
A BILL FOR AN ACT

RELATING TO THE DEPARTMENT OF LAND AND NATURAL RESOURCES.

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

1 SECTION 1. Chapter 171, Hawaii Revised Statutes, is
2 amended by adding a new section to subpart D of part II to be
3 appropriately designated and to read as follows:

4 "§171- Disposition of water rights; exemptions.

5 Notwithstanding any other law to the contrary, the provisions of
6 this chapter relating to the disposition of water rights shall
7 not apply to any person practicing the traditional production of
8 wetland kalo."

9 SECTION 2. Section 171-58, Hawaii Revised Statutes, is
10 amended to read as follows:

11 "§171-58 Minerals and water rights. (a) Except as
12 provided in this section the right to any mineral or surface or
13 ground water shall not be included in any lease, agreement, or
14 sale, this right being reserved to the State; provided that the
15 board may make provisions in the lease, agreement, or sale, for
16 the payment of just compensation to the surface owner for
17 improvements taken as a condition precedent to the exercise by



1 the State of any reserved rights to enter, sever, and remove
2 minerals or to capture, divert, or impound water.

3 (b) Disposition of mineral rights shall be in accordance
4 with the laws relating to the disposition of mineral rights
5 enacted or hereafter enacted by the legislature.

6 (c) Disposition of water rights may be made by lease at
7 public auction as provided in this chapter or by permit for
8 temporary use on a month-to-month basis under those conditions
9 ~~[which]~~ that will best serve the interests of the State and
10 subject to a maximum term of one year and other restrictions
11 under the law; provided that:

12 (1) Where an application has been made for a lease under
13 this section to continue a previously authorized
14 disposition of water rights, a holdover may be
15 authorized annually until the pending application for
16 the disposition of water rights is finally resolved or
17 for a total of ~~[three]~~ ten consecutive one-year
18 holdovers, whichever occurs sooner; provided that the
19 total period of the holdover for any applicant shall
20 not exceed ~~[three]~~ ten years; provided further that
21 the holdover is consistent with the public trust



1 doctrine; provided further that any holdover
2 authorization that allows or has the effect of
3 allowing the use of over two million gallons per day
4 shall:

5 (A) Be issued pursuant to a final written decision
6 that explicitly considers and includes conditions
7 to minimize any potential impacts to the public
8 trust purposes of any affected water source,
9 including the ecological, natural, recreational,
10 and aesthetic values of affected surface waters
11 in their natural state; and

12 (B) Limit the total aggregate quantity of any surface
13 water allowed to be received under all holdovers
14 issued pursuant to an application to the
15 applicant's demonstrated actual, reasonable,
16 beneficial needs for the holdover period;

17 (2) If a contested case pursuant to chapter 91 is
18 requested on a one-year holdover, any provision of law
19 notwithstanding, the holdover shall be continued
20 without any action of the board pending completion of
21 the proceedings;



1 ~~[-2-]~~ (3) Any disposition by lease shall be subject to
2 disapproval by the legislature by two-thirds vote of
3 either the senate or the house of representatives or
4 by majority vote of both in any regular or special
5 session next following the date of disposition; and

6 ~~[-3-]~~ (4) After a certain land or water use has been
7 authorized by the board subsequent to public hearings
8 and conservation district use application and
9 environmental impact statement approvals, water used
10 in nonpolluting ways, for nonconsumptive purposes
11 because it is returned to the same stream or other
12 body of water from which it was drawn, and essentially
13 not affecting the volume and quality of water or biota
14 in the stream or other body of water, may also be
15 leased by the board with the prior approval of the
16 governor and the prior authorization of the
17 legislature by concurrent resolution.

18 (d) Any lease of water rights shall contain a covenant on
19 the part of the lessee that the lessee shall provide from waters
20 leased from the State under the lease or from any water sources
21 privately owned by the lessee to any farmer or rancher engaged



1 in irrigated pasture operations, crop farming, pen feeding
2 operations, or raising of grain and forage crops, or for those
3 public uses and purposes as may be determined by the board, at
4 the same rental price paid under the lease, plus the
5 proportionate actual costs, as determined by the board, to make
6 these waters available, so much of the waters as are determined
7 by the board to be surplus to the lessee's needs and for that
8 minimum period as the board shall accordingly determine;
9 provided that in lieu of payment for those waters as the State
10 may take for public uses and purposes the board may elect to
11 reduce the rental price under the lease of water rights in
12 proportion to the value of the waters and the proportionate
13 actual costs of making the waters available. Subject to the
14 applicable provisions of section 171-37(3), the board, at any
15 time during the term of the lease of water rights, may withdraw
16 from waters leased from the State and from sources privately
17 owned by the lessee so much water as it may deem necessary to:
18 (1) [~~preserve~~] Preserve human life; and
19 (2) [~~preserve~~] Preserve animal life,
20 in that order of priority; and that from waters leased from the
21 State the board, at any time during the term of the lease of



1 water rights, may also withdraw so much water as it may deem
2 necessary to preserve crops; provided that payment for the
3 waters shall be made in the same manner as provided in this
4 section.

5 (e) Any new lease of water rights shall contain a covenant
6 that requires the lessee and the department of land and natural
7 resources to jointly develop and implement a watershed
8 management plan. The board shall not approve any new lease of
9 water rights without the foregoing covenant or a watershed
10 management plan. The board shall prescribe the minimum content
11 of a watershed management plan; provided that the watershed
12 management plan shall require the prevention of the degradation
13 of surface water and ground water quality to the extent that
14 degradation can be avoided using reasonable management
15 practices.

16 (f) Upon renewal, any lease of water rights shall contain
17 a covenant that requires the lessee and the department of land
18 and natural resources to jointly develop and implement a
19 watershed management plan. The board shall not renew any lease
20 of water rights without the foregoing covenant or a watershed
21 management plan. The board shall prescribe the minimum content



1 of a watershed management plan; provided that the watershed
2 management plan shall require the prevention of the degradation
3 of surface water and ground water quality to the extent that
4 degradation can be avoided using reasonable management
5 practices.

6 (g) The department of land and natural resources shall
7 notify the department of Hawaiian home lands of its intent to
8 execute any new lease, or to renew any existing lease of water
9 rights. After consultation with affected beneficiaries, these
10 departments shall jointly develop a reservation of water rights
11 sufficient to support current and future homestead needs. Any
12 lease of water rights or renewal shall be subject to the rights
13 of the department of Hawaiian home lands as provided by section
14 221 of the Hawaiian Homes Commission Act.

15 (h) The department shall retain a certified appraiser who
16 has a sufficient understanding of real property and water law to
17 determine the valuation of water for the purposes of this
18 section.

19 (i) Prior to the approval of any holdover authorization
20 after January 1, 2020, the board shall hold a public hearing
21 pursuant to chapter 91 on the adoption of proposed



1 administrative rules on the disposition of water rights by lease
2 at public auction and water valuation process."

3 SECTION 3. Act 126, Session Laws of Hawaii 2016, is
4 amended as follows:

5 1. By amending section 2 to read:

6 "SECTION 2. The department of land and natural resources
7 shall prepare and submit an annual [reports] report to the
8 legislature no later than twenty days before the convening of
9 each [~~of the~~] regular [~~sessions~~] session of [~~2017, 2018, 2019,~~
10 ~~and 2020.~~] the legislature for the years 2017-2027. The reports
11 shall include:

- 12 (1) The status of applications to continue previously-
- 13 authorized dispositions of water rights;
- 14 (2) Actions taken on the applications during the [~~fiscal~~
- 15 ~~period of July 1, 2016, to November 30, 2016, fiscal~~
- 16 ~~year 2016-2017, fiscal year 2017-2018, and fiscal year~~
- 17 ~~2018-2019, respectively;]~~ immediately preceding fiscal
- 18 year; and
- 19 (3) Any relevant recommendations for legislative action or
- 20 appropriation."

21 2. By amending section 4 to read:



1 "SECTION 4. This Act shall take effect upon its approval,
2 and shall apply to applications for a lease to continue a
3 previously authorized disposition of water rights that are
4 pending before the board of land and natural resources on the
5 effective date of this Act or filed with the board of land and
6 natural resources on or after the effective date of this Act,
7 but prior to June 30, [~~2019~~] 2026; provided that:

8 (1) This Act shall be repealed on June 30, [~~2019~~] 2026,
9 and section 171-58(c), Hawaii Revised Statutes, shall
10 be reenacted in the form in which it read on the day
11 prior to the effective date of this Act; and

12 (2) Any holdovers first applied for under this Act prior
13 to June 30, [~~2019~~] 2026, may be reauthorized, as
14 provided in section 1 of this Act, beyond June 30,
15 [~~2019~~] 2026."

16 SECTION 4. (a) The board of land and natural resources,
17 in consultation with the commission on water resources
18 management, shall:

19 (1) Conduct an analysis of the effectiveness of the
20 State's long-term water disposition laws, including
21 section 171-58, Hawaii Revised Statutes, and whether



1 that section is appropriate to guide the board of land
2 and natural resources on the issuance of long-term
3 leases for the disposition of water rights; and

4 (2) Recommend any changes to the State's laws, rules, and
5 procedures relating to the issuance of long-term
6 leases for the disposition of water rights.

7 (b) The board of land and natural resources shall submit a
8 report of its findings and recommendations, including any
9 proposed legislation, to the legislature no later than twenty
10 days prior to the convening of the regular sessions of 2020.

11 SECTION 5. Statutory material to be repealed is bracketed
12 and stricken. New statutory material is underscored.

13 SECTION 6. This Act shall take effect on July 1, 2050.



Report Title:

DLNR; Disposition of Water Rights; Exemptions; Report

Description:

Allows for a total of ten consecutive one-year holdovers of water permits under section 171-58(c), HRS. Places conditions on holdovers that authorize the use of over two million gallons of water per day. Requires holdovers to continue without Board of Land and Natural Resources action while a contest case hearing is pending. Requires the Board of Land and Natural Resources to hold a public hearing on the adoption of proposed administrative rules on the disposition of water rights by lease at public auction and water valuation process. Requires the Department of Land and Natural Resources to retain a certified appraiser to determine water valuation. Exempts the traditional production of wetland kalo from provisions of chapter 171, HRS, relating to disposition of water rights. Extends the repeal and reenactment provision for Act 126, SLH 2016, from June 30, 2019, to June 30, 2022. Requires the Board of Land and Natural Resources and the Commission on Water Resource Management to report to the legislature on the effectiveness of the State's long-term water disposition laws. Effective 7/1/2050. (SD2 Proposed)

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