

ACT 122

An Act Relating to Ground-Water Resources of the State and Amending Chapter 87B of the Revised Laws of Hawaii 1955, as Amended.

Be it Enacted by the Legislature of the State of Hawaii:

SECTION 1. Chapter 87B of the Revised Laws of Hawaii 1955, as amended, is hereby amended to read as follows :

“Section 87B-1. Declaration of policy. To meet the growing need for domestic, municipal, agricultural and industrial uses, it is necessary that the ground-water resources of the State be put to beneficial use to the fullest extent to which they are capable, that the threat of exhaustion, depletion, waste, pollution or deterioration by salt encroachment, and the unreasonable method of diversion, withdrawal or use of ground-water resources be prevented and that the supply and quality of such water resources be protected, conserved and controlled to assure their reasonable and beneficial use in the interest of the people of the State. It is therefore declared to be the policy of the State of Hawaii that (a) the development, utilization and control of all ground-water resources shall be directed to make the maximum contribution to the public benefit, (b) the ground-water resources of all areas must be regulated and protected from the threat of exhaustion, depletion, waste, pollution or deterioration by salt encroachment to assure adequate supplies for beneficial uses in the interest of the people, (c) the ground-water resources of certain areas under threat of exhaustion, depletion, waste, pollution or deterioration by salt encroachment must be protected, conserved and controlled to assure adequate supplies for beneficial uses in the interest of the people, (d) the State, in the exercise of its sovereign power, should control the development and use of the ground-water resources of the State in all areas and in areas where the supply is threatened with exhaustion, depletion, waste, pollution or deterioration by salt encroachment.

The Legislature hereby makes the following findings concerning the development utilization and control of the ground-water resources of the State:

(a) The development, utilization, and control of the ground-water resources of the State are vital to the people in order to assure adequate supplies for domestic, municipal, agricultural, industrial and other beneficial uses.

(b) The ground-water resources of the State must be regulated and protected for their best utilization, conservation and protection in order to prevent threat of exhaustion, depletion, waste, pollution or deterioration by salt encroachment.

(c) The ground-water resources of the State must be regulated and protected in areas where the supply is under threat of exhaustion, depletion, waste, pollution or deterioration by salt encroachment.

(d) The regulation of ground-water resources is essential to protect beneficial uses and to assure adequate supplies for beneficial users.

(e) The ground-water resources can best be utilized, conserved and protected if utilization thereof is restricted to beneficial uses and controlled by the board of land and natural resources responsible for proper development and utilization of the ground-water resources of the State.

(f) Planning for the development and utilization of ground-water re-

sources is essential in view of population growth and the expanding economic activity within the State.

Section 87B-2. Definitions. In this chapter, except where the context otherwise requires:

(a) 'Beneficial use' means use of water, including the method of diversion, storage, transportation and application, that is reasonable and consistent with the public interest in the proper utilization of water resources, including, but not limited to, domestic, municipal, military, agricultural and industrial uses.

(b) 'Board' means the board of land and natural resources created by chapter 14A.

(c) 'Designated ground-water area' means an area in which the board finds that the ground water must be regulated and protected for its best utilization, conservation and protection in order to prevent threat of exhaustion, depletion, waste, pollution or deterioration by salt encroachment or an area in which the board finds that the ground water must be regulated and protected in order to protect the ground-water resources from exhaustion, depletion, waste, pollution or deterioration by salt encroachment.

(d) 'Domestic use' means the use of water by an individual, or by a family unit or household for drinking, cooking, laundry, sanitation, and other personal comforts and necessities, for the watering of stock used in operating a farm or as food for the family or household, or for the irrigation of the lawn or family garden not exceeding one-half acre in area.

(e) 'Emergency' means a shortage of ground-water in any ground-water area, whether established as a designated ground-water area or not, which threatens the public health, safety and welfare.

(f) 'Ground water' means any water found beneath the surface of the earth, whether in perched supply, dyke-confined, flowing or percolating in underground channels or streams, under artesian pressure or not, or otherwise.

(g) 'Municipal use' means the use of water through public services available to the inhabitants of a community for the promotion and protection of their health, comfort and safety, for the protection of property from fire, and for the purposes listed under the term 'domestic use'.

(h) 'Permit' means a permit issued upon application of a person in accordance with the provisions of this chapter.

(i) 'Person' imports the plural as well as the singular and includes governmental entities and agencies, public and private corporations, associations, estates and individuals.

(j) 'Preserved use' means a use preserved under section 87B-15 of this chapter.

(k) 'Shortage' means the absence of a sufficient quantity and quality of ground-water in a designated ground-water area to supply lawful use of water.

(l) 'Time of taking' means, in view of the nature, manner, and purposes of a beneficial use of water, the most accurate method of describing the time when the water is taken, including description in terms of hours, days, weeks, months, or physical, operational, or other conditions.

(m) 'Well' means an artificial excavation or opening into the ground, or artificial enlargement of a natural opening by which ground water is drawn or is capable of being drawn from the ground; the term includes, but is not

limited to, circular, vertical, horizontal or approximately horizontal tunnels, and vertical or inclined shafts.

Section 87B-3. Regulations of ground-water resources. The ground water of designated ground-water areas of the State is subject to regulation under the provisions of this chapter. After June 12, 1959, no person shall make any use of the water of any designated ground-water area of the State except in compliance with the provisions of this chapter. No right, title, or interest in the use of any of the ground-water resources of this State can be acquired by means of prescription. Nothing contained in this section or this chapter, however, shall be construed as an admission or declaration on the part of the State of any prescriptive rights to ground water in favor of any private party.

Section 87B-4. Administration by board of land and natural resources. The board of land and natural resources created by chapter 14A shall administer the ground water program established by this chapter, provided, however, that all meetings held by the board to consider matters arising hereunder the managing officer or engineer of the board of water supply or water department of the respective counties shall be invited to participate as ex-officio members without voting power.

Section 87B-5. General powers. To effectuate the provisions of this chapter, the board is authorized:

(a) To conduct, authorize, cooperate or contract for the conducting of scientific investigations, experiments and research and to collect data concerning the ground-water resources of the State through the water program of the board;

(b) To enter at all reasonable times upon any and all public and private lands within the State without doing damage, for the purpose of conducting investigations and studies and inspecting water resources and their use;

(c) To establish and consult with advisory boards and/or water user associations; to advise and make recommendations to the board on research, policies, administration and other matters; and to encourage and promote agreements among users of ground-water and to supply the parties to such agreements with information and advice in order to carry out the intent of this chapter;

(d) To require reports, on forms furnished by the board, from all owners or operators of wells, from all persons holding or claiming rights to withdraw or receive or use water from wells owned by others, and from all well drillers, whether such wells are located in the designated ground-water areas or not, providing all information on ground-water use that the board shall deem necessary to further the purposes of this chapter; and it shall be the duty of all such persons to make such reports to the board at the times prescribed in its rules and regulations; and each such report shall contain a statement, signed by the person making the report, to the effect that the contents thereof are true to the best of his knowledge and belief;

(e) To designate ground-water areas for regulations, protection and control under this chapter on its own initiation or upon petition by any interested person, where the board, after conducting the scientific investigations and research mentioned in (a) and after public hearing and published notice thereof as herein provided, finds that any of the following conditions exist or may exist in the foreseeable future, and that such conditions will endanger the supply or condition of the water in such area: (1) the use of

ground water exceeds the rate of recharge; (2) ground-water levels are declining or have declined excessively; (3) chloride content of the water is increasing to a level that materially reduces the value of the use to which water is being put; (4) excessive preventable waste of water is occurring; (5) any proposed water development or developments which is constructed would be* in the opinion of the board lead to one of the above conditions;

(f) To retain such establishment of a designated ground-water area so long as the factors justifying such designation remain in effect, provided, however, that whenever it may appear that such factors are no longer present, the board, upon its own motion or a motion of any interested person, shall hold a public hearing for the purpose of determining whether or not the designation should be rescinded, and provided, further, that such hearing shall be called and conducted in the manner prescribed in this chapter and no such rescission shall be or become effective until thirty days after the decision with respect thereto;

(g) To hold hearings upon matters pending before it for determination; provided that where a public hearing and published notice thereof are required, notice of the time, place and purpose of the hearing shall be published once each week for three successive weeks in a newspaper of general circulation in the appropriate county, the last publication to be not less than ten days nor more than thirty days before the date set for the hearing;

(h) To subpoena and compel the attendance of witnesses to any investigation, hearing, or proceeding before it, and the production of books, papers, and other evidence pertinent to any such matters; to administer oaths and examine witnesses under oath, and to authorize any of its members or agents to do so. In the event of failure of any person to obey any such subpoena or to testify thereunder before the board or before any member or agent of the board authorized by it to take testimony, such person may be punished as for contempt of the circuit court, on application therefor by the board to the court;

(i) To seek enforcement in the courts of the provisions of this chapter or of any rule, regulation, or order of the board;

(j) To intervene on behalf of the public in any suit in any court in which the control or withdrawal of any waters from any designated ground-water area or rights to their use shall be in issue;

(k) To require the cessation of waste of the water of any designated ground-water area, and the cessation of practices that result or are likely to result in the excessive or dangerous deterioration of the quality of any such water; and

(l) To exercise its shortage and emergency authority under this chapter.

Section 87B-6. Departmental cooperation. The board may request and receive from any department, division, board, bureau, commission, public body, or agency of the State or of any political subdivision thereof, or government of the United States of America or any of its agencies, or from any organization, incorporated or unincorporated, which has for its object the control or use of any of the water resources of the State, such assistance and data as will enable the board to properly carry out its activities and effectuate its purposes hereunder. The board shall provide for reimbursement of such agencies for special expenses resulting from expenditures not normally a part of the operating expenses of any such agency.

* So in original.

Section 87B-7. Rules and regulations. (a) The board may make, amend, and repeal such rules and regulations concerning notices, hearings, and proceedings, under this chapter as it shall deem necessary for the accomplishment of its functions, and all such rules and regulations, when made or amended after a public hearing thereon, of which notice shall have been published as provided in section 7-30 shall have the force and effect of law.

(b) For purposes of rules, regulations, forms and orders, the board may classify uses, sources, methods of development and other related matters within its jurisdiction and prescribe different requirements therefor.

Section 87B-8. Action of other government agencies and municipalities.

(a) No state or local governmental agency may enforce any ordinance, rule or regulation that affects the use of ground water from a designated ground-water area, whether promulgated before or after June 12, 1959, unless the board has approved the ordinance, rule or regulation.

(b) No state or local governmental agency or other person having the power of eminent domain or condemnation may exercise that power in respect to the taking of any rights to ground-water from designated ground-water areas within the State unless written consent is obtained from the board.

Section 87B-9. Investigations. The board may in its discretion: (a) make such investigations as it deems necessary, through the attorney general, (1) to determine if any person has violated or is about to violate any provision of this chapter or any rule, regulation or order of the board, or (2) to aid in enforcing this chapter or in formulating rules, regulations or orders;

(b) Require or permit any person to file a statement as to any facts and circumstances within his knowledge concerning the matter to be investigated; and

(c) Publish information concerning any investigation made pursuant to this chapter.

Section 87B-10. Injunctions. If it appears to the board that any person has engaged or is about to engage in any act or practice constituting a violation of any provision of this chapter or any rule, regulation or order of the board, the board may bring an action in the appropriate circuit court to enjoin any such acts or practices and to enforce compliance with this chapter or any rule, regulation or order. Upon a proper showing, the court shall grant a restraining order, temporary or permanent injunction, or other appropriate relief. The board shall not be required to post a bond.

Section 87B-11. Hearing procedures. In all hearings required to be conducted under this chapter: (a) The board shall have authority to (1) administer oaths and affirmations, (2) issue subpoenas, (3) rule upon offers of proof and receive relevant evidence, (4) take or cause depositions to be taken, (5) regulate the course of the hearing, (6) hold conferences for the settlement or simplification of the issues by consent of the parties, (7) dispose of procedural requests or similar matters, (8) make findings of fact, determinations of law, conclusions, and the decision as to the subject matter of the hearing, and (9) take any other action authorized by board rule consistent with this chapter.

(b) Any oral or documentary evidence that the board deems helpful may be received but the board shall as a matter of policy provide for the ex-

clusion of irrelevant, immaterial, or unduly repetitious evidence. Parties to the hearing shall have the right to present their case or defense by oral or documentary evidence, to submit rebuttal evidence, and to conduct such cross-examination as may be required for a full and true disclosure of the facts. In a hearing on the initial application for a permit, the board may adopt procedures for the submission of all or part of the evidence in written form only.

(c) The board may take notice of judicially cognizable facts and in addition may take notice of general, technical, or scientific facts within its specialized knowledge. Parties shall be notified either before or during hearings, or by reference in preliminary reports or otherwise, of the material so noticed, and they shall be afforded an opportunity to contest the facts so noticed. The board may utilize its experience, technical competence, and specialized knowledge in the evaluation of the evidence presented to it.

(d) The transcript of testimony and exhibits, together with all papers and requests filed in the proceeding, shall constitute the exclusive record for decision by the board, and, upon payment of lawfully prescribed costs, shall be made available to the parties. The board shall prepare an official record, which shall include findings of fact, determinations of law and the decision as to the subject matter involved, and the testimony and exhibits, but it shall not be necessary to transcribe shorthand notes unless requested for court review.

Section 87B-12. Judicial review. (a) Any person aggrieved by an order or decision of the board may obtain a review of the order or decision in the circuit court of the judicial circuit in which the ground-water area affected by the order or decision is located by filing in the court within sixty days after the entry of the order or decision a written petition praying that the order or decision be modified or set aside in whole or in part.

(b) A copy of the petition shall be served upon the board, and within thirty (30) days after service of the petition, or within such further time as the court may allow, the board shall transmit to the court the original or a certified copy of the entire record upon which the order or decision was based; but, by stipulation of all parties to the review proceeding, the record may be shortened. Any party unreasonably refusing to stipulate to limit the record may be taxed by the court for the additional costs.

(c) On appeal, the findings of the board as to the facts, if supported by substantial evidence in the record, are conclusive.

(d) The commencement of proceedings under this section shall not, unless specifically ordered by the court, operate as a stay of the board's order or decision.

Section 87B-13. Continuation and initiation of domestic uses. (a) Domestic uses of ground-water as defined in this chapter, whether in a designated ground-water area or otherwise, being made on June 12, 1959, may be continued and new domestic uses of ground-water may be initiated after June 12, 1959 without the user being required to certify his use or to apply for a permit; provided, however, such user shall file such reports as are required by the board.

(b) Where access to a suitable supply of ground-water is available, new domestic uses may be initiated without regard to whether the taking for domestic use reduces the water supply or any preserved use or use made pursuant to a permit.

(c) No person making a domestic use may initiate an action in the courts to compel the reduction of any preserved use or use made pursuant to a permit granted prior to the initiation of the domestic use in order to make available a sufficient quantity of water for the domestic use.

Section 87B-14. Shortage and emergency powers. Domestic uses shall be subject to the shortage and emergency powers of the board under sections 87B-33 and 87B-34 of this chapter.

Section 87B-15. Preservation of existing uses. (a) The withdrawal of water directly from any designated ground-water area, which is a lawful and beneficial use, other than a domestic use, (1) being made at the effective date the board designates a designated ground-water area, (2) to be in conjunction with facilities under construction at such date, or (3) made within the five years prior to such date, may be continued if the uses remain beneficial and if the user complies with the provisions of section 87B-16. For the purposes of this chapter the effective date shall be the date 90 days prior to the date the board designates a designated ground-water area.

(b) Unless authorized by the board, no use preserved in subsection (a) may be modified by increasing the quantity of water used or by substantially changing the purpose or manner of the use, or the time of taking the water, or the point of diversion of the water from any designated ground-water area; provided, however, that any municipal corporation or person supplying a municipal corporation may increase its water use from such designated ground-water area up to one hundred thousand gallons, or five per cent, whichever is the greater, per day more than its average per day beneficial use during the year immediately prior to the date of establishment of a designated ground-water area without first receiving prior authorization from the board.

(c) Uses preserved under subsection (a) may be conveyed to the same extent and in the same manner as they could prior to June 12, 1959.

Section 87B-16. Certification of existing uses. (a) After the board has designated a ground-water area for protection and/or regulation, the board shall require by rule any person making a use preserved under section 87B-15(a) to file a declaration of his use with the board within three months, or any extension thereof, after the effective date of the rule. In its rules requiring the filing of declarations of existing uses, the board may divide the State into areas and prescribe different dates for filings from the various areas.

(b) Any person making a use preserved under section 87B-15(a) may file a declaration of his use with the board at any time prior to the required date for filing of such declaration.

(c) (1) When the board requires filing of declarations of uses by rule, it shall cause notice of the rule to be given by publication once each week for the three weeks prior to the effective date of the rule in a newspaper of general circulation in the affected county. (2) The board shall also cause notice of the rule to be given by registered or certified mail to any person required to file of whom the board has or could readily obtain knowledge or who has requested mailed notice to be given when the board adopted a rule requiring the filing of declarations.

(d) The declarations shall be in such form and contain such information as the board by rule prescribes, including the quantity of water used, the purpose or manner of the use, the time of taking the water, and the point of diversion of the water.

(e) If no declaration is filed as required by rule of the board, the board, in its discretion, may conclusively determine the extent of the uses preserved under section 87B-15(a).

(f) If the board has not acted upon a declaration within six (6) months after its filing, the board shall certify those uses described in the declaration.

(g) When uses preserved has been ascertained in accordance with the provisions of this section, the board shall issue a certificate describing such uses and setting forth the maximum daily and annual drafts from each well. Such certificate shall be deemed to constitute a description of the use preserved pursuant to this chapter, but shall not be deemed to constitute an adjudication of property rights, if any, to the water in the designated ground-water area.

(h) The board shall hold a hearing upon the request of any person adversely affected by the certification or the refusal to certify any water use.

Section 87B-17. Exchange of preserved uses. (a) Any person making a use preserved under section 87B-15(a) may voluntarily exchange his preserved use for a permit.

(b) Whenever any person shall materially violate the provisions of section 87B-15, the board in its discretion, after giving notice by registered mail, and after a hearing may enter an order that the violation constitutes an offer of exchange under subsection (a).

Section 87B-18. Extinguishment of preserved uses. All or any part of the uses preserved under section 87B-15 (a) shall be extinguished if they are not used for four consecutive years or for any five out of seven years. In computing the period: (1) years of non-use in the three years prior to the effective date of the establishment of a designated ground-water area shall be conclusively presumed to be years of non-use, (2) years of non-use caused by a shortage of water due to natural conditions will be considered neither years of use nor non-use, and (3) years during which a declaration was required to have been filed under section 87B-16 but during which none was filed shall be conclusively presumed to be years of non-use.

Section 87B-19. Permits for ground-water use. After the board has designated a ground-water area for protection and/or regulation, except in respect to domestic uses and uses preserved under section 87B-15(a), a withdrawal of water directly from any designated ground-water area may be made only in accordance with a permit issued by the board.

Section 87B-20. Permits to supply ground-water. (a) After June 12, 1959, no State or local government agency shall contract to obtain ground-water supply within a designated ground-water area from any person not holding a permit to supply water, unless permission is obtained from the board by such state or local governmental agency.

(b) After June 12, 1959, no person shall contract to supply or sell the rights to ground-water from a designated ground-water area to another person unless permission is obtained from the board by the supplier or seller.

(c) Permission required by this section shall not be withheld except for good cause and shall be deemed granted unless the board shall act or commence hearings thereon within ninety days after application therefor.

Section 87B-21. Applications and notice. (a) Each application for a permit required under this chapter shall be in writing and shall state specifically the information determined by board rule or regulation to be necessary to determine

(1) the merits of the water use, (2) the hazards to public health, safety or welfare, (3) the desirability of the permit, and (4) any qualifications of the applicant the board deems appropriate to effectuate the provisions of this chapter.

(b) At least ten days prior to the granting of any permit, the board shall cause notice of the application to be given by publication at the applicant's expense in a newspaper of general circulation in each county in which the water resources will be substantially affected by the granting of the permit. The board by rule, regulation or order, may also require the applicant to mail notices of the application to any state or local governmental agency or other person who may have an interest in the application.

Section 87B-22. Granting of permits. (a) In granting permits and determining the duration of permits, the board shall have as its objective the most beneficial use of the ground-water resources of the State.

(b) Permits may be granted if: (1) there is water available for use; (2) the use of the water will be beneficial; (3) the most beneficial use and development of the water resources of the State will not be impaired by granting the permit; and (4) granting the permit will not substantially and materially interfere with preserved uses, or with domestic or permitted uses made previously, except as provided in this chapter.

(c) Permits may be granted without regard to whether, under the law operative in the State prior to the date of designation of a designated ground-water area, the use made under the permit could have been maintained only in connection with specific lands or otherwise.

(d) The board shall hold a hearing upon the request of any person who is or may be adversely affected by the granting or denial of a permit.

Section 87B-23. Classes of permits. The board is authorized: (1) to establish classes of permits, and (2) to exempt for specific periods minimal quantities of water or types of water uses or users in specified areas from the requirement of a permit when the board finds that such exemptions do not constitute an unreasonable impediment to the beneficial use of the ground-water resources of the State.

Section 87B-24. Duration of permits. Each permit shall be issued for a specified period, not exceeding fifty years, as determined by rule, regulation or order of the board, depending upon the manner and nature of the water use involved.

Section 87B-25. Conditions of permits. Each permit granted by the board shall contain and be subject to the following conditions:

(a) The water must be used for the beneficial purpose described in the permit;

(b) The use authorized by the permit must not interfere substantially and materially with preserved uses or with domestic or permitted uses made previously, except as provided in this chapter;

(c) The use is subject to the shortage and emergency powers of the board;

(d) The permit may be suspended or revoked in accordance with the provisions of this chapter; and

(e) Such other conditions as the board may establish by rule or regulation to effectuate the provisions of this chapter.

Section 87B-26. Permits interfering with preserved, domestic or permitted uses. Where application is made for a permit and there is sufficient water available, but the use under the permit would interfere substantially and

materially with a domestic use previously initiated, or with the ground-water supply, or water diversion facilities of a preserved use or a use made under a permit previously granted, the board may issue a permit subject to the condition that the permit holder furnish to the person whose use is interfered with water equal in quantity and comparable in quality to that lost by reason of the interference.

Section 87B-27. Compulsory relinquishment of permits. Unless a specific exemption is authorized by the board, each permit shall provide, as a condition, that at any time or at a specified time after issuance of the permit the permit holder may be required, upon receipt of reasonable compensation, to relinquish to the board his permit if the board determines that (1) there exist one or more applicants for permits to make water uses which would be more beneficial, or which would be as beneficial and would provide a more complete utilization of the available water, than the permit holder is making; (2) additional permits to make such uses cannot be granted without acquiring the water use permit because there is no reasonably available water; and (3) the applicants are willing and able to furnish reasonable compensation to the permit holder.

Section 87B-28. Renewal of permits. (a) A permit holder may file an application for a renewal of the permit after one-half the length of the period of the existing permit has expired. Renewed permits shall take effect immediately upon being granted by the board.

(b) If a permit has been issued for a period exceeding one year, and no application for renewal has been filed six months before the expiration of the permit, the board after thirty days written notice to the permit holder during which time such permit holder may file an application for renewal may proceed immediately to grant to another person a permit to use the water being used pursuant to the existing permit, and to become effective upon the expiration of the existing permit.

(c) The board shall hold a hearing upon the request of any person adversely affected by the renewal or refusal to renew a permit.

Section 87B-29. Revocation of permits. (a) A permit may be revoked in whole or in part: (1) for any material false statement in the application or in any report or statement of fact required pursuant to the provisions of this chapter; (2) for violation of the provisions of this chapter; (3) for violation of the conditions of the permit, or (4) for non-use.

(b) In any proceeding to revoke a permit in whole or in part, the board shall give written notice to the permit holder of the facts or conduct which may warrant such action and provide opportunity for a hearing.

Section 87B-30. Injunctions. Except as provided in this chapter, no court may enjoin the use of water by any person who holds a valid permit for such use.

Section 87B-31. Injury to property rights, damages. If the use authorized under a permit results in an injury to any property rights, the injured person is entitled to compensation for actual damages in a suitable action at law against the permit holder.

Section 87B-32. Fees for permits. The board is authorized to establish fees for the issuance of permits under this chapter. In determining the amount of fees the board shall consider the class of the permit, the duration of the permit, the capital investment made or to be made by the permit holder, the quantity or nature of the water use, and other factors the board deems relevant or

material in the determination of a reasonable fee. The fee may be waived, in the discretion of the board if the permit holder has agreed to convey any rights having substantial value to the State.

Section 87B-33. Water shortages. (a) If a shortage of water exists in any designated ground-water area of the State, the board may, after public hearing and published notice thereof as herein provided, in order to obtain the most beneficial use of the water resources of the State and to protect the public health, safety, and welfare and the interests of the water users affected:

(1) establish rules, regulations, or orders affecting the use of ground-water, as the conditions warrant, and forbidding the construction of new diversion facilities or wells, the initiation of new water uses, or the modification of any existing uses, diversion facilities, or storage facilities within the affected area;

(2) regulate the use of ground-water within the affected area by apportioning, limiting, or rotating uses of water, or by preventing those uses which the board finds have ceased to be reasonable or beneficial, but (i) domestic, municipal and military uses shall always be preferred to other uses; (ii) preserved uses shall always be preferred to uses made pursuant to permits; and (iii) among permitted uses which are substantially similar, the board shall give preference to uses initiated prior in time unless the board determines that such preference would impair or be detrimental to the public interest in the utilization of water resources; and

(3) make other rules, regulations and orders necessary for the preservation of the public health, safety and welfare and the interest of affected water users.

(b) On the motion of any affected person, the board shall set a time and place of a hearing to determine whether any rules, regulations, or orders established under this section shall be amended, repealed or revoked.

Section 87B-34. Emergency powers. (a) If any emergency exists within any ground-water area of the State whether designated or not, and if the board finds that the exercise of its powers under section 87B-33 will not protect the public health, safety and welfare, the board, after public hearing and published notice thereof as herein provided, may:

(1) Establish rules, regulations, or orders limiting, apportioning, rotating, or prohibiting the use of the water resources in the affected ground-water areas of the State;

(2) Authorize any affected state or local governmental agency or public water supplier to enter upon public or private lands in any ground-water area and remove any amount of ground-water necessary to protect the public health, safety and welfare, provided that, if such entry or taking interferes with any property right other than any right which may be acquired under this chapter due compensation shall be payable; and

(3) Designate the ground-water area for regulation in accordance with Section 87B-5(e) and may:

(4) Make other rules, regulations, and orders necessary with respect to such ground-water areas to protect the public health, safety and welfare during the emergency.

(b) On the motion of any affected person, the board shall set a time and place of a hearing to determine whether the emergency has terminated or whether any rules, regulations or orders entered during the emergency should be amended, repealed or revoked;

(c) The authority granted the board under this section is in addition to the authority granted under other provisions of this chapter.

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Section 87B-35. Short title. This Act may be cited as The Ground-Water Use Act.

Section 87B-36. Effect on other statutes. This chapter is not intended to repeal chapter 101 or sections 152-30 to 152-40, inclusive. In the event of conflict, this chapter, and rules and regulations established hereunder, shall prevail.”

SECTION 2. This Act shall take effect upon its approval.

(Approved June 3, 1961.) **S.B. 429.**
