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# A BILL FOR AN ACT

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RELATING TO IRRIGATION.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

1       SECTION 1. Section 167-5, Hawaii Revised Statutes, is  
2 amended to read as follows:

3       "~~[+]~~\$167-5~~[+]~~ **Powers.** (a) In addition to any other  
4 powers granted to the board of agriculture for the purpose of  
5 carrying out all of its functions and duties, the board shall  
6 have the following powers for the purposes of this chapter:

- 7       (1) To acquire by eminent domain, water and water sources  
8       either above or underground, watershed, reservoir  
9       sites, rights-of-way over lands and property for  
10       paths, trails, roads, and landing sites, ditches,  
11       tunnels, flumes, reservoirs, and pipelines necessary  
12       or proper for the construction and maintenance of  
13       water facilities for conveying, distributing, and  
14       transmitting water for irrigation and ~~[domestic use]~~  
15       other agricultural uses, and for such other purposes  
16       as may properly fall within the scope of its  
17       activities in creating, managing, controlling,  
18       operating, and maintaining irrigation water



1 facilities, any of which purposes shall be held to be  
2 for a public use and purpose;

3 (2) To make and execute contracts and other instruments  
4 necessary or convenient to the exercise of the powers  
5 of the board, including, without prejudice to the  
6 generality of the foregoing, contracts and other  
7 instruments for the purchase or sale of water and for  
8 the purchase or lease of water facilities for  
9 irrigation of the area, including but not limited to  
10 the production of agricultural products and the land  
11 on which the facilities are situated, and for securing  
12 to the owners and occupiers of land already using  
13 water in a project a priority right to so much water  
14 from those of their sources and facilities which are  
15 taken over for the project as is required for the  
16 purposes or needs of the land, whether agricultural or  
17 nonagricultural in nature, as such purposes or needs  
18 exist at the inception of the project or are then  
19 contemplated in the immediate future;

20 (3) To make and from time to time amend and repeal bylaws  
21 and rules, not inconsistent with this chapter, which



1           upon compliance with chapter 91 shall have the force  
2           and effect of law, to carry into effect the powers and  
3           purposes of the board;

4           (4) To make surveys for the purposes of determining the  
5           engineering and economic feasibility of each project;

6           (5) To conduct or have prepared comprehensive studies of  
7           the crops, livestock, and poultry which may be  
8           profitably grown or produced within each project and  
9           the probable market for such crops, livestock, and  
10          poultry;

11          (6) To conduct feasibility studies of the economic  
12          potential of the area;

13          (7) To determine the probable costs and value of providing  
14          water for irrigation in any proposed project;

15          (8) To investigate and make surveys of water resources,  
16          including the possibility and feasibility of inducing  
17          rain by artificial or other means; and

18          (9) To define and redefine the boundaries of projects and  
19          to consolidate or separate projects, existing or  
20          proposed pursuant to this chapter, provided that in  
21          the event the redefinition of the boundaries or the



1 consolidation or separation previously effected  
2 increased the total amount required to be derived from  
3 acreage assessments upon lands within the existing  
4 project or projects by more than five per cent or will  
5 require an increase in the tolls charged for water  
6 supplied to the lands or will reduce the amount of  
7 water normally available for distribution to the  
8 lands, then the redefinition, consolidation, or  
9 separation may be accomplished only after notice has  
10 been published and a public hearing held as required  
11 for the formation of a project upon the initiative of  
12 the board. At the hearing, right to protest and the  
13 procedure relative to protest shall be the same as  
14 specified in section 167-17 concerning the formation  
15 of projects, and the proposed redefinition of  
16 boundaries, consolidation, or separation of projects  
17 shall not be accomplished if protests, such as would  
18 be sufficient to prevent the action if it were the  
19 formation of a project, are filed by owners and  
20 lessees of land within the existing projects or  
21 projects affected thereby.



1        (b) The board is empowered, upon petition of land  
2 occupiers as provided by section 167-13, or upon petition of the  
3 Hawaiian homes commission or upon its own initiative, to prepare  
4 detailed plans for the acquisition or construction of facilities  
5 for irrigation or for economic development which in its opinion  
6 are economically feasible, to prepare estimates of the probable  
7 cost of each, and to prepare estimates of the water tolls and  
8 acreage assessments required for the cost of operation and the  
9 amortization of the investment of each project, so that the  
10 project shall be self-supporting."

11        SECTION 2. Section 269-1, Hawaii Revised Statutes, is  
12 amended by amending the definition of "public utility" to read  
13 as follows:

14        "Public utility":

15        (1) Includes every person who may own, control, operate,  
16            or manage as owner, lessee, trustee, receiver, or  
17            otherwise, whether under a franchise, charter,  
18            license, articles of association, or otherwise, any  
19            plant or equipment, or any part thereof, directly or  
20            indirectly for public use for the transportation of  
21            passengers or freight; for the conveyance or



1 transmission of telecommunications messages; for the  
2 furnishing of facilities for the transmission of  
3 intelligence by electricity within the State or  
4 between points within the State by land, water, or  
5 air; for the production, conveyance, transmission,  
6 delivery, or furnishing of light, power, heat, cold,  
7 water, gas, or oil; for the storage or warehousing of  
8 goods; or for the disposal of sewage; provided that  
9 the term shall include:

10 (A) An owner or operator of a private sewer company  
11 or sewer facility; and

12 (B) A telecommunications carrier or  
13 telecommunications common carrier; and

14 (2) Shall not include:

15 (A) An owner or operator of an aerial transportation  
16 enterprise;

17 (B) An owner or operator of a taxicab as defined in  
18 this section;

19 (C) Common carriers that transport only freight on  
20 the public highways, unless operating within  
21 localities, along routes, or between points that



1 the public utilities commission finds to be  
2 inadequately serviced without regulation under  
3 this chapter;

4 (D) Persons engaged in the business of warehousing or  
5 storage unless the commission finds that  
6 regulation is necessary in the public interest;

7 (E) A carrier by water to the extent that the carrier  
8 enters into private contracts for towage,  
9 salvage, hauling, or carriage between points  
10 within the State; provided that the towing,  
11 salvage, hauling, or carriage is not pursuant to  
12 either an established schedule or an undertaking  
13 to perform carriage services on behalf of the  
14 public generally;

15 (F) A carrier by water, substantially engaged in  
16 interstate or foreign commerce, that transports  
17 passengers on luxury cruises between points  
18 within the State or on luxury round-trip cruises  
19 returning to the point of departure;

20 (G) Any user, owner, or operator of the Hawaii  
21 electric system as defined under section 269-141;



1 (H) A telecommunications provider only to the extent  
2 determined by the public utilities commission  
3 pursuant to section 269-16.9;

4 (I) Any person who controls, operates, or manages  
5 plants ~~[or]~~, facilities, or projects developed  
6 pursuant to chapter 167 for conveying,  
7 distributing, and transmitting nonpotable or  
8 irrigation water ~~[for irrigation and other~~  
9 ~~purposes for public use and purpose]~~;

10 (J) Any person who owns, controls, operates, or  
11 manages plants or facilities for the reclamation  
12 of wastewater; provided that:

13 (i) The services of the facility are provided  
14 pursuant to a service contract between the  
15 person and a state or county agency and at  
16 least ten per cent of the wastewater  
17 processed is used directly by the state or  
18 county agency that entered into the service  
19 contract;

20 (ii) The primary function of the facility is the  
21 processing of secondary treated wastewater





1 that has been produced by a municipal  
2 wastewater treatment facility owned by a  
3 state or county agency;

4 (iii) The facility does not make sales of water to  
5 residential customers;

6 (iv) The facility may distribute and sell  
7 recycled or reclaimed water to entities not  
8 covered by a state or county service  
9 contract; provided that, in the absence of  
10 regulatory oversight and direct competition,  
11 the distribution and sale of recycled or  
12 reclaimed water shall be voluntary and its  
13 pricing fair and reasonable. For purposes  
14 of this subparagraph, "recycled water" and  
15 "reclaimed water" means treated wastewater  
16 that by design is intended or used for a  
17 beneficial purpose; and

18 (v) The facility is not engaged, either directly  
19 or indirectly, in the processing of food  
20 wastes;



1 (K) Any person who owns, controls, operates, or  
2 manages any seawater air conditioning district  
3 cooling project; provided that at least fifty per  
4 cent of the energy required for the seawater air  
5 conditioning district cooling system is provided  
6 by a renewable energy resource, such as cold,  
7 deep seawater;

8 (L) Any person who owns, controls, operates, or  
9 manages plants or facilities primarily used to  
10 charge or discharge a vehicle battery that  
11 provides power for vehicle propulsion;

12 (M) Any person who:

13 (i) Owns, controls, operates, or manages a  
14 renewable energy system that is located on a  
15 customer's property; and

16 (ii) Provides, sells, or transmits the power  
17 generated from that renewable energy system  
18 to an electric utility or to the customer on  
19 whose property the renewable energy system  
20 is located; provided that, for purposes of  
21 this subparagraph, a customer's property



1 shall include all contiguous property owned  
2 or leased by the customer without regard to  
3 interruptions in contiguity caused by  
4 easements, public thoroughfares,  
5 transportation rights-of-way, and utility  
6 rights-of-way; and

7 (N) Any person who owns, controls, operates, or  
8 manages a renewable energy system that is located  
9 on such person's property and provides, sells, or  
10 transmits the power generated from that renewable  
11 energy system to an electric utility or to  
12 lessees or tenants on the person's property where  
13 the renewable energy system is located; provided  
14 that:

15 (i) An interconnection, as defined in section  
16 269-141, is maintained with an electric  
17 public utility to preserve the lessees' or  
18 tenants' ability to be served by an electric  
19 utility;

20 (ii) ~~[Such]~~ The person does not use an electric  
21 public utility's transmission or



1 distribution lines to provide, sell, or  
2 transmit electricity to lessees or tenants;

3 (iii) At the time that the lease agreement is  
4 signed, the rate charged to the lessee or  
5 tenant for the power generated by the  
6 renewable energy system shall be no greater  
7 than the effective rate charged per kilowatt  
8 hour from the applicable electric utility  
9 schedule filed with the public utilities  
10 commission;

11 (iv) The rate schedule or formula shall be  
12 established for the duration of the lease,  
13 and the lease agreement entered into by the  
14 lessee or tenant shall reflect such rate  
15 schedule or formula;

16 (v) The lease agreement shall not abrogate any  
17 terms or conditions of applicable tariffs  
18 for termination of services for nonpayment  
19 of electric utility services or rules  
20 regarding health, safety, and welfare;



1           (vi) The lease agreement shall disclose: (1) the  
2           rate schedule or formula for the duration of  
3           the lease agreement; (2) that, at the time  
4           that the lease agreement is signed, the rate  
5           charged to the lessee or tenant for the  
6           power generated by the renewable energy  
7           system shall be no greater than the  
8           effective rate charged per kilowatt hour  
9           from the applicable electric utility  
10          schedule filed with the public utilities  
11          commission; (3) that the lease agreement  
12          shall not abrogate any terms or conditions  
13          of applicable tariffs for termination of  
14          services for nonpayment of electric utility  
15          services or rules regarding health, safety,  
16          and welfare; and (4) whether the lease is  
17          contingent upon the purchase of electricity  
18          from the renewable energy system; provided  
19          further that any disputes concerning the  
20          requirements of this provision shall be  
21          resolved pursuant to the provisions of the



1 lease agreement or chapter 521, if

2 applicable; and

3 (vii) Nothing in this section shall be construed  
4 to permit wheeling~~[-]~~ or apply to any board  
5 of water supply managing, controlling, and  
6 operating the water works of the county for  
7 the purpose of supplying water to the public  
8 in the county.

9 If the application of this chapter is ordered by the  
10 commission in any case provided in paragraph (2)(C), (D), (H),  
11 and (I), the business of any public utility that presents  
12 evidence of bona fide operation on the date of the commencement  
13 of the proceedings resulting in the order shall be presumed to  
14 be necessary to the public convenience and necessity, but any  
15 certificate issued under this proviso shall nevertheless be  
16 subject to terms and conditions as the public utilities  
17 commission may prescribe, as provided in sections 269-16.9 and  
18 269-20."

19 SECTION 3. Statutory material to be repealed is bracketed  
20 and stricken. New statutory material is underscored.

21 SECTION 4. This Act shall take effect upon its approval.



**Report Title:**

Irrigation; Water; BOA; Public Utility

**Description:**

Clarifies that the BOA has the power to acquire property by eminent domain for the construction and maintenance of water facilities that convey, distribute, and transmit water for agricultural uses, but not for domestic use. Amends the definition of "public utility" in chapter 269, HRS, to exclude any person who controls, operates, or manages plants, facilities, or projects for conveying, distributing, and transmitting non-potable or irrigation water. (SD1)

*The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.*

