvement projects. Your Committee agreed that the three-year period would provide more flexibility in the implementation of projects and programs." (Underscoring added.)

It may be seen, from the foregoing, that Committee Proposal No. 14 originally intended an automatic lapsing at the end of the biennial appropriation period. It may also be noted that the Committee of the Whole did not intend to change the appropriation period. While it did not artfully express its intent in its redraft of Committee Proposal No. 14, the Committee of the Whole intended (in the change from two years to three years) to allow the expenditure of funds up to one year beyond the end of the appropriation period.

It has been the practice of the Legislature, after the biennial budgeting and appropriation provisions took effect, to make a distinction between an appropriation period and the period within which appropriation would lapse, particularly in appropriations for capital improvements.

For example, Act 68, S.L.H. 1971, made appropriations for certain capital improvement projects "for the fiscal biennium beginning July 1, 1971 and ending June 30, 1973." Section 25 of Act 68 provided that:

"[T]he appropriations made for capital investment projects included a Part II and listed in Part III of this act shall not lapse at the end of the fiscal year for which the appropriation is made, provided that all appropriations made to be expended in fiscal year 1971-72 which are unencumbered as of June 30, 1976, and all appropriations made to be expended in fiscal year 1972-73 which are unencumbered on June 30, 1976 shall lapse on that date."

Subsequent general appropriations acts (Act 218, S.L.H. 1973; Act 195, S.L.H. 1975; Act 10, First Special Session 1977) generally provided for lapsing of appropriations for capital improvement projects three years beyond the fiscal period covered by the appropriations.

Similarly, the supplemental appropriation acts of the even numbered years appropriated funds for capital improvement projects for the second fiscal year of the biennium covered by the general appropriations acts and contained provisions which generally provided for the lapsing of unencumbered funds three years beyond the end of the appropriation period.

Implied in the foregoing practice is the legislative belief that Section 9 of Article VII permitted appropriation to be made only for the "ensuing fiscal biennium" or the "current fiscal biennium" or for "prior years," but did not preclude the expenditure of appropriations beyond the appropriation period through a lapsing provision. Such legislative determination is entitled to great weight. 16 Am. Jur.2d, Constitutional Law, § 85.

The Honorable Tony T. Kunimura
March 9, 1981
Page 9

In summary, it is our opinion that Section 11 permits the expenditure of an appropriation, if so specified in the act making the appropriation, up to one year beyond the biennial period covered by the appropriation. Thus it is permissible, in a bill making an appropriation for biennial period to provide that a specified portion of the appropriation shall be expendable during the first fiscal year and the remaining portion during the second fiscal year of the biennial and that both portions shall lapse on June 30 of the year following the end of the biennium. [Emphasis added.]

We believe that the conclusion reached by the March 9, 1979 opinion is still applicable today. We note that the lapsing provision which is being considered for inclusion in the General Appropriations Act of 1981 would specify that funds appropriated for fiscal year 1982-1983 be lapsable on June 30, 1985, or two years beyond the 1981-83 biennium. For the reasons expressed in our March 9 opinion, we feel that the longer lapsing period would contravene Article VII, Section 11 of the State Constitution.

Please feel free to call, if you have any question on the above.

Very truly yours,

Corinne K. A. Watanabe

CORINNE K. A. WATANABE
Deputy Attorney General

APPROVED:

Tony S. Hong

TONY S. HONG
Attorney General

**LARRY JEFTS FARMS, LLC
PO BOX 27
KUNIA, HAWAII 96759
(808) 688-2892**

SB233, Relating to Irrigation
Senate AEN Hearing
Wednesday, January 30, 2019
1:15 pm
Conference Room 224

Testimony by: Larry Jeffs
Position: Support

Chair Gabbard, and Members of the Senate AEN Committee:

I am Larry Jeffs, owner and operator of Larry Jeffs Farms, LLC, which is part of our family-run business of farms on Oahu and Molokai, under the administrative umbrella of Sugarland Growers, Inc. We have more than 35 years of Hawaii farm experience on Molokai and Oahu. I am a volunteer director for the West Oahu Soil and Water Conservation District (SWCD).

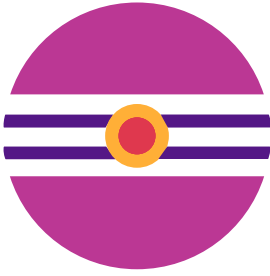
Water is the lifeblood of all farmers and without affordable and accessible water there will be no farming. No farming, no locally grown produce and livestock.

For more than 17 years, the East Kauai Water Users' Cooperative has managed the State-owned reservoir and ditch system in the Kapaa/Kalepa area under a year-to-year revocable permit from the Department of Land and Natural Resources (DLNR).

I understand that the Cooperative was informed by DLNR that within 3 years an application process to include an Environmental Impact Statement is needed. This far exceeds the Cooperative's monetary resources and capacity for other complex requirements.

Your support and passage of SB 233 is critical because of the timing of the expiration of the 3 year application process period, at which time DLNR will no longer renew the revocable permit. This means the Cooperative will cease operation; the irrigation system will revert to DLNR control where attention for this issue may be lost among its diverse priorities. The Department of Agriculture is the appropriate state agency to manage this responsibility.

Thank you for the opportunity to present testimony



Saiva Siddhanta Church

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

January 29, 2019

Committee on Agriculture and Environment

Sen. Mike Gabbard, Chair
Sen. Russell Ruderman, Vice Chair

Testimony on SB223, Relating to Irrigation Wednesday, January 30, 2019, Conference Room 224

Chairperson Gabbard and Members of the Committee:

We **strongly support SB223**. 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. It also service more than 1,000 acres of State lands located in Kalepa and potentially could service nearly the entire 6,500 acres of Kalepa.

We urgently request the committee to approve this legislation. On September 20, 2016, the East Kauai Water Users Cooperative was given three years by the Department of Land and Natural Resources to apply for and receive a water license for the system. The application process requires an environmental impact statement, the cost of which is far beyond the Coop's means.

Once the three years passes at the beginning of 2020, the system will revert to DLNR who most likely will abandon it. Therefore, this bill is urgent. The logical department to manage this state-owned system is the Department of Agriculture, who are willing to do so.

This will ensure the long-term preservation of this valuable system—estimated by State consultants to be worth “more than two hundred million dollars”—in service of local farmers and ranchers.

Saiva Siddhanta Church

A handwritten signature in black ink that reads "Sadasivanatha Palaniswami".

Sadasivanatha Palaniswami
Vice-President, Saiva Siddhanta Church



Kalepa Koalition

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

January 29, 2019

TO: **Committee on Agriculture and Environment**
Sen. Mike Gabbard, Chair
Sen. Russell Ruderman, Vice Chair

Testimony on SB223, Relating to Irrigation
Wednesday, January 30, 2019, Conference Room 224

RE: Chairperson Gabbard and Members of the Committee:

We **support SB223**. The Kalepa Koalition is a 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 Users Cooperative System can presently service more than 1,000 acres of the Kalepa lands. In just the last few years, ADC has converted nearly 300 acres of irrigable land from ranching to farming, and has more prospective farmers under consideration.

All this progress toward food self-sufficiency will be reversed if the Coop system is not put under the Department of Agriculture before its Revocable Permit expires in 2020.

We respectfully request that this bill be passed.

Leslie P. Milnes, President
Kalepa Koalition

Acharya Arumugaswami
Member, Board of Directors



**East Kauai
Water Users' Cooperative**

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

January 29, 2019

TO: Committee on Agriculture and Environment

Sen. Mike Gabbard, Chair
Sen. Russell Ruderman, Vice Chair

**RE: Testimony on SB223, Relating to Irrigation
Wednesday, January 30, 2019, Conference Room 224**

Chairperson Gabbard and Members of the Committee:

My name is Jerry Ornellas and **I strongly support SB223**. 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 17 years under a year-to-year revocable permit from the Department of Land and Natural Resources. On September 20, 2016, the Cooperative was informed by DLNR that as a consequence of the East Maui irrigation decision we would have to seek a long-term water lease. We were given three years to complete the application process which includes an Environmental Impact Statement which alone is beyond our monetary resources to pay for, as well as other complex requirements. Even if we had the resources to pay to meet the requirements, we could only bid on the system at public auction with no guarantee that we would ultimately be awarded a lease for the system.

Once the three years expires at the beginning of 2020, DLNR will no longer renew the system's revocable permit, the Coop will cease operation, the irrigation system, including the recently renovated Wailua and Upper Kapahi Reservoirs, will revert to DLNR control (including dam safety oversight) and most likely be abandoned. In 2001, ITC Water Management, hired by the State to evaluate the East Kauai system, estimated the cost to build it in 2001 to be in excess of \$200 million. We are talking about the potential loss of a substantial and irreplaceable State asset.

We are therefore in favor of SB223 allowing the East Kauai system be taken over by the Department of Agriculture. This is in keeping with the mandate of Article XI, Section 3, of the State Constitution: "The state shall conserve and protect agricultural lands, promote diversified agriculture, increase agricultural self-sufficiency and assure the availability of agriculturally suitable lands."

Furthermore, Hawaii Revised Statute 167-1, Irrigation Water Development, states: "Findings and declaration of necessity. It is important to the welfare of the people of Hawaii that agricultural production be developed as fully as possible. **It is further found that water presently tapped for irrigation is inadequate for the fullest development of the economy of the State.** It is therefore hereby declared that additional water and water facilities are necessary for the development of agriculture in the State."

The statue recommends development of new water facilities, what to say of preserving the ones we already have.

In 2003, the Department of Agriculture released its comprehensive Agricultural Water Use and Development Plan which analyzed the development and present status of State's plantation-developed irrigation systems and concluded that the East Kauai System was among five State systems "important and viable to Hawaii's growing diversified agricultural industry."

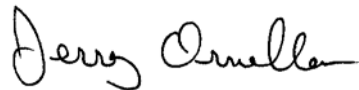
Our system includes two reservoirs and 22 miles of ditch which has historically serviced thousands of acres of State and private lands. In particular, it can supply irrigation water to more than 1,000 acres of the State Kalepa lands located between Kapaa and Lihue, and a similar amount of private former cane lands mauka of Kapaa town. When first taken out of sugar cane in 2001, the Kalepa lands had gone into pasture, but in the last few years, through the good action of the Agribusiness Development Corporation, nearly 300 acres to date has been leased to farmers who are actively developing their crops, including ginger, bananas, noni and sweet potatoes. This is only possible because the Coop can provide these farms with water.

Aside from the State lands and private Kapaa parcel, the Coop system can service thousands of acres of so-called "marginal lands"—those not taken by the cane companies and now privately owned. These are located throughout Kapaa and are or could be productive agricultural lands, such as my own farm.

The Department of Agriculture is the natural State agency to manage this public water system, as is the pattern in most other states in the country. It is also the only long-term, permanent way to manage the system for the benefit of our citizens.

I respectfully ask that you pass this bill.

East Kauai Water Users' Cooperative

A handwritten signature in black ink that reads "Jerry Ornellas". The signature is written in a cursive, flowing style.

Jerry Ornellas, President



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

January 30, 2019

HEARING BEFORE THE
SENATE COMMITTEE ON AGRICULTURE AND ENVIRONMENT

TESTIMONY ON SB 223
RELATING TO IRRIGATION

Room 224
1:15 pm

Aloha Chair Gabbard, Vice Chair Ruderman, and Members of the Committee:

I am Brian Miyamoto, Executive Director 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.

The Hawaii Farm Bureau strongly supports SB 223, which transfers operational authority over the portions of the east Kauai irrigation system operated and maintained by the east Kauai water users' cooperative to the department of agriculture, establishes positions within the agricultural resource management division, and authorizes GO bonds for plans, designs, land acquisition, and equipment.

Since the demise of plantation operations across the islands, we have seen the erosion of irrigation systems. Ditches that carried water fell into disrepair with major leaks in the system, and in cases such as Kau, cracks in tunnels created enough losses that there is no longer significant flow of water. The Legislature continues to advocate for increased self-sufficiency and sustainability. Agriculture must play a key role in the process and for there to be agriculture, water is important.

The East Kauai Irrigation System services more than 12,500 acres of agricultural land on Kauai. The repair and maintenance of this 21-mile irrigation systems is critical for Kauai's farmers who depend on the East Kauai Irrigation System for their operations. Water availability is a basic necessity needed by farmers and ranchers to maintain and expand their production, particularly in times of drought. Having a reliable water supply is a key factor when Hawaii's farmers and ranchers are making decisions to start new or to expand existing operations.

Thank you for this opportunity to testify on this important matter.

SB-223

Submitted on: 1/29/2019 9:40:18 AM

Testimony for AEN on 1/30/2019 1:15:00 PM

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

Comments:

Please pass this bill to support the many farmers who rely on water from this irrigation system.

Thank you.