

JAN 23 2008

A BILL FOR AN ACT

RELATING TO WATER FOR IMPORTANT AGRICULTURAL LANDS.

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

1 SECTION 1. In 1978, voters approved article XI, section 3,
2 of the Constitution of the State of Hawaii, which sets out the
3 framework for state policies to promote agriculture and the
4 conservation of productive agricultural lands in the State.

5 Article XI, section 3, requires the State to:

- 6 (1) Conserve and protect agricultural lands;
7 (2) Promote diversified agriculture;
8 (3) Increase agricultural self sufficiency;
9 (4) Assure the availability of agriculturally suitable
10 lands; and
11 (5) Provide standards and criteria to accomplish the
12 foregoing.

13 The legislature enacted Act 183, Session Laws of Hawaii
14 2005, to establish standards, criteria, and mechanisms to
15 identify important agricultural lands and implement the intent
16 and purpose of the state constitution. When it enacted the
17 important agricultural lands law, the legislature recognized
18 that while the supply of lands suitable for agriculture is



1 critical, the long-term viability of agriculture also depends on
2 other factors, including commodity prices, the availability of
3 water for irrigation, agricultural research and outreach,
4 application of production technologies, marketing, and
5 availability and cost of transportation services.

6 The most important of these factors is the availability of
7 water for irrigation. The legislature finds that to promote the
8 long-term viability of agriculture, the State must establish
9 mechanisms that promote the availability of irrigation water for
10 agricultural activities.

11 The legislature finds that amendments to the state water
12 code, codified under chapter 174C, Hawaii Revised Statutes, are
13 necessary to promote the availability of irrigation water for
14 agricultural activities. The state water code was enacted prior
15 to Act 183 and preceded a number of Hawaii supreme court
16 decisions interpreting the state water code, several of which
17 are known collectively as the Waiahole ditch cases.

18 In these cases, the Hawaii supreme court decided that the
19 public trust doctrine applies to water resources and water
20 resource decisions made by the implementing agency. Further,
21 the court identified resource protection, domestic uses,
22 preservation of the rights of native tenants, and reservations



1 of water for the department of Hawaiian home lands as valid
2 public trust purposes. However, the court did not specifically
3 recognize agriculture as a public trust use of water and viewed
4 the requests for agricultural water as serving private
5 interests. The decisions stated that the court stops short of
6 embracing private commercial uses as a protected trust purpose,
7 apparently relegating agriculture to a lower priority. However,
8 uses under the public trust do not remain fixed for all time,
9 but must conform to changing public values and needs. The
10 legislature, as elected representatives of the people of Hawaii,
11 is in the best position to identify the public trust values and
12 needs.

13 While agricultural activities may be conducted by private
14 entities, the preservation of agriculture as an industry and the
15 preservation of important agricultural lands are interests that
16 the people of Hawaii value highly, and have recognized as a
17 constitutional mandate. The availability of water for
18 agricultural use is essential to conserving and protecting
19 agricultural lands, promoting diversified agriculture,
20 increasing agricultural self-sufficiency, and ensuring the
21 availability of agriculturally suitable lands.



1 The purpose of this Act is to provide incentives and
2 protections to establish and sustain viable agricultural
3 operations on important agricultural lands by amending the state
4 water code to require that the state water plan, including the
5 water resource protection, water use and development, and water
6 projects plans, and the provisions of the water code regulating
7 the use of waters, recognize and support the importance of
8 making sufficient water available for agricultural activity on
9 important agricultural lands.

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

12 "**§174C-2 Declaration of policy.** (a) It is recognized
13 that the waters of the State are held for the benefit of the
14 citizens of the State. It is declared that the people of the
15 State are beneficiaries and have a right to have the waters
16 protected for their use.

17 (b) There is a need for a program of comprehensive water
18 resources planning to address the problems of supply and
19 conservation of water. The Hawaii water plan, with such future
20 amendments, supplements, and additions as may be necessary, [~~is~~]
21 shall be accepted as the guide for developing and implementing
22 this policy.



1 (c) The state water code shall be liberally interpreted to
2 obtain maximum beneficial use of the waters of the State for
3 purposes such as domestic uses, aquaculture uses, irrigation and
4 other agricultural uses, power development, and commercial and
5 industrial uses. However, adequate provision shall be made for
6 the protection of traditional and customary Hawaiian rights, the
7 protection and procreation of fish and wildlife, the maintenance
8 of proper ecological balance and scenic beauty, and the
9 preservation and enhancement of waters of the State for
10 municipal uses, public recreation, public water supply,
11 agriculture, and navigation. Such objectives are declared to be
12 in the public interest.

13 (d) The state water code shall be liberally interpreted to
14 protect and improve the quality of waters of the State and to
15 provide that no substance be discharged into such waters without
16 first receiving the necessary treatment or other corrective
17 action. The people of Hawaii have a substantial interest in the
18 prevention, abatement, and control of both new and existing
19 water pollution and in the maintenance of high standards of
20 water quality.

21 (e) The public trust doctrine shall guide the actions of
22 the commission. In the planning and allocation of water



1 resources, to the extent feasible, the commission shall protect
2 the public trust purposes of resource protection, domestic uses,
3 upholding the exercise of native Hawaiian traditional and
4 customary rights, and the conservation and protection of
5 agricultural activity on lands identified and designated as
6 important agricultural lands pursuant to part III of chapter
7 205.

8 ~~[(e)]~~ (f) The state water code shall be liberally
9 interpreted and applied in a manner ~~[which]~~ that conforms ~~[with]~~
10 to intentions and plans of the counties in terms of land use
11 planning."

12 SECTION 3. Section 174C-31, Hawaii Revised Statutes, is
13 amended by amending subsections (e) and (f) to read as follows:

14 "(e) The department of agriculture shall prepare a state
15 agricultural water use and development plan for agricultural
16 uses in the State in accordance with chapter 167 and this
17 chapter, and subsequently modify and update the plan as
18 necessary. The state agricultural water use and development
19 plan shall include but not be limited to a master irrigation
20 inventory plan ~~[which]~~ that shall:

21 (1) Inventory ~~[the]~~ public and private irrigation water
22 systems;



- 1 (2) Identify the extent of rehabilitation needed for each
2 system;
- 3 ~~(3) Subsidize the cost of repair and maintenance of the~~
4 ~~systems;~~
- 5 ~~(4) Establish criteria to prioritize the rehabilitation of~~
6 ~~the systems;]~~
- 7 (3) Identify sources of water used by agricultural
8 operations, particularly agricultural operations on
9 lands identified and designated as important
10 agricultural lands pursuant to part III of chapter
11 205;
- 12 (4) Identify current and future water needs for
13 agricultural operations on lands identified and
14 designated as important agricultural lands pursuant to
15 part III of chapter 205;
- 16 (5) Develop a five-year program to repair the systems; and
17 (6) Set up a long-range plan to manage the systems.

18 The commission shall coordinate the incorporation of the state
19 agricultural water use and development plan into the state water
20 projects plan.

- 21 (f) Each county water use and development plan shall
22 include ~~[but not be limited to]~~:



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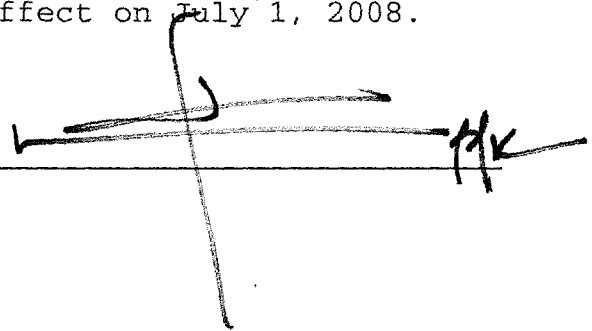
- 1 (1) Status of water and related land development,
2 including an inventory of existing water uses for
3 domestic, municipal, and industrial users,
4 agriculture[-7] and lands identified and designated as
5 important agricultural lands pursuant to part III of
6 chapter 205, aquaculture, hydropower development,
7 drainage, reuse, reclamation, recharge, and resulting
8 problems and constraints;
- 9 (2) Future land uses and related water needs; and
- 10 (3) Regional plans for water developments including
11 recommended and alternative plans, costs, adequacy of
12 plans, and relationship to the water resource
13 protection and water quality plans."

14 SECTION 4. Statutory material to be repealed is bracketed
15 and stricken. New statutory material is underscored.

16 SECTION 5. This Act shall take effect on July 1, 2008.

17

INTRODUCED BY: _____



Report Title:

State Water Code; Important Agricultural Lands

Description:

Amends the state water code to support making sufficient water available for agricultural activity on important agricultural lands.

