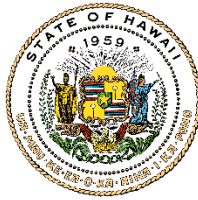


JOSH GREEN, M.D.
GOVERNOR | KE KIA'ĀINA

SYLVIA LUKE
LIEUTENANT GOVERNOR | KA HOPE KIA'ĀINA



STATE OF HAWAII | KA MOKU'ĀINA 'O HAWAII'
DEPARTMENT OF LAND AND NATURAL RESOURCES
KA 'OIHANA KUMUWAIWAI 'ĀINA

P.O. BOX 621
HONOLULU, HAWAII 96809

DAWN N.S. CHANG
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE
MANAGEMENT

RYAN K.P. KANAKA'OLE
FIRST DEPUTY

DEAN D. UYENO
ACTING 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

Testimony of
DAWN N. S. CHANG
Chairperson

Before the Senate Committee on
WATER AND LAND

Friday, February 9, 2024
1:10 PM

State Capitol, Conference Room 229 & Videoconference

In consideration of
SENATE BILL 2978
RELATING TO WATER RESOURCES

Senate Bill 2978 proposes to 1) establish an income tax credit to incentivize the voluntary relinquishment of private water systems; 2) direct the Attorney General to commence eminent domain proceedings in certain counties; 3) appropriate moneys; and 4) declare that the appropriation exceeds the state general fund expenditure ceiling for 2024-2025. **The Department of Land and Natural Resources (Department) would support this measure if it was clarified to use public funds to acquire private water systems to county water departments for public benefit, but has concern to the extent it imposes ownership of any relinquished or condemned water system on the Department.**

This measure does not specify the agency that would be responsible for the ownership, maintenance and management of any systems acquired by the State. If the Department were to assume ownership of private water systems, it would impose a significant, unfunded management burden for a responsibility that is far beyond the Department's mission for the management and protection of the public trust natural, cultural, historical and recreational resources. The Department lacks the necessary resources and expertise to function as a water service provider. If an appropriate agency is not identified and provided the needed resources to operate water systems, the result may negatively impact access to water to those that are currently and reliably serviced by a private operator.

In order to resolve the Department's concerns, the Department respectfully requests that this bill be amended to clarify that any water systems relinquished or condemned pursuant to this measure shall be owned, operated and maintained by the respective county where the subject system is located.

The water from these private water systems may very likely already be purveyed to existing water users and will not result in any more water being available for public consumption unless the intent is to disenfranchise the water users that are currently and reliably serviced by the private water purveyors or operators. If that is the intent, there are alternatives that would be effective in doing so other than the State owning the systems. As the County of Maui (County) already has a Department of Water Supply (DWS) that provides water service, it would be more appropriate for the County to acquire the systems or be granted the authority to limit water use from the private systems.¹

The Department has already incurred significant monetary and staff time expenses to manage other reservoirs and irrigation systems located on its lands. The Wailua Reservoir on Kaua'i, for example, was successfully rehabilitated and the Upper Kapahi Reservoir was removed and replaced with a smaller reservoir. Both of these facilities are part of the East Kauai Irrigation System that was previously under the management of the East Kauai Irrigation Cooperative via revocable permit. The cooperative has since discontinued the revocable permit and the system reverted back to management under the Department's Land Division. The Land Division uses its limited operating funds to maintain the system to a limited extent to address public and health and safety and to keep the system operationally viable, but does not fully operate the system. Ultimately the Department is working toward a goal to transfer the system to another appropriate agency that could operate the system to provide water for agricultural uses.

The Department does not support using its limited operating funds to fund this additional management burden that is not consistent with its mission and beyond its expertise.

Thank you for the opportunity to testify on this measure.

¹ Based on public testimony for the companion House Bill 2694, testifiers expressed that they believed this measure would solve what they perceive as disparate access to water where those on the County DWS system were subject to shortage restrictions and users on private water systems in the same area were not.

SB-2978

Submitted on: 2/8/2024 9:14:33 AM

Testimony for WTL on 2/9/2024 1:10:00 PM

Submitted By	Organization	Testifier Position	Testify
Russell Tsuji	Testifying for Department of Land and Natural Resources	Support	Remotely Via Zoom

Comments:

Written testimony from DLNR previously submitted on another Capitol account. Request for a Zoom link for additional DLNR staff testifying remotely for SB2978.

JOSH GREEN, M.D.
Governor

SYLVIA LUKE
Lt. Governor



SHARON HURD
Chairperson, Board of Agriculture

DEXTER KISHIDA
Deputy to the Chairperson

State of Hawai'i
DEPARTMENT OF AGRICULTURE
KA 'OIHANA MAHI'AI
1428 South King Street
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**TESTIMONY OF SHARON HURD
CHAIRPERSON, BOARD OF AGRICULTURE**

BEFORE THE SENATE COMMITTEE ON WATER AND LAND

**FEBRUARY 9, 2024
1:10 PM
CONFERENCE ROOM 229**

**SENATE BILL NO. 2978
RELATING TO WATER RESOURCES**

Chair Inouye, Vice Chair Elefante, and Members of the Committee:

Thank you for the opportunity to testify on Senate bill 2978. This bill proposes to 1) establish an income tax credit to incentivize the voluntary relinquishment of private water systems; 2) direct the Attorney General to commence eminent domain proceedings in certain counties; 3) appropriate moneys; and 4) declare that the appropriation exceeds the state general fund expenditure ceiling for 2024-2025. The Department of Agriculture opposes this measure.

The Department opposes this measure as it does not specify the agency that would be responsible for the ownership, maintenance and management of any system(s) acquired by the State. It is our understanding that the only county that is affected by this measure is the County of Maui which has at least one extremely large, multipurpose system. The East Maui Irrigation system serves multiple uses that we are aware of, including potable water. The Department does not have the expertise to manage a system with this use. If the Department were forced to assume ownership of private water systems, it would impose a significant, unfunded management burden for a responsibility that includes uses outside of our core mission. If the intent is to change the private water operator with the State while retaining the existing water users, then the Department lacks the necessary resources and expertise to function as a general



water service provider. If an appropriate agency is not identified and provided the needed resources to operate water systems, the result may negatively impact access to water to those that are currently and reliably serviced by a private operator.

Consequently, the Department has serious concerns regarding both the cost of maintaining the system(s) as well as the capital costs required to make any necessary improvements. It is highly likely that State management would be significantly higher than private management due to procurement requirements and labor/safety costs. Without detailed studies of the potential transferred systems, the magnitude of undertaking is unknown. Annual costs could be in the millions, and capital costs could be in the eight or even nine figure category.

The Department does not support using its limited operating funds for this additional management burden that is not consistent with its mission.

Thank you for the opportunity to testify.

JOSH GREEN M.D.
GOVERNOR

SYLVIA LUKE
LT. GOVERNOR



STATE OF HAWAII
DEPARTMENT OF TAXATION

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GARY S. SUGANUMA
DIRECTOR

KRISTEN M.R. SAKAMOTO
DEPUTY DIRECTOR

**TESTIMONY OF
GARY S. SUGANUMA, DIRECTOR OF TAXATION**

TESTIMONY ON THE FOLLOWING MEASURE:

S.B. No. 2978, Relating to Water Resources.

BEFORE THE:

Senate Committee on Water and Land

DATE: Friday, February 9, 2024

TIME: 1:10 p.m.

LOCATION: State Capitol, Room 229

Chair Inouye, Vice-Chair Elefante, and Members of the Committee:

The Department of Taxation ("Department") offers the following comments regarding S.B. 2978 for your consideration.

Section 2 of S.B. 2978 seeks to incentivize the voluntary relinquishment of private water systems by amending section 235, Hawaii Revised Statutes (HRS), to offer a new nonrefundable income tax credit equal to the value of the water system, as assessed by county officials, which may be carried forward if the credit exceeds the taxpayer's liability in the year claimed. The bill is effective upon approval, with the new tax credit applying to taxable years beginning after December 31, 2023.

The Department recommends that a definition be added for the term "water system," as the Department is unable to determine what constitutes a water system without additional guidance.

The Department also suggests that a definition be added for the term "relinquished." The bill, as currently drafted, is unclear as to what would constitute a relinquishment and whether a taxpayer who is compensated for the relinquishment would qualify for the tax credit.

Further, the Department notes that the bill does not specify the taxable year for

which the credit may be claimed. The Department recommends amending subsection (e) to specify that the credit must be claimed before the end of the twelfth month following the close of the taxable year during which the water system was relinquished by the taxpayer to the county. The Department also recommends amending subsection (b) to replace the phrase "the tax credit allowable is for the assessed value of a water system relinquished by the entity for the taxable year" with "the tax credit allowable is for the assessed value of a water system relinquished by the entity to the county during the taxable year."

Furthermore, the Department notes that the bill would not preclude multiple owners of a water system from each claiming a credit for the full amount of the assessed value of the water system. The Department suggests amending the bill to limit the amount of credit that may be claimed by each owner.

Finally, the Department requests that the effective date of this measure be delayed so that the new tax credit apply to taxable years beginning after December 31, 2024. This will provide sufficient time to develop Forms and Instructions, make the necessary administrative and computer system changes, and provide taxpayer education for this new credit.

Thank you for the opportunity to provide comments on this measure.



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February 9, 2024

HEARING BEFORE THE
SENATE COMMITTEE ON WATER AND LAND

TESTIMONY ON SB 2978
RELATING TO WATER RESOURCES

Conference Room 229 & Videoconference
1:10 PM

Aloha Chair Inouye, Vice-Chair Elefante, and Members of the Committee:

I am Brian Miyamoto, Executive Director of the Hawai'i Farm Bureau (HFB). Organized since 1948, the HFB is comprised of 1,800 farm family members statewide and serves as Hawai'i's voice of agriculture to protect, advocate, and advance the social, economic, and educational interests of our diverse agricultural community.

The Hawai'i Farm Bureau opposes SB 2978, which establishes an income tax credit to incentivize the voluntary relinquishment of private water systems and directs the Attorney General to commence eminent domain proceedings in certain counties.

HFB opposes this measure as it does not specify which state agency would be responsible for the ownership, maintenance, and management of any system(s) acquired by the State and the potential impact on Maui farmers and ranchers. Section 3 appears to limit this measure to the County of Maui which has an extremely large, multipurpose system, the East Maui Irrigation System. Neither HDOA nor DLNR has the expertise to manage a multiple-use system that includes potable water use. If either Department were forced to assume ownership of private water systems, it would impose a significant, unfunded management burden for a responsibility that includes uses outside of its core missions.

If HDOA becomes responsible for managing the East Maui Irrigation System, current users may be negatively impacted due to higher operating and capital costs. This could result in less reliable and higher costs of water to our farmers and ranchers.

Thank you for the opportunity to testify on this matter of great importance to the agricultural community.

TAX FOUNDATION OF HAWAII

126 Queen Street, Suite 305

Honolulu, Hawaii 96813 Tel. 536-4587

SUBJECT: INCOME TAX, Credit to Encourage Voluntary Relinquishment of Private Water Resources

BILL NUMBER: HB 2694, SB 2978

INTRODUCED BY: HB by SAIKI; SB by KEOHOKALOLE, CHANG, DECOITE, GABBARD, HASHIMOTO, SAN BUENAVENTURA, Fukunaga, Kidani, Moriwaki

EXECUTIVE SUMMARY: Establishes an income tax credit to incentivize the voluntary relinquishment of private water systems. Directs the Attorney General to commence eminent domain proceedings in certain counties to acquire private water systems.

SYNOPSIS: Adds a new section to chapter 235, HRS, to establish an income tax credit for any taxpayers voluntarily relinquishing their private water systems to the State. The amount of the credit is equal to the value of the water system. The credit is nonrefundable but may be carried forward until exhausted.

EFFECTIVE DATE: Upon approval, provided that Part 2 shall apply to taxable years beginning after December 31, 2023; and Section 5 shall take effect July 1, 2024.

STAFF COMMENTS: The State's apparent objective is to acquire water systems that are now in the hands of private parties. Rather than negotiating with the owners on a price, the State proposes to have an owner interested in selling its water system to put down a price on a tax form and (presumably) relinquish the system. Later, after the owner has parted with the system, the State retains the ability to disallow the credit in whole or in part, and then use tax collection tools such as liens and levies against other property or interests owned by the same taxpayer to strong-arm the taxpayer into accepting an unfair value for the property.

While the idea of providing a tax credit to encourage such activities may have been acceptable a few years ago when the economy was on a roll and advocates could point to credits like those to encourage construction and renovation activities, what lawmakers and administrators have learned in these past few years is that unbridled tax incentives, where there is no accountability or limits on how much in credits can be claimed, are irresponsible as the cost of these credits goes far beyond what was ever intended. Instead, lawmakers should control water system acquisition through the appropriation of a specific number of taxpayer dollars. A direct appropriation would be preferable to the tax credit as it would: (1) provide some accountability for the taxpayers' funds being utilized to support this effort; and (2) not be a blank check.

Digested: 2/4/2024