
A BILL FOR AN ACT

RELATING TO DISPOSITION OF WATER LICENSES BY THE BOARD OF LAND
AND NATURAL RESOURCES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. Section 171-58, Hawaii Revised Statutes, is
2 amended to read as follows:

3 "**§171-58 Minerals and water rights.** (a) Except as
4 provided in this section, the right to any mineral or surface or
5 ground water shall not be included in any lease, license,
6 agreement, or sale, this right being reserved to the State;
7 provided that the board may make provisions in the lease,
8 license, agreement, or sale, for the payment of just
9 compensation to the surface owner for improvements taken as a
10 condition precedent to the exercise by the State of any reserved
11 rights to enter, sever, and remove minerals or to capture,
12 divert, or impound water.

13 (b) Disposition of mineral rights shall be in accordance
14 with the laws relating to the disposition of mineral rights
15 enacted or hereafter enacted by the legislature.



1 (c) Disposition [~~of~~] for water [~~rights~~] may be made by
2 [~~lease~~] license at public auction or by direct negotiation as
3 provided in this chapter for a term of no more than thirty
4 years, or by permit for temporary use on a month-to-month basis
5 under those conditions which will best serve the interests of
6 the State and subject to a maximum term of one year and other
7 restrictions under the law; provided that [~~any~~]:

8 (1) A license for water may be disposed of through direct
9 negotiation, without recourse to public auction;
10 provided that the license rental for water shall be at
11 fair market value determined by independent appraisal.
12 Prior to approving a direct license, the board shall
13 publish a request for interest and request for
14 qualifications notice inviting persons to express
15 their interest in the license for water and their
16 qualifications as potential licensees. The notice
17 shall be given at least once statewide and at least
18 once in the county in which the land is located and
19 shall contain:

20 (A) The qualifications required of eligible
21 licensees;



1 (B) A general description of the land, water, and any
2 improvements on the land appurtenant to the use
3 of the water;

4 (C) The proposed use and amount of the water to be
5 allowed under the license;

6 (D) The closing date and manner by which a person
7 shall indicate interest and submit a statement of
8 qualifications; and

9 (E) Notice that a current business plan that shall
10 include the proposed use and amount of the water
11 is a prerequisite to participate at time of
12 auction or direct negotiation, if applicable, and
13 shall be made a term of the license.

14 The board shall, in its sole discretion, determine if
15 any persons have qualified under the terms of the
16 request for qualifications and shall notify all
17 persons who expressed interest as to whether they
18 qualified. If the board determines there is no more
19 than one potential qualified bidder, then the board
20 may dispose of a license for water by direct
21 negotiation, without recourse to public auction;



1 (2) In determining the fair market value for the license
2 for water, the following factors may be considered,
3 where appropriate:

4 (A) The amount of water diverted and the proposed use
5 of water allowed under the license;

6 (B) The amount of water diverted in proportion to the
7 amount of water available from the diversion
8 source;

9 (C) The costs of delivery of the water;

10 (D) The avoided cost to the licensee of obtaining the
11 water from practicable alternative sources;

12 (E) The net economic benefit to the licensee;

13 (F) The value contributed by the licensee for
14 watershed management pursuant to subsection (e);
15 and

16 (G) The public benefit provided from the use of water
17 pursuant to section 174C-2;

18 (3) If the licensee disagrees with the fair market value
19 for the license for water, the board shall have sole
20 discretion to resolve the dispute; provided that such



1 resolution is consistent with the public trust
2 doctrine;

3 (4) Any disposition by [~~lease~~] license for water shall be
4 subject to disapproval by the legislature by two-
5 thirds vote of either the senate or the house of
6 representatives or by majority vote of both in any
7 regular or special session next following the date of
8 disposition; [~~provided further that after~~] and

9 (5) After a certain land or water use has been authorized
10 by the board subsequent to public hearings and
11 conservation district use application approval, and
12 [~~environmental impact statement approvals,~~] complies
13 with chapter 343, water used in nonpolluting ways, for
14 nonconsumptive purposes because it is returned to the
15 same stream or other body of water from which it was
16 drawn, and essentially not affecting the volume and
17 quality of water or biota in the stream or other body
18 of water, may also be [~~leased~~] licensed by the board
19 with the prior approval of the governor and the prior
20 authorization of the legislature by concurrent
21 resolution.



1 (d) Any [~~lease of~~] license for water [~~rights~~] shall
2 contain a covenant on the part of the [~~lessee~~] licensee that the
3 [~~lessee~~] licensee shall provide from waters [~~leased~~] licensed
4 from the State under the [~~lease~~] license or from any water
5 sources privately owned by the [~~lessee~~] licensee to any farmer
6 or rancher engaged in irrigated pasture operations, crop
7 farming, pen feeding operations, or raising of grain and forage
8 crops, or for those public uses and purposes as may be
9 determined by the board, at the same rental price paid under the
10 [~~lease,~~] license, plus the proportionate actual costs, as
11 determined by the board, to make these waters available, so much
12 of the waters as are determined by the board to be surplus to
13 the [~~lessee's~~] licensee's needs and for that minimum period as
14 the board shall accordingly determine; provided that in lieu of
15 payment for those waters as the State may take for public uses
16 and purposes the board may elect to reduce the rental price
17 under the [~~lease of~~] license for water [~~rights~~] in proportion to
18 the value of the waters and the proportionate actual costs of
19 making the waters available. [~~Subject to the applicable~~
20 ~~provisions of section 171-37(3), the~~] The board, at any time
21 during the term of the [~~lease of~~] license for water [~~rights~~],



1 may withdraw from waters [~~leased~~] licensed from the State and
2 from sources privately owned by the [~~lessee~~] licensee so much
3 water as it may deem necessary to (1) preserve human life and
4 (2) preserve animal life, in that order of priority; and that
5 from waters [~~leased~~] licensed from the State, the board, at any
6 time during the term of the [~~lease of~~] license for water
7 [~~rights~~], may also withdraw so much water as it may deem
8 necessary to preserve crops; provided that payment for the
9 waters shall be made in the same manner as provided in this
10 section.

11 (e) Any new [~~lease of~~] license for water [~~rights~~] shall
12 [~~contain a covenant that requires~~] require the [~~lessee~~] licensee
13 and the department [~~of land and natural resources~~] to jointly
14 develop and implement a watershed management plan[-] that
15 prioritizes the availability of water resources from forested
16 watersheds. The board shall not [~~approve~~] issue any new [~~lease~~
17 ~~of~~] license for water [~~rights~~] without [~~the foregoing covenant~~
18 ~~or~~] a watershed management plan[-] and a commitment from the
19 licensee to assist in implementation of the watershed management
20 plan. The board shall prescribe the minimum content of a
21 watershed management plan[+] developed pursuant to this section;



1 provided that the watershed management plan shall require the
2 prevention of the degradation of [~~surface water and ground water~~
3 ~~quality~~] water resources from forested watersheds to the extent
4 that degradation can be avoided using reasonable management
5 practices.

6 (f) [~~Upon renewal, any lease of water rights shall contain~~
7 ~~a covenant that requires the lessee and the department of land~~
8 ~~and natural resources to jointly develop and implement a~~
9 ~~watershed management plan. The board shall not renew any lease~~
10 ~~of water rights without the foregoing covenant or a watershed~~
11 ~~management plan. The board shall prescribe the minimum content~~
12 ~~of a watershed management plan; provided that the watershed~~
13 ~~management plan shall require the prevention of the degradation~~
14 ~~of surface water and ground water quality to the extent that~~
15 ~~degradation can be avoided using reasonable management~~
16 ~~practices.~~] The board shall consult with the commission on water
17 resource management to determine whether the proposed
18 disposition is consistent with chapter 174C.

19 (g) The department [~~of land and natural resources~~] shall
20 notify the department of Hawaiian home lands of its intent to
21 execute any new [~~lease, or to renew any existing lease of water~~



1 ~~rights.]~~ license for water. After consultation with affected
2 beneficiaries, these departments shall jointly develop a
3 reservation of water rights sufficient to support current and
4 future homestead needs. Any ~~[lease-of]~~ license for water
5 ~~[rights or renewal]~~ shall be subject to the rights of the
6 department of Hawaiian home lands as provided by section 221 of
7 the Hawaiian Homes Commission Act.

8 (h) This section shall not apply to any authorization of
9 instream, in-watershed use of water for wetland kalo cultivation
10 done in a traditional manner."

11 SECTION 2. This Act does not affect rights and duties that
12 matured, penalties that were incurred, and proceedings that were
13 begun before its effective date.

14 SECTION 3. Statutory material to be repealed is bracketed
15 and stricken. New statutory material is underscored.

16 SECTION 4. This Act shall take effect on January 1, 2050.



Report Title:

Water License; BLNR

Description:

Clarifies the conditions and manner in which the board of land and natural resources may dispose of water by license.

Effective 1/1/2050. (HD2)

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