

DAVID Y. IGE
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LT. GOVERNOR
STATE OF HAWAII



WILLIAM J. AILA, JR.
CHAIRMAN
HAWAIIAN HOMES COMMISSION

TYLER I. GOMES
DEPUTY TO THE CHAIRMAN

**STATE OF HAWAII
DEPARTMENT OF HAWAIIAN HOME LANDS**

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TESTIMONY OF WILLIAM J. AILA, JR, CHAIRMAN
HAWAIIAN HOMES COMMISSION
BEFORE THE SENATE COMMITTEES ON JUDICIARY
DECISION MAKING ON FEBRUARY 24, 2020 AT 12:15PM IN CR 016

**SB 2111, SD1 RELATING TO THE CHAIRPERSON OF THE HAWAIIAN HOMES
COMMISSION**

January 30, 2020

Aloha Chair Kahele, Chair Shimabukuro, and members of the Committee:

Thank you for the opportunity to testify in support of the intent of Senate Bill 2111, SD1 which adds the Chairperson of the Hawaiian Homes Commission (HHC) or the Chairperson's designee and the Chairperson of the Department of Hawaiian Home Lands (DHHL) to serve as ex officio, voting members of the Commission on Water Resource Management. DHHL supports the original version of the bill.

The HHC approved a proposal in 2017 to add the Chairman of the Hawaiian Homes Commission or the Chairman's designee to the Commission on Water Resource Management since the Hawaiian Homes Commission Act references a Chairman as opposed to Chairperson as referenced in this bill. Additionally, the HHC approved a Water Policy Plan in 2014 after conducting a series of statewide Beneficiary Consultation Meetings on the draft plan. One of the goals in the Water Policy Plan is to "aggressively, proactively, consistently and comprehensively advocate for the kuleana of the beneficiaries, the DHHL and the HHC to water before all relevant agencies and entities." While DHHL has been working closely with the Commission on Water Resource Management, the original version of this bill would allow for greater advocacy for beneficiaries of the Hawaiian Homes Commission Act by allowing for the Chairperson or the Chairperson's designee to serve as an ex officio voting member of the Commission on Water Resource Management similar to the Director of Health or the Director's designee.

Thank you for your consideration of our testimony.

DAVID Y. IGE
GOVERNOR OF
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**STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES**

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SUZANNE D. CASE
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

ROBERT K. MASUDA
FIRST DEPUTY

M. KALEO MANUEL
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
BUREAU OF CONVEYANCES
COMMISSION ON WATER RESOURCE MANAGEMENT
CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCES ENFORCEMENT
ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

**Testimony of
SUZANNE D. CASE
Chairperson**

**Before the Senate Committee on
JUDICIARY**

**Monday, February 24, 2020
12:15 PM
State Capitol, Conference Room 016**

**In consideration of
SENATE BILL 2111, SENATE DRAFT 1
RELATING TO THE CHAIRPERSON OF THE HAWAIIAN HOMES COMMISSION**

Senate Bill 2111, Senate Draft 1 proposes to amend Section 174C-7, Hawaii Revised Statutes (HRS), to add two members: the Chairperson of the Hawaiian Homes Commission or the Chairperson's designee, and the Chairperson of the Department of Hawaiian Home Lands, or the Chairperson's designee, to serve as an ex-officio voting members on the Commission on Water Resource Management (Commission) of the Department of Land and Natural Resources (Department). **The Department offers the following comments.**

The Commission is committed to fulfill its mandate to incorporate and protect adequate reserves of water for current and foreseeable development and use of Hawaiian home lands as set forth in Section 221 of the Hawaiian Homes Commission Act, as provided in the State Water Code, Section 174C-101, HRS. The Commission's 2019 Water Resource Protection Plan includes a priority task (Task 2.3.4) to establish additional water reservations for the Department of Hawaiian Home Lands (DHHL).

Towards that end, the Commission has approved 26 reservations thus far for DHHL for both ground and surface waters across the six major Hawaiian islands totaling over 28 million gallons per day (mgd):

Island	Hydrologic Unit*	Reservation Amounts (million gallons per day)	Effective Date
Kaua‘i	Wailua GWHU	0.708	9/18/18
	Anahola GWHU	1.470	9/18/18
	Kekaha GWHU	0.336	9/18/18
	Makaweli GWHU	0.405	9/18/18
	Waimea SWHU	6.903	6/20/17
	Wailua SWHU	0.513	10/16/18
O‘ahu	Waipahu-Waiawa GWHU	1.724	2/18/94
	Waimānalo GWHU	0.124	2/18/94
Lāna‘i	Leeward GWHU	0.067	9/18/18
Molokai	Kualapu‘u GWHU	2.905	6/10/95
Maui	Honokōwai GWHU	0.770	9/18/18
	Kama‘ole GWHU	2.547	9/18/18
	Ke‘anae GWHU	0.003	9/18/18
	Kawaipapa GWHU	0.118	9/18/18
	Luala‘iula GWHU	0.063	9/18/18
Hawai‘i	Keauhou GWHU	3.398	8/17/15
	Hawi GWHU	0.148	9/18/18
	Māhukona GWHU	3.014	9/18/18
	Honoka‘a GWHU	0.396	9/18/18
	Hakalau GWHU	0.083	9/18/18
	Onomea GWHU	0.250	9/18/18
	Hilo GWHU	0.492	9/18/18
	Kea‘au GWHU	1.336	9/18/18
	‘Ōla‘a GWHU	0.025	9/18/18
	Nā‘ālehu GWHU	0.185	9/18/18
	Pāhoa GWHU	0.660	9/18/18

* GWHU= Ground Water Hydrologic Unit; SWHU = Surface Water Hydrologic Unit

To date, the Commission has not reserved water for any other entity except DHHL. All reservations made since 2017 are based on the State Water Projects Plan, updated in 2017, which focuses exclusively on the water needs for DHHL. Reservations are currently in place for DHHL’s potable water needs from ground water sources. Additional surface water reservations for DHHL’s non-potable needs will be made in conjunction with the Commission’s establishment of measurable interim instream flow standards across the State, as that process provides the necessary streamflow information (currently lacking for many streams) as well as information on existing offstream uses and other public trust uses against which DHHL needs must be balanced.

All Commission members have constitutional and statutory responsibilities to protect and preserve the rights of DHHL. The Hawaii Supreme Court has made it clear that in the context of water, the entire Commission has a responsibility to respect and protect native Hawaiian rights, including those of DHHL, and to carry out the State’s public trust duties. This responsibility does not rest on a single member.

Finally, the Department understands that the Chairperson of the Hawaiian Homes Commission is currently the same as the Chairperson of DHHL.

Thank you for the opportunity to comment on this measure.



SB2111 SD1
RELATING TO THE CHAIRPERSON OF THE HAWAIIAN HOMES COMMISSION
Ke Kōmike 'Aha Kenekoa o ka Ho'okolokolo

Pepeluali 24, 2020

12:15 p.m.

Conference Room 016

The Office of Hawaiian Affairs (OHA) **SUPPORTS** SB2111 SD1, which would add the chairperson of the Hawaiian Homes Commission (HHC) or the chairperson's designee, as well as a contemplated chairperson of the Department of Hawaiian Home Lands (DHHL) or that person's designee, to the Commission on Water Resources Management (CWRM).

Designating a seat on CWRM for HHC and DHHL representatives would ensure that the unique rights and needs of DHHL and its beneficiaries are understood and considered, in the administration and allocation of our public trust water resources. Both the constitution and the state water code provide DHHL and its beneficiaries with unique rights to our public trust water resources. These rights may be essential to fulfilling the State's and DHHL's critical responsibilities, to serve the beneficiaries and manage the assets of the Hawaiian Home Lands Trust; such rights, for example, include the right to reserve water for future DHHL needs, as well as the right to enjoy a priority for water use in designated water management areas, among others.

OHA notes that there have been longstanding concerns involving the actual enforcement and practical implementation of DHHL's water rights, which may be often overlooked in CWRM's current decision-making process. For example, while DHHL may apply for and receive reservations for water, CWRM has in the past failed to ensure that new private wells do not impair DHHL's future ability to actually use such reservations. Similarly, CWRM decisionmaking on whether or not to designate water management areas may not necessarily reflect a full consideration of how designation can better protect DHHL's rights and interests, particularly in aquifer areas where substantial future development may be planned.

By requiring HHC and DHHL representation on CWRM, this measure may allow CWRM to more fully understand DHHL's unique water rights and needs, and better ensure that CWRM decisionmaking properly considers DHHL's historical and practical challenges and concerns relating to its water rights.

Accordingly, OHA urges the Committee to **PASS** SB2111 SD1. Mahalo for the opportunity to testify on this measure.