
A BILL FOR AN ACT

RELATING TO WATER.

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

1 SECTION 1. The legislature finds that water resources are
2 held by the State in trust for the benefit of present and future
3 generations pursuant to article XI, section 7, of the Hawaii
4 State Constitution. The legislature further finds that counties
5 and their subdivisions bear primary responsibility for providing
6 water for public health, safety, and welfare. The legislature
7 also finds that prioritizing state-to-county disposition of
8 water for public purposes strengthens accountability and
9 transparency, promotes long-term reliability and pricing
10 stability, and advances the public trust.

11 The legislature additionally finds that the State and its
12 agencies have an affirmative and continuing duty to ensure that
13 water licenses do not impair public trust purposes.

14 Therefore, the purpose of this Act is to establish a
15 framework that:

- 16 (1) Gives counties or their subdivisions priority to
17 obtain intergovernmental agreements related to the



1 disposition of water resources for public purposes;

2 and

3 (2) Applies a rebuttable presumption and functional
4 control analysis for non-county and non-subdivision
5 applicants with certain ownership or management
6 structures, ensuring protection of public trust uses.

7 SECTION 2. Chapter 171, Hawaii Revised Statutes, is
8 amended by adding a new part to be appropriately designated and
9 to read as follows:

10 **"PART . WATER LICENSES**

11 **§171-A Definitions.** As used in this part:

12 "County" includes the city and county of Honolulu, county
13 of Hawaii, county of Kauai, and county of Maui.

14 "Functional characteristics of ownership or management
15 structures" include any one or combination of the following:

16 (1) Layered ownership or control that obscures ultimate
17 decision-making authority;

18 (2) Governance or financial structures prioritizing short-
19 term returns over long-term stewardship;



(3) Financial arrangements that limit reinvestment in infrastructure, system maintenance, or watershed protection; or

(4) Disclosure practices limiting public accountability or regulatory oversight.

"Meaningful community participation" means community participation sufficient to ensure that input from residents of the watershed or watersheds from which the water is drawn is incorporated into water management decisions affecting public trust uses; provided that this participation shall include documented opportunities for public comment and regular public meetings, where input is solicited, recorded, and considered by the decision-making authority.

"Meaningful governance oversight" means the authority and ability of the State, a county, or a subdivision to monitor, influence, and enforce decisions regarding water use to ensure compliance with public trust purposes, including access to information, review and approval of management decisions, enforcement of conditions, and incorporation of community input.

"Public trust uses" means the following purposes recognized under the Hawaii State Constitution:



- 1 (1) Native Hawaiian traditional and customary practices;
2 (2) Maintenance of waters in their natural state;
3 (3) Domestic water use; and
4 (4) Present and future needs of the Hawaiian homes
5 commission.

6 "Subdivision" means any agency, board, authority,
7 commission, or department operating under county administration
8 that manages water resources or infrastructure.

9 "Water license" means any license, permit, or authorization
10 issued by the State to divert, withdraw, or use water.

11 **§171-B County or subdivision priority; right of first**
12 **refusal.** (a) Prior to considering any water license
13 application, the department shall notify the county and its
14 applicable subdivisions in which the water source is located and
15 offer the county an opportunity to enter into an
16 intergovernmental agreement.

17 (b) To exercise its priority and right of first refusal,
18 the county or subdivision shall respond to the department within
19 ninety days.



1 (c) If a county or subdivision submits a timely response
2 that meets the requirements of subsection (b), the department
3 shall:

4 (1) Give priority to the county and presume that the
5 proposed use serves the public interest, subject to
6 compliance with the public trust doctrine and
7 applicable law; and

8 (2) Make every effort to work with the county or
9 subdivision to meet the requirements necessary to
10 enter into an intergovernmental agreement for the
11 disposition of water or water infrastructure.

12 (d) The department shall not approve an application for
13 the disposition of water or water infrastructure that is not
14 submitted by a county or subdivision unless the department makes
15 written findings that:

16 (1) The county or subdivision declined or failed to submit
17 a response; or

18 (2) An intergovernmental agreement with the county or
19 subdivision would be inconsistent with the public
20 trust doctrine.



1 **§171-C Rebuttable presumption and functional control**

2 **review for non-county and non-subdivision applicants.** (a) This
3 section shall apply only after the department has complied with
4 section 171-B and has determined that no intergovernmental
5 agreement with a county or subdivision will be approved.

6 (b) Any applicant that is not a county or subdivision
7 shall be presumed to propose a use inconsistent with the public
8 trust if its ownership, financing, management, or operational
9 structure exhibits one or more of the functional characteristics
10 of ownership or management structures.

11 (c) An applicant may rebut the presumption under
12 subsection (b) and shall meet the following criteria for the
13 department to determine that the action is in the best interest
14 of the State, is a reasonable and beneficial use, and meets the
15 public trust doctrine:

16 (1) Ensure transparency and public accountability,
17 including disclosure of beneficial ownership and
18 material financial arrangements;

19 (2) Provide enforceable and adequately funded commitments
20 for infrastructure maintenance, repair, climate
21 resilience, and watershed protection;



1 (3) Protect and not impair public trust uses;

2 (4) Align financial incentives and operational decision-
3 making with long-term stewardship and equitable public
4 benefit; and

5 (5) Provide a management structure that includes
6 meaningful community participation and meaningful
7 government oversight.

8 (e) Any determination by the department under this section
9 shall be supported by written findings of fact and conclusions
10 of law and be made publicly available.

11 (f) Any water license issued to an applicant other than a
12 county or subdivision shall have a term not exceeding five
13 years. One extension of the term, not to exceed five years, may
14 be granted by the department only if the applicant demonstrates
15 compliance with all conditions imposed under this part,
16 including ongoing protection of public trust uses.

17 Upon the expiration of the water license, the county or
18 subdivision shall have a right of first refusal, to be exercised
19 within ninety days, pursuant to this part.

20 **§171-D Conditions; rules.** Pursuant to rules adopted under
21 chapter 91, the department may prescribe conditions it deems

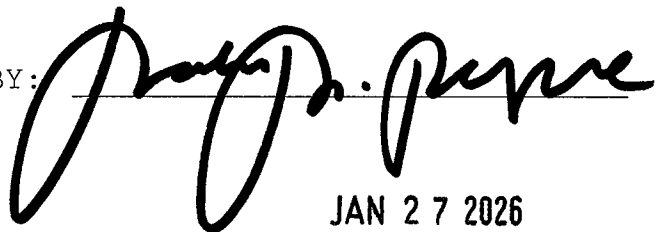


1 necessary on any applicant to ensure that the public trust
2 doctrine and public trust uses of water are fully protected and
3 remain unimpaired."

4 SECTION 3. In codifying the new sections added by section
5 2 of this Act, the revisor of statutes shall substitute
6 appropriate section numbers for the letters used in designating
7 the new sections in this Act.

8 SECTION 4. This Act shall take effect upon its approval.
9

INTRODUCED BY:


JAN 27 2026



H.B. NO. 2434

Report Title:

Water Licenses; Department of Land and Natural Resources;
Counties and Subdivisions

Description:

Establishes a framework that provides counties or their subdivisions priority and the right of first refusal to obtain intergovernmental agreements related to the disposition of water resources for public purposes. Establishes criteria to be applied when determining that the issuance of a state water license is in the best interest of the State.

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