

JAN 18 2024

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



- 1 organizations and agencies in coordinating the use of
2 their facilities and participate in the exchange of
3 ideas, knowledge, and data with these organizations
4 and agencies. For this purpose, the commission shall
5 maintain an advisory staff of experts;
- 6 (7) Shall prepare, publish, and issue printed pamphlets
7 and bulletins as the commission deems necessary for
8 the dissemination of information to the public
9 concerning its activities;
- 10 (8) May appoint and remove agents, including hearings
11 officers and consultants, necessary to carry out the
12 purposes of this chapter, who may be engaged by the
13 commission without regard to the requirements of
14 chapter 76 and section 78-1;
- 15 (9) May hire employees in accordance with chapter 76;
- 16 (10) May acquire, lease, and dispose of real and personal
17 property as may be necessary in the performance of its
18 functions, including the acquisition of real property
19 for the purpose of conserving and protecting water and



1 water related resources as provided in section 174C-
2 14;

3 (11) Shall identify, by continuing study, those areas of
4 the State where salt water intrusion is a threat to
5 fresh water resources and report its findings to the
6 appropriate county mayor and council and the public;

7 (12) Shall provide coordination, cooperation, or approval
8 necessary to the effectuation of any plan or project
9 of the federal government in connection with or
10 concerning the waters of the State. The commission
11 shall approve or disapprove any federal plans or
12 projects on behalf of the State. No other agency or
13 department of the State shall assume the duties
14 delegated to the commission under this paragraph;
15 except that the department of health shall continue to
16 exercise the powers vested in it with respect to water
17 quality, and except that the department of business,
18 economic development, and tourism shall continue to
19 carry out its duties and responsibilities under
20 chapter 205A;



- 1 (13) Shall plan and coordinate programs for the
2 development, conservation, protection, control, and
3 regulation of water resources, based upon the best
4 available information, and in cooperation with federal
5 agencies, other state agencies, county or other local
6 governmental organizations, and other public and
7 private agencies created for the utilization and
8 conservation of water;
- 9 (14) Shall catalog and maintain an inventory of all water
10 uses and water resources; [~~and~~]
- 11 (15) Shall determine appurtenant water rights, including
12 but not limited to the quantification of the amount of
13 water and the specification of the water course or the
14 means of access and delivery entitled to by that
15 right, which determination shall be valid for purposes
16 of this chapter[-]; and
- 17 (16) May declare an emergency if the commission determines,
18 in consultation with the governor, the appropriate
19 county, and the department of health, that there is an
20 absence of sufficient quantity and quality of water in



1 any area, whether within or outside of a water
2 management area, that immediately threatens the public
3 health, safety, and welfare. The commission may issue
4 orders reciting the existence of the emergency and
5 requiring those actions as the commission deems
6 necessary to address the emergency be taken, including
7 but not limited to apportioning, rotating, limiting,
8 or prohibiting the use of the water resources of the
9 area. An emergency order shall expire no later than
10 one year after issuance by the commission, unless
11 extended by a separate or supplementary order."

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

14 "~~{}~~§174C-9~~{}~~ **Proceedings before the commission**
15 **concerning water resources.** (a) All proceedings before the
16 commission concerning the enforcement or application of any
17 provision of this chapter or any rule adopted pursuant thereto,
18 or the issuance, modification, or revocation of any permit or
19 license under this code by the commission, shall be conducted in
20 accordance with chapter 91. Hearings regarding particular water



1 resources shall be conducted on the island where those water
2 resources are located.

3 (b) Any party to whom an emergency order is directed may
4 challenge that order but shall immediately comply with the order
5 pending disposition of the party's challenge. The commission
6 shall give precedence to a hearing on the challenge over all
7 other pending matters."

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

10 "~~§~~**174C-62**~~§~~ **Declaration of water shortage.** (a) The
11 commission shall formulate a statewide plan for implementation
12 during periods of water shortage. As a part of the plan, the
13 commission shall adopt a reasonable system of permit
14 classification according to source of water supply, method of
15 extraction or diversion, use of water, or a combination thereof.

16 (b) The commission, by rule, may declare that a water
17 shortage exists within all or part of an area, whether within or
18 outside of a water management area, when insufficient water is
19 available to meet the requirements of the permit system or when
20 conditions are such as to require a temporary reduction in total



1 water use within the area to protect water resources from
2 serious harm. The commission shall publish a set of criteria
3 for determining when a water shortage exists[-], including but
4 not limited to impacts and effects of the climate crisis.

5 (c) In accordance with the plan adopted under subsection
6 (a), the commission may impose such restrictions on one or more
7 classes of permits and outside of management areas on well and
8 stream diversion owners and operators as may be necessary to
9 protect the water resources of the area from serious harm and to
10 restore them to their previous water quantity or chloride level
11 condition.

12 (d) A declaration of water shortage and any measures
13 adopted pursuant thereto may be rescinded by rule by the
14 commission.

15 (e) When a water shortage is declared, the commission
16 shall cause a notice [~~thereof~~] of the water shortage to be
17 published in a prominent place in a newspaper of general
18 circulation throughout the area[-] and on the commission's
19 website. The notice shall be published each day for the first
20 week of the shortage and once a week [~~thereafter~~] for four



1 months, followed by monthly publications until the declaration
2 is rescinded. Publication of [~~such~~] the notice shall serve as
3 notice to all water users in the area of the condition of water
4 shortage.

5 (f) The commission shall cause each permittee in the area
6 to be notified by regular and electronic mail of any change in
7 the conditions of the permittee's permit, any suspension
8 [~~thereof,~~] of the permittee's permit, or of any other
9 restriction on the use of water for the duration of the water
10 shortage.

11 [~~(g) If an emergency condition arises due to a water~~
12 ~~shortage within any area, whether within or outside of a water~~
13 ~~management area, and if the commission finds that the~~
14 ~~restrictions imposed under subsection (c) are not sufficient to~~
15 ~~protect the public health, safety, or welfare, or the health of~~
16 ~~animals, fish, or aquatic life, or a public water supply, or~~
17 ~~recreational, municipal, agricultural, or other reasonable uses,~~
18 ~~the commission may issue orders reciting the existence of such~~
19 ~~emergency and requiring that such actions as the commission~~
20 ~~deems necessary to meet the emergency be taken, including but~~



1 ~~not limited to apportioning, rotating, limiting, or prohibiting~~
2 ~~the use of the water resources of the area. Any party to whom~~
3 ~~an emergency order is directed may challenge such an order but~~
4 ~~shall immediately comply with the order, pending disposition of~~
5 ~~the party's challenge. The commission shall give precedence to~~
6 ~~a hearing on such challenge over all other pending matters.]"~~

7 SECTION 4. Statutory material to be repealed is bracketed
8 and stricken. New statutory material is underscored.

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

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INTRODUCED BY





S.B. NO. 2146

Report Title:

Commission on Water Resource Management; Water Shortage and
Emergency; Declaration; Notice

Description:

Amends the conditions, manner, and areas in which the Commission
on Water Resource Management of the Department of Land and
Natural Resources can declare and provide notice of water
shortages and emergencies.

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