



TESTIMONY BY:

JADE T. BUTAY
DIRECTOR

Deputy Directors
ROSS M. HIGASHI
EDUARDO P. MANGLALLAN
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STATE OF HAWAII
DEPARTMENT OF TRANSPORTATION
869 PUNCHBOWL STREET
HONOLULU, HAWAII 96813-5097

February 11, 2022
1:00 P.M.
State Capitol, Teleconference

S.B. NO. 2598
RELATING TO UNDERGROUND STORAGE TANKS

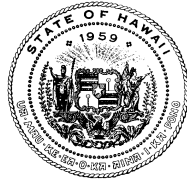
Senate Committee(s) on Health and Agriculture & Environment

The Department of Transportation (DOT) offers comments to S.B. 2598. The DOT recognizes the intent of this bill is to protect our fragile ecosystem and natural drinking water resources. The DOT is recommending the bill be revised to address the following concerns.

The proposed measure would limit the discretion of the Department of Health (DOH) to enforce noncompliance of the underground storage tank (UST) regulations. The DOT feels the current statute and rules provides DOH adequate authority and discretion to revoke the permit, issue orders, or request repairs on a noncompliant UST.

As an example, currently under Hawaii Administrative Rules (HAR), 11-280.1, DOH has the ability to remove an out-of-compliance UST from service. The timeframes proposed in S.B. 2598 will cumber the Director's discretion on enforcement, as §11-280.1-429 allows DOH to order any out-of-compliance UST to be immediately removed from service.

Thank you for the opportunity to provide testimony.



STATE OF HAWAII
DEPARTMENT OF HEALTH
P. O. Box 3378
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**Testimony in OPPOSITION to SB2598
RELATING TO UNDERGROUND STORAGE TANKS**

SENATOR JARRETT KEOHOKALOOLE, CHAIR
SENATE COMMITTEE ON HEALTH
SENATOR MIKE GABBARD, CHAIR
SENATE COMMITTEE ON AGRICULTURE AND ENVIRONMENT

Hearing Date: 2/11/2022

Room Number: Videoconference

1 **Fiscal Implications:** This measure may impact the priorities identified in the Governor's
2 Executive Budget Request for the Department of Health's (department's) appropriations and
3 personnel priorities.

4 **Department Testimony:** The department appreciates the intent of this measure, to provide
5 additional protection to the state's groundwater and drinking water resources, but strongly
6 disagrees with the proposed methods for accomplishing this goal. This bill limits the
7 department's regulatory authority and places the department's enforcement discretion in the
8 hands of third-party contractors.

9 The department does not feel that the type of self-inspection and compliance
10 determination described in the bill is likely to improve the enforcement of existing requirements
11 in chapter 11-280.1, HAR, nor will it enhance the inspections carried out by the department's
12 own personnel. Inspectors employed by the underground storage tank (UST) system
13 owner/operator will always be financially motivated to maintain the contractual or employer-
14 employee relationship. Accordingly, their independence will necessarily be suspect. Any
15 conflict between the findings of a self-inspection and subsequent inspection by the department's
16 personnel will needlessly complicate the efforts of the department to obtain compliance by
17 raising questions about the legitimacy of the department's findings. It is simply unclear how a

1 layer of privatized inspection, conducted by third-party contractors, will improve enforcement
2 outcomes.

3 The department is also concerned with the way in which relatively minor infractions
4 could subject an owner or operator to delivery prohibition. Page 3 line 4 to page 4 line 11 of the
5 bill requires the department to accept the findings of a self-inspection and make a delivery
6 prohibition for every violation identified by such inspections, except in specific circumstances
7 laid out in the bill. There are a wide range of possible violations of chapter 11-280.1, HAR,
8 including minor recordkeeping violations that do not generate risk to human health and the
9 environment (for example, an individual operator has been trained, but training documentation is
10 not available on-site at the time of inspection). The department strongly prefers its current policy
11 of making case-by-case determinations of whether delivery prohibition is warranted. Exercising
12 discretion in this way enables the department to account for the fact that some violations of the
13 department's UST rules do not present significant risk to public health or the environment.

14 **Offered Amendments:** The department respectfully requests that this bill be deferred. In
15 addition, if the committees choose to pass the bill onward, we request the deletion of the
16 proposed §342L- (d)(3), (4), and (5) on page 3 line 4 to page 4 line 11.

17

18 Thank you for the opportunity to testify on this measure.

BOARD OF WATER SUPPLY

CITY AND COUNTY OF HONOLULU
630 SOUTH BERETANIA STREET
HONOLULU, HI 96843
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February 11, 2022

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

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

The Honorable Jarrett Keohokalole, Chair
and Members
Senate Committee on Health
Via Videoconference
Honolulu, Hawaii 96813



The Honorable Mike Gabbard, Chair
and Members
Senate Committee on Agriculture and Environment
Via Videoconference
Honolulu, Hawaii 96813

Dear Chair Keohokalole, Chair Gabbard, and Members:

Subject: Senate Bill 2598: Relating to Underground Storage Tanks

The Honolulu Board of Water Supply (BWS) supports the intent of Senate Bill (SB) 2598 and respectfully offers the following comments.

This bill proposes amending Hawaii Revised Statutes (HRS) §342L by adding a new section requiring enhanced schedules and standards for the inspection of the release detection systems for underground storage tanks (USTs). As the primary source of potable water in Hawaii, groundwater must be preserved in as close to pristine condition as possible and accommodate the needs of present and future generations. Accordingly, the BWS supports the bill's objective to ensure that USTs and UST systems, which have the potential to adversely impact human health, the environment, and our drinking water, are properly inspected, maintained, repaired, and operated to prevent releases for their operational life.

However, the BWS believes that SB 2598 could be strengthened further. First, the bill states that the required inspections are to be performed to determine compliance with "the release detection requirements" of HRS §342L-33. The types of release detection contemplated by 342L-33 and its implementing regulation include, among other things, inventory control, tightness testing, and other methods designed to identify releases from USTs and UST systems. As written, SB 2598 appears to only require inspections of the release detection equipment and related processes. While important in the overall framework of regulating USTs and UST systems, release detection is a

The Honorable Jarrett Keohokalole, Chair
The Honorable Mike Gabbard, Chair
and Members
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reactionary means by which to monitor substances that have already been released into the environment. It falls short of preventing future releases. To prevent releases from happening in the first place, the BWS respectfully suggests amending subsection (a) of SB 2598 to include a parallel reference to HRS §342L-32, which requires that all USTs and UST systems “be designed, constructed, installed, upgraded, maintained, repaired, and operated to prevent releases of the stored regulated substances for the operational life of the tank or tank system.” The BWS further recommends that the timing requirement proposed in subsection (a) that USTs and UST systems be inspected annually. These proposed amendments to the bill would hold UST operators to a higher standard; one that better protects Oahu’s irreplaceable sole-source groundwater aquifer from releases from USTs.

Thank you for your consideration of our testimony concerning SB 2598.

Very truly yours,

A handwritten signature in blue ink, appearing to read 'Ernest Y. W. Lau', is positioned above the printed name.

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

SB-2598

Submitted on: 2/9/2022 11:51:40 PM

Testimony for HTH on 2/11/2022 1:00:00 PM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
Susan Pcola_Davis	Individual	Support	Yes

Comments:

Although the intent of this bill is applauded, I oppose because there are too many holes and it is not a tight document for a bill. It leaves too many things open to interpretation.

NOTE: I have used text features like, bold and size tfor emphasis

Inspections:

Each inspection must be performed by **an inspector** qualified to perform the inspection in accordance with rules adopted by the department, and must include, as applicable,

PROBLEM: How do you get qualified to inspect? Is there a certification? If so say a certified inspector. Who chooses the inspector? How is the inspector determined? Is there a list of eligible inspectors for underground fuel tanks?

(c) PROBLEM: No later than thirty days WHY 30 DAYS? after a satisfactory operations inspection is completed or no later than September 30 of the year the inspection is due, whichever is earlier, the inspector who performed the inspection of the underground storage tank or tank system shall provide to the department the results of the inspection on a form provided by the department.

PROBLEM: Instead of satisfactory, it should be pass/fail, no in between

(d) If, after inspection, the inspector finds that the underground storage tank or tank system is not in compliance with this chapter:

(l) The inspector shall notify the owner or operator of the non—compliance;

PROBLEM: ~~No later than ten days~~ why 10 days, business days? Why not the same day, what is the purpose of waiting.

after the inspection was performed, the inspector shall submit the inspection report to the department;

The department shall deem the underground storage tank or tank system to be substandard and not in compliance with this chapter **until the required repairs are completed; what If it can't be prepared**

The department shall issue an order pursuant to section 342L—8(a)(2) and prohibit the underground storage tank or tank system from accepting any new delivery or deposit of regulated substances; provided that the department shall **revoke the permit** required under this Chapter **not later than sixty days** after the inspection was performed, unless:

(A) The required repairs have been completed in accordance with the inspector's report and recommendations, and the department receives documentation of those repairs; or

(B) The department:

(i) Receives from the owner or operator a written request accompanied by detailed repair information and a schedule of repairs; and

(ii) **PROBLEM: Grants a temporary deferral. What would be any reason for a temporary deferral?**

under of any prohibition on the acceptance of any new delivery or deposit of regulated substances; and

1. The underground storage tank or tank system **PROBLEM:** shall be taken out of service **not later than ninety days after the date of inspection, unless the department has granted a temporary deferral under paragraph (4) of this subsection. WHY 90 DAYS?**

SB-2598

Submitted on: 2/8/2022 3:11:53 PM

Testimony for HTH on 2/11/2022 1:00:00 PM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
Lynn Murakami-Akatsuka	Individual	Support	No

Comments:

To Members of the Senate Committee on Health and the Senate Committee on Agriculture and Environment,

I strongly support the passage of SB 2598 to have in place a schedule with standards for the inspection and repair of underground storage tanks evaluated to prevent hazardous material from leaking into the aquifers, soil, and ocean.

Thank you for the opportunity to testify in strong support of SB 2598.



Senate Committees on Health / Agriculture and Environment

Friday, February 11th, 2022, 1p.m.

Hawai'i Alliance for Progressive Action Supports: SB2598

Aloha Chairs Keohokalole/Gabard, Vice Chair Baker/Nishihara and Members of the Committees,

On behalf of the Hawai'i Alliance for Progressive Action (HAPA) I am submitting testimony in **support of SB2598**. HAPA is a state-wide organization that engages approximately 10,000 local residents annually.

Mahalo for hearing SB2598, which implements a schedule and standards for the inspection and repair of underground storage tanks.

SB2598 seeks to protect our islands' most precious resource from fuel contamination. The presence of leaky fuel tanks at Red Hill and the Navy's mismanagement of this crisis directly impacts the health and quality of life of Oahu's residents, and will continue to for generations to come. Some of our staff and many of our supporters are directly affected by this crisis. Our water is precious and we all have a duty to protect our islands' source of life for present and future generations.

The legislature must do all that it can to remove the threat of something far worse happening to our water supply, both now and for future generations to come. O'ahu's residents are facing a serious crisis which will continue for years. Board of Water Supply's Ernie Lau said that the Hālawā shaft – which was shut down as a precaution following the Navy's Red Hill well contamination – could be shut down for years, even permanently.

We cannot allow 80-year-old underground storage tanks that store up to 187 million gallons of fuel per day and that pose such an immense threat of leaking and contaminating our environment and water supply to operate 100 feet above O'ahu's sole-source drinking water aquifer.

Navy officials cannot be trusted to protect our water. They have lied time and time again. The following reasons explain why the legislature must act since the Navy has failed to:

- The Navy lied about an active leak at Pearl Harbor for months, discovering the leak in January 2021 but not informing Health Department officials until May. This was revealed in whistleblower emails and documents in October.
- A whistleblower also told the Department of Health in September that Navy officials provided false testimony and withheld information about the full extent of the Facility's infrastructure, including connected pipelines, as well as "historical records of corrosion issues, including holes in tanks" at its Red Hill fuel facility during legal proceedings.

- The Navy suspended use of its Red Hill water shaft on November 28, but the public only found out on December 1. The Navy continues to confuse and gaslight community members.
- Hundreds of community members reported chemical smells in their water on November 28 and then health issues on November 29, which the Navy refused to acknowledge as a potential health concern until the state Department of Health advised residents to not drink the clearly contaminated water.
- A day after the Navy said it had detected diesel in its 'Aiea Hālawā well at levels more than double the DOH safety limit, the military backtracked, saying the contaminated sample "did not come directly" from the well and the Navy does not believe the result proves the well is contaminated.
- They continue to not be transparent despite agreeing to the Administrative Order of Consent, which requires them to be more forthcoming about operations at the Red Hill facility.
- The BWS Hālawā shaft will be shut down until fuel is removed from the tanks and may not reopen for years to come. This shaft was a source of water for South O'ahu from Hālawā to Maunāluā. The BWS has advised that mandatory water conservation measures will now need to be in place in the summer of 2022.
- The Navy "flushed" Red Hill contaminants for days in violation of Department of Health requirements despite repeated warnings. This risked long-lasting effects on birds, plants, fish, and other aquatic life from petroleum contamination

The Department of Health has agreed that the situation is inherently dangerous. DOH said that a water sample taken from the Red Hill drinking water shaft on December 5 confirmed the water is contaminated with "high levels" of petroleum and gasoline. The sample detected total petroleum hydrocarbons diesel range organics levels 350 times above the DOH Environmental Action Level (EAL) for drinking water, and gasoline range organics more than 66 times the DOH EAL.

The Red Hill facility – the fragile, antiquated fuel tanks and supporting systems – has a long history of leaking fuel into the surrounding environment and has already contaminated O'ahu's primary drinking water aquifer. Shutting down Red Hill immediately and entirely is the only way to guarantee the safety of our water and our people.

The Facility's tanks, each with a 12.5 million-gallon capacity, had a quarter-inch thick steel liner when first constructed nearly 80 years ago. They are encased in aging concrete and the steel liners have been corroding to the point where many through-wall holes have been found and in some areas they are one-third of their original thickness.

These tanks have leaked 180,000 gallons of fuel since they were constructed and the Navy's own risk assessment from 2018 concluded that the probability of an acute leak of between 1,000 and 30,000 gallons (independent of any earthquake risk) over the next ten years is 96%. The Navy cannot prove that the tank or tank system will not leak regulated substances into the environment.

Approximately 93,000 people living in military housing have been unable to use their water for months. If the Navy water system is further compromised, our housing crisis will mushroom.

Lower levels of petroleum products were also found in samples collected from the Aliamanu Child Development Center as well as homes located on the Navy's water system.

It's absolutely critical that the State Legislature take action immediately to address this major threat to Honolulu's water supply by doing everything you can to address this and future potential threats from underground fuel storage tanks.
Please pass SB2598.

Mahalo for your consideration,

A handwritten signature in black ink, appearing to read 'Anne Frederick', with a stylized, cursive script.

Anne Frederick
Executive Director