

STAND. COM. REP. NO. 3501

Honolulu, Hawaii

MAR 24 2022

RE: H.B. No. 1768  
H.D. 2  
S.D. 1

Honorable Ronald D. Kouchi  
President of the Senate  
Thirty-First State Legislature  
Regular Session of 2022  
State of Hawaii

Sir:

Your Committees on Water and Land and Agriculture and Environment, to which was referred H.B. No. 1768, H.D. 2, entitled:

"A BILL FOR AN ACT RELATING TO THE DISPOSITION OF WATER RIGHTS,"

beg leave to report as follows:

The purpose and intent of this measure is to exempt the instream use of water for:

- (1) Traditional and customary kalo cultivation practices; and
- (2) Commercial kalo cultivation conducted in a manner consistent with traditional and customary Native Hawaiian practices from the existing process for disposition of water rights.

Your Committees received testimony in support of this measure from the Department of Hawaiian Home Lands, Hawaii State Aha Moku, Office of Hawaiian Affairs, one member of the Hawai'i County Council, one member of the Kaua'i County Council, County of Kaua'i Office of the Mayor, Restore the Commons, Center for Biological Diversity, Kua'āina Ulu 'Auamo, Hanalei Watershed Hui, Sierra Club of Hawai'i, Hawaiian Affairs Caucus of the Democratic Party of



Hawai'i, Kanaeokana Network, 'Ai Pohaku - The Stone Eaters, Wai'oli Valley Taro Hui, Earthjustice, Papa Ola Lōkahi, Waipā Foundation, Hanalei Hawaiian Civic Club, Hui o Nā Wai 'Ehā, Hawai'i Alliance for Progressive Action, Hawaiian Islands Land Trust, 'Ahahui o nā Kauka - Association of Native Hawaiian Physicians, Council for Native Hawaiian Advancement, and twenty-seven individuals. Your Committees received testimony in opposition to this measure from Makahanaloa Fishing Association.

Your Committees find that for nearly two thousand years, Native Hawaiians have been farming successfully on lands throughout the State without adversely impacting the land. As a significant cultural and traditional practice, Native Hawaiian farming practices serve as a key tradition that also benefits the quality of life for Hawaii's residents. While the State has a fiduciary duty to assure the preservation and enhancement of water for various public interests, some regulatory actions disrupt protected cultural rights and traditions of Native Hawaiians.

However, your Committees have heard the concerns of many testifiers, including Hui o Nā Wai 'Ehā, that this measure as drafted should confirm and uphold existing water rights. According to Hui o Nā Wai 'Ehā, protections of traditional, customary, and kuleana rights, including rights to access traditional water course or auwai, support kalo farmers across the State. Some kalo farmers have waited over twenty years to have priority rights recognized. The gap in recognition has led to delays or deprivation of water rights access. To preserve traditional Native Hawaiian cultural rights while also providing clean, safe, and protected water to the people of Hawaii, amendments to this measure are therefore necessary to provide further justice for kalo farmers to exercise traditional, customary, and kuleana water rights.

Your Committees have amended this measure by:

- (1) Deleting language that would have exempted commercial kalo cultivation conducted in a manner consistent with traditional and customary Native Hawaiian practices from the existing process for disposition of water rights;
- (2) Clarifying that the powers and duties of the Commission on Water Resource Management to determine appurtenant



water rights include the specification of the water course or the means of access and delivery entitled to by that right;

- (3) Clarifying that nothing in chapter 174C, part IV, Hawaii Revised Statutes, shall be construed to deny the exercise of an appurtenant right, including the use, access, delivery, and quality of water, by the holder thereof at any time;
- (4) Clarifying that the appurtenant water rights of kuleana and taro lands, include but are not limited to the rights of use, access, delivery, and quality of water;
- (5) Inserting a severability clause;
- (6) Amending section 1 to reflect its amended purpose; and
- (7) Making technical, nonsubstantive amendments for the purposes of clarity and consistency.

As affirmed by the records of votes of the members of your Committees on Water and Land and Agriculture and Environment that are attached to this report, your Committees are in accord with the intent and purpose of H.B. No. 1768, H.D. 2, as amended herein, and recommend that it pass Second Reading in the form attached hereto as H.B. No. 1768, H.D. 2, S.D. 1, and be referred to your Committee on Judiciary.

Respectfully submitted on  
behalf of the members of the  
Committees on Water and Land  
and Agriculture and  
Environment,

  
MIKE GABBARD, Chair

  
LORRAINE R. INOUE, Chair



The Senate  
 Thirty-First Legislature  
 State of Hawai'i

**Record of Votes**  
**Committee on Water and Land**  
**WTL**

Bill / Resolution No.:* <b>HB 1768, HD2</b>	Committee Referral: <b>WTL/AEN, JDC</b>	Date: <b>3/23/22</b>
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The Committee is reconsidering its previous decision on this measure.  
 If so, then the previous decision was to: \_\_\_\_\_

The Recommendation is:

Pass, unamended 2312    
  Pass, with amendments 2311    
 Hold 2310    
 Recommit 2313

Members	Aye	Aye (WR)	Nay	Excused
INOUE, Lorraine R. (C)	X			
KEITH-AGARAN, Gilbert S.C. (VC)	X			
MISALUCHA, Bennette E.	X			
RIVIERE, Gil	X			
FEVELLA, Kurt	X			
<b>TOTAL</b>	<b>5</b>			

Recommendation:    
 Adopted    
 Not Adopted


Chair's or Designee's Signature:  


Distribution:    
 Original    
 Yellow    
 Pink    
 Goldenrod  
 File with Committee Report    
 Clerk's Office    
 Drafting Agency    
 Committee File Copy

**\*Only one measure per Record of Votes**

The Senate  
Thirty-First Legislature  
State of Hawai'i

**Record of Votes**  
**Committee on Agriculture and Environment**  
**AEN**

Bill / Resolution No.:* <b>HB1768 HD2</b>	Committee Referral: <b>WTL/AEN, JDL</b>	Date: <b>03/23/22</b>		
<input type="checkbox"/> The Committee is reconsidering its previous decision on this measure. If so, then the previous decision was to: _____				
The Recommendation is: <input type="checkbox"/> Pass, unamended 2312 <input checked="" type="checkbox"/> Pass, with amendments 2311 <input type="checkbox"/> Hold 2310 <input type="checkbox"/> Recommit 2313				
Members	Aye	Aye (WR)	Nay	Excused
GABBARD, Mike (C)	/			
NISHIHARA, Clarence K. (VC)	/			
ACASIO, Laura	/			
RHOADS, Karl	/			
FEVELLA, Kurt	/			
<b>TOTAL</b>	<b>5</b>	<b>-</b>	<b>-</b>	<b>-</b>
Recommendation: <input checked="" type="checkbox"/> Adopted <input type="checkbox"/> Not Adopted				
Chair's or Designee's Signature: 				
<b>Distribution:</b> Original                      Yellow                      Pink                      Goldenrod File with Committee Report    Clerk's Office            Drafting Agency        Committee File Copy				

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