

STAND. COM. REP. NO.

198

Honolulu, Hawaii

FEB 13 2023

RE: S.B. No. 735
S.D. 1

Honorable Ronald D. Kouchi
President of the Senate
Thirty-Second State Legislature
Regular Session of 2023
State of Hawaii

Sir:

Your Committees on Water and Land and Hawaiian Affairs, to which was referred S.B. No. 735 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 commercial kalo cultivation conducted in a manner consistent with traditional and customary practices of Native Hawaiians from the existing process for the disposition of water rights.

Your Committees received testimony in support of this measure from the University of Hawai'i, Hawai'i Alliance for Progressive Action, Hawaii Food+ Policy, and thirty-four individuals. Your Committees received comments on this measure from the Department of Land and Natural Resources and Department of Hawaiian Home Lands.

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 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. Therefore, this measure exempts the instream use of water for commercial kalo cultivation conducted in a manner consistent with traditional and customary practices of Native Hawaiians from the existing process for the disposition of water rights.

Your Committees have heard the testimony of the Department of Land and Natural Resources expressing concerns that this measure, as drafted, would allow water used ultimately for commercial purposes to avoid any oversight from the Board of Land and Natural Resources, as well as not having to provide a reservation with the Department of Hawaiian Home Lands nor collaborate to develop and implement a watershed management plan, both of which are requirements of the water lease process. Your Committees have also heard the testimony of the Department of Hawaiian Home Lands expressing concerns that a complete exemption would directly impact their interests.

Therefore, your Committees have amended this measure by:

- (1) Inserting a new subsection specifying that only the public auction requirements for the disposition of water rights shall not apply to commercial kalo cultivation and deleting the language that would have exempted instream commercial kalo cultivation conducted in a manner consistent with traditional and customary practices of Native Hawaiians from the disposition of water rights requirements pursuant to section 171-58, Hawaii Revised Statutes;
- (2) Inserting an effective date of July 1, 2050, to encourage further discussion; and
- (3) 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 and Hawaiian Affairs that are attached to this report, your Committees are in accord with the intent and purpose of S.B. No. 735, as amended herein, and recommend that it pass Second Reading in the form attached hereto



as S.B. No. 735, S.D. 1, and be referred to your Committee on Judiciary.

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



MAILE S.L. SHIMABUKURO, Chair

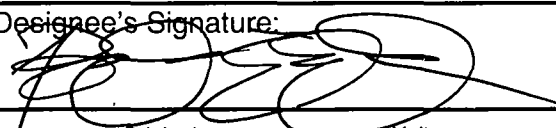


LORRAINE R. INOUE, Chair



The Senate
 Thirty-Second Legislature
 State of Hawai'i

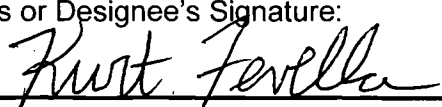
Record of Votes
Committee on Water and Land
WTL

Bill / Resolution No.:* SB 735	Committee Referral: WTL/HWN, JDC	Date: 2/8/23		
<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
INOUYE, Lorraine R. (C)	✓			
ELEFANTE, Brandon J.C. (VC)		✓		
CHANG, Stanley				✓
MCKELVEY, Angus L.K.	✓			
FEVELLA, Kurt	✓			
TOTAL	3	1	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				

*Only one measure per Record of Votes

The Senate
 Thirty-Second Legislature
 State of Hawai'i

Record of Votes
Committee on Hawaiian Affairs
HWN

Bill / Resolution No.:* SB 735	Committee Referral: WTL/HWN, JDC	Date: 02/08/2023		
<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)	/			
FEVELLA, Kurt (VC)	/			
IHARA, Jr., Les	/			
KEOHOKALOLE, Jarrett	/			
RICHARDS, III, Herbert M. "Tim"	/			
TOTAL	5	—	—	—
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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