

DAVID Y. IGE
GOVERNOR OF HAWAII



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

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

**Testimony of
SUZANNE D. CASE
Chairperson**

**Before the Senate Committee on
HAWAIIAN AFFAIRS**

**Tuesday, February 16, 2021
1:02PM
State Capitol, Via Videoconference**

**In consideration of
SENATE BILL 1122
RELATING TO COUNTY BOARDS OF WATER SUPPLY**

Senate Bill 1122 proposes to clarify the requirements on the County Boards of Water Supply; and adds representation on the County Boards of Water Supply of the interests to be served by the allocation 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. **The Department of Land and Natural Resources (Department) offers the following comments.**

The Department is concerned that this bill may impair its ability to obtain water service for its major proposed development projects, including an industrial and business park at Pulehunui, Maui and the East Kapolei Transit Oriented Development project. Supplanting the authority of the respective county water boards to determine how their water credits may be used in favor of the Department of Hawaiian Home Lands (DHHL) may be a significant disincentive for county water departments and State agencies to collaboratively develop infrastructure necessary to obtain water service for public projects other than those of DHHL. Additionally, with respect to the proposed subsection (d) in Section 2 of this measure, land that is set aside by Governor's executive order to a county water board or department of water supply for the explicit purpose to provide water service to the public pursuant to Section 171-11, Hawaii Revised Statutes (HRS), we believe should not be also subject to the requirements of Section 171-58, HRS.

Thank you for the opportunity to comment on this measure.

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

ROBERT K. MASUDA
FIRST DEPUTY

M. KALEO MANUEL
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
BUREAU OF CONVEYANCES
COMMISSION ON WATER RESOURCE MANAGEMENT
CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCES ENFORCEMENT
ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

SB-1122

Submitted on: 2/15/2021 12:54:34 PM

Testimony for HWN on 2/16/2021 1:02:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Russell Tsuji	Testifying for DLNR	Comments	No

Comments:

I would like to testify on SB 1122. Please allow me Zoom access. Thank you.

BOARD OF WATER SUPPLY

CITY AND COUNTY OF HONOLULU
630 SOUTH BERETANIA STREET
HONOLULU, HI 96843
www.boardofwatersupply.com



LATE

February 16, 2021

RICK BLANGIARDI, MAYOR

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Manager and Chief Engineer

ELLEN E. KITAMURA, P.E.
Deputy Manager and Chief Engineer

The Honorable Maile S.L. Shimabukuro, Chair
and Members
Committee on Hawaiian Affairs
Hawaii State Capitol,
Honolulu, Hawaii 96813

Dear Chair Shimabukuro and Members:

SUBJECT: Senate Bill 1122 – Relating to the County Boards of Water Supply

The Board of Water Supply (BWS), City and County of Honolulu strongly opposes Senate Bill (SB) 1122, relating to the county boards of water supply. This bill attempts to disregard pre-existing legal protections and systems regarding water use and allocation, and usurps “home rule” guarantees found in the State Constitution. We have the following comments:

1. Article VIII, §2 of the State Constitution provides for each political subdivision to have the power to frame and adopt a charter for its own self-governance. Under section 54-12, Hawaii Revised Statutes (HRS), the Mayor of each county shall, with the advice and consent of the council, nominate the members of the county board of water supply stipulating the makeup of the members of the board. The Revised Charter of the City and County of Honolulu (RCCH) 1973, as amended, establishes the BWS as a semi-autonomous City agency. This bill appears to override the RCCH Sections 7-104 and 13-103 governing appointment of the members of the board.
2. This bill also requires that “at least one of the five members shall *represent the interests* to be served by the allocation 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, 1920, as amended.” The phrase “represent the interests” is vague and open to interpretation.
3. Section (d) of the bill is inconsistent with language in section 171-58, referring to leases, not licenses.
4. There is an apparent inconsistency and lack of integration between the applicability of water rights under Chapter 171-58, HRS, Mineral and Water

Rights and Chapter 174C State Water Code. For example, §171-58, HRS, language seems to treat water as a commodity to be temporarily leased for profit and only mentions degradation of water quality but is absent protections for public trust resources or requirements for reasonable and beneficial use. In particular, the requirement for water leases on state lands under §171-58 confuses and may conflict with the requirement for a water use permit in designated water management areas under 174C.

- a. Most of Oahu's aquifers are already designated water management areas, except for Waianae and BWS is pursuing Waianae designation establishing State administrative control over all of Oahu's aquifers to ensure consistent reasonable-beneficial use of the water resources in the public interest.
- b. Standard water use permit conditions already have protections for water for DHHL.
 - i. Authorized water use is subject to the requirements of the Hawaiian Homes Commission Act, as amended, if applicable.
 - ii. The permit may be modified by the Commission and the amount of water initially granted to the permittee may be reduced if the Commission determines it is necessary to meet legal obligations to the Department of Hawaiian Home Lands, if applicable;

Therefore, regarding Item Ch. 54-____ (d), we recommend the following revisions:

No later than July 30, 2022, each board of water supply shall apply for water leases licenses of any waters they develop or have in their system emanating from state lands under section 171-58, except as otherwise provided under Chapter 174C Part IV Regulation of Water Use.

5. The State Commission on Water Resource Management (CWRM) has adopted the Pearl Harbor Water Shortage Plan, which includes policies and prioritizations to require reductions in nonpublic trust uses of water to occur before reduction of DHHL and domestic water uses. The BWS Drought and Recovery Plan for Oahu acknowledges and integrates the Department of Hawaiian Home Lands (DHHL) and domestic prioritizations established in the CWRM Water Shortage Plan.
6. We understand that water for DHHL is a public trust water right along with domestic use, water in its natural state and water for traditional and customary practices. BWS makes existing water system capacity available for DHHL projects under their public trust water rights. The County Water Use and

Development Plan called the Oahu Water Management Plan, consisting of 8 regional Watershed Management Plans, codified in Chapter 30, ROH, sets forth the allocation of water for DHHL projects and other land uses on Oahu. Therefore, this measure is unnecessary for water allocation purposes on Oahu.

- a. Along with the development of their housing projects, DHHL on Oahu would be required to pay BWS Water System Facilities Charges (WSFC), a one-time impact fee to obtain potable water meters adjacent to the BWS water system, if adequate capacity is available. BWS WSFC recovers the cost of off-site water conveyance for resource development, transmission and storage. Most State projects (UH, DLNR, DOE, DAGS, DOT, DHHL, etc.) follow the same process except for large agricultural parks where irrigation water demands are too large, exceeding BWS water system capacity. The State Water Projects Plan adopted by the State Commission on Water Resource Management (CWRM), lays out a comprehensive water development and allocation process for state projects including obtaining County water through the impact fee process. The findings of the State Water Projects Plan are incorporated in the Oahu County Water Use and Development Plan along with the State Water Resources Protection Plan, the State Water Quality Plan and the State Agricultural Water Use and Development Plan, collectively called the Hawaii Water Plan under Chapter 174C-31, HRS.
- b. Water credits are tied to State developed wells through a proportionate share allocation agreement. DHHL has not developed any wells on Oahu that would then be allocated by water credits, therefore, an accounting requirement is not applicable.
- c. DHHL holds water reservations according to Hawaii Administrative Rules §13-171-61 in the Waimānalo aquifer of 0.124 MGD and in the Waipahu-Waiawa aquifer of 1.358 MGD for their projects. DHHL may request that CWRM assign its reservations toward new or existing sources as their lands are developed. DHHL should maintain its reservations in the event these aquifers are fully allocated. The reservations ensure water for DHHL projects. In the meantime, DHHL should continue to utilize the BWS WSFC process.
- d. The DHHL owns approximately 8,154 acres in Mākaha, Wai‘anae, Lualualei, Nānākuli, Kalaeloa, Kapolei, Papakōlea, Mō‘ili‘ili, Waimānalo, and Ha‘ikū as shown in the Figure below. The 2014 DHHL O‘ahu Island Plan was developed to provide recommendations for the future uses of DHHL lands and to analyze the need for possible land acquisitions on

O'ahu to meet beneficiary and department needs over the next 20 years. The plan does not include specific details about water use and development; however, it states that DHHL has distinct water rights that may be pursued to meet the needs of DHHL and beneficiaries, based on the Hawaiian Homestead Community Association, the State Constitution, State statutes, and case law.

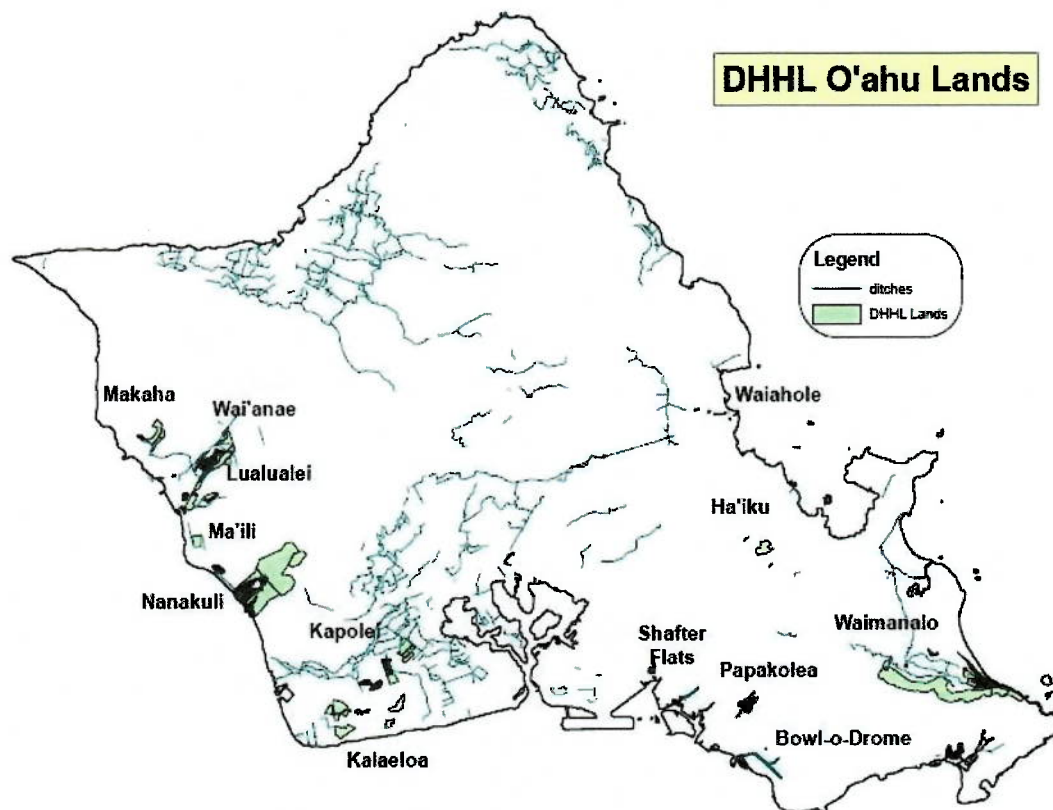


Figure: Department of Hawaiian Home Lands on O'ahu

- e. The May 2017 update to the State Water Projects Plan for DHHL plans for a total potable water demand of 5.43 MGD by 2031 for DHHL lands on O'ahu. Of the total demand projection, 3.07 MGD is for municipal uses and 2.36 MGD is for industrial uses of which BWS will provide water service, except for 2.20 MGD of the industrial use which is located within Kalaeloa and served by the private Kalaeloa water system. DHHL and other State water demand projections are already incorporated into the BWS municipal water demand forecasts using the population based per capita demand method.

The Honorable Maile S.L. Shimabukuro, Chair
and Members
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In summary, this bill disregards pre-existing legal protections and systems regarding water use and allocation, usurps “home rule” guarantees found in the State Constitution and is unnecessary because water for DHHL on Oahu is already comprehensively planned and being implemented.

Thank you for your consideration of our testimony in opposition to SB 1122.

Very Truly Yours,

A handwritten signature in blue ink, appearing to read 'Ernest Y.W. Lau', with a stylized flourish extending to the left.

ERNEST Y.W. LAU, P.E.
Manager and Chief Engineer

DAVID Y. IGE
GOVERNOR
STATE OF HAWAII

JOSH GREEN
LT. GOVERNOR
STATE OF HAWAII



WILLIAM J. AILA, JR.
CHAIRMAN
HAWAIIAN HOMES COMMISSION

TYLER I. GOMES
DEPUTY TO THE CHAIRMAN

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

P. O. BOX 1879
HONOLULU, HAWAII 96805

TESTIMONY OF WILLIAM J. AILA, JR, CHAIRMAN
HAWAIIAN HOMES COMMISSION
BEFORE THE SENATE COMMITTEE ON HAWAIIAN AFFAIRS
HEARING ON FEBRUARY 16, 2021 AT 1:02 PM VIA VIDEOCONFERENCE

SB 1122 RELATING TO THE COUNTY BOARDS OF WATER SUPPLY

Aloha Chair Shimabukuro, Vice Chair Keohokalole, and Members of the Committee:

The Department of Hawaiian Home Lands (DHHL) is in strong support of this bill, which clarifies requirements on the County Boards of Water Supply and adds representation to their Boards, to further the development and use of Hawaiian Home Lands as set forth in section 221 of the Hawaiian Homes Commission Act (HHCA). This bill was approved by the Hawaiian Homes Commission (HHC) and included in the Governor's package by request of our department.

DHHL appreciates that some changes proposed in this bill will face opposition. We assure the Committee that this measure was only crafted after nine years of development and implementation of the HHC Water Policy Plan and specific challenges experienced by DHHL in attempting to secure water for existing and future homesteads when working with Counties.

SB 1122 is anchored in the Constitutional obligations the State and Counties have to fulfill the HHCA. In the bill, the HHC and DHHL are asking for five systemic changes to the status quo that will more quickly address Hawai'i's obligations to the beneficiaries on the waiting list under the HHCA. These five proposed changes are:

1. The ability to reserve available water credits on a County water system should a County water system have available, unallocated capacity.
2. Should DHHL need to develop a new water source, DHHL receive the water that is produced from that source. The current practice of the Counties is to withhold a percentage of the water produced from new sources for purposes they alone determine (even when the source was funded by the Legislature for DHHL uses).
3. In times of drought, develop plans to seek use reductions in line with Public Trust principles.
4. Clarify that County Boards of Water Supply are not exempt from the provisions of HRS 171-58.
5. Add DHHL representation on all County Boards of Water Supply as these bodies make major policy decisions that affect the availability of potable water for DHHL.

Two examples of the challenges that DHHL has faced illustrate the reasons this bill was crafted.

Hanapepe, Kauai

DHHL recently completed the final environmental assessment for a new residential and agriculture homestead development on the island of Kauai. See: http://oeqc2.doh.hawaii.gov/Doc_Library/2020-11-08-KA-FEA-DHHL-Hanapepe-Homestead-Community.pdf

The Kauai County Department of Water (DOW) has confirmed there is available water on its system to accommodate up to 75 new lots, reflected in the Draft Environmental Assessment (DEA) section 1.3.8 and confirmed by comment letter on the DEA dated August 24, 2020. However, the DOW said the water may not be available in the future if other developments in the region are constructed first:

*“Any actual subdivision or development of this area will be dependent on the adequacy of the source, storage, transmission facilities **existing at that time.**”*

DHHL’s development timetables are affected in large part from the availability of sufficient state funding. Should DHHL not receive sufficient funding in a timely manner, private developments in the region may move first and use the available capacity on the DOW system. If this occurs, DHHL would then need to develop additional improvements, adding to the time and expense for its homestead development. The inability to reserve credits ultimately impacts our shared kuleana to fulfill the HHCA.

Puunani Homestead, Waikapu, Maui

DHHL recently completed the FEA for its planned 161 lot residential Puunani homestead on Maui. See: http://oeqc2.doh.hawaii.gov/Doc_Library/2020-11-08-MA-FEA-Puunani-Homestead-Subdivision.pdf

DHHL has not yet been able to secure water from the Maui County DWS for this new development, though that water is available. The issue has been that DHHL does not fit Maui County’s definition of affordable housing. As on Kaua’i, the inability to reserve available credits ultimately impacts our shared kuleana to fulfill the HHCA.

DHHL is grateful for the hearing of this bill and the deliberation on these critical issues. Thank you for your consideration of our testimony.



DEPARTMENT OF WATER SUPPLY • COUNTY OF HAWAII

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February 12, 2021

TESTIMONY OF KEITH K. OKAMOTO, MANAGER-CHIEF ENGINEER
DEPARTMENT OF WATER SUPPLY, COUNTY OF HAWAII

HEARING BEFORE THE SENATE COMMITTEE ON HAWAIIAN AFFAIRS

DATE: Tuesday, February 16, 2021

TIME: 1:02pm – 2:30pm

PLACE: Via Videoconference

SB1122 – RELATING TO THE COUNTY BOARDS OF WATER SUPPLY

Honorable Chair Maile S.L. Shimabukuro, Vice-Chair Jarrett Keohokalole, and Committee Members
Senate Committee on Hawaiian Affairs,

The Department of Water Supply, County of Hawaii (DWS) **strongly opposes** Senate Bill 1122. As written, the bill contains provisions that would adversely impact our ability to service communities across Hawaii island with potable water in a financially responsible manner.

We support the need for, and share the desire to see progress on DHHL projects and place lessees on the lands. However, placing blame and additional burden on the County Boards of Water Supply is misdirected.

The DWS has and continues to work with DHHL over the past many years, to deliver potable water to Hawaiian Homelands developments island-wide. In addition, DWS has considered and provided water to DHHL projects, over and beyond the general water availability guidelines when and where feasible.

DWS has also collaborated with DHHL on water infrastructure development agreements that take advantage of partnering to allow for oversizing of infrastructure for each other's needs. Some of the more recent projects include:

- Villages of La'i'Opua (Villages 3, 4, and Portion of 5)
- La'i'Opua 2020 Development
- Palani Transmission (DWS project - DHHL participation)
- Puukapu (Kuhio Village)
- Puukapu Farm Lots
- Puukapu Hybrid Water System/Lalamilo Subdivision (DWS Waimea Well – DHHL participation)
- Honokaia Pastoral Lots
- Hilo Scattered Lots (Kaumana-Piihonua, Keaukaha)
- Panaewa Farm Lots
- Makuu Farm/Ag Lots

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The DWS is also actively participating/assisting with the planning and design of several future developments requiring water infrastructure improvements including the following:

- Ka'ū Pastoral Lots and future DHHL developments from the Naalehu-Waiohinu water system
- Panaewa Lot 185

The proposed bill would adversely impact the existing cooperation and collaboration between DWS and DHHL as it appears to put all of the burden on the DWS. The DWS does not feel that it is appropriate for DHHL to demand water from DWS systems without contributing to the system infrastructure. The DWS also does not believe that this proposed legislation accords with the intent of Section 221 of the Hawaiian Homes Commission Act (HHCA). The DWS is a semi-autonomous agency that operates and maintains 23 public water systems primarily with revenues generated by its customers. This revenue must cover both the operational and capital improvement costs to ensure that we can continue to provide water service that meets the requirements of the Safe Drinking Water Act for public health and safety. The DWS does not sell water as a commodity as it appears to be addressed in the water license issues in this section of the HHCA. Section 221(f) also addresses water systems under the control of the department (DHHL) "shall remain under the exclusive control of the department provided that the department may negotiate an agreement to provide for the maintenance of the water system and the billing and collection of user fees." DWS has historically entered into an agreement consistent with these requirements wherein user fees have been determined by water rate studies and set by the Water Board.

The DWS also feels that it is DHHL's prioritization of their projects that would drive infrastructure improvements. Shifting the planning as well as financing of those improvements will ultimately be devastating to an already restricted DWS budget. The DWS cannot provide all of DHHL's water needs free of infrastructure improvements and/or charges and maintain a reasonable rate to its customers. DWS is not equipped to install water systems for proposed developments that may not come to fruition in a timely manner. That would further deplete the DWS budget as well as potentially introduce concerning water quality issues that could impact existing DWS customers.

It appears the section requiring DWS to apply for water licenses per HRS 171-58 as well as the reference to HHCA Section 221 may be a means for DHHL to obtain water without fair contribution to the costs of existing or new infrastructure and compensation for water service. Besides the financial challenges described above, there may also be legal ramifications as we have existing agreements with parties (private and government) which include obligations for water development and use on specific project lands.

We may be open to the provision regarding the allocation of all water developed by DHHL. Normally, we retain a portion due to the fact that we are responsible for the operation and maintenance costs of the source in perpetuity. The portion we retain is for the overall community benefit.

We agree more can be done to assist DHHL with water needs for their projects. However, these actions can be implemented without additional legislation. The DWS believes that continued participation and/or collaboration on future developments of either DHHL and/or DWS improvements would be most beneficial to both parties as well as to the communities that are currently served by a DWS water system. It should be noted that each member of the Water Board already represents the interests of all constituents within their Council District, including DHHL.

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This bill also attempts to infringe on County Charter provisions as established by the Hawaii State Constitution, Article VIII, Section 2, in attempting to disproportionately set the requirements of the makeup of the Water Board of the County of Hawaii.

In summary, we empathize with DHHL and their challenges, however, to shift a significant burden to the County of Hawaii Water Board and DWS will be very detrimental to our ability to provide a vital and essential service to our island.

Thank you for your time and consideration of DWS's testimony in opposition to SB1122.

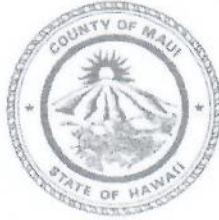
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The Department of Water Supply is an Equal Opportunity provider and employer.

MICHAEL P. VICTORINO
Mayor

JEFFREY T. PEARSON, P.E.
Director

HELENE KAU
Deputy Director



DEPARTMENT OF WATER SUPPLY
COUNTY OF MAUI
200 SOUTH HIGH STREET
WAILUKU, MAUI, HAWAII 96793
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February 13, 2021

**Testimony of County of Maui Department of Water Supply
In Consideration of S.B. 1122 relating to County Boards of Water Supply**

**Before the Senate Committee on
HAWAIIAN AFFAIRS
Tuesday, February 16, 2021
1:02 PM
State Capitol, Via Videoconference**

The County of Maui, Department of Water Supply opposes the proposed Bill S.B. No 1122. This bill would add undue hardships to all county utilities to provide potable water, a public trust use, to our future customers, domestic and otherwise. The County of Maui, Department of Water Supply supports all other counties in their opposition to SB 1122.

Thank you for your consideration of our viewpoint on this matter.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Jeffrey T. Pearson".

Jeffrey T Pearson, P.E.
Director of Water Supply
County of Maui

"By Water All Things Find Life"