

SB 2503

DAVID Y. IGE
GOVERNOR OF HAWAII



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

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**Testimony of
SUZANNE D. CASE
Chairperson**

**Before the Senate Committees on
WATER, LAND, AND AGRICULTURE
and
PUBLIC SAFETY, INTERGOVERNMENTAL, AND MILITARY AFFAIRS**

**February 10, 2016
2:45 PM
State Capitol, Conference Room 224**

**In consideration of
SENATE BILL 2503
RELATING TO WATER INFRASTRUCTURE LOANS**

Senate Bill 2503 proposes to amend Chapter 174C, Hawaii Revised Statutes (HRS), by adding a new part to establish a water infrastructure loan program. **The Department of Land and Natural Resources (Department) acknowledges the intent of Senate Bill 2503 but opposes this measure and respectfully suggests alternatives to meet the intent of the bill.**

While the Department recognizes the need for water infrastructure improvements, the Department opposes the proposed amendments to Chapter 174C HRS because it is not the role of the Department's Commission on Water Resource Management (Commission) to provide maintenance, or project development support or assistance for water supply infrastructure. Under the State Water Code, the Commission is a trustee of the water resources for the State. The role of the Commission is to balance maximum beneficial uses with protection of the water resources of the State by setting policy and establishing programs and plans for this purpose. The Water Code declaration of policy §174C-2, HRS, states:

The state water code shall be liberally interpreted to obtain maximum beneficial use of the waters of the State for purposes such as domestic uses, aquaculture uses, irrigation and other agricultural uses, power development, and commercial and industrial uses. However, adequate provision shall be made for the protection of traditional and customary Hawaiian rights, the protection and procreation of fish and wildlife, the maintenance of proper ecological balance and scenic beauty, and the preservation and enhancement of waters of

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BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

KEKOA KALUHIWA
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DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
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COMMISSION ON WATER RESOURCE MANAGEMENT
CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCES ENFORCEMENT
ENGINEERING
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KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

the State for municipal uses, public recreation, public water supply, agriculture, and navigation. Such objectives are declared to be in the public interest.

The Commission administers statewide water-related regulatory, planning, and protection programs in conformance with the above declaration of policy. Administration of a water infrastructure loan program would result in a conflict of interest because the Commission's stewardship role requires impartiality and neutrality in its weighting and balancing of competing public interests and objectives.

In 1992, the Commission was administratively separated from the Department's Engineering Division (formerly called the Division of Water and Land Development) due to such perceived conflict. Presently, the Commission's role in infrastructure development is limited to the construction of monitoring wells, which serve to ensure the protection and sustainability of groundwater resources for the benefit of all of the current and future citizens of the State. The Commission interest in water infrastructure is appropriately limited to the goals of resource protection.

The proposed water infrastructure loan program appears to be modeled after the Green Energy Market Securitization (GEMS) program that was established under the Department of Business, Economic Development & Tourism (DBEDT) by Act 211, Session Laws of Hawaii 2013. A review of the Annual Reports to the Governor and Legislature and the meeting minutes of the Hawaii Green Infrastructure Authority indicate that this initiative is a very large undertaking.

As the bill notes, implementation of this program will require additional staff resources. To support the GEMS program, 5.5 exempt positions were created, including an Executive Director, Executive Assistant, Administrative Services Coordinator, Accountant, and two Program Officers. Agreements or contracts for consultant services for professional and technical assistance and for administration of the loan program will be required. Agreements executed under the GEMS program include: Loan Purchase and Servicing Agreements, Marketplace Access Agreements, and Loan Servicing Agreements. Staff with expertise in loan purchase and servicing would be needed to coordinate and manage these agreements. The Department does not have staff with expertise or knowledge of loan purchase and servicing or marketplace access.

In addition, significant funding will be required to carry out this measure. Sections 2 and 3 provide for an unspecified amount of general revenues to support the program. The Department is concerned about the impacts that the funding appropriated under this bill would have on the Executive Supplemental Budget request. The GEMS program was seeded with \$30 million primarily through the proceeds from \$150 million of revenue bonds that were issued by DBEDT. The water infrastructure loan program will require a continuous cash flow to function effectively. It is not clear how future funds will be derived pending loan repayments, which could extend over a period as long as thirty-years.

With regard to the members of the water infrastructure authority, the Chairperson of the Board of Land and Natural Resources is also the Chairperson of the Commission.

The Department appreciates that maintaining and upgrading water infrastructure is important to the State and understands the desire to explore innovative infrastructure financing programs. However, the proposed water infrastructure loan program is a new program that would distract from the core mission of the Department and would require a significant amount of specialized staff resources and funding to implement. The Department notes that there may be other existing loan programs in place that are presently available or could be expanded to meet the intent of the bill to improve or install water infrastructure. The Department defers to other agencies that have jurisdiction over the following programs:

- The aforementioned GEMS program is designed to make clean energy improvements affordable and accessible. Hydroelectric pumping and the water infrastructure necessary to support hydroelectric pumping systems is a type of clean energy that may be appropriately financed through GEMS. The Legislature could consider expanding GEMS to include other green infrastructure technologies, such as stormwater reclamation.
- In addition, while not implemented as yet, Act 42, Session Laws of Hawaii 2015, authorizes the counties to establish and charge user fees for stormwater management, which includes stormwater reclamation and reuse.
- The State of Hawaii, Department of Agriculture's Agricultural Loan Division administers the Agricultural Loan Program. The intent of the program is to promote agricultural developments by providing credit at reasonable rates and terms. Through the establishment of a revolving loan fund, credit is made available to eligible applicants by supplementing private lender sector loan funds or by providing direct funding.
- The State of Hawaii, Drinking Water State Revolving Fund program provides low interest loans for the construction of drinking water infrastructure projects, including wells and water distribution systems, to help achieve or maintain compliance with drinking water standards, protect public health and the environment. While presently limited to the four county water departments, this program is planned for expansion to non-county water systems. Since it began in 1997, the Drinking Water State Revolving Fund has disbursed more than \$201.5 million in low interest loans. The fund presently has a healthy balance available to the counties for drinking water infrastructure improvements.

In addition, the Department notes there are other bills that have been introduced that address the issue of water infrastructure installation, improvement, and financing.



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Testimony COMMENTING on S.B. 2503
RELATING TO WATER INFRASTRUCTURE LOANS

SENATOR MIKE GABBARD, CHAIR
SENATE COMMITTEE ON WATER, LAND, AND AGRICULTURE
and

SENATOR CLARENCE K. NISHIHARA, CHAIR
SENATE COMMITTEE ON PUBLIC SAFETY, INTERGOVERNMENTAL, AND
MILITARY AFFAIRS

Hearing Date: February 10, 2016
Time: 2:45 pm

Room Number: 224

- 1 **Fiscal Implications:** None for Department of Health.
- 2 **Department Testimony:** The Department of Health comments that other water infrastructure
3 loan programs already exists in the State. One such program is the State of Hawaii, Drinking
4 Water State Revolving Fund program which provides low interest loans for the construction of
5 drinking water infrastructure projects to help achieve or maintain compliance with drinking
6 water standards and protect public health and the environment. While presently limited to the
7 four county water departments, the program plans to expand to non-county water systems.
- 8 From 1997 through state fiscal year 2015, the Drinking Water State Revolving Fund has
9 disbursed more than \$210 million in low interest loans. As of February 8, 2016, the Drinking
10 Water State Revolving Fund has disbursed more than \$14 million in state fiscal year 2016.
- 11 The Department acknowledges that the Drinking Water State Revolving Fund cannot be used to
12 fund all of the kinds of projects listed in S.B. 2503. Eligible drinking water infrastructure
13 projects include reservoirs, wells, treatment facilities, and distribution systems.
- 14 Thank you for this opportunity to testify on this measure.

DAVID Y. IGE
Governor

SHAN S. TSUTSUI
Lt. Governor



SCOTT E. ENRIGHT
Chairperson, Board of Agriculture

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**TESTIMONY OF SCOTT E. ENRIGHT
CHAIRPERSON, BOARD OF AGRICULTURE**

**BEFORE THE SENATE COMMITTEES ON WATER, LAND AND AGRICULTURE AND
PUBLIC SAFETY, INTERGOVERNMENTAL, AND MILITARY AFFAIRS**

February 10, 2016
2:45 P.M.
CONFERENCE ROOM 224

**SENATE BILL NO. 2503
RELATING TO WATER INFRASTRUCTURE LOANS**

Chairpersons Gabbard and Nishihara and Members of the Committees:

Thank you for the opportunity to testify on Senate Bill No. 2503. The purpose of this measure is to establish a water infrastructure loan program under the Hawaii water infrastructure authority within DLNR. It also grants authority to make loans for water infrastructure development, repair, and maintenance activities. Finally, it makes an appropriation to support this initiative. The Department of Agriculture supports the intent of this measure provided that it does not impact the priorities submitted in the department's executive budget.

Irrigation infrastructure is the backbone of Hawaii's agricultural industry. It is critical to ensure the viability of these systems as the push toward food security is made. Many of these systems are aging and are in need of significant improvements to modernize their collection and delivery systems to increase storage and reduce water losses and maintenance costs. These funds are necessary to help extend the life of these systems for many decades to come and to continue to move Hawaii toward a more sustainable future.

Thank you for the opportunity to testify on this measure.



DAVID Y. IGE
GOVERNOR



WRITTEN ONLY

WESLEY K. MACHIDA
DIRECTOR

RODERICK K. BECKER
DEPUTY DIRECTOR

EMPLOYEES' RETIREMENT SYSTEM
HAWAII EMPLOYER-UNION HEALTH BENEFITS TRUST FUND
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**STATE OF HAWAII
DEPARTMENT OF BUDGET AND FINANCE**

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**TESTIMONY BY WESLEY K. MACHIDA
DIRECTOR, DEPARTMENT OF BUDGET AND FINANCE
TO THE SENATE COMMITTEES ON WATER, LAND AND
AGRICULTURE AND PUBLIC SAFETY, INTERGOVERNMENTAL, AND
MILITARY AFFAIRS
ON
SENATE BILL NO. 2503**

February 10, 2016
2:45 p.m.

RELATING TO WATER INFRASTRUCTURE LOANS

Senate Bill (S.B.) No. 2503 establishes a five-member Hawaii Water Infrastructure Authority (Authority) within the Department of Land and Natural Resources (DLNR). The purpose of the Authority is to make loans and expend funds to finance the purchase or installation of water infrastructure equipment for dams, reservoirs, hydroelectric pumping, storm water reclamation, ditch maintenance, spillways, wells, water ducts and water distribution systems.

Additionally, S.B. No. 2503 establishes the Hawaii Water Infrastructure Special Fund to receive appropriations enacted by the Legislature, revenues from water infrastructure charges, and all other funds received by the DLNR or the Authority for the purpose of the special fund. The funds will be used to make water infrastructure loans and paying administrative costs of the Hawaii Water Infrastructure loan program.

The Department of Budget and Finance does not take any position on the policy of the Authority; however, as a matter of general policy, the department does not support the creation of special funds which do not meet the requirements of

Section 37-52.3, Hawaii Revised Statutes. Special funds should: 1) serve a need as demonstrated by the purpose, scope of work and an explanation why the program cannot be implemented successfully under the general fund appropriation process; 2) reflect a clear nexus between the benefits sought and charges made upon the users or beneficiaries or a clear link between the program and the sources of revenue; 3) provide an appropriate means of financing for the program or activity; and 4) demonstrate the capacity to be financially self-sustaining.

In regards to this bill, it does not appear that the proposed special fund is self-sustaining.

DAVID Y. IGE
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**TESTIMONY
OF
SARAH ALLEN, ADMINISTRATOR
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TO THE SENATE COMMITTEE
ON
WATER, LAND, AND AGRICULTURE
AND
PUBLIC SAFETY, INTERGOVERNMENTAL, AND MILITARY AFFAIRS**

February 10, 2016, 2:45 pm

**Senate Bill No. 2503
RELATING TO WATER INFRASTRUCTURE LOANS**

Chairs Gabbard, Nishimara, Vice-Chairs Nishihara, Espero, and members of the committee, thank you for the opportunity to submit testimony on SB 203. The State Procurement Office supports the intent of this bill, but opposes the exemption language on page 5, lines 4 to 5.

Statutory exemptions are contrary to the Hawaii Public Procurement Code (Code), section 103D-102, HRS, on the applicability of the chapter that states in part "...shall apply to all procurement contracts made by governmental bodies whether the consideration for the contract is cash, revenues, realizations, receipts, or earnings...." Any governmental agency with the authority to expend funds should be in compliance with chapter 103D, which promotes the policy of fair and equitable treatment of all persons who deal with the procurement system; fosters effective broad-based competition; and increases public confidence in public procurement.

One of public procurement's primary objectives is to provide everyone equal opportunity to compete for government contracts, to prevent favoritism, collusion, or fraud in the awarding of contracts. Another critical objective is to ensure disclosure and public visibility into the way tax-payer dollars are being spent. As such, along with open competition the Code provides safeguards to ensure procurement integrity, determination of fair and reasonable pricing, public notice, and transparency. The Code also provides consistency in the manner in which purchasing agencies procure goods, services, and construction.

Exemptions to the Code mean that all procurements made with taxpayer monies for this authority, will not have the same oversight, accountability and transparency requirements mandated by those procurements processes provided in the Code. It means that there is no requirement for due diligence, proper planning or consideration of protections for the State in contract terms and conditions, nor are there any set requirements to conduct cost and price analysis and market research or post-award contract management. It also means the authority is not required to adhere to the Code's procurement integrity laws.

To provide fairness and consistency, and due process for vendors/contractors, the Code offers a legal and contractual remedy process to resolve protested solicitations and awards, which includes impartial reviews by the Department of Commerce and Consumer Affairs administrative hearings process and the ability to request judicial review. The protest process also protects agencies and taxpayers from onerous and baseless protests, minimizes delays and disruptions in the award of contracts, and supports a prompt resolution.

To ensure all vendors/contractors who seek public contracts compete on equal footing they are required to demonstrate compliance with Hawaii laws. The Code requires potential vendors/contractors to comply with Hawaii laws prior to award of a contract, i.e. DOTAX Tax Clearance Certificate including IRS certification, DLIR Certificate of Compliance; DCCA Certificate of Good Standing; or Hawaii Compliance Express (HCE) Certificate of vendor compliance. Upon completion of goods provided or services performed, and before final payment is made, a vendor/contractor is again required to demonstrate compliance with Hawaii laws, thereby assuring that public funds are paid to compliant vendors/contractors.

Open bidding procedures assures that the State obtains value, and potential vendors/contractors are treated fairly. Those who lack a working knowledge of the Code, may view it as a cumbersome process. The SPO believes that it is vital to good government to have a fair and consistent process to award government contracts that hold agencies responsible and accountable for their actions.

The SPO is against exempting the Hawaii water infrastructure authority, administratively attached to the Department of Land and Natural Resources, for the administration of the loan program from the Code, as it is not in the best interest of government, the business community, and the general public. The Code establishes a time-tested, fair, reliable set of rules and processes for award of contracts.

In conclusion, there is no compelling reason to statutorily exempt the Hawaii water infrastructure authority, administratively attached to the Department of Land and Natural from the Code. The SPO recommends amending page 5, lines 3 to 5 to read as follows:

“(5) Enter into contracts for the administration of the loan program, ~~without the necessity of~~
~~complying~~ in accordance with chapter 103D;”

Thank you.



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February 8, 2016

HEARING BEFORE THE
SENATE COMMITTEE ON WATER, LAND AND AGRICULTURE

TESTIMONY ON
SB2503: RELATING TO WATER INFRASTRUCTURE LOANS
COMMITTEE ON PUBLIC SAFETY, INTERGOVERNMENTAL, AND MILITARY
AFFAIRS

Room 224
2:45 PM

Aloha Chair Yamane, Vice Chair Cullen, and Members of the Committee:

I am Randy Cabral, President of the Hawaii Farm Bureau (HFB). Organized since 1948, the HFB is comprised of 1,900 farm family members statewide, and serves as Hawaii's voice of agriculture to protect, advocate and advance the social, economic and educational interest of our diverse agricultural community.

The Hawaii Farm Bureau strongly supports SB2503, establishing, authorizing and making and making an appropriation for a water infrastructure loan program within DLNR.

There is no doubt that water infrastructure development have lagged the needs of population growth across the State. In addition to new development, repair and maintenance of aging infrastructure also need to be addressed. In addition to those meeting potable water needs, there is an equal need to address irrigation and other water requirements associated with agriculture.

We commend the focus on storm water reclamation as weather forecasts indicate increasing erratic weather patterns, with prolonged droughts followed by intense storm events. Management of storm waters will be critical to protect the environment, properties and lives. At the same time, storm waters will be critical sources of water to be used during the prolonged droughts that are sure to follow.

Responsibility for publicly held water infrastructure currently resides in the Department of Agriculture, Agricultural Resource Management Office and County Water Departments. A coordinated body focused on water infrastructure development, repair and maintenance is reasonable. However, it **should include existing agencies and complement their efforts.**

The measure lists the scope of water infrastructure and types of activities eligible for the loan program. These descriptions follow traditional water infrastructure expectations. Times have changed and the infrastructure demands of agricultural systems go beyond delivery of water to the farms and ranches. Untreated water that was considered the norm for agriculture may no longer be acceptable in certain cases based on the requirements of the Food Safety Modernization Act or FSMA. Farms using non-potable water face the need to acquire treated water for certain operations. Without treatment having water itself will not suffice. We believe **water treatment should be included in the definitions associated with water infrastructure.**

There are Federal programs that have assisted the State in water infrastructure. This is one of the core mission of the Hawaii Association of Conservation Districts whose funding(HB2420) was discussed last Friday. We appreciate your support in passing the measure. HACD works along with USDA NRCS to fund major projects to control flooding while utilizing the water. Funding for programs such as PL-566 eroded over the years, however, President Obama has proposed funding these measures and Senator Hirono has introduced amendments to qualify Hawaii as a recipient. **The scope of this authority should include working with organizations such as HACD to identify and access federal funds to leverage state funding.**

HFBF commends this proactive measure to address Hawaii's water infrastructure needs. We request your **strong support of SB2503 with amendments as suggested** to focus on increasing Hawaii's resiliency to droughts and storm events. Thank you.