

STAND. COM. REP. NO.

2142

Honolulu, Hawaii

FEB 09 2022

RE: S.B. No. 2759
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, Agriculture and Environment, and Hawaiian Affairs, to which was referred S.B. No. 2759 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 traditional and customary kalo cultivation practices from the existing process for disposition of water rights.

Your Committees received testimony in support of this measure from the Department of Hawaiian Homelands, one member of the Hawai'i County Council, County of Kaua'i Department of Planning, County of Kaua'i Office of the Mayor, Waimea Hawaiian Civic Club, Kua'āina Ulu 'Auamo, Wai'oli Valley Taro Hui, Hawai'i Alliance for Progressive Action, Hui o Nā Wai 'Ehā, Hawai'i SEED, Haiku Community Association, Waipā Foundation, Kupuna for the Mo'opuna, Earthjustice, Council for Native Hawaiian Advancement, Hawai'i Land Trust, Hanalei Hawaiian Civic Club, and twenty-six individuals. Your Committees received comments on this measure from the Department of Land and Natural Resources.

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. However, 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.

Accordingly, your Committees have amended this measure by:

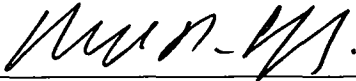
- (1) Clarifying that appurtenant and traditional, customary, and kuleana water rights include the rights of use, access, delivery, and quality of water that shall be recognized and protected;
- (2) Amending section 1 to reflect its amended purpose;
- (3) Inserting an effective date of July 1, 2050, to encourage further discussion; and
- (4) 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, Agriculture and Environment, and Hawaiian Affairs that are attached to this report, your Committees are in accord with the intent and purpose of S.B. No. 2759, as amended herein, and recommend that it pass Second Reading in the

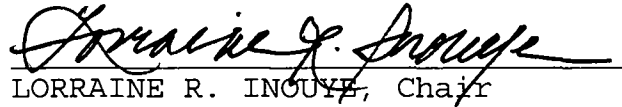


form attached hereto as S.B. No. 2759, S.D. 1, and be referred to your Committee on Ways and Means.

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



MIKE GABBARD, Chair



LORRAINE R. INOUE, Chair

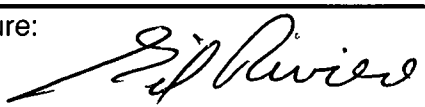


MAILE S.L. SHIMABUKURO, Chair



The Senate
 Thirty-First Legislature
 State of Hawai'i

Record of Votes
Committee on Water and Land
WTL

Bill / Resolution No.:* SB 2759	Committee Referral: WTL/AEN/HWN, WAM	Date: 2/4/22		
<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
INOUE, Lorraine R. (C)	X			
KEITH-AGARAN, Gilbert S.C. (VC)	X			
MISALUCHA, Bennette E.	X			
RIVIERE, Gil	X			
FEVELLA, Kurt	X			
TOTAL	5	0	0	<i>[Signature]</i>
Recommendation: <input checked="" type="checkbox"/> Adopted <input type="checkbox"/> Not Adopted				
Chair's or Designee's Signature: <div style="text-align: center; font-family: cursive; font-size: 1.2em;">  </div>				
Distribution: Original Yellow Pink Goldenrod <small>File with Committee Report Clerk's Office Drafting Agency Committee File Copy</small>				

*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.:*	Committee Referral:	Date:
SB 2759	WTL/AEN/HWN, WAM	02/04/22

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
GABBARD, Mike (C)	/			
NISHIHARA, Clarence K. (VC)				/
ACASIO, Laura	/			
RHOADS, Karl	/			
FEVELLA, Kurt	/			
TOTAL	4			1

Recommendation:
 Adopted
 Not Adopted


Chair's or Designee's Signature:

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The Senate
Thirty-First Legislature
State of Hawai'i

Record of Votes
Committee on Hawaiian Affairs
HWN

Bill / Resolution No.:* SB 2759	Committee Referral: WTL/AEN/HWN, WAM	Date: 2/4/2022		
<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
SHIMABUKURO, Maile S.L. (C)	✓			
KEOHOKALOLE, Jarrett (VC)				✓
ACASIO, Laura	✓			
IHARA, Jr., Les	✓			
FEVELLA, Kurt	✓			
TOTAL	4	0	0	1
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				

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