

NEIL ABERCROMBIE
GOVERNOR

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To: The Honorable Cindy Evans, Chair
and Members of the House Committee on Water and Land

The Honorable Faye P. Hanohano, Chair
and Members of the House Committee on Ocean, Marine Resources, and
Hawaiian Affairs

Date: Friday, February 1, 2013
Time: 8:00 a.m.
Place: Conference Room 325, State Capitol

From: Frederick D. Pablo, Director
Department of Taxation

Re: H.B. 1352 Relating to Water

The Department of Taxation (Department) appreciates the intent of H.B.1352 and provides the following information and comments for your consideration. The Department defers to the Department of Land and Natural Resources with respect to its merits.

H.B. 1352 exempts the owners of kuleana lands from all state, county, and municipal taxation, fees, and charges of every kind for water usage in connection with the kuleana landowner's appurtenant water rights. The measure would take effect upon its approval.

The Department notes that kuleana lands is a relatively small percentage of lands, with some 8,421 kuleana claims totaling 28,658 acres being awarded between 1850 and 1855 by the then Kingdom's Land Commission to ho'a'aina, or native tenants under the L.1850, p. 202, entitled "An Act Confirming Certain Resolutions of the King and Privy Council, Passes on the 21st Day of December, A.D. 1849, Granting to the Common People Allodial Titles for Their Own Lands and House Lots, and Certain other Privileges". The Department does not foresee any impact on the Department's operations.

Thank you for the opportunity to provide comments.

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From: omhtestimony
Sent: Thursday, January 31, 2013 3:36 PM
To: waltestimony
Subject: FW: Submitted testimony for HB1352 on Feb 1, 2013 08:00AM
Attachments: House Bill 1352.docx

From: mailinglist@capitol.hawaii.gov [mailto:mailinglist@capitol.hawaii.gov]
Sent: Thursday, January 31, 2013 3:32 PM
To: omhtestimony
Cc: hoshinos@hawaii.edu
Subject: Submitted testimony for HB1352 on Feb 1, 2013 08:00AM

HB1352

Submitted on: 1/31/2013

Testimony for OMH/WAL on Feb 1, 2013 08:00AM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Nameaaea Hoshino	Individual	Oppose	No

Comments:

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

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Nameaaea Hoshino
Oppose HB 1352

I am from Lahaina, Maui. I'm testifying in opposition to this House Bill 1352 Kuleana land and Water Rights in which I may have concerns on this bill because they stating owner's will have tax exemption for Kuleana land but does not clarify any of the kuleana land awardee(s) or Kuleana land tenant(s). Developers or new land owners through illegal transfer of titles has taken most of the Kuleana lands in Hawaii presently. Possibly anyone can get tax exemption no matter if the owner is Kuleana Awardee(s), Tenant(s) or not. These concerns must be address and recognize on who owns Kuleana Lands from the 1848 Mahele that grant title the Kuleana Awardee(s) and Kuleana Tenant(s). The intention is unclear on who will benefit from this bill. So I will views still stands in oppose to this bill.

Mahalo

NEIL ABERCROMBIE
GOVERNOR OF HAWAII



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES

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WILLIAM J. AILA, JR.
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

ESTHER KIA'AINA
FIRST DEPUTY

WILLIAM M. TAM
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
WILLIAM J. AILA, JR.
Chairperson

Before the House Committees on
WATER & LAND
and
OCEAN, MARINE RESOURCES, & HAWAIIAN AFFAIRS

Friday, February 1, 2013
8:00 AM
State Capitol, Conference Room 325

HOUSE BILL 1352
RELATING TO WATER

House Bill 1352 proposes to amend Hawaii Revised Statutes (“HRS”) §174C-101, to incorporate a new section (e) exempting kuleana landowners from all state, county, and municipal taxation, fees, and charges for water usage related to their appurtenant water right. The Department of Land and Natural Resources and Commission on Water Resource Management (Commission) do **not support** and **opposes** this measure.

First, matters related to taxation at the county or municipal level should be addressed through county ordinances, not amendments to the State Water Code. Property taxes are within the counties’ jurisdiction, as are matters relating to land use and property taxes generally. Income tax exemptions and general excise taxes are covered under HRS, Title 14, Chapters 235 and 237 and administered by the State Department of Taxation. The State Water Code has nothing to do with taxes and is not the appropriate vehicle to address such issues.

Second, there are no fees for filing appurtenant rights claims with the Commission. While appurtenant rights may not be diminished or extinguished by failure to apply for permits under the State Water Code, HRS §174C-101, if appurtenant rights holders do apply for permits, filing fees may be assessed to defray the administrative costs of the permitting process (not the water itself). Currently, filing fees for water use permits are modest (\$25.00).

Third, the Commission is not aware of any complete statewide inventory of kuleana lands, nor which kuleana lands also have appurtenant water rights. The 2002 Legislature amended the State Water Code to clarify the Commission's authority to determine appurtenant water rights, HRS 174C-5 (15). The Commission is currently determining appurtenant rights in the Na Wai Eha (West Maui) surface water management area. Determining and quantifying appurtenant water rights are extremely complex. Most proceedings are likely to require administrative contested case hearings, in part due to competing claims. However, the Commission's water jurisdiction does not extend to kuleana lands which do not have appurtenant rights attached to them. But these determinations come at the end of the proceedings, not at the beginning. It is not possible to know *in advance* that a particular claim qualifies.

The Commission recommends that this bill not pass and be held in committee.

Thank you for the opportunity to testify on this measure.