

JAN 23 2009

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# A BILL FOR AN ACT

RELATING TO WATER.

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

1           SECTION 1. Section 174C-71, Hawaii Revised Statutes, is  
2 amended to read as follows:

3           "§174C-71 Protection of instream uses. The commission  
4 shall establish and administer a statewide instream use  
5 protection program. In carrying out this part, the commission  
6 shall cooperate with the United States government or any of its  
7 agencies, other state agencies, and the county governments and  
8 any of their agencies. In the performance of its duties the  
9 commission shall:

10           (1) Establish instream flow standards on a stream-by-  
11 stream basis whenever necessary to protect the public  
12 interest in waters of the State;

13           (A) The commission, on its own motion, may determine  
14 that the public interest in the waters of the  
15 State requires the establishment of an instream  
16 flow standard for streams;



1 (B) In acting upon the establishment of instream flow  
2 standards, the commission shall set forth in  
3 writing its conclusion that the public interest  
4 does or does not require, as is appropriate, an  
5 instream flow standard to be set for the stream,  
6 the reasons therefor, and the findings supporting  
7 the reasons;

8 [~~(C) Each instream flow standard shall describe the  
9 flows necessary to protect the public interest in  
10 the particular stream. Flows shall be expressed  
11 in terms of variable flows of water necessary to  
12 protect adequately fishery, wildlife,  
13 recreational, aesthetic, scenic, or other  
14 beneficial instream uses in the stream in light  
15 of existing and potential water developments  
16 including the economic impact of restriction of  
17 such use;~~]

18 (C) In establishing instream flow standards, the  
19 commission shall consider all streams within a  
20 geographical region and shall describe how the  
21 instream flow standards for the streams in the  
22 region, in combination, adequately protect



fishery, wildlife, recreational, aesthetic,  
scenic, and other beneficial instream uses, as  
well as address important noninstream uses;

(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 [~~sueh~~] 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



1           mayor of the county in which the stream is  
2           located, and other agencies having interest in or  
3           information on the stream, and may consult with  
4           and consider the recommendations of persons  
5           having interest in or information on the stream.  
6           In formulating the proposed standard, the  
7           commission shall weigh the importance of the  
8           present or potential instream values with the  
9           importance of the present or potential uses of  
10          water from the stream for noninstream purposes,  
11          including the economic impact of restriction of  
12          ~~[such]~~ the uses[-] and shall consider how  
13          instream flow standards for all streams within a  
14          geographic region, in combination, can best  
15          obtain maximum beneficial uses of the waters of  
16          the State. In order to avoid or minimize the  
17          impact on existing uses of preserving, enhancing,  
18          or restoring instream values, the commission  
19          shall consider physical solutions, including  
20          water exchanges, modifications of project  
21          operations, changes in points of diversion,  
22          changes in time and rate of diversion, uses of



1 water from alternative sources, or any other  
2 solution;

3 (F) Before adoption of an instream flow standard or  
4 modification of an established instream flow  
5 standard, the commission shall give notice and  
6 hold a hearing on its proposed standard or  
7 modification;

8 (2) Establish interim instream flow standards;

9 (A) Any person with the proper standing may petition  
10 the commission to adopt [~~a~~] interim instream  
11 flow [~~standard~~] standards for streams in order to  
12 protect the public interest pending the  
13 establishment of [~~a~~] permanent instream flow  
14 [~~standard,~~] standards;

15 (B) Any interim instream flow standard adopted under  
16 this section shall terminate upon the  
17 establishment of [~~a~~] permanent instream flow  
18 [~~standard~~] standards for the stream on which the  
19 interim standards were adopted;

20 (C) A petition to adopt [~~a~~] interim instream flow  
21 [~~standard~~] standards under this section shall set  
22 forth data and information concerning the [~~need~~



1           ~~to protect and conserve]~~ protection and  
2           conservation of beneficial instream uses of water  
3           and the impact of noninstream uses of water in  
4           the context of all streams within a geographic  
5           region, and any other relevant and reasonable  
6           information required by the commission;

7           (D) In considering a petition to adopt [~~an~~] interim  
8           instream flow [~~standard,~~] standards, the  
9           commission shall weigh the importance of the  
10          present or potential instream values with the  
11          importance of the present or potential uses of  
12          water for noninstream purposes, including the  
13          economic impact of restricting [~~such~~] uses[~~],~~  
14          and shall consider how instream flow standards  
15          for all streams within a geographic region, in  
16          combination, can best obtain maximum beneficial  
17          uses of the waters of the State;

18          (E) The commission shall grant or reject a petition  
19          to adopt [~~an~~] interim instream flow [~~standard~~]  
20          standards under this section within one hundred  
21          eighty days of the date the petition is filed.

22          The one hundred eighty days may be extended a



1 maximum of one hundred eighty days at the request  
2 of the petitioner and subject to the approval of  
3 the commission;

4 (F) Interim instream flow standards may be adopted on  
5 a stream-by-stream basis or may consist of a  
6 general instream flow standard applicable to all  
7 streams within a specified area;

8 (3) Protect stream channels from alteration whenever  
9 practicable to provide for fishery, wildlife,  
10 recreational, aesthetic, scenic, and other beneficial  
11 instream uses;

12 (A) The commission shall require persons to obtain a  
13 permit from the commission prior to undertaking a  
14 stream channel alteration; provided that routine  
15 streambed and drainageway maintenance activities  
16 and maintenance of existing facilities are exempt  
17 from obtaining a permit;

18 (B) Projects which have commenced construction or  
19 projects reviewed and approved by the appropriate  
20 federal, state, or county agency prior to July 1,  
21 1987, shall not be affected by this part;



1 (C) The commission shall establish guidelines for  
2 processing and considering applications for  
3 stream channel alterations consistent with  
4 section 174C-93;

5 (D) The commission shall require filing fees by users  
6 to accompany each application for stream channel  
7 alteration;

8 (4) Establish an instream flow program to protect,  
9 enhance, and reestablish, where practicable,  
10 beneficial instream uses of water. The commission  
11 shall conduct investigations and collect instream flow  
12 data including fishing, wildlife, aesthetic,  
13 recreational, water quality, and ecological  
14 information and basic streamflow characteristics  
15 necessary for determining instream flow requirements.

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

21 SECTION 2. Statutory material to be repealed is bracketed  
22 and stricken. New statutory material is underscored.





1 SECTION 3. This Act shall take effect upon its approval.

2

INTRODUCED BY:

Bym Hee

By request



**Report Title:**

Instream Uses of Water

**Description:**

Expands the considerations of the commission on water resource management to include noninstream uses of water and the instream uses in context of the geographic region in determining instream flow standards.

