

JAN 28 2009

A BILL FOR AN ACT

RELATING TO WATER.

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 state constitution, which sets out the framework for
3 state policies to promote agriculture and the conservation of
4 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



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

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

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

20 In these cases, the Hawaii supreme court decided that the
21 public trust doctrine applies to water resources and water
22 resource decisions made by the implementing agency. Further,



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

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



1 increasing agricultural self-sufficiency, and ensuring the
2 availability of agriculturally suitable lands.

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

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

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

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



1 shall be accepted as the guide for developing and implementing
2 this policy.

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

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



1 (e) The public trust doctrine shall guide the actions of
 2 the commission. In the planning and allocation of water
 3 resources, to the extent feasible, the commission shall protect
 4 the public trust purposes of resource protection, domestic uses,
 5 upholding the exercise of native Hawaiian traditional and
 6 customary rights, and the conservation and protection of
 7 agricultural activity on lands identified and designated as
 8 important agricultural lands pursuant to part III of chapter
 9 205.

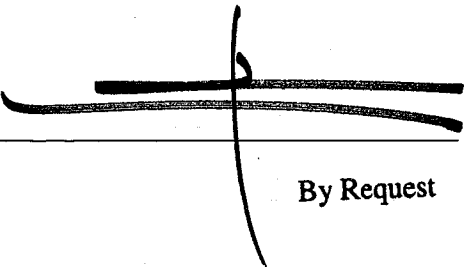
10 [~~e~~] (f) The state water code shall be liberally
 11 interpreted and applied in a manner [~~which~~] that conforms [~~with~~]
 12 to intentions and plans of the counties in terms of land use
 13 planning."

14 SECTION 3. Statutory material to be repealed is bracketed
 15 and stricken. New statutory material is underscored.

16 SECTION 4. This Act shall take effect on July 1, 2009.

17

INTRODUCED BY:



 By Request



Report Title:

State Water Code; Important Agricultural Lands

Description:

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

