

JAN 17 2024

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# A BILL FOR AN ACT

RELATING TO WATER.

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

1           SECTION 1. Section 174C-2, Hawaii Revised Statutes, is  
2 amended by amending subsection (c) to read as follows:  
3           "(c) The state water code shall be liberally interpreted  
4 to obtain maximum beneficial use of the waters of the State for  
5 purposes such as domestic uses[-]; aquaculture uses[-];  
6 irrigation and other agricultural uses[-]; power development[-  
7 and]; commercial and industrial uses[-]; and to benefit the  
8 public's health, safety, and welfare by maintaining available  
9 fresh water for fire safety purposes. However, adequate  
10 provision shall be made for the protection of traditional and  
11 customary Hawaiian rights, the protection and procreation of  
12 fish and wildlife, the maintenance of proper ecological balance  
13 and scenic beauty, and the preservation and enhancement of  
14 waters of the State for municipal uses, public recreation,  
15 public water supply, agriculture, and navigation. [~~Such~~] These  
16 objectives are declared to be in the public interest."



1 SECTION 2. 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;

18 (3) Shall establish an instream use protection program  
19 designed to protect, enhance, and reestablish, where  
20 practicable, beneficial instream uses of water in the  
21 State;



- 1           (4) May contract and cooperate with the various agencies  
2                   of the federal government and with state and local  
3                   administrative and governmental agencies or private  
4                   persons;
- 5           (5) May enter, after obtaining the consent of the property  
6                   owner, at all reasonable times upon any property other  
7                   than dwelling places for the purposes of conducting  
8                   investigations and studies or enforcing any of the  
9                   provisions of this code, being liable, however, for  
10                  actual damage done. If consent cannot be obtained,  
11                  reasonable notice shall be given prior to entry;
- 12          (6) Shall cooperate with federal agencies, other state  
13                  agencies, county or other local governmental  
14                  organizations, and all other public and private  
15                  agencies created for the purpose of utilizing and  
16                  conserving the waters of the State, and assist these  
17                  organizations and agencies in coordinating the use of  
18                  their facilities and participate in the exchange of  
19                  ideas, knowledge, and data with these organizations  
20                  and agencies. For this purpose the commission shall  
21                  maintain an advisory staff of experts;



- 1           (7) Shall prepare, publish, and issue printed pamphlets  
2                   and bulletins as the commission deems necessary for  
3                   the dissemination of information to the public  
4                   concerning its activities;
- 5           (8) May appoint and remove agents, including hearings  
6                   officers and consultants, necessary to carry out the  
7                   purposes of this chapter, who may be engaged by the  
8                   commission without regard to the requirements of  
9                   chapter 76 and section 78-1;
- 10          (9) May hire employees in accordance with chapter 76;
- 11          (10) May acquire, lease, and dispose of real and personal  
12               property as may be necessary in the performance of its  
13               functions, including the acquisition of real property  
14               for the purpose of conserving and protecting water and  
15               water related resources as provided in section 174C-  
16               14;
- 17          (11) Shall identify, by continuing study, those areas of  
18               the State where salt water intrusion is a threat to  
19               fresh water resources and report its findings to the  
20               appropriate county mayor and council and the public;



- 1           (12) Shall provide coordination, cooperation, or approval  
2           necessary to the effectuation of any plan or project  
3           of the federal government in connection with or  
4           concerning the waters of the State. The commission  
5           shall approve or disapprove any federal plans or  
6           projects on behalf of the State. No other agency or  
7           department of the State shall assume the duties  
8           delegated to the commission under this paragraph;  
9           except that the department of health shall continue to  
10          exercise the powers vested in it with respect to water  
11          quality, and except that the department of business,  
12          economic development, and tourism shall continue to  
13          carry out its duties and responsibilities under  
14          chapter 205A;
- 15          (13) Shall plan and coordinate programs for the  
16          development, conservation, protection, control, and  
17          regulation of water resources, based upon the best  
18          available information, and in cooperation with federal  
19          agencies, other state agencies, county or other local  
20          governmental organizations, and other public and



1 private agencies created for the utilization and  
2 conservation of water;

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

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

11 (16) May declare an emergency if the commission determines,  
12 in consultation with the appropriate county and the  
13 Hawaii emergency management agency, that there is an  
14 absence of sufficient quantity of water in any area,  
15 whether within or outside of a water management area,  
16 that immediately threatens public health, safety, and  
17 welfare during a wildfire. The commission may issue  
18 orders reciting the existence of the emergency and  
19 requiring actions as the commission deems necessary to  
20 address the emergency to be taken, including but not  
21 limited to apportioning, rotating, limiting, or



1           prohibiting the use of the water resources in the  
2           area. An emergency order shall expire no later than  
3           one year after the order is issued by the commission,  
4           unless extended by a separate or supplementary order."

5           SECTION 3. Section 174C-9, Hawaii Revised Statutes, is  
6 amended to read as follows:

7           " ~~§~~174C-9 ~~§~~ Proceedings before the commission  
8 concerning water resources. (a) All proceedings before the  
9 commission concerning the enforcement or application of any  
10 provision of this chapter or any rule adopted pursuant thereto,  
11 or the issuance, modification, or revocation of any permit or  
12 license under this code by the commission, shall be conducted in  
13 accordance with chapter 91. Hearings regarding particular water  
14 resources shall be conducted on the island where those water  
15 resources are located.

16           (b) Any party to whom any emergency order is directed may  
17 challenge that order but shall immediately comply with the order  
18 pending disposition of the party's challenge. The commission  
19 shall give precedence to a hearing on the challenge over all  
20 other pending matters."



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

3 " ~~[+] §174C-62 [±]~~ Declaration of water shortage ~~[±]~~ and  
4 emergency. (a) The commission shall formulate a plan for  
5 implementation during periods of water shortage. As a part of  
6 the plan, the commission shall adopt a reasonable system of  
7 permit classification according to source of water supply,  
8 method of extraction or diversion, use of water, or a  
9 combination thereof.

10 (b) The commission, by rule, may declare that a water  
11 shortage exists within all or part of an area when insufficient  
12 water is available to meet the requirements of the permit system  
13 or when conditions are such as to require a temporary reduction  
14 in total water use within the area to protect water resources  
15 from serious harm. The commission shall publish a set of  
16 criteria for determining when a water shortage exists ~~[±]~~,  
17 including but not limited to the imminent threat of an emergency  
18 condition caused by a wildfire.

19 (c) In accordance with the plan adopted under subsection  
20 (a), the commission may impose ~~[such]~~ restrictions on one or  
21 more classes of permits as may be necessary to protect the water



1 resources of the area from serious harm and to restore them to  
2 their previous condition.

3 (d) A declaration of water shortage and any measures  
4 adopted pursuant [~~thereto~~] to the declaration may be rescinded  
5 by rule by the commission.

6 (e) When a water shortage is declared, the commission  
7 shall cause a notice [~~thereof~~] of the declaration to be  
8 published in a prominent place in a newspaper of general  
9 circulation throughout the area. The notice shall be published  
10 each day for the first week of the shortage and once a week  
11 thereafter until the declaration is rescinded. Publication of  
12 [~~such~~] the notice shall serve as notice to all water users in  
13 the area of the condition of water shortage.

14 (f) The commission shall [~~cause~~] notify by regular mail  
15 each permittee in the area [~~to be notified by regular mail~~] of  
16 any change in the conditions of the permittee's permit, any  
17 suspension [~~thereof,~~] of the permit, or of any other restriction  
18 on the use of water for the duration of the water shortage.

19 [~~(g) If an emergency condition arises due to a water~~  
20 ~~shortage within any area, whether within or outside of a water~~  
21 ~~management area, and if the commission finds that the~~



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

14 (g) Notwithstanding any other law to the contrary, a  
15 public water supplier may declare a water shortage emergency  
16 condition without holding a public hearing in the event of a  
17 wildfire."

18 SECTION 5. Section 185-1.5, Hawaii Revised Statutes, is  
19 amended to read as follows:

20 "[+]§185-1.5[+] **Responsible agency.** (a) The department  
21 shall take measures for the prevention, control, and



1 extinguishment of wildland fires within forest reserves, public  
2 hunting areas, wildlife and plant sanctuaries, and natural area  
3 reserves and

4 (b) The department shall cooperate with established fire  
5 control agencies of the counties and the federal government in  
6 developing plans and programs and mutual aid agreements for  
7 assistance for the prevention, control, and extinguishment of  
8 fires on forest, grass, brush, and watershed lands not within  
9 the department's fire protection responsibilities described  
10 [above.] in this section.

11 (c) The department, in consultation with the Hawaii  
12 emergency management agency, shall cooperate with the counties  
13 and reservoir owners to develop protocols and agreements for the  
14 use of reservoir waters for fire safety purposes. The protocols  
15 and agreements shall address the emergency use of reservoir  
16 waters for prevention, control, and extinguishment of fires  
17 while taking into account the various competing uses of  
18 reservoir waters."

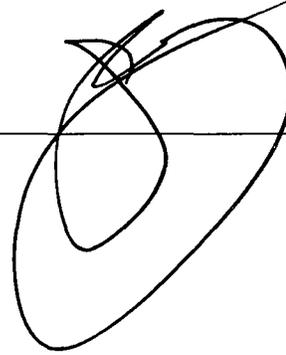
19 SECTION 6. Statutory material to be repealed is bracketed  
20 and stricken. New statutory material is underscored.



1 SECTION 7. This Act shall take effect upon its approval.

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INTRODUCED BY: \_\_\_\_\_

A large, stylized handwritten signature in black ink is written over a horizontal line. The signature consists of several overlapping loops and curves, making it difficult to decipher.

# S.B. NO. 2089

**Report Title:**

DLNR; CWRM; HIEMA; State Water Code; Reservoirs; Fire Safety; Water Shortage and Emergency; Declaration; Notice

**Description:**

Specifies that fire safety use is a beneficial use of fresh water in the State Water Code. Requires the Department of Land and Natural Resources, in consultation with the Hawaii Emergency Management Agency, to cooperate with the counties and reservoir owners to develop protocols and agreements for the use of reservoir waters for fire safety purposes. Amends the conditions, manner, and areas in which the Commission on Water Resource Management can declare and provide notice of water shortages and emergencies.

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

