
A BILL FOR AN ACT

RELATING TO WATER USE.

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

1 SECTION 1. Section 167-5, Hawaii Revised Statutes, is
2 amended to read as follows:

3 "~~§~~167-5~~§~~ **Powers.** In addition to any other powers
4 granted to the board of agriculture for the purpose of carrying
5 out all of its functions and duties, the board shall have the
6 following powers for the purposes of this chapter:

7 (1) To acquire by eminent domain, water and water sources
8 either above or underground, watershed, reservoir
9 sites, rights-of-way over lands and property for
10 paths, trails, roads, and landing sites, ditches,
11 tunnels, flumes, reservoirs, and pipelines necessary
12 or proper for the construction and maintenance of
13 water facilities for conveying, distributing, and
14 transmitting water for irrigation and domestic use and
15 for ~~such~~ other purposes as may properly fall within
16 the scope of its activities in creating, managing,
17 controlling, operating, and maintaining irrigation



1 water facilities, any of which purposes shall be held
2 to be for a public use and purpose;

3 (2) To make and execute contracts and other instruments
4 necessary or convenient to the exercise of the powers
5 of the board, including, without prejudice to the
6 generality of the foregoing, contracts and other
7 instruments for the purchase or sale of water and for
8 the purchase or lease of water facilities for
9 irrigation of the area, including but not limited to
10 the production of agricultural products and the land
11 on which the facilities are situated, and for securing
12 to the owners and occupiers of land already using
13 water in a project a priority right to so much water
14 from those of their sources and facilities [~~which~~]
15 that are taken over for the project as is required for
16 the purposes or needs of the land, whether
17 agricultural or nonagricultural in nature, as [~~such~~]
18 those purposes or needs exist at the inception of the
19 project or are then contemplated in the immediate
20 future;



- 1 (3) To [~~make and from time to time~~] adopt, amend, and
2 repeal bylaws and rules, not inconsistent with this
3 chapter, which upon compliance with chapter 91 shall
4 have the force and effect of law, to carry into effect
5 the powers and purposes of the board;
- 6 (4) To make surveys for the purposes of determining the
7 engineering and economic feasibility of each project;
- 8 (5) To conduct or have prepared comprehensive studies of
9 the crops, livestock, and poultry [~~which~~] that may be
10 profitably grown or produced within each project and
11 the probable market for [~~such~~] those crops, livestock,
12 and poultry;
- 13 (6) To conduct feasibility studies of the economic
14 potential of the area;
- 15 (7) To determine the probable costs and value of providing
16 water for irrigation in any proposed project;
- 17 (8) To investigate and make surveys of water resources,
18 including the availability of nonpotable water and the
19 possibility and feasibility of inducing rain by
20 artificial or other means; and



1 (9) To define and redefine the boundaries of projects and
2 to consolidate or separate projects, existing or
3 proposed pursuant to this chapter[7]; provided that in
4 the event the redefinition of the boundaries or the
5 consolidation or separation previously effected
6 increased the total amount required to be derived from
7 acreage assessments upon lands within the existing
8 project or projects by more than five per cent or will
9 require an increase in the tolls charged for water
10 supplied to the lands or will reduce the amount of
11 water normally available for distribution to the
12 lands, then the redefinition, consolidation, or
13 separation may be accomplished only after notice has
14 been published and a public hearing held as required
15 for the formation of a project upon the initiative of
16 the board. At the hearing, right to protest and the
17 procedure relative to protest shall be the same as
18 specified in section 167-17 concerning the formation
19 of projects, and the proposed redefinition of
20 boundaries, consolidation, or separation of projects
21 shall not be accomplished if protests, such as would



1 be sufficient to prevent the action if it were the
2 formation of a project, are filed by owners and
3 lessees of land within the existing projects or
4 projects affected thereby.

5 The board is empowered, upon petition of land occupiers as
6 provided by section 167-13, or upon petition of the Hawaiian
7 homes commission or upon its own initiative, to prepare detailed
8 plans for the acquisition or construction of facilities for
9 irrigation or for economic development [~~which~~] that in its
10 opinion are economically feasible, to prepare estimates of the
11 probable cost of each, and to prepare estimates of the water
12 tolls and acreage assessments required for the cost of operation
13 and the amortization of the investment of each project, so that
14 the project shall be self-supporting."

15 SECTION 2. Section 167-12, Hawaii Revised Statutes, is
16 amended to read as follows:

17 "**[+]§167-12[+]** **Lands included within irrigation projects.**

18 (a) Except as otherwise expressly permitted in the chapter,
19 lands to be included within an irrigation project shall be only
20 those used or to be used in farming. The number of acres of
21 agricultural and pasture land of each land occupier within the



1 project shall be determined by the board of agriculture and
2 shall not be increased or decreased, nor shall any [~~such~~] land
3 included within a project thereafter be withdrawn, after final
4 determination to construct the project, except in the manner and
5 with the limitations specified in this chapter by redefining the
6 boundaries of a project. The project shall include only such
7 lands as can be adequately irrigated by the quantity of water
8 and facilities to be provided under normal conditions of supply.
9 No land [~~which~~] that at the time of formation of the project is
10 irrigated, or is devoted to the cultivation for commercial
11 purposes of sugar, pineapples, coffee, bananas, citrus, papayas,
12 or macadamia nuts, or other horticultural crops, whether or not
13 the land so devoted is irrigated, or is being devoted to an
14 industrial or townsite or other use of greater economic value
15 than agriculture shall be included in the project if the owner
16 of the land (or the land occupier thereof if other than the
17 owner, in the event that the land occupier is legally chargeable
18 with the acreage assessments) shall object in writing to the
19 inclusion. The foregoing provisions of this [~~paragraph~~]
20 subsection shall be applicable to all irrigation projects.



1 (b) Notwithstanding the limitation expressed in ~~[the~~
2 ~~foregoing paragraph, lands]~~ subsection (a):

3 (1) Lands of the State used by the University of Hawaii
4 for experimental farms may be included in irrigation
5 projects~~[,]~~; provided the board of regents undertakes
6 the payment of water tolls and acreage assessments and
7 for the purposes of the inclusion the University of
8 Hawaii shall be deemed a land occupier within the
9 meaning of this chapter~~[.—Lands]~~; provided further
10 that lands within the farms shall be assessed
11 accordingly as the same are of the character of
12 agricultural or pasture lands, as defined in this
13 chapter, although they are used for experimental
14 purposes~~[.—The]~~; provided further that the
15 assessments shall not~~[, however,]~~ become a lien upon
16 the lands~~[,]~~; and

17 (2) Residential and mixed-use developments described in
18 section 174C-51.5 may also be included in irrigation
19 projects; provided that the water shall be sourced
20 from county-supplied R-1 water."



1 SECTION 3. Section 174C-51.5, Hawaii Revised Statutes, is
2 amended as follows:

3 1. By amending its title and subsection (a) to read:

4 "[+]§174C-51.5[+] Dual line water supply systems;
5 installation in [~~new industrial and commercial~~] certain
6 developments located in designated water management areas. (a)
7 The commission, as a condition for issuing permits pursuant to
8 this part, may require the use of dual line water supply systems
9 in new industrial and commercial developments and new
10 residential and mixed-use developments located in designated
11 water management areas. The commission shall not require the
12 use of dual line water supply systems if:

- 13 (1) There is a threat to existing water quality or to
14 public health and safety, as determined by the
15 department of health;
- 16 (2) A source of nonpotable water will not be reasonably
17 available in the near future as determined by the
18 commission; or
- 19 (3) There is a serious threat to permitted ground or
20 surface water uses within a designated water
21 management area as determined by the commission."



1 2. By amending subsection (c) to read:

2 "(c) For the purposes of this section [~~the term~~]:

3 ~~["Developments" means one or more commercial or industrial~~
4 ~~subdivisions approved after May 30, 2000. It shall not apply to~~
5 ~~any modification, addition to, or replacement of, any commercial~~
6 ~~or industrial subdivision in existence prior to May 30, 2000.]~~

7 "Dual line water supply system" means a supply system that
8 distributes potable and nonpotable water through parallel but
9 separate distribution lines.

10 "Industrial and commercial development" means one or more
11 commercial or industrial subdivisions approved after May 30,
12 2000. "Industrial and commercial development" shall not apply
13 to any modification, addition to, or replacement of, any
14 commercial or industrial subdivision in existence prior to May
15 30, 2000.

16 "Residential and mixed-use development" means one or more
17 residential or mixed-use subdivisions approved after June 30,
18 2025. "Mixed use-development" includes mixed-use developments
19 as defined under section 201H-12(a); provided that the term
20 "commercial uses" as used in that definition shall include
21 commercial agricultural uses."



1 SECTION 4. (a) This Act shall preempt any state or county
2 rule, ordinance, policy, procedure, guideline, or other material
3 that precludes or restricts the installation or use of a dual
4 line water supply system in a residential or mixed-use
5 development, as authorized by this Act.

6 (b) The department of health, board of agriculture, and
7 each county shall:

8 (1) Review their respective rules, ordinances, policies,
9 procedures, guidelines, and other materials, including
10 the department of health reuse guidelines and each
11 county's zoning and building code; and

12 (2) Amend any provisions that conflict with this Act or
13 otherwise preclude or restrict the installation of a
14 dual line water supply system in a residential or
15 mixed-use development, as authorized by this Act.

16 (c) Notwithstanding any department of health rule, policy,
17 procedure, guideline, or material to the contrary, including the
18 department of health reuse guidelines, volume II, the irrigation
19 of a single-family residential home shall be permitted with the
20 designation of a recycled water manager.



1 SECTION 5. This Act does not affect rights and duties that
2 matured, penalties that were incurred, and proceedings that were
3 begun before its effective date.

4 SECTION 6. Statutory material to be repealed is bracketed
5 and stricken. New statutory material is underscored.

6 SECTION 7. This Act shall take effect on July 1, 3000.



Report Title:

Water; CWRM; Residential and Mixed-use Developments; Board of Agriculture; DOH; Counties; Irrigation Projects

Description:

Authorizes the Board of Agriculture to investigate and survey the availability of nonpotable water. Authorizes the Commission on Water Resource Management, as a condition for issuing permits, to require the use of dual line water supply systems in new residential and mixed-use developments located in designated water management areas. Authorizes those residential and mixed-use developments to be included in irrigation projects, as defined in chapter 167, HRS. Requires the Department of Health, Board of Agriculture, and counties to update their rules, ordinances, to allow dual line water supply systems in residential and mixed-use developments. Effective 7/1/3000.
(HD1)

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