



GOV. MSG. NO. 1371

EXECUTIVE CHAMBERS  
KE KE'ENA O KE KIA'ĀINA

JOSH GREEN, M.D.  
GOVERNOR  
KE KIA'ĀINA

July 7, 2023

The Honorable Ronald D. Kouchi  
President of the Senate,  
and Members of the Senate  
Thirty-Second State Legislature  
State Capitol, Room 409  
Honolulu, Hawai'i 96813

✓The Honorable Scott K. Saiki  
Speaker, and Members of the  
House of Representatives  
Thirty-Second State Legislature  
State Capitol, Room 431  
Honolulu, Hawai'i 96813

Dear President Kouchi, Speaker Saiki, and Members of the Legislature:

I am transmitting herewith HB1088, without my approval and with the statement of objections relating to the measure.

HB1088

RELATING TO DECLARATION OF WATER  
SHORTAGE AND EMERGENCY.

Sincerely,

Josh Green, M.D.  
Governor, State of Hawai'i

EXECUTIVE CHAMBERS

HONOLULU

July 7, 2023

STATEMENT OF OBJECTIONS TO HOUSE BILL NO. 1088

Honorable Members  
Thirty-Second Legislature  
State of Hawai'i

Pursuant to Section 16 of Article III of the Constitution of the State of Hawai'i, I am returning herewith, without my approval, House Bill No. 1088, entitled "A Bill for an Act Relating to Declaration of Water Shortage and Emergency."

The purpose of this bill is to amend the conditions, manner, and areas in which the Commission on Water Resource Management (CWRM) of the Department of Land and Natural Resources can declare and provide notice of water shortages and emergencies.

This bill is objectionable because the current provisions of the State Water Code, found in chapter 174C, Hawaii Revised Statutes (HRS), sufficiently protect our water resources in an emergency. The CWRM is tasked in section 174C-62, HRS, with formulating a plan for implementation during periods of water shortage and is already authorized by statute to declare water shortages and impose restrictions. I share some of the concerns raised by the Board of Water Supply of the City and County of Honolulu about the amendments to the State Water Code made in this bill, and I have concluded that until the CWRM completes its plan, thereby establishing a foundation for emergency actions, it is premature to substantively amend the State Water Code.

For the foregoing reasons, I am returning House Bill No. 1088 without my approval.

Respectfully,



JOSH GREEN, M.D.  
Governor of Hawai'i

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A BILL FOR AN ACT

RELATING TO DECLARATION OF WATER SHORTAGE AND EMERGENCY.

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

1 SECTION 1. Section 174C-5, Hawaii Revised Statutes, is  
2 amended to read as follows:

3 "§174C-5 General powers and duties. The general  
4 administration of the state water code shall rest with the  
5 commission on water resource management. In addition to its  
6 other powers and duties, the commission:

7 (1) Shall carry out topographic surveys, research, and  
8 investigations into all aspects of water use and water  
9 quality;

10 (2) Shall designate water management areas for regulation  
11 under this chapter where the commission, after the  
12 research and investigations mentioned in paragraph  
13 (1), shall consult with the appropriate county council  
14 and county water agency, and after public hearing and  
15 published notice, finds that the water resources of  
16 the areas are being threatened by existing or proposed  
17 withdrawals of water;



1 (3) Shall establish an instream use protection program  
2 designed to protect, enhance, and reestablish, where  
3 practicable, beneficial instream uses of water in the  
4 State;

5 (4) May contract and cooperate with the various agencies  
6 of the federal government and with state and local  
7 administrative and governmental agencies or private  
8 persons;

9 (5) May enter, after obtaining the consent of the property  
10 owner, at all reasonable times upon any property other  
11 than dwelling places for the purposes of conducting  
12 investigations and studies or enforcing any of the  
13 provisions of this code, being liable, however, for  
14 actual damage done. If consent cannot be obtained,  
15 reasonable notice shall be given prior to entry;

16 (6) Shall cooperate with federal agencies, other state  
17 agencies, county or other local governmental  
18 organizations, and all other public and private  
19 agencies created for the purpose of utilizing and  
20 conserving the waters of the State, and assist these  
21 organizations and agencies in coordinating the use of



1 their facilities and participate in the exchange of  
2 ideas, knowledge, and data with these organizations  
3 and agencies. For this purpose, the commission shall  
4 maintain an advisory staff of experts;

5 (7) Shall prepare, publish, and issue printed pamphlets  
6 and bulletins as the commission deems necessary for  
7 the dissemination of information to the public  
8 concerning its activities;

9 (8) May appoint and remove agents, including hearings  
10 officers and consultants, necessary to carry out the  
11 purposes of this chapter, who may be engaged by the  
12 commission without regard to the requirements of  
13 chapter 76 and section 78-1;

14 (9) May hire employees in accordance with chapter 76;

15 (10) May acquire, lease, and dispose of real and personal  
16 property as may be necessary in the performance of its  
17 functions, including the acquisition of real property  
18 for the purpose of conserving and protecting water and  
19 water related resources as provided in section 174C-  
20 14;



- 1           (11) Shall identify, by continuing study, those areas of  
2           the State where salt water intrusion is a threat to  
3           fresh water resources and report its findings to the  
4           appropriate county mayor and council and the public;
- 5           (12) Shall provide coordination, cooperation, or approval  
6           necessary to the effectuation of any plan or project  
7           of the federal government in connection with or  
8           concerning the waters of the State. The commission  
9           shall approve or disapprove any federal plans or  
10          projects on behalf of the State. No other agency or  
11          department of the State shall assume the duties  
12          delegated to the commission under this paragraph;  
13          except that the department of health shall continue to  
14          exercise the powers vested in it with respect to water  
15          quality, and except that the department of business,  
16          economic development, and tourism shall continue to  
17          carry out its duties and responsibilities under  
18          chapter 205A;
- 19          (13) Shall plan and coordinate programs for the  
20          development, conservation, protection, control, and  
21          regulation of water resources, based upon the best



1 available information, and in cooperation with federal  
2 agencies, other state agencies, county or other local  
3 governmental organizations, and other public and  
4 private agencies created for the utilization and  
5 conservation of water;

6 (14) Shall catalog and maintain an inventory of all water  
7 uses and water resources; [~~and~~]

8 (15) Shall determine appurtenant water rights, including  
9 but not limited to the quantification of the amount of  
10 water and the specification of the water course or the  
11 means of access and delivery entitled to by that  
12 right, which determination shall be valid for purposes  
13 of this chapter[-]; and

14 (16) May declare an emergency if the commission determines,  
15 in consultation with the appropriate county and the  
16 department of health, that there is an absence of  
17 sufficient quantity and quality of water in any area,  
18 whether within or outside of a water management area,  
19 that immediately threatens the public health, safety,  
20 and welfare. The commission may issue orders reciting  
21 the existence of the emergency and requiring such



1 actions as the commission deems necessary to address  
2 the emergency be taken, including but not limited to  
3 apportioning, rotating, limiting, or prohibiting the  
4 use of the water resources of the area. An emergency  
5 order shall expire no later than one year after issued  
6 by the commission, unless extended by a separate or  
7 supplementary order."

8 SECTION 2. Section 174C-9, Hawaii Revised Statutes, is  
9 amended to read as follows:

10 **"[~~§~~174C-9~~]~~ Proceedings before the commission**  
11 **concerning water resources. (a)** All proceedings before the  
12 commission concerning the enforcement or application of any  
13 provision of this chapter or any rule adopted pursuant thereto,  
14 or the issuance, modification, or revocation of any permit or  
15 license under this code by the commission, shall be conducted in  
16 accordance with chapter 91. Hearings regarding particular water  
17 resources shall be conducted on the island where those water  
18 resources are located.

19 (b) Any party to whom an emergency order is directed may  
20 challenge that order but shall immediately comply with the order  
21 pending disposition of the party's challenge. The commission





1 shall give precedence to a hearing on the challenge over all  
2 other pending matters."

3 SECTION 3. Section 174C-62, Hawaii Revised Statutes, is  
4 amended to read as follows:

5 "[~~§~~174C-62~~]~~ **Declaration of water shortage.** (a) The  
6 commission shall formulate a statewide plan for implementation  
7 during periods of water shortage. As a part of the plan, the  
8 commission shall adopt a reasonable system of permit  
9 classification according to source of water supply, method of  
10 extraction or diversion, use of water, or a combination thereof.

11 (b) The commission, by rule, may declare that a water  
12 shortage exists within all or part of an area, whether within or  
13 outside of a water management area, when insufficient water is  
14 available to meet the requirements of the permit system or when  
15 conditions are such as to require a temporary reduction in total  
16 water use within the area to protect water resources from  
17 serious harm. The commission shall publish a set of criteria  
18 for determining when a water shortage exists~~[-]~~, including but  
19 not limited to impacts and effects of the climate crisis.

20 (c) In accordance with the plan adopted under subsection  
21 (a), the commission may impose such restrictions on one or more



1 classes of permits and outside of management areas on well and  
2 stream diversion owners and operators as may be necessary to  
3 protect the water resources of the area from serious harm and to  
4 restore them to their previous water quantity or chloride level  
5 condition.

6 (d) A declaration of water shortage and any measures  
7 adopted pursuant thereto may be rescinded by rule by the  
8 commission.

9 (e) When a water shortage is declared, the commission  
10 shall cause a notice [~~thereof~~] of the water shortage to be  
11 published in a prominent place in a newspaper of general  
12 circulation throughout the area[~~-~~] and on the commission's  
13 website. The notice shall be published each day for the first  
14 week of the shortage and once a week [~~thereafter~~] for four  
15 months, followed by monthly publications until the declaration  
16 is rescinded. Publication of [~~such~~] the notice shall serve as  
17 notice to all water users in the area of the condition of water  
18 shortage.

19 (f) The commission shall cause each permittee in the area  
20 to be notified by regular and electronic mail of any change in  
21 the conditions of the permittee's permit, any suspension



1 ~~[thereof,]~~ of the permittee's permit, or of any other  
2 restriction on the use of water for the duration of the water  
3 shortage.

4 ~~[(g) If an emergency condition arises due to a water  
5 shortage within any area, whether within or outside of a water  
6 management area, and if the commission finds that the  
7 restrictions imposed under subsection (c) are not sufficient to  
8 protect the public health, safety, or welfare, or the health of  
9 animals, fish, or aquatic life, or a public water supply, or  
10 recreational, municipal, agricultural, or other reasonable uses,  
11 the commission may issue orders reciting the existence of such  
12 emergency and requiring that such actions as the commission  
13 deems necessary to meet the emergency be taken, including but  
14 not limited to apportioning, rotating, limiting, or prohibiting  
15 the use of the water resources of the area. Any party to whom  
16 an emergency order is directed may challenge such an order but  
17 shall immediately comply with the order, pending disposition of  
18 the party's challenge. The commission shall give precedence to  
19 a hearing on such challenge over all other pending matters.]"~~

20 SECTION 4. Statutory material to be repealed is bracketed  
21 and stricken. New statutory material is underscored.



1 SECTION 5. This Act shall take effect upon its approval.

APPROVED this                    day of                    , 2023

GOVERNOR OF THE STATE OF HAWAII



HB No. 1088, HD 1, SD 1, CD 1

THE HOUSE OF REPRESENTATIVES OF THE STATE OF HAWAII

Date: May 2, 2023  
Honolulu, Hawaii

We hereby certify that the above-referenced Bill on this day passed Final Reading in the House of Representatives of the Thirty-Second Legislature of the State of Hawaii, Regular Session of 2023.



Scott K. Saiki  
Speaker  
House of Representatives




Brian L. Takeshita  
Chief Clerk  
House of Representatives

**THE SENATE OF THE STATE OF HAWAI'I**

Date: May 2, 2023  
Honolulu, Hawai'i 96813

We hereby certify that the foregoing Bill this day passed Final Reading in the Senate of the Thirty-Second Legislature of the State of Hawai'i, Regular Session of 2023.

  
President of the Senate

  
Clerk of the Senate