
A BILL FOR AN ACT

RELATING TO THE STATE WATER CODE.

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~~] standards for streams;

17 (B) In acting upon the establishment of instream flow
18 standards, the commission shall set forth in



1 writing its conclusion that the public interest
2 does or does not require, as is appropriate, an
3 instream flow standard to be set for [the] a
4 stream, the reasons therefor, and the findings
5 supporting the reasons;

6 (C) ~~[Each instream flow standard shall describe the~~
7 ~~flows necessary to protect the public interest in~~
8 ~~the particular stream. Flows shall be expressed~~
9 ~~in terms of variable flows of water necessary to~~
10 ~~protect adequately fishery, wildlife,~~
11 ~~recreational, aesthetic, scenic, or other~~
12 ~~beneficial instream uses in the stream in light~~
13 ~~of existing and potential water developments~~
14 ~~including the economic impact of restriction of~~
15 ~~such use;]~~ In establishing instream flow
16 standards, the commission shall consider all
17 streams within a geographical region and shall
18 describe how the instream flow standards for the
19 streams in the region, in combination, adequately
20 protect fishery, wildlife, recreational,
21 aesthetic, scenic, and other beneficial instream



1 uses, as well as address important noninstream
2 uses;

3 (D) Establishment or modification of an instream flow
4 standard shall be initiated by the commission by
5 providing notice of its intention to set an
6 instream flow standard in a newspaper of general
7 circulation published in the vicinity of the
8 stream in question, to the mayor of the
9 appropriate county, and to persons who have
10 previously requested [~~such~~] notice in writing;

11 (E) After giving notice of its intention to set an
12 instream flow standard, the commission or other
13 agencies in participation with the commission
14 shall investigate the stream. During the process
15 of this investigation, the commission shall
16 consult with and consider the recommendations of
17 the department of health, the aquatic biologist
18 of the department of land and natural resources,
19 the natural area reserves system commission, the
20 University of Hawaii cooperative fishery unit,
21 the United States Fish and Wildlife Service, the
22 mayor of the county in which the stream is



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



- 1 diversion, uses of water from alternative
2 sources, or any other solution; and
- 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 [~~an~~] 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 for the stream on which the interim
19 standards were adopted;
- 20 (C) A petition to adopt [~~an~~] 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
3 water, 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, the commission shall
9 weigh the importance of the present or potential
10 instream values with the importance of the
11 present or potential uses of water for
12 noninstream purposes, including the economic
13 impact of restricting [~~such~~] the present or
14 potential uses;

15 (E) The commission shall grant or reject a petition
16 to adopt an interim instream flow standard under
17 this section within one hundred eighty days of
18 the date the petition is filed. The one hundred
19 eighty days may be extended a maximum of one
20 hundred eighty days at the request of the
21 petitioner and subject to the approval of the
22 commission; and



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

5 (3) Protect stream channels from alteration whenever
6 practicable to provide for fishery, wildlife,
7 recreational, aesthetic, scenic, and other beneficial
8 instream uses [7]:

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

15 (B) Projects [~~which~~] that have commenced construction
16 or projects reviewed and approved by the
17 appropriate federal, state, or county agency
18 prior to July 1, 1987, shall not be affected by
19 this part;

20 (C) The commission shall establish guidelines for
21 processing and considering applications for



1 stream channel alterations consistent with
2 section 174C-93; and

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

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

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

19 SECTION 2. Statutory material to be repealed is bracketed
20 and stricken. New statutory material is underscored.



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

2

INTRODUCED BY:

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JAN 23 2009



Report Title:

State Water Code; Instream Waters

Description:

Requires commission on water resources management, in determining instream flow standards, to considers streams in a geographic region together.

