

ACT 276

S.B. NO. 2462

A Bill for an Act Relating to Protection of Streams.

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

SECTION 1. Section 174C-31, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) To prepare the water resources protection and quality plan, the commission shall:

- (1) [study] Study and inventory the existing water resources of the State and the means and methods of conserving and augmenting such water resources;

- (2) [review] Review existing and contemplated needs and uses of water including state and county land use plans and policies and study their effect on the environment, procreation of fish and wildlife, and water quality;
- (3) [study] Study the quantity and quality of water needed for existing and contemplated uses, including irrigation, power development, geothermal power, and municipal uses;
- (4) Identify rivers or streams, or a portion of a river or stream, which appropriately may be placed within a wild and scenic rivers system, to be preserved and protected as part of the public trust. For the purposes of this paragraph, the term "wild and scenic rivers" means rivers or streams, or a portion of a river or stream, of high natural quality or that possess significant scenic value, including but not limited to, rivers or streams which are within the natural area reserves system. The commission shall report its findings to the legislature twenty days prior to the convening of each regular legislative session; and
- (5) [study] Study such other related matters as drainage, reclamation, flood hazards, floodplain zoning, dam safety, and selection of reservoir sites, as they relate to the protection, conservation, quantity, and quality of water.

The water resource protection plan shall include, but not be limited to:

- (1) Nature and occurrence of water resources in the State;
- (2) Hydrologic units and their characteristics, including the quantity and quality of available resource, requirements for beneficial instream uses and environmental protection, desirable uses worthy of preservation by permit, and undesirable uses for which permits may be denied;
- (3) Existing and contemplated uses of water, as identified in the water use and development plans of the State and the counties, their impact on the resource, and their consistency with objectives and policies established in the water resource protection quality plan;
- (4) Programs to conserve, augment, and protect the water resource; and
- (5) Other elements necessary or desirable for inclusion in the plan.

Thereafter, the commission in coordination with the counties and the department of health shall formulate an integrated coordinated program for the protection, conservation, and management of the waters in each county based on the above studies. This program, with such amendments, supplements, and additions as may be necessary, shall be known as the water resource protection and quality plan.

Thereafter, each county shall prepare a water use and development plan and the appropriate state agency shall prepare the state water projects plan. Each county water use and development plan shall include but not be limited to:

- (1) Status of water and related land development including an inventory of existing water uses for domestic, municipal, and industrial users, agriculture, aquaculture, hydropower development, drainage, reuse, reclamation, recharge, and resulting problems and constraints;
- (2) Future land uses and related water needs; and
- (3) Regional plans for water developments including recommended and alternative plans, costs, adequacy of plans, and relationship to water resource protection and quality plan."

SECTION 2. Section 174C-71, Hawaii Revised Statutes, is amended to read as follows:

"[**§174C-71**] **Protection of instream uses.** The commission shall establish and administer a statewide instream use protection program. In carrying out

this part, the commission shall cooperate with the United States government or any of its agencies, other state agencies, and the county governments and any of their agencies. In the performance of its duties the commission shall:

- (1) Establish instream flow standards on a stream-by-stream basis whenever necessary to protect the public interest in waters of the State;
 - (A) The commission, on its own motion, may determine that the public interest in the waters of the State requires the establishment of an instream flow standard for streams;
 - (B) In acting upon the establishment of instream flow standards, the commission shall set forth in writing its conclusion that the public interest does or does not require, as is appropriate, an instream flow standard to be set for the stream, the reasons therefor, and the findings supporting the reasons;
 - (C) Each instream flow standard shall describe the flows necessary to protect the public interest in the particular stream. Flows shall be expressed in terms of variable flows of water necessary to protect adequately fishery, wildlife, recreational, aesthetic, scenic, or other beneficial instream uses in the stream in light of existing and potential water developments including the economic impact of restriction of such use;
 - (D) Establishment or modification of an instream flow standard shall be initiated by the commission by providing notice of its intention to set an instream flow standard in a newspaper of general circulation published in the vicinity of the stream in question, to the mayor of the appropriate county, and to persons who have previously requested such notice in writing;
 - (E) After giving notice of its intention to set an instream flow standard, the commission or other agencies in participation with the commission shall investigate the stream. During the process of this investigation, the commission shall consult with and consider the recommendations of the department of health, the aquatic biologist of the department of land and natural resources, the natural area reserves system commission, the university of Hawaii cooperative fishery unit, the United States Fish and Wildlife Service, the mayor of the county in which the stream is located, and other agencies having interest in or information on the stream, and may consult with and consider the recommendations of persons having interest in or information on the stream. In formulating the proposed standard, the commission shall weigh the importance of the present or potential instream values with the importance of the present or potential uses of water from the stream for noninstream purposes, including the economic impact of restriction of such uses. In order to avoid or minimize the impact on existing uses of preserving, enhancing, or restoring instream values, the commission shall consider physical solutions, including water exchanges, modifications of project operations, changes in points of diversion, changes in time and rate of diversion, uses of water from alternative sources, or any other solution;
 - (F) Before adoption of an instream flow standard or modification of an established instream flow standard, the commission shall give notice and hold a hearing on its proposed standard or modification;
- (2) Establish interim instream flow standards;

- (A) Any person with the proper standing may petition the commission to adopt an interim instream flow standard for streams in order to protect the public interest pending the establishment of a permanent instream flow standard;
- (B) Any interim instream flow standard adopted under this section shall terminate upon the establishment of a permanent instream flow standard for the stream on which the interim standards were adopted;
- (C) A petition to adopt an interim instream flow standard under this section shall set forth data and information concerning the need to protect and conserve beneficial instream uses of water and any other relevant and reasonable information required by the commission;
- (D) In considering a petition to adopt an interim instream flow standard, the commission shall weigh the importance of the present or potential instream values with the importance of the present or potential uses of water for noninstream purposes, including the economic impact of restricting such uses;
- (E) The commission shall grant or reject a petition to adopt an interim instream flow standard under this section within one hundred eighty days of the date the petition is filed. The one hundred eighty days may be extended a maximum of one hundred eighty days at the request of the petitioner and subject to the approval of the commission;
- (F) Interim instream flow standards may be adopted on a stream-by-stream basis or may consist of a general instream flow standard applicable to all streams within a specified area;
- (3) Protect stream channels from alteration whenever practicable to provide for fishery, wildlife, recreational, aesthetic, scenic, and other beneficial instream uses;
 - (A) The commission shall require persons to obtain a permit from the commission prior to undertaking a stream channel alteration; provided that routine streambed and drainageway maintenance activities and maintenance of existing facilities are exempt from obtaining a permit;
 - (B) Projects which have commenced construction or projects reviewed and approved by the appropriate federal, state, or county agency prior to July 1, 1987, shall not be affected by this part;
 - (C) The commission shall establish guidelines for processing and considering applications for stream channel alterations consistent with section 174C-93;
 - (D) The commission shall require filing fees by users to accompany each application for stream channel alteration;
- (4) Establish an instream flow program to protect, enhance, and reestablish, where practicable, beneficial instream uses of water. The commission shall conduct investigations and collect instream flow data including fishing, wildlife, aesthetic, recreational, water quality, and ecological information and basic streamflow characteristics necessary for determining instream flow requirements.

The commission shall implement its instream flow standards when disposing of water from state watersheds, including that removed by wells or tunnels where they may affect stream flow, and when regulating use of lands and waters within the state conservation district, including water development."

SECTION 3. Statutory material to be repealed is bracketed. New statutory material is underscored.

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

(Approved June 13, 1988.)