

STAND. COM. REP. NO. 3058

Honolulu, Hawaii

MAR 24 2016

RE: H.B. No. 2501
H.D. 2
S.D. 1

Honorable Ronald D. Kouchi
President of the Senate
Twenty-Eighth State Legislature
Regular Session of 2016
State of Hawaii

Sir:

Your Committee on Water, Land, and Agriculture, to which was referred H.B. No. 2501, H.D. 2, entitled:

"A BILL FOR AN ACT RELATING TO WATER RIGHTS,"

begs leave to report as follows:

The purpose and intent of this measure is to allow for a holdover disposition of water rights previously authorized pursuant to a lease during the pendency of an application for a lease renewal even if the application's determination exceeds one year.

Your Committee received testimony in support of this measure from the Department of Agriculture; Ka'u Agricultural Water Cooperative District; Hawaii Crop Improvement Association; Pacific Resource Partnership; Hawai'i Farm Bureau; Hawaii Cattlemen's Council, Inc.; Chamber of Commerce Hawaii; REALTORS Association of Maui, Inc.; Kauai Island Utility Cooperative; Land Use Research Foundation of Hawaii; Moloaa Irrigation Cooperative; Hawai'i Association of REALTORS; Larry Jefts Farms, LLC; Monsanto; International Longshore Workers Union Local 142; Hawaii Farmers and Ranchers United; Building Industry Association-Hawaii; Maui County Hawaii Farm Bureau; Hawaii Aquaculture & Aquaponics Association; Alexander & Baldwin, Inc.; Ponooho Ranch Limited; Pukalani Plant Company, Inc.; Kuahiwi Contractors, Inc.; Kuahiwi Ranch; Island Planning; McCandless Ranch; Farias Cattle Company; Syngenta Hawaii, LLC; DuPont Pioneer; PRL English, LLC; and sixty-three individuals. Your Committee received testimony in

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opposition to this measure from the Office of Hawaiian Affairs; Aha Moku Advisory Committee; Ethnic Studies Department of the University of Hawaii at Manoa; Hawai'i Center for Food Safety; Aina O Kumaka Loko I'a-Hana; Kona Ohana Poi Ohana; Hawai'i Farmers Union United-Haleakala Chapter; Conservation Council for Hawai'i; Sovereign Councils of the Hawaiian Homeland Assembly; Plant a Wish; Earthjustice; Aha Moku o Wailuku; Kekiwi' Ohana; Hawaii's Thousand Friends; Maui Farmers Union United; Maui Nui Marine Resource Council; Na'aikane o Maui, Inc.; Kalihi Palama Hawaiian Civic Club; Halau Palaihiwa O Kaipuwai; Green Party of Hawai'i; Hawai'i Wildlife Fund; Earth Corps; 'Ai Pohaku; Rainbow Ridge West, LLC; Hawaii Farmers Union United-Maui; Friends of Lana'i; Sierra Club of Hawaii; KAHEA: the Hawaiian Environmental Alliance; Native Hawaiian Legal Corporation; Maui Tomorrow; Babes Against Biotech; Farmers Voice Hawaii; Haiku Aina Permaculture Initiative; Life of the Land; Americans for Democratic Action; George Cypher Ohana; Waianae Coast Community Foundation; He Kanaka Maoli Au; Poe oka aina; Nation of Hawaii; Kaakaua Alii Sir Kalani Tassill KCK of the Royal Order of Kamehameha-Kahekili Chapter-Moku o Maui; Kalei Papahi O Kakuhihewa; Haiku Community; Ka Lahui Hawaii; The John Munn Kahikina Kelekona; Onipaa Na Hui Kalo; Lionsgate; Lanalani Farm; Kawaipapa Nursery; We Are One, Inc.; Kihei Ice, Inc.; Clifton M Hasegawa & Associates LLC; Kau Specialty LLC; Kipahulu Ohana Incorporated; and four hundred fifty-eight individuals. Your Committee received comments on this measure from the Department of Land and Natural Resources, Department of Hawaiian Home Lands, and one individual.

Your Committee finds that although it is in the interest of all for Hawaii to be self-reliant, achieving a sustainable community where food is grown locally and sustainably and water is clean and well managed is very challenging as economic and environmental changes continue to occur in the State. Your Committee has weighed all the facts surrounding this measure, and finds that the concerns raised by the Maui taro farmers, Native Hawaiians, and environmentalists are very real and need to be incorporated into a final solution regarding water rights on Maui, while at the same time, the Judge's decision in *Carmichael, et al. v. Board of Land and Natural Resources* (Civ. No. 15-1-0650-04), has created a very serious situation for agriculture in the State and brought into question the validity of water and land revocable permits.



Your Committee finds that this measure's sunset date may only apply to the authority of the Board of Land and Natural Resources (Board) to issue holdover permits, and not necessarily the permits themselves, which may lead to an interpretation that any holdover permit issued by the Board could continue indefinitely. Your Committee finds it necessary to clarify that the legislative intent of this measure is to provide the Board a finite time period during which it must follow the existing statutory requirements for issuing long-term leases for disposition of water rights, where appropriate. It is not the intent of your Committee to create a new category of permits for an indefinite period of time.

Your Committee further finds that while the Board may traditionally defer to the Commission on Water Resource Management to determine the volume of water a permittee or lessee may withdraw from a stream, the Board has the authority to make an independent decision, in the absence of a Commission decision, when issuing a disposition of water rights by lease. The Board may adopt lease language that would automatically amend the lease and incorporate a final Commission decision, once one is issued. Your Committee insists that the Board incorporate the public trust doctrine and applicable laws into any determination as to the amount of water rights that may be awarded to an applicant on a holdover basis annually. Your Committee specifically notes the prohibition against the issuance of any disposition of water rights that supports waste, and that in some circumstances, previously authorized dispositions of water may need to be reduced due to changed circumstances.

Accordingly, your Committee has amended this measure by:

- (1) Requiring that a holdover permit be issued on an annual basis;
- (2) Requiring that a holdover permit expire when the Board's disposition of water rights is finally resolved or in three years, whichever is sooner;
- (3) Requiring that the holdover be consistent with the public trust doctrine and any applicable law;
- (4) Inserting a blank appropriation to the Department of Land and Natural Resources to expedite pending

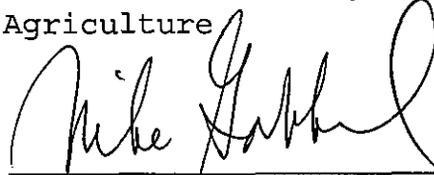


applications for the disposition of water rights, to take effect on July 1, 2016;

- (5) Inserting a repeal date of July 1, 2019; and
- (6) Making technical, nonsubstantive amendments for the purposes of clarity and consistency.

As affirmed by the record of votes of the members of your Committee on Water, Land, and Agriculture that is attached to this report, your Committee is in accord with the intent and purpose of H.B. No. 2501, H.D. 2, as amended herein, and recommends that it pass Second Reading in the form attached hereto as H.B. No. 2501, H.D. 2, S.D. 1, and be referred to your Committee on Ways and Means.

Respectfully submitted on
behalf of the members of the
Committee on Water, Land, and
Agriculture



MIKE GABBARD, Chair



The Senate
 Twenty-Eighth Legislature
 State of Hawai'i

Record of Votes
Committee on Water, Land, and Agriculture
WLA

Bill / Resolution No.:* <i>HB 2501, HD2</i>	Committee Referral: <i>WLA, WAM</i>	Date: <i>3-21-16</i>		
<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
GABBARD, Mike (C)	/			
NISHIHARA, Clarence K. (VC)		/		
DELA CRUZ, Donovan M.	/			
RIVIERE, Gil			✓	
RUDERMAN, Russell E.			✓	
SHIMABUKURO, Maile S.L.			/	
THIELEN, Laura H.		/		
WAKAI, Glenn		/		
SLOM, Sam		/		
TOTAL	<i>2</i>	<i>4</i>	<i>3</i>	
Recommendation: <input checked="" type="checkbox"/> Adopted <input type="checkbox"/> Not Adopted				
Chair's or Designee's Signature: <i>Clarence K. Nishihara</i>				
Distribution: Original Yellow Pink Goldenrod File with Committee Report Clerk's Office Drafting Agency Committee File Copy				

*Only one measure per Record of Votes