SB 2011 S.D. 1
RELATING TO THE COMMISSION ON WATER RESOURCES MANAGEMENT

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SB 2011 S.D. 1 would amend Chapter 174C, HRS, to authorize the CWRM to create a technical advisory committee to assist the Commission in decisionmaking. The measure also would allow the Commission to retain private counsel.

Our statement on this measure is compiled from voluntarily submitted opinions of the listed academic sources, and as such, does not constitute an institutional position of the University of Hawaii.

1. **A Technical Advisory Committee is not presently warranted.**

Specific expert advice and state-of-knowledge information are absolute prerequisites of enlightened decisionmaking for the Water Commission and all public decisionmakers. Furthermore, such advice must be as free as possible of political influence.

The range of issues confronting the Water Commission would exceed the scope of expertise of an appointed body of any manageable size. Furthermore, even were the members of such a diverse group uncompensated other than for expenses, the administrative costs of supporting the panel would be considerable. (The State’s Earthquake Advisory Board, with 15 members, has an annual operating budget of over $80,000.)

The most advanced, diverse, and politically independent concentration of technical information in the State exists in the University. Furthermore, an entire University Research unit, the Water Resources Research Center, has been in existence since 1964 with the specific mission to serve as the fundamental research unit of the state for water resources. The Environmental Center, which is part of WRRC, was created by the Legislature to provide access to that expertise for the benefit of government and private sector decisionmakers.
Given current fiscal constraints, we see no justification for attempting to augment existing expertise readily available at no cost to any State agency or commission. In addition, avoidance of any possibility of political influence which might attend a gubernatorial appointment seems eminently advisable, due to the highly sensitive nature of water-related deliberations. Committee rules of practice and procedure should provide that current expertise be sought from the University whenever additional analysis is deemed necessary by any member of the Commission.

2. **Access of the Commission to private legal counsel is unnecessary.**

Two justifications for providing independent legal counsel to the Water Commission were advanced in the report of the Senate Committee whose chair introduced this measure:

1. the Attorney General may be in a conflict-of-interest in certain matters;

2. the A.G. may be without expertise in the area of water resource management.

We consider allegations of legal incompetence at best unfounded and at worst a tawdry exercise in legislative arrogance. The A.G. assigned to the Water Commission has been principally engaged in nothing but water resource law for over 15 years. To question his legal expertise deems the integrity of both this public servant and the Attorney General’s Office as a whole and is unwarranted.

We further suggest that conflicts-of-interest are by and large inescapable, particularly with regard to an issue as generalized and controversial as water use. It is certainly arguable that in Hawaii, no attorney in private practice who possesses considerable expertise in water law has not gained that expertise working in a firm on retainer to a major landowning entity or other interested party. Hence, it is far more likely that a privately-practicing attorney will have a conflict than that the A.G. will. It is noteworthy that in the ongoing Waiahole case, three out of the seven Water Commissioners have had to recuse themselves. The A.G. also has established procedures following those practiced by the U.S. Department of Justice for managing these conflicts.

Expenditure of public funds to duplicate services available at no cost through existing government agencies would appear irresponsible, particularly in times of severe fiscal constraint. If existing legal resources of the Office of the Attorney General are insufficient to meet the Commission’s needs, then additional funding should be provided to the Attorney General in lieu of authorizing expenditures for retention of private counsel.