

STAND. COM. REP. NO.

1212

Honolulu, Hawaii

MAR 21 2023

RE: H.B. No. 1088

H.D. 1

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

Sir:

Your Committee on Water and Land, to which was referred H.B. No. 1088, H.D. 1, entitled:

"A BILL FOR AN ACT RELATING TO DECLARATION OF WATER SHORTAGE AND EMERGENCY,"

begs leave to report as follows:

The purpose and intent of this measure is to amend the conditions, manner, and areas in which the Commission on Water Resource Management of the Department of Land and Natural Resources can declare water shortages and emergencies.

Your Committee received testimony in support of this measure from the Department of Land and Natural Resources and one individual. Your Committee received testimony in opposition to this measure from one individual. Your Committee received comments on this measure from the Office of the Mayor of the County of Maui, Honolulu Board of Water Supply, County of Hawaii Department of Water Supply, and Department of Water of the County of Kaua'i.

Your Committee finds that under existing law, a water shortage must be declared through a rule-making process and in accordance with an established water shortage plan before the Commission on Water Resource Management can declare a water emergency. Thus, the existing law does not contemplate water shortages or emergencies caused by an immediate degradation of



water quality -- such as the fuel leak that occurred at the Red Hill Bulk Fuel Storage Facility -- which can happen in an instant. Therefore, this measure will allow the Commission to react to a crisis, whether within or outside of a water management area, in a swift and comprehensive manner.

Your Committee has heard the testimony of the Office of the Mayor of the County of Maui, expressing concerns, among other things, that:

- (1) Allowing the Commission to declare a water emergency without a prior water shortage declaration would appear to preempt and usurp the executive authority provided under section 127A-14(c), Hawaii Revised Statutes (HRS), which provides that "[t]he [G]overnor or [M]ayor shall be the sole judge of the existence of the danger, threat, or circumstances giving rise to a declaration of a state of emergency in the State or a local state of emergency in the county, as applicable";
- (2) Allowing the Commission to impose restrictions on permits outside of water management areas would contravene the intent and purpose of section 174C-41(a), HRS, which provides that a water designation area can be designated only when "it can be reasonably determined, after conducting scientific investigations and research, that the water resources in an area may be threatened by existing or proposed withdrawals or diversions of water"; and
- (3) Striking the language from section 174C-62(g), HRS, would relieve the Commission from performing its due diligence to make certain findings before imposing restrictions on permittees, thereby nullifying the procedural and substantive due process protections provided by the State Water Code.

Your Committee also heard the testimony of the Honolulu Board of Water Supply, which expressed similar concerns regarding the contravention of section 174C-41(a), HRS, and the nullification of due process by striking the language from section 174C-62(g), HRS.



Should your Committee on Judiciary choose to deliberate on this measure, your Committee respectfully requests that it consider further examining the concerns expressed by the Office of the Mayor of the County of Maui and the Honolulu Board of Water Supply.

As affirmed by the record of votes of the members of your Committee on Water and Land that is attached to this report, your Committee is in accord with the intent and purpose of H.B. No. 1088, H.D. 1, and recommends that it pass Second Reading and be referred to your Committee on Judiciary.

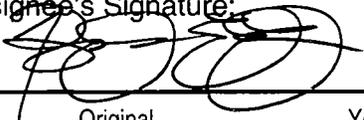
Respectfully submitted on
behalf of the members of the
Committee on Water and Land,


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.:* HB 1088, HD1	Committee Referral: WTL, JDC	Date: 3/15/23		
<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 checked="" type="checkbox"/> Pass, unamended 2312 <input 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	2	3	0	0
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