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# 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, agreement, or  
6 sale, this right being reserved to the State; provided that the  
7 board may make provisions in the lease, agreement, or sale, for  
8 the payment of just compensation to the surface owner for  
9 improvements taken as a condition precedent to the exercise by  
10 the State of any reserved rights to enter, sever, and remove  
11 minerals or to capture, divert, or impound water.

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

15 (c) Disposition [~~of~~] for water [~~rights~~] may be made by  
16 [~~lease~~] license at public auction or direct negotiations as



1 provided in this chapter for a term of no more than thirty  
 2 years, or by permit for temporary use on a month-to-month basis  
 3 under [~~these~~] conditions [~~which~~] that will best serve the  
 4 interests of the [~~State and~~] State, subject to a maximum term of  
 5 one year, and other restrictions under the law; provided that  
 6 [any] :

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

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

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

20      (d) Any [~~lease of~~] license for water [~~rights~~] shall  
21      contain a covenant on the part of the [~~lessee~~] licensee that the



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



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

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



1 ~~quality]~~ water resources from forested watersheds to the extent  
2 that degradation can be avoided using reasonable management  
3 practices.

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

17 (g) The department ~~[of land and natural resources]~~ shall  
18 notify the department of Hawaiian home lands of its intent to  
19 execute any new ~~[lease, or to renew any existing lease of water~~  
20 ~~rights.]~~ license for water. After consultation with affected  
21 beneficiaries, these departments shall jointly develop a



1 reservation of water rights sufficient to support current and  
2 future homestead needs. Any [~~lease of~~] license for water  
3 [~~rights or renewal~~] shall be subject to the rights of the  
4 department of Hawaiian home lands as provided by section 221 of  
5 the Hawaiian Homes Commission Act."

6 SECTION 2. This Act does not affect rights and duties that  
7 matured, penalties that were incurred, and proceedings that were  
8 begun before its effective date.

9 SECTION 3. Statutory material to be repealed is bracketed  
10 and stricken. New statutory material is underscored.

11 SECTION 4. This Act shall take effect upon its approval.



**Report Title:**

Water Licenses; Disposition

**Description:**

Clarifies the conditions and manner in which the Board of Land and Natural Resources may dispose water by license. (SD1)

*The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.*

