

STAND. COM. REP. NO. 3933

Honolulu, Hawaii

APR - 8 2022

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

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

Sir:

Your Committee on Judiciary, to which was referred H.B. No. 1768, H.D. 2, S.D. 1, entitled:

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

begs leave to report as follows:

The purpose and intent of this measure is to:

- (1) Exempt the instream use of water for traditional and customary kalo cultivation practices from the existing process for disposition of water rights; and
- (2) Recognize, confirm, and protect traditional and customary and kuleana rights to water, including rights of use, access, delivery, and quality of water.

Your Committee received testimony in support of this measure from the Department of Land and Natural Resources, Department of Hawaiian Home Lands, Office of Hawaiian Affairs, one member of the Kaua'i County Council, Mayor of the County of Kaua'i, County of Kaua'i Planning Department, Hawai'i Land Trust, Sierra Club of Hawai'i, Kua'āina Ulu 'Auamo, Council for Native Hawaiian Advancement, Hanalei Hawaiian Civic Club, 'Ai Pohaku, Waipā Foundation, 'Ahahui o nā Kauka, Wai'oli Valley Taro Hui, Papa Ola



Lōkahi, Hawai'i Alliance for Progressive Action, Hui o Nā Wai 'Ehā, Earthjustice, Hanalei Watershed Hui, and twenty-four individuals.

Your Committee finds 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 Hawai'i'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. Providing a water disposition exemption for certain kalo cultivation will help to reduce barriers for kalo cultivation, reduce the cost to produce poi, increase food production in Hawaii, and protect the traditional and customary practices of Native Hawaiians as mandated by the Hawaii State Constitution.

Your Committee has amended this measure by incorporating the changes proposed by the Department of Land and Natural Resources as follows:

- (1) Specifying that nothing in chapter 174C, part IV, Hawaii Revised Statutes, shall be construed to deny the exercise of an appurtenant right, including access by the holder thereof to conduct activities necessary to assure the use, delivery, and quality of water including temperature and turbidity, that shall not be unreasonably withheld; and
- (2) Specifying that the appurtenant water rights of kuleana and kalo lands, along with those traditional and customary rights, including access by the holder thereof to conduct activities necessary to assure the use, delivery, and quality of water including temperature and turbidity, that shall not be unreasonably withheld, shall not be diminished or extinguished by a failure to apply for or to receive a permit.

As affirmed by the record of votes of the members of your Committee on Judiciary that is attached to this report, your Committee is in accord with the intent and purpose of H.B. No. 1768, H.D. 2, S.D. 1, as amended herein, and recommends that



it pass Third Reading in the form attached hereto as H.B.
No. 1768, H.D. 2, S.D. 2.

Respectfully submitted on
behalf of the members of the
Committee on Judiciary,



KARL RHOADS, Chair



The Senate
Thirty-First Legislature
State of Hawai'i

**Record of Votes
Committee on Judiciary
JDC**

Bill / Resolution No.:*	Committee Referral:	Date:		
HB 1768, HD2, SD1	WTL/AEN, JDC	03-31-22		
<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
RHOADS, Karl (C)	/			
KEOHOKALOLE, Jarrett (VC)	/			
ACASIO, Laura		x		
GABBARD, Mike	/			
KIM, Donna Mercado	/			
LEE, Chris	/			
FEVELLA, Kurt		x		
TOTAL	5	2	-	-
Recommendation: <input checked="" type="checkbox"/> Adopted <input type="checkbox"/> 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