

COUNCIL OF THE COUNTY OF MAUI
COMMITTEE OF THE WHOLE

August 22, 1994

Committee
Report No. 94-186

Honorable Chair and Members
of the County Council
County of Maui
Wailuku, Maui, Hawaii

Chair and Members:

Your Committee of the Whole, having met on May 18, 1994, July 13, 1994, July 19, 1994, and August 8, 1994, makes reference to County Communication No. 94-95, from Councilmember Manuel Moniz, Jr., transmitting a draft of a proposed resolution entitled "PROPOSING AN AMENDMENT TO THE CHARTER OF THE COUNTY OF MAUI (1993 EDITION) TO CHANGE THE DEPARTMENT OF WATER SUPPLY FROM A DEPARTMENT UNDER THE JURISDICTION OF THE BOARD OF WATER SUPPLY TO A COUNTY DEPARTMENT".

The purpose of the draft proposed resolution is to amend Chapter 11 of the Charter of the County of Maui to eliminate the semi-autonomous status of the Department of Water Supply and the Board of Water Supply, by requiring:

1. the appointment and removal of the Director of Water Supply by the Mayor with the approval of the Council;
2. the approval of all Department of Water Supply rules by the Mayor and the Council;
3. the approval of long range capital improvement plans by the Mayor and the Council; and
4. the approval of the Department's annual budget by the Mayor.

By memorandum dated March 21, 1994, Councilmember Alice L. Lee transmitted a copy of a March 11, 1994 letter to the Mayor from Steve Sutrov, President of the Kula Community Association. Mr. Sutrov's letter indicated that the Kula Community Association Board, at its meeting of March 3, 1994, voted unanimously to support: (1) the establishment of an autonomous Board of

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Water Supply; (2) the adoption of the Water Availability Rule; and (3) the implementation of an appropriate and equitable water rate increase.

By letter dated March 30, 1994, the Director of Water Supply transmitted a copy of the Department of Water Supply's Capital Improvement Program Report, and a chart showing the history of the Department from 1949 to the present.

By letter dated May 18, 1994, the Director of Water Supply reported that at its May 17, 1994 meeting, the Board of Water Supply voted unanimously in favor of greater autonomy. He also transmitted a copy of a chart comparing the powers of the board of water supply in each county, along with a copy of the relevant charter provisions.

At its meeting of May 18, 1994, your Committee met with the Director of Water Supply, the Corporation Counsel, and the Vice-Chair of the Board of Water Supply.

Your Committee received oral and written testimony from Mr. James R. Smith, who opposed the draft proposed resolution. He urged that the Board continue in its semi-autonomous state until it is clear that there is a structural problem.

The Director of Water Supply referred to the comparison chart of the boards of water supply in the four counties, and observed that Maui County's board is the only one which lacks the power to approve its own rules. He noted that State law requires a board to hold a public hearing before it can change the rules or rates.

The Corporation Counsel noted that it is not possible for the Board of Water Supply to become fully autonomous because matters such as civil service and financing are governed by State law.

Your Committee deferred the matter pending receipt of a proposed resolution amending the Charter to grant the Board of Water Supply more autonomous powers.

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By memorandum dated June 28, 1994, the Corporation Counsel transmitted a proposed resolution entitled "PROPOSING AN AMENDMENT TO THE REVISED CHARTER OF THE COUNTY OF MAUI (1994) RELATING TO CHAPTER 11 DEPARTMENT OF WATER SUPPLY (Amended 1988)".

The purpose of the proposed resolution is to amend Chapter 11 of the Charter to increase the autonomy of the Board of Water Supply by:

1. changing the composition of the Board to include three voting ex-officio members, two members from the Administration and one member from the Council; and
2. allowing the Board to adopt its own rules and regulations, without the approval of the Mayor or the Council.

At its meeting of July 13, 1994, your Committee met with the Director of Water Supply, a Deputy Corporation Counsel, and the Vice-Chair of the Board of Water Supply.

Your Committee accepted oral and written public testimony from six individuals opposing the proposed resolution to increase the Board's autonomy, on the grounds that the Board would become less accountable to the public.

The Director of Water Supply observed that even if the proposed resolution is adopted, State law requires the Board of Water Supply to hold a public hearing before it can adopt, amend, or repeal any rule. He indicated that the Board has not voted on the proposed resolution, although it has discussed the matter.

The Vice-Chair of the Board of Water Supply stated that the Board desires more autonomy. However, she suggested that the proposal requires further consideration by the Board.

The Deputy Corporation Counsel recommended revising the proposed resolution to: (1) add a transitional provision for the change in membership, and (2) allow the Council Chair to appoint any Council member to the Board.

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Your Committee questioned whether the Department of Water Supply and the Board of Water Supply could operate well under complete autonomy. Further, your Committee was concerned that the three ex-officio Board members might not provide enough oversight. However, your Committee noted that if a proposal was not presented to the voters this year, the next opportunity would not occur until the next election. Therefore, your Committee requested that the matter be deferred to further consider the proposal.

In regards to public input, the Chair of your Committee noted that the public had the opportunity to testify at the two Committee meetings on this matter. Since the Council must pass the proposed resolution on two readings, the public will also have the opportunity to testify at these two Council meetings. Finally, the public will make the final decision in voting on the matter.

The Chair of your Committee requested the Department of the Corporation Counsel revise the proposed resolution to provide that:

1. the existing members continue serving on the Board of Water Supply for their remaining terms;
2. two new voting members from the Administration be appointed by the Mayor; and
3. one new voting member be a Council member appointed by the Council Chair.

The Chair also asked the Board of Water Supply to specify what kind of autonomy was sought and what it discussed on this matter.

Your Committee recessed the meeting on this matter until July 19, 1994.

At its meeting of July 19, 1994, your Committee met with the Director of Water Supply, the Corporation Counsel, a Deputy Corporation Counsel, and the Vice-Chair of the Board of Water Supply.

The Mayor testified that she consistently opposed the semi-autonomous status of the Board of Water Supply. She believed that the Department of Water

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Supply should be under the control of the Mayor and the Council, as are other departments. She received many complaints about the Board of Water Supply, particularly in regards to the inadequate supply of water. However, the Mayor cannot change the priorities of the Department to expedite one project over another.

She noted that granting the Board greater autonomy will allow it to assume authority over planning and land use in the County, because water determines where land use will occur. However, she believed that the public should be able to decide on one of the following alternatives:

1. placing the Department under the control of the Mayor and the Council;
2. allowing the Department to be totally independent; and
3. leaving the Department as a semi-autonomous body.

Your Committee received testimony from four members of the general public.

Mr. James R. Smith presented written testimony dated July 18, 1994 and a proposed resolution for a Charter amendment, contending that the Mayor should not be able to disapprove a proposed rule without the Council's involvement. However, he opposed changing the composition of the Board to include members from the executive and legislative branches.

Mr. James Whitehead, Vice President of the Maui Contractors Association, requested that the public be given the opportunity to choose from all the options in voting on a Charter amendment, including whether the Board should be part of the Administration or whether it should be fully autonomous.

Mr. Charles K. Maxwell testified against increasing the autonomy of the Board, emphasizing that the public would no longer be able to influence critical decisions concerning water.

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Mr. William Ellis, Jr., testified in support of the proposed resolution and suggested that there are two separate issues: (1) the approval of the rules, and (2) the composition of the Board. Changes to the Charter in these two areas should be presented to the voters as alternative proposals, rather than as one proposal which changes both areas.

The Director of Water Supply presented a proposed amendment to Section 8-11.3 of the Charter. He reported that the Board of Water Supply voted unanimously to support the proposed resolution, with the inclusion of the amendment.

The proposed amendment provides that existing members will serve out their terms, and that the voting ex-officio members from the Administration and the Council would be appointed when vacancies arise. After the three ex-officio members are appointed, the remaining vacancies would be filled by members appointed by the Mayor with the approval of the Council, to staggered terms. Ex-officio members would serve at least through the following election.

Consequently, the terms of the ex-officio members would be two years for Council members and four years for members from the Administration. The Director noted that an ex-officio member appointed by the Mayor remains on the Board until the next election, instead of having a five-year term like other Board members.

The Vice-Chair of the Board of Water Supply stated that the Board wants full autonomy, so that its rulemaking is no longer subject to the approval of the Mayor or the Council. Furthermore, the Board feels that the proposed change in the composition of its membership would be advantageous, because voting members from the Administration and the Council would actively participate and facilitate communication with the Board.

The Deputy Corporation Counsel presented two proposed resolutions, both entitled "PROPOSING AN AMENDMENT TO THE REVISED CHARTER OF THE COUNTY OF MAUI (1994) RELATING TO CHAPTER 11 DEPARTMENT OF WATER SUPPLY (Amended 1988)".

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The Deputy Corporation Counsel explained that under the first proposed resolution, the voting ex-officio members from the Administration and the Council would begin to serve immediately, temporarily increasing the Board to 12 members. Under the second proposed resolution, the membership of the Board remains at nine, and the members from the Administration and the Council would be added as vacancies occur. Both proposed resolutions remove the restrictions on a Council member in dealing with County employees or officers, while performing duties as a Board member.

The Vice-Chair of the Board of Water Supply noted that no new members would be appointed until 1996, when two vacancies occur. In 1997, two more vacancies occur.

Your Committee felt that the public should have the opportunity to make a choice on the issue of autonomy. Your Committee felt it would be important to have a Council member on the Board of Water Supply, to improve communication.

Nevertheless, your Committee questioned whether it is necessary to change the composition of the Board, in order to give the Board autonomous rulemaking power. Your Committee questioned whether members from the Administration and the Council would be able to devote the time to attend the meetings and actively participate as voting Board members. Furthermore, a Council member would be unable to make decisions on behalf of the Council, and would have to comply with the prior notice of the State Sunshine Law when meeting with the Council. Your Committee cautioned that a member from the Administration or the Council would gain additional power in becoming a voting Board member, creating the potential for undue influence.

Your Committee considered requiring a super majority of the Board to approve rules and rates, to ensure that the Board acts in the best interests of the residents of the County, and to make no other changes to the Board's membership or powers.

The Chair of your Committee observed that a proposed Charter amendment will pass, if it receives a majority vote of the ballots cast. If three alternative proposals are placed on the ballot, it is possible for all three

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proposals to pass. Thus, the Chair cautioned that the question presented to the voters must be carefully drafted.

Your Committee requested additional time to investigate the matter, particularly the experience of the other counties with autonomous water boards. Accordingly, the Chair of your Committee deferred the matter pending further discussion.

By letter dated July 26, 1994, the Director of Water Supply transmitted a proposed amendment to Section 8-11.4(3) of the Charter, which was unanimously approved by the Board of Water Supply. The proposed amendment provides that rules and regulations shall be adopted, amended, or repealed by a two-thirds vote of the Board's voting members.

By memorandum dated August 8, 1994, the Council Chair transmitted two memoranda from the Department of the Corporation Counsel. The first memorandum, dated July 28, 1994, set forth a proposed amendment to Charter Section 8-11.8. The second memorandum, dated July 29, 1994, transmitted a proposed resolution entitled "PROPOSING AN AMENDMENT TO THE REVISED CHARTER OF THE COUNTY OF MAUI (1994) RELATING TO THE DEPARTMENT OF WATER SUPPLY".

The purpose of the proposed resolution is to amend Section 8-11.8 of the Charter to provide that the proposed adoption, amendment, and repeal of all rules shall be submitted to the Mayor for approval or disapproval and submission to the Council, within 15 days of receipt by the Mayor. If the Mayor does not submit the proposal to the Council within 15 days, the Board may do so. Within 45 days of receipt, the Council must approve or disapprove the proposal, otherwise it is deemed to be approved.

At its meeting of August 8, 1994, your Committee met with the Director of Water Supply, the Corporation Counsel, and the Chair of the Board of Water Supply.

Mr. Kazu Hayashida, Manager and Chief Engineer of the Board of Water Supply for the City and County of Honolulu, testified that the proposed resolution

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is an improvement because it gives the Board the opportunity to appeal to the Council, if the Mayor disapproves of a proposal.

He noted that in the City and County of Honolulu, the board of water supply controls its rules and regulations, rates, budget and capital improvement programs, and the number of positions in the department, without requiring additional approval from the mayor or the council. In the City and County, there have been no violations of the Safe Drinking Water Act.

Mr. Muri Telfer Nielsen, Manager and Chief Engineer of the Department of Water Supply for the County of Kauai, testified that in the County of Kauai, the board of water supply controls the finances of the department, without the influence of the administration or the council. He stated that the board's fiscal control allows it to support the department's long-term needs and make decisions in the best interests of the consumers without political considerations.

Mr. James R. Smith testified in support of the proposed resolution.

The Chair of your Committee explained that the intent of the proposed resolution is to require proposals to be submitted to the Council with 15 days of receipt by the Mayor, whether the Mayor approves, disapproves or takes no action on the proposal. The Council can approve the Mayor's position by a majority vote or disapprove of the Mayor's position by a two-thirds vote of its entire membership.

The Director of Water Supply observed that the proposed resolution shifts the final approval for rules and rates to the Council, rather than giving the Board full responsibility.

Your Committee noted that the proposed resolution places strict time limits on the Mayor and the Council, ensuring that prompt action is taken on the Board's proposals. If a proposed Charter amendment for complete autonomy is not likely to pass, the proposed resolution would be a compromise.

The Corporation Counsel suggested that the proposed resolution be revised to clarify that:

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1. the Mayor either approve or disapprove the proposal and transmit it to the Council within 15 days, and if the Mayor fails to act, that the proposal is deemed approved and transmitted on the 16th day; and
2. within 45 days of receipt by the County Clerk, the Council must confirm the Mayor's action by a majority vote or disapprove the Mayor's action by a two-thirds vote of its entire membership, otherwise the proposal is deemed approved.

Your Committee recommended that the Council adopt the proposed resolution, with the revisions suggested by the Corporation Counsel.

By memorandum dated August 9, 1994, the Department of the Corporation Counsel transmitted a revised proposed resolution, as requested by the Committee, entitled "PROPOSING AN AMENDMENT TO THE REVISED CHARTER OF THE COUNTY OF MAUI (1994) RELATING TO THE DEPARTMENT OF WATER SUPPLY". The proposed resolution incorporates your Committee's request.

Your Committee of the Whole RECOMMENDS the following:


1. That Resolution No. 94-77, as revised herein and attached hereto, entitled "PROPOSING AN AMENDMENT TO THE REVISED CHARTER OF THE COUNTY OF MAUI (1994) RELATING TO THE DEPARTMENT OF WATER SUPPLY", PASS FIRST READING and BE ORDERED TO PRINT; and
2. That County Communication No. 94-95 be FILED.

Adoption of this report is respectfully requested.


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GORO HOKAMA Chair



JAMES H. APANA, JR. Vice-Chair




B. LYNN BRITTON Member




PATRICK S. KAWANO Member



ALICE L. LEE Member



RICARDO MEDINA Member



MANUEL MONIZ, JR. Member



THOMAS P. MORROW Member



DENNIS Y. NAKAMURA Member


COUNCIL OF THE COUNTY OF MAUI

WAILUKU, HAWAII 96793

CERTIFICATION OF ADOPTION

It is HEREBY CERTIFIED that COMMITTEE REPORT NO. 94-186 was adopted by the Council of the County of Maui, State of Hawaii, on the 22nd day of August, 1994, by the following vote:

MEMBERS	Goro HOKAMA Chair	Dennis Y. NAKAMURA Vice-Chair	James H. APANA, Jr.	B. Lynn BRITTON	Patrick S. KAWANO	Alice L. LEE	Ricardo MEDINA	Manuel MONIZ, Jr.	Thomas P. MORROW
ROLL CALL	Aye	Aye	Aye	Aye	Aye	Aye	Excused	Aye	Aye



COUNTY CLERK