

# SB2667

Measure Title: RELATING TO STATE WATER CODE.

Report Title: Water Resources

Description: Requires a private person or entity to obtain a permit to withdraw ground water in certain counties. Establishes certain counties as a designated water management area.

Companion:

Package: None

Current Referral: WTL/PSM, WAM

Introducer(s): SOLOMON, Galuteria, Kahele, Nishihara, Shimabukuro

<u>Sort by Date</u>		<b>Status Text</b>
1/17/2014	S	Introduced.
1/21/2014	S	Passed First Reading.
1/21/2014	S	Referred to WTL/PSM, WAM.
1/30/2014	S	The committee(s) on WTL/PSM has scheduled a public hearing on 02-07-14 1:15PM in conference room 225.
2/3/2014	S	The committee(s) on WTL/PSM has rescheduled its public hearing to 02-07-14 1:00PM in conference room 225.

NEIL ABERCROMBIE  
GOVERNOR OF HAWAII



**STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES**

POST OFFICE BOX 621  
HONOLULU, HAWAII 96809

**Testimony of  
WILLIAM J. AILA, JR.  
Chairperson**

**Before the Senate Committees on  
WATER AND LAND  
and  
PUBLIC SAFETY, INTERGOVERNMENTAL AND MILITARY AFFAIRS**

**Friday, February 07, 2014  
1:00 PM  
State Capitol, Conference Room 225**

**In consideration of  
SENATE BILL 2667  
RELATING TO STATE WATER CODE**

Senate Bill 2667 proposes to amend two sections of the State Water Code, Hawaii Revised Statutes ("Haw. Rev. Stat.") §174C-41 Designation of Water Management Areas, and §174C-48 Permits Required, to:

- (1) Automatically designate ground water management areas in counties with populations of less than 225,000 people to establish administrative control over ground water withdrawals by private persons or entities;
- (2) Limit all ground water use permits to two-year terms subject to renewal at the discretion of the Commission;
- (3) Set unspecified fees for ground water use permits applications and renewals; and
- (4) Remove delegation of authority to the county boards of water supply (except for Oahu) to allocate uses of water for municipal purposes within the limits of water allocated to each county board.

**The Department of Land and Natural Resources ("Department") and the Commission on Water Resources Management ("Commission") strongly oppose this measure.**

**This bill conflicts with many sections of the Water Code, sets inconsistent regulatory policies, creates an unmanageable workload (given present staff resources) and undermines multiple water resource issues currently before the Commission.**

- A. If a groundwater area requires management, anyone affected may file a petition under the current law (Haw. Rev. Stat. §174C-41(b)) to designate an area for management.

**WILLIAM J. AILA, JR.**  
CHAIRPERSON  
BOARD OF LAND AND NATURAL RESOURCES  
COMMISSION ON WATER RESOURCE MANAGEMENT

**ESTHER KIA'AINA**  
FIRST DEPUTY

**WILLIAM M. TAM**  
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES  
BOATING AND OCEAN RECREATION  
BUREAU OF CONVEYANCES  
COMMISSION ON WATER RESOURCE MANAGEMENT  
CONSERVATION AND COASTAL LANDS  
CONSERVATION AND RESOURCES ENFORCEMENT  
ENGINEERING  
FORESTRY AND WILDLIFE  
HISTORIC PRESERVATION  
KAHOOLAWE ISLAND RESERVE COMMISSION  
LAND  
STATE PARKS

There is an existing remedy under the Water Code today to address the problem of threatened ground water withdrawals. If there is a threat to groundwater in any location in the state (not already in a designated groundwater management area), then anyone affected may file a petition with the State Commission on Water Resource Management (“Commission”) to designate that area for management under existing law. Haw. Rev. Stat. §174C-41(b)

On the Island of Hawaii, the only petition now pending before the Commission is the September 13, 2013 petition filed by the United States National Park Service at Kaloko-Honokohau to designate the Keauhou Aquifer System on the Kona coast of the Island of Hawaii. That petition is under review pending a number of studies and further consultation with the County of Hawaii. The Commission is expected to act on the petition this year (2014).

If drought conditions present a serious threat to groundwater in specific areas on the Island of Hawaii, then someone within the affected area may file a petition to designate that area. To date, no such petitions have been filed.

**B. Senate Bill 2667 conflicts with multiple sections of the Hawaii Water Code.**

1. The proposed amendments are inconsistent with the plain language and intent of the State Water Code, Hawaii Revised Statutes (“Haw. Rev. Stat.”) §174C-41 that directs the Commission to evaluate threats to ground water sources and designate for management those areas most in need of direct supervision. Senate Bill 2667 eliminates any threat analysis.

2. Second, Senate Bill 2667 *de facto* designates the entire state--except for the Waianae Coast on Oahu (a county with *more than* 225,000 persons) which is the last remaining area on Oahu not designated. Essentially, the bill would render moot the designation criteria in Haw. Rev. Stat. §174C-44 for groundwater (although not for surface water).

3. Third, Senate Bill 2667 would effectively nullify the procedures in Haw. Rev. Stat. §174C-41, -42, -43, -44 and -46 for ground water (while leaving intact the same procedures for surface water). The procedures to establish a formal record of action, require public participation, and agency consultation would be eliminated.

4. Fourth, it took nine years (1978-87) to work out the complex balance of considerations in the State Water Code. Early drafts of the Code applied the permit process statewide. However, due to the concerns of both counties and multiple landowners, the original design was modified to address threats on a staged basis (through a designated area process) rather than a complete change at one time. As a practical matter, some areas do not require management at this time. Committing staff, time, and money to process permits for existing and then new uses in these areas is a much lower overall priority. The areas that are under stress or threats deserve full attention sooner. Moreover, full designation of every region of the state would pose extraordinary challenges.

5. Senate Bill 2667 proposes a two-year term ground water permit (with discretionary renewals). This proposal completely undermines a fundamental proposition of the Water Code that water uses, properly permitted, may continue so long as the location, quantity, and purpose of use do not change. This proposition (that water uses properly permitted may continue) is

essential for any coherent permit system and for any ability to plan. A two year permit term is completely at odds with the very purpose of the Water Code and will not work.

6. Haw. Rev. Stat §174C-56 already provides for a comprehensive 20-year water use permit compliance review. The first 20-year review was completed in 2008. It resulted in various enforcement and revocation actions. The Commission does not wait for the 20-year reviews to address non-compliance. The Commission acts on a case-by-case basis where circumstances require immediate action. In addition, through the Commission’s newly-developed online water use reporting system (which has just been developed and successfully beta tested), the Commission will begin enforcement of the monthly reporting requirement. These reports will help to ensure real-time user compliance with the terms and conditions of water use permits and certificates.

7. Senate Bill 2667 proposes no procedures and no criteria for renewal of permits following the two year term. Is the renewal process the same procedures as initial application? Will another costly public notice be required? Do the provisions for objections, public hearings, and contested case hearing requests apply? There should be some standards criteria that can be applied equitably so that Commission renewal decisions are not perceived as arbitrary and capricious.

8. Senate Bill 2667 is inconsistent with the requirement under HRS §174C-48(b) that the Commission delegate to the county boards of water supply (“BWS”) the authority to allocate the use of water for municipal purposes, subject to the limits of water supply allocated to the county boards of water supply in their role as water purveyors in designated ground water management areas. This delegation of authority has worked well for the county boards of water supply. Without it, the Commission would have to permit every end user on the BWS system – a task the BWS now does. There is no good reason to make such a change.

The Commission has allowed some administrative modifications so that batteries of municipal back up wells or shifting allocations among county wells to more evenly distribute pumping (subject to certain conditions) is useful. Delegating authority has provided for more efficient use by the counties. It has provided flexibility to respond to new information derived from numerical models regarding optimal well placement, extraction levels, and conservation efforts.

9. It is unclear whether Haw. Rev. Stat. §174C-48(a), which exempts individual domestic users, will still apply. Many of the private persons or entities that this bill seeks to regulate are individual domestic users currently exempt from water use permits.

10. The Commission is reviewing its administrative costs for implementing permitting provisions under the State Water Code. The Commission recently granted authority for the staff to initiate rule-making proceedings and will be considering a fee schedule to defray administrative costs. Significant time and thought has gone into developing language for the proposed rule and fee schedule. The proposed rule will enable flexibility to adjust permit fees in the future without the need for statutory amendments or further rule-making proceedings. This measure would negate these efforts and render future fee adjustments less responsive to future conditions. The estimated administrative costs to process single simple water use permit,

including public noticing requirements, is a few thousand dollars. Requiring water users to bear such fees every two years would be onerous.

11. The Commission has 22 authorized positions, including its Deputy Director and secretarial support staff. Historically, the Commission has been significantly underfunded and understaffed to carry out the many mandates of the Water Code. In addition to resource assessment, monitoring, and long-range planning responsibilities, the Commission's limited staff must address numerous contentious regulatory issues in both ground and surface water.

Complaints and formal disputes are increasing statewide. There are two contested case proceedings on remand from the Hawaii Supreme Court for instream flow standards in a) the four streams of Na Wai Eha (central Maui); and 2) for eight streams in East Maui. There is a contested case to determine appurtenant (taro) surface water rights for approximately 200 claimants in Na Wai Eha, Maui. This is the first time in Hawaii's history that appurtenant rights will be addressed through any process other than individual court suits. These are complex surface water issues that are being addressed for the first time. There are pending petitions to set instream flows in five watersheds in west Maui. There is a petition for dispute resolution, setting instream flow standards, and for a declaratory order regarding waste for the entire Waimea River system in west Kauai. Statewide ground water designation would seriously detract from this important work.

12. There are currently 3,858 wells in the state that may require water use permits if Senate Bill 2667 becomes law. Any proposed new wells or ground water uses would need to be deferred until the process of permitting existing users is completed. This could hold up development of not only private projects, but also public purpose projects of governmental agencies.

13. Finally, the Commission has been concentrating on gathering more existing water use data for both surface and ground waters statewide to manage our water resources. The Commission consolidated all its water resource regulatory, data, and research databases in 2012 in its Water Resource Information Management System ("WRIMS"). One feature of WRIMS is the online water use reporting feature that facilitates compliance and enforcement. Online reporting from all source owners began in March, 2013, with large users and water management areas. However, statewide, only about one-third of all production and permanent monitor wells and one-fifth of the 1,288 known surface water diversions are currently reporting their water use. The Commission recently updated a 1992 policy that exempted surface and some small ground water source owners from reporting, clarifying that all water source owners are required to report monthly water data as required under the Water Code. Existing use data is a critical input to the water use permitting process. Senate Bill 2667 would negatively impact this long-overdue fundamental management effort by diverting available resources.

Senate Bill 2667 should be HELD.

Thank you for the opportunity to testify on this measure.



**DEPARTMENT OF WATER SUPPLY • COUNTY OF HAWAI'I**

345 KEKŪANAŌ'A STREET, SUITE 20 • HILO, HAWAI'I 96720

TELEPHONE (808) 961-8050 • FAX (808) 961-8657

February 4, 2014

The Honorable Malama Solomon, Senator  
4th Senatorial District  
Chair, Senate Committee on Water and Land

The Honorable Will Espero, Senator  
19<sup>th</sup> Senatorial District  
Chair, Senate Committee on Public Safety, Intergovernmental and Military Affairs

**SB 2667, RELATING TO STATE WATER CODE**

The Department of Water Supply, County of Hawai'i, respectfully submits this testimony opposing Senate Bill 2667 which proposes to amend Section 174C-41, Hawaii Revised Statutes.

The proposed amendments are not in line with the intent of the current legislation which allows the State to assume management of the water resources in an area when it is shown scientifically that those resources are threatened. The proposed amendments aim to have the State manage the water resources strictly based on population numbers rather than the actual condition of the resources. We feel that approach is not reasonable and is without merit.

Secondly, our understanding is that all entities already must apply for permits (well-drilling and pump installation) as well as provide monthly reports to the State Commission on Water Resource Management (CWRM). This provides CWRM with the information needed to determine if water resources are nearing a point of being threatened.

We also feel that the proposed legislation will have an adverse impact to our County by delaying County planning permits as well as unnecessary increased costs due to biennial permitting fees.

Thank you for your consideration. If there are any questions, please contact me at (808) 961-8050.

Sincerely yours,

  
Quirino Antonio, Jr., P.E.  
Manager-Chief Engineer

KKO:dmj

copy – Honorable William P. Kenoi, Mayor, County of Hawai'i  
Honorable J Yoshimoto, Chair, Hawai'i County Council  
Honorable Dennis Onishi, Councilman, Hawai'i State Association of Counties  
Duane Kanuha, Director, Planning Department  
Kenneth Kaneshiro, Chairperson, Water Board  
Ernest Lau, Manager and Chief Engineer, Honolulu Board of Water Supply  
Dave Taylor, Director, Maui Department of Water Supply  
Kirk Saiki, Acting Manager and Chief Engineer, Kauai Department of Water Supply

*... Water, Our Most Precious Resource ... Ka Wai A Kane ...*

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ALAN M. ARAKAWA  
Mayor



DAVID TAYLOR, P.E.  
Director

PAUL J. MEYER  
Deputy Director

**DEPARTMENT OF WATER SUPPLY  
COUNTY OF MAUI**

200 SOUTH HIGH STREET  
WAILUKU, MAUI, HAWAII 96793-2155  
www.mauiwater.org

**February 6, 2014**

The Honorable Malama Solomon, Chair and Members  
Committee on Water and Land  
The Honorable Will Espero, Chair and Members  
Committee on Public Safety, Intergovernmental and Military Affairs  
Senate  
Hawaii State Capitol  
Senate Conference Room 225  
415 South Beretania Street  
Honolulu, Hawaii 96813

**Subject: Senate Bill 2667 Relating to the State Water Code**

Dear Honorable Chairs Soloman, Espero and Members:

The Maui County Department of Water Supply (DWS) **opposes** Senate Bill 2667, relating to the State Water Code requiring a private person or entity to obtain a permit to withdraw ground water in certain counties and establishing certain counties as a designated water management area. Maui County currently has two CWRM designated water management areas located in Iao Valley and on Molokai.

We oppose this measure because the Commission on Water Resources Management (CWRM) does not currently have the staffing resources needed to oversee all water management area designations for counties with populations under 225,000 people. That would, in effect, create an administrative burden ultimately creating delays and possibly bring to a standstill, all other on-going business DWS conducts with CWRM. We do not see how the additional burden of this bill could possibly be managed in a timely or efficient manner with the current staffing and resource capacity of the Commission. Until the CWRM receives a resource allocation by the Legislature that would enable them to oversee and administer the various requirements of this Bill to their satisfaction, we cannot support SC 2667.

Thank you for consideration of our testimony in opposition of Senate Bill 2667.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "David Taylor".

David Taylor, P.E.  
Director of Water Supply

*"By Water All Things Find Life"*





*Water has no substitute.....Conserve it*

February 5, 2014

Testimony of  
Kirk Saiki, P.E.  
*Acting Manager and Chief Engineer*

Before the Senate Committee on Water & Land  
Friday, February 7, 2014  
1 p.m.  
State Capitol, Conference Room 225

The Honorable Senator Malama, Senator Espero and the Committee on Water & Land,

**RE: SB2667, RELATING TO STATE WATER CODE**

The Department of Water Supply, County of Kaua'i, respectfully submits this testimony **opposing** Senate Bill 2667 which proposes to require a private person or entity to obtain a permit to withdraw groundwater in certain counties and establishes certain counties as a designated water management area.

The proposed amendment to establish certain counties as a designated water management area by population is not consistent with the existing provisions set forth in the Section 174C-41 of the Hawaii Revised Statues. Currently, the State can establish a designated management area only after it has conducted scientific investigations and research to reasonably determine that water resources in the area may be threatened. Establishing designated water management areas by population appears subjective and does not consider the condition of the water resources in the area.

In accordance with the provisions set forth in Section 174C-84 of the Hawaii Revised Statues, all well construction and well pump installation must apply for and receive a permit from the State Commission on Water Resource Management (CWRM) before constructing and operating the well. The proposed amendment to Section 174C-48 of the Hawaii Revised Statues will require another permit for ground water withdrawals. It is our opinion that the information provided for well construction permit, pump installation permit, and the monthly reports to CWRM should be adequate to determine the condition of water resources.

The proposed amendments will adversely impact our county by increasing project completion times and costs due to the additional permits and water management area designation.

Thank you for the opportunity to testify. Should you have any questions feel free to call me at (808) 245-5408 or e-mail at [ksaiki@kauaiwater.org](mailto:ksaiki@kauaiwater.org).



Respectfully,



Kirk Saiki P.E.  
*Acting* Manager-Chief Engineer

KS/mjg

CC: Honorable Bernard P. Carvalho, Mayor, County of Kauai  
Clyde Nakaya, Chairperson, Kaua'i Board of Water Supply  
Ernest Lau, Manager and Chief Engineer, Honolulu Board of Water Supply  
Dave Taylor, Director, Maui Department of Water Supply  
Quirino Antonio Jr., Manager and Chief Engineer, County of Hawai'i, Department of Water Supply

**FORESTCITY**  
HAWAII KONA, LLC

February 6, 2014

The Honorable Malama Solomon, Senator  
4th Senatorial District  
Chair, Senate Committee on Water and Land

The Honorable Will Espero, Senator  
19th Senatorial District  
Chair, Senate Committee on Public Safety, Intergovernmental and Military Affairs

**SB 2667, RELATING TO STATE WATER CODE**

Thank you for this opportunity to provide testimony against Senate Bill 2667, relating to amendments to the State Water Code (Chapter 174C, Hawaii Revised Statutes).

Forest City Hawaii Kona, LLC opposes the proposed measure. Forest City Hawaii Kona, LLC, in partnership with the Hawaii Housing Finance and Development Corporation, is developing a mixed-use affordable housing project in Kona to include up to 2,330 residential units, more than 50% of which will be sold or rented to Hawaii residents who are at 140% or below of the HUD area median income. The Kamakana Villages project will also include commercial sites, numerous park and open space areas, archaeological preserves, and school sites. We are honored to have an opportunity to build a community where so many kama'āina will be able to make their home.

Developing Kamakana Villages means developing infrastructure, including water systems, to support this community. We are very concerned that SB 2667 will delay and likely jeopardize our ability to affordably and efficiently develop the water system that is needed by this community. SB 2667 will add an expensive and unnecessary layer of State control over a process that is currently comprehensively managed by the County Department of Water Supply.

The Water Code already has a process for designating water management areas based on scientific investigations and research. That process can be initiated by CWRM itself, or by the petition of others. Once the process has started, the law requires consultation with the County Council, County Mayor and County Water Board, and factual data must prove that designation is necessary. SB 2667 guts this deliberate process, strips away the authority of the counties, and forces all neighbor island water users to obtain permission from the State in order to develop water systems to serve neighbor island residents. We urge you to reject SB 2667.

Thank you for your consideration.

Sincerely yours,



Ann Bouslog  
Development Manager

**From:** [mailinglist@capitol.hawaii.gov](mailto:mailinglist@capitol.hawaii.gov)  
**To:** [WTLTestimony](#)  
**Cc:** [rsmith@lanihau.net](mailto:rsmith@lanihau.net)  
**Subject:** Submitted testimony for SB2667 on Feb 7, 2014 13:00PM  
**Date:** Wednesday, February 05, 2014 7:42:19 AM

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**SB2667**

Submitted on: 2/5/2014

Testimony for WTL/PSM on Feb 7, 2014 13:00PM in Conference Room 225

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Riley Smith	Lanihau Properties, LLC	Oppose	No

Comments: There is a current process in place for DLNR, CWRM to assess whether an aquifer should be designated as a water management area. To change the criteria to population based, rather than scientific/data based does not make sense.

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

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**From:** [mailinglist@capitol.hawaii.gov](mailto:mailinglist@capitol.hawaii.gov)  
**To:** [WTLTestimony](#)  
**Cc:** [uguava@gmail.com](mailto:uguava@gmail.com)  
**Subject:** Submitted testimony for SB2667 on Feb 7, 2014 13:00PM  
**Date:** Tuesday, February 04, 2014 2:17:35 PM

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**SB2667**

Submitted on: 2/4/2014

Testimony for WTL/PSM on Feb 7, 2014 13:00PM in Conference Room 225

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Judith M Frazier	Individual	Support	No

Comments: We are in dire need of a bigger park!!

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

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**Nancy E. Burns, P.E., LLC**  
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February 5, 2014

The Honorable Malama Solomon, Senator  
4<sup>th</sup> Senatorial District  
Chair, Senate Committee on Water & Land

The Honorable Will Espero, Senator  
19<sup>th</sup> Senatorial District  
Chair, Senate Committee on Public Safety, Intergovernmental and Military Affairs

**SB 2667, Relating to State Water Code**

I am a civil engineer in Kona Hawaii and I strongly oppose Senate Bill 2667 which proposes to amend Section 174C-41, Hawaii Revised Statutes.

The proposed amendments are not in line with the intent of the current legislation which allows the State to assume management water resources in an area when it is shown scientifically that those resources are threatened. To date there has been no scientific evidence that water wells on the Island of Hawaii have threatened resources. The proposed amendments base the State control of water resources on a small population density which does not make sense from scientific or logical standpoint. A smaller population would use less water and therefore make management by the State rather than the County less of a concern. The proposed population based management water resources is not reasonable and is without merit.

In addition, it is my understanding that all entities already must apply for permits (well drilling and pump installations) as well as provide monthly reports to the State Commission on Water Resource Management (CWRM). This provides CWRM with the information needed to determine if water resources within an area are nearing a point of being threatened from a scientific fact-based view point and not just a subjective perspective.

I believe that the proposed legislation will have a negative impact on the economy as it will slow the ability of projects to proceed and increase costs due to biennial permit fees.

Please call me at 325-3182 if you have any questions.

Sincerely,  
**NANCY E. BURNS, P.E., LLC**



Nancy E. Burns, P.E.