

JAN 21 2022

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# A BILL FOR AN ACT

RELATING TO WATER QUALITY.

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

1       SECTION 1. The legislature finds that for Hawai'i's people,  
2       culture, and resources, *ola i ka wai*, "water is life." The  
3       Hawaii State Constitution recognizes that water is held in trust  
4       by the State for the benefit of the people and mandates that the  
5       State and its political subdivisions conserve and protect  
6       Hawai'i's water. The public trust has a duty and the authority  
7       to maintain the purity and flow of Hawai'i's waters for future  
8       generations. The Hawaii Supreme Court has recognized four  
9       public trust purposes:

10       (1) The maintenance of water in its natural state;

11       (2) Domestic water uses;

12       (3) Water for the department of Hawaiian home lands; and

13       (4) Water use in the exercise of traditional and customary

14       Native Hawaiian rights.

15       The legislature further finds that to protect and conserve  
16       water, water quality and quantity issues must be managed  
17       holistically as every public trust purpose and other water uses



1 have water quality considerations before quantity. When  
2 enacting the State Water Code, Session Laws of Hawaii 1987 (Act  
3 45), the fourteenth legislature found that the water resources of  
4 the State were in need of management and regulation, as there  
5 has already been shortages of water, a decline in groundwater  
6 levels, and severe pollution by toxic contaminants. Therefore,  
7 in acting pursuant to its obligations to implement article XI,  
8 section 7, of the Hawaii State Constitution, the fourteenth  
9 legislature recognized and this legislature emphasizes again, as  
10 did the 1978 constitutional convention, that the State has an  
11 obligation to prevent any further harm by protecting,  
12 controlling, and regulating the use and quality of Hawai'i's  
13 water resources for the benefit of its people.

14 Currently, the State Water Code tasks the commission on  
15 water resource management with its implementation and  
16 administration. The commission on water resource management  
17 adopted the motto ke kahawai pono, "the trustee who oversees the  
18 rightful sharing of water." It is with this conviction that the  
19 commissioners, deputy director, and staff strive to ensure the  
20 availability of freshwater for generations to come.



1       The legislature additionally finds that quantity decisions  
2   are also quality decisions. Therefore, managing water under a  
3   single agency recognizes the need to protect, conserve, and use  
4   water at every step of the water cycle. This integrated  
5   management honors the connections between groundwater, surface  
6   water, stormwater, wastewater, and coastal water. Consolidation  
7   of water quantity and quality decisions to a single agency can  
8   effectively carry out the mandate under article XI, section 7,  
9   of the Hawaii State Constitution, to: set overall water  
10   conservation, quality and use policies; define beneficial and  
11   reasonable uses; protect ground and surface water resources,  
12   watersheds and natural stream environments; establish criteria  
13   for water use priorities while assuring appurtenant rights and  
14   existing correlative and riparian uses and establish procedures  
15   for regulating all uses of Hawai'i's water resources.

16       Integration of water quality and quantity oversight with  
17   the commission on water resource management will create greater  
18   government efficiency and offer the benefit of simplified  
19   permitting procedures. The commission on water resource  
20   management as the single lead agency can increase and integrate  
21   enforcement and compliance of water quality and quantity



1 provisions. Integrating water quality and quantity will aid the  
2 conservation of water resources as the commission on water  
3 resource management can oversee the planning and allocation of  
4 recycled wastewater and desalinated water. The use of recycled  
5 water has become more significant due to the State's growing  
6 population, limited potable water resources due to the climate  
7 crisis, and wastewater disposal issues.

8 Therefore, to create a wider forum for public participation  
9 on issues related to water, the purpose of this Act is to  
10 integrate water quality policy within the responsibilities of  
11 the commission on water resource management by transferring  
12 jurisdiction from the department of health.

13 SECTION 2. Section 174C-3, Hawaii Revised Statutes, is  
14 amended as follows:

15 1. By adding seven new definitions to be appropriately  
16 inserted and to read:

17 "Coastal waters" means all waters surrounding the islands  
18 of the state from the coast of any island to a point three miles  
19 seaward of the coast and, in the case of streams, rivers, and  
20 drainage ditches, to a point three miles seaward from their  
21 point of discharge into the sea and includes both brackish



1 waters, fresh waters, and salt waters that are subject to the  
2 ebb and flow of the tide.

3 "Reclaimed water" means treated wastewater that by design  
4 is intended or used for a beneficial purpose.

5 "Wastewater" means any liquid waste, whether treated or  
6 not, and whether animal, mineral, or vegetable including  
7 agricultural, industrial, and thermal wastes.

8 "Water pollution" means:

9 (1) Contamination or other alteration of the physical,  
10 chemical, or biological properties of any state  
11 waters, including change in temperature, taste, color,  
12 turbidity, or odor of the waters, or

13 (2) Discharge of any liquid, gaseous, solid, radioactive,  
14 or other substances into any state waters,  
15 as will or is likely to create a nuisance or render such waters  
16 unreasonably harmful, detrimental, or injurious to public  
17 health, safety, or welfare, including harm, detriment, or injury  
18 to public water supplies, fish and aquatic life and wildlife,  
19 traditional and customary Native Hawaiian uses, recreational  
20 purposes and agricultural and industrial research and scientific  
21 uses of such waters or as will or is likely to violate any water



1 quality standards, effluent standards, treatment and  
2 pretreatment standards, or standards of performance for new  
3 sources adopted by the commission.

4 "Water quality" means chemical, physical, biological,  
5 bacteriological, radiological, and other properties and  
6 characteristics of water that affects its use.

7 "Watershed" means those lands that capture and transmit  
8 water to streams and that induce percolation to replenish  
9 aquifers.

10 "Wetlands" means land that is transitional between  
11 terrestrial and aquatic ecosystems where the water table is  
12 usually at or near the surface or the land is covered by shallow  
13 water. A wetland shall have one or more of the following  
14 attributes:

15 (1) At least periodically the land supports predominantly  
16 hydrophytic vegetation;

17 (2) The substratum is predominantly undrained hydric soil;  
18 or

19 (3) The substratum is nonsoil (gravel or rocks) and is at  
20 least periodically saturated with water or covered by  
21 shallow water.



1        Wetlands may be fresh, brackish, or saline and generally  
2   include swamps, marshes, bogs, and associated ponds and pools,  
3   mud flats, isolated seasonal ponds, littoral zones of standing  
4   water bodies, and alluvial floodplains."

5        2. By amending the definition of "water" or "waters of the  
6   State" to read:

7        "'Water" or "waters of the State" means any and all water,  
8   whether fresh, brackish, or saltwater, or reclaimed wastewater,  
9   on or beneath the surface of the ground, including natural or  
10   artificial watercourses, estuaries, wetlands, lakes, ponds, or  
11   diffused surface water and water percolating, standing, or  
12   flowing beneath the surface of the ground~~[-]~~, and coastal  
13   waters."

14        3. By amending the definition of "water source" to read:

15        "'Water source" means a place within or from which water is  
16   or may be developed, including but not limited to: (1)  
17   [~~generally,~~] an area such as a watershed defined by topographic  
18   boundaries~~[-or-a]~~; (2) a definitive ground water body; [~~and (2)~~  
19   ~~specifically, a particular~~] (3) a stream, other surface water  
20   body, spring, tunnel, or well or [~~related~~] combination



1    thereof[-]; (4) other places from which water may be taken; (5)  
2    reclaimed wastewater; and (6) desalinated water."

3            SECTION 3.    Section 174C-4, Hawaii Revised Statutes, is  
4    amended by amending subsection (a) to read as follows:

5            "(a)    All waters of the State are subject to regulation  
6    under the provisions of this chapter unless specifically  
7    exempted.    ~~[No provision of this chapter shall apply to coastal~~  
8    ~~waters.]~~    Nothing in this chapter to the contrary shall restrict  
9    the planning or zoning power of any county under chapter 46."

10           SECTION 4.    Section 174C-5, Hawaii Revised Statutes, is  
11    amended to read as follows:

12           "**§174C-5    General powers and duties.**    The general  
13    administration of the state water code shall rest with the  
14    commission on water resource management.    In addition to its  
15    other powers and duties, the commission:

16           (1)    Shall carry out topographic surveys, research, and  
17           investigations into all aspects of water use and water  
18           quality;

19           (2)    Shall designate water management areas for regulation  
20           under this chapter where the commission, after the  
21           research and investigations mentioned in paragraph





1           (1), shall consult with the appropriate county council  
2           and county water agency, and after public hearing and  
3           published notice, finds that the water resources of  
4           the areas are being threatened by existing or proposed  
5           withdrawals of water;

6           (3) Shall establish an instream use protection program  
7           designed to protect, enhance, and reestablish, where  
8           practicable, beneficial instream uses of water in the  
9           State;

10          (4) May contract and cooperate with the various agencies  
11          of the federal government and with state and local  
12          administrative and governmental agencies or private  
13          persons;

14          (5) May enter, after obtaining the consent of the property  
15          owner, at all reasonable times upon any property other  
16          than dwelling places for the purposes of conducting  
17          investigations and studies or enforcing any of the  
18          provisions of this code, being liable, however, for  
19          actual damage done. If consent cannot be obtained,  
20          reasonable notice shall be given prior to entry;



1           (6) Shall cooperate with federal agencies, other state  
2           agencies, county or other local governmental  
3           organizations, and all other public and private  
4           agencies created for the purpose of utilizing and  
5           conserving the waters of the State, and assist these  
6           organizations and agencies in coordinating the use of  
7           their facilities and participate in the exchange of  
8           ideas, knowledge, and data with these organizations  
9           and agencies. For this purpose the commission shall  
10          maintain an advisory staff of experts;

11          (7) Shall prepare, publish, and issue printed pamphlets  
12          and bulletins as the commission deems necessary for  
13          the dissemination of information to the public  
14          concerning its activities;

15          (8) May appoint and remove agents, including hearings  
16          officers and consultants, necessary to carry out the  
17          purposes of this chapter, who may be engaged by the  
18          commission without regard to the requirements of  
19          chapter 76 and section 78-1;

20          (9) May hire employees in accordance with chapter 76;



1       (10) May acquire, lease, and dispose of such real and  
2           personal property as may be necessary in the  
3           performance of its functions, including the  
4           acquisition of real property for the purpose of  
5           conserving and protecting water and water related  
6           resources as provided in section 174C-14;

7       (11) Shall identify, by continuing study, those areas of  
8           the State where salt water intrusion is a threat to  
9           fresh water resources and report its findings to the  
10          appropriate county mayor and council and the public;

11       (12) Shall provide coordination, cooperation, or approval  
12          necessary to the effectuation of any plan or project  
13          of the federal government in connection with or  
14          concerning the waters of the State. The commission  
15          shall approve or disapprove any federal plans or  
16          projects on behalf of the State. No other agency or  
17          department of the State shall assume the duties  
18          delegated to the commission under this paragraph;  
19          ~~[except that the department of health shall continue~~  
20          ~~to exercise the powers vested in it with respect to~~  
21          ~~water quality, and]~~ except that the department of



business, economic development, and tourism shall  
continue to carry out its duties and responsibilities  
under chapter 205A;

(13) Shall plan and coordinate programs for the  
development, conservation, protection, control, and  
regulation of water resources, based upon the best  
available information, and in cooperation with federal  
agencies, other state agencies, county or other local  
governmental organizations, and other public and  
private agencies created for the utilization and  
conservation of water;

(14) Shall catalog and maintain an inventory of all water  
uses and water resources; and

(15) Shall determine appurtenant water rights, including  
quantification of the amount of water entitled to by  
that right, which determination shall be valid for  
purposes of this chapter."

SECTION 5. Section 174C-6, Hawaii Revised Statutes, is  
amended to read as follows:

"§174C-6 Deputy [~~to the chairperson of the commission on~~  
for water resource management[-]; deputy for water quality. (a)



1 There shall be [a] two first [~~deputy~~] deputies to the  
2 chairperson of the commission on water resource management  
3 ("deputy for water resource management" [↯] and "deputy for  
4 quality") who shall be in addition to any other first deputy to  
5 the chairperson as the chairperson of the board of land and  
6 natural resources. The deputy for water resource management  
7 shall have experience in the area of water resources and the  
8 deputy for water quality shall have experience in the area of  
9 water quality. Both shall be appointed by the chairperson with  
10 the approval of a majority of the commission.

11 (b) The duties of the deputy for water resource management  
12 shall be to administer and implement, under the direction of the  
13 commission, the state water code and all rules, and other  
14 directives promulgated in accordance therewith by the  
15 commission. Nothing in this provision shall be construed as  
16 limiting the authority of the commission as to matters regarding  
17 water resources.

18 (c) The duties of the deputy for water quality shall be to  
19 administer and implement, under the direction of the commission,  
20 the State's water quality control program as provided in  
21 chapters 340B, 340E, 340F, 342D, and 342E, and all rules, and



1 other directives promulgated in accordance therewith by the  
2 commission. Nothing in this subsection shall be construed as  
3 limiting the authority of the commission as to matters regarding  
4 water resources.

5 ~~[(+e)]~~ (d) The ~~[position]~~ positions of deputy for water  
6 resource management ~~[is]~~ and deputy for water quality are not  
7 subject to chapter 76.

8 ~~[(+d)]~~ (e) The ~~[salary]~~ salaries of the deputy for water  
9 resource management, and deputy for water quality shall be as  
10 provided in section 26-53 for first deputies or first assistants  
11 to the head of any department."

12 SECTION 6. Section 174C-7, Hawaii Revised Statutes, is  
13 amended by amending subsection (b) to read as follows:

14 "(b) ~~[Five]~~ Seven members shall be appointed by the  
15 governor subject to confirmation by the senate in the manner  
16 prescribed in subsection (d). Each member shall have  
17 substantial experience in the area of water resource management;  
18 provided that two members shall have substantial experience in  
19 the area of water quality; provided that at least one member  
20 shall have substantial experience or expertise in traditional  
21 Hawaiian water resource management techniques and in traditional



1 Hawaiian riparian usage such as those preserved by section  
2 174C-101. The chairperson of the board of land and natural  
3 resources shall be the chairperson of the commission. [The  
4 ~~director of health or the director's~~] The chairperson of the  
5 Hawaiian homes commission or the chairperson's designee shall  
6 serve as an ex officio[+], [+] voting member."

7 SECTION 7. Section 174C-31, Hawaii Revised Statutes, is  
8 amended as follows:

9 1. By amending subsections (a) through (d) to read:

10 "(a) The Hawaii water plan shall consist of [~~four~~] three  
11 parts:

12 (1) A water resource protection plan which shall be  
13 prepared by the commission;

14 (2) Water use and development plans for each county which  
15 shall be prepared by each separate county and adopted  
16 by ordinance, setting forth the allocation of water to  
17 land use in that county; and

18 (3) A state water projects plan which shall be prepared by  
19 the agency which has jurisdiction over such projects  
20 in conjunction with other state agencies[+and



~~(4) A water quality plan which shall be prepared by the  
department of health].~~

(b) All water use and development plans shall be prepared  
in a manner consistent with the following conditions:

(1) Each water use and development plan shall be  
consistent with the water resource protection and  
[water] quality ~~[plans,]~~ plan;

(2) Each water use and development plan and the state  
water projects plan shall be consistent with the  
respective county land use plans and policies  
including general plan and zoning as determined by  
each respective county;

(3) The water use and development plan for each county  
shall also be consistent with the state land use  
classification and policies;

~~[(4) The cost to develop the initial water use and  
development plan for each county shall be funded by  
the State in an amount not exceeding \$150,000 per  
county;~~

~~(5)]~~ (4) The cost of maintaining the water use and  
development plan shall be borne by the counties; state





1 water capital improvement funds appropriated to the  
2 counties shall be deemed to satisfy article VIII,  
3 section 5 of the state constitution; and

4 ~~[(+6)]~~ (5) Each county in order to be eligible for state  
5 appropriations for county water projects must have  
6 developed an acceptable water use and development plan  
7 within the time frame established by this chapter.

8 (c) To prepare the water resource protection and ~~[water]~~  
9 quality ~~[plans,]~~ plan, the commission shall:

10 (1) Study and inventory the existing water resources of  
11 the State and the means and methods of conserving and  
12 augmenting such water resources;

13 (2) Study and inventory all existing and potential sources  
14 of drinking water in the State, consistent with State  
15 and federal water quality standards;

16 ~~[(+2)]~~ (3) Review existing and contemplated needs and uses  
17 of water including state and county land use plans and  
18 policies and study their effect on the environment,  
19 procreation of fish and wildlife, and water quality;

20 ~~[(+3)]~~ (4) Study the quantity and quality of water needed  
21 for existing and contemplated uses, including



1           irrigation, power development, geothermal power, and  
2           municipal uses;

3       ~~[(4)]~~ (5)   Identify rivers or streams, or a portion of a  
4           river or stream, which appropriately may be placed  
5           within a wild and scenic rivers system, to be  
6           preserved and protected as part of the public trust.  
7           For the purposes of this paragraph, the term "wild and  
8           scenic rivers" means rivers or streams, or a portion  
9           of a river or stream of high natural quality or that  
10          possess significant scenic value, including but not  
11          limited to, rivers or streams which are within the  
12          natural area reserves system. The commission shall  
13          report its findings to the legislature twenty days  
14          prior to the convening of each regular legislative  
15          session; and

16       ~~[(5)]~~ (6)   Study such other related matters as drainage,  
17           reclamation, flood hazards, floodplain zoning, dam  
18           safety, and selection of reservoir sites, as they  
19           relate to the protection, conservation, quantity, and  
20           quality of water.



1 (d) The water resource protection and quality plan shall  
2 include but not be limited to:

3 (1) Nature and occurrence of water resources in the State;

4 (2) Hydrologic units and their characteristics, including  
5 the quantity and quality of available resource,  
6 requirements for beneficial instream uses and  
7 environmental protection, desirable uses worthy of  
8 preservation by permit, and undesirable uses for which  
9 permits may be denied;

10 (3) Existing and contemplated uses of water, as identified  
11 in the water use and development plans of the State  
12 and the counties, their impact on the resource, and  
13 their consistency with objectives and policies  
14 established in the water resource protection and  
15 [water] quality [plans,] plan;

16 (4) Programs to conserve, augment, and protect the water  
17 resource, including plans for storm water management,  
18 reuse, reclamation, and remediation; and

19 (5) Other elements necessary or desirable for inclusion in  
20 the plan.



1           Thereafter, the commission, in coordination with the  
2 counties [~~and the department of health~~], shall formulate an  
3 integrated coordinated program for the protection, conservation,  
4 and management of the waters in each county based on the above  
5 studies. This program, with such amendments, supplements, and  
6 additions as may be necessary, shall be known as the water  
7 resource protection and [water] quality [~~plans~~] plan.

8           Thereafter, each county shall prepare a water use and  
9 development plan and the appropriate state agency shall prepare  
10 the state water projects plan."

11           2. By amending subsections (f) and (g) to read:

12           "(f) Each county water use and development plan shall  
13 include but not be limited to:

14           (1) Status of water and related land development,  
15 including an inventory of existing water uses for  
16 domestic, municipal, and industrial users,  
17 agriculture, particularly agriculture on lands  
18 designated as important agricultural lands under part  
19 III of chapter 205, aquaculture, hydropower  
20 development, drainage, reuse, reclamation, recharge,  
21 and resulting problems and constraints;



- 1           (2)   Future land uses and related water needs; and
- 2           (3)   Regional plans for water developments, including
- 3                recommended and alternative plans, costs, adequacy of
- 4                plans, and relationship to the water resource
- 5                protection and ~~[water]~~ quality ~~[plans.]~~ plan.

6           (g)   The Hawaii water plan shall be directed toward the

7   achievement of the following objectives:

- 8           (1)   The attainment of maximum reasonable-beneficial use of
- 9                water for such purposes as those referred to in
- 10              subsection (a);
- 11          (2)   The proper conservation and development of the waters
- 12              of the State;
- 13          (3)   The control of the waters of the State for such public
- 14              purposes as navigation, drainage, sanitation, and
- 15              flood control;
- 16          (4)   The attainment of adequate water quality as expressed
- 17              in the water resource protection and ~~[water]~~ quality
- 18              ~~[plans.]~~ plan and consistent with state and federal
- 19              water quality standards;
- 20          (5)   The implementation of the water resources policies
- 21              expressed in section 174C-2; and



(6) The utilization of reclaimed water for uses other than drinking and for potable water needs in one hundred per cent of state and county facilities by December 31, 2045."

3. By amending subsection (q) to read:

"(q) In formulating or revising each county's water use and development plan, the state water projects plan, the water resource protection and quality plan [~~and the water quality plan~~], each county and the commission shall incorporate the current and foreseeable development and use needs of the department of Hawaiian home lands for water as provided in section 221 of the Hawaiian Homes Commission Act.

Each county shall update and modify its water use and development plans as necessary to maintain consistency with its zoning and land use policies."

SECTION 8. Section 174C-32, Hawaii Revised Statutes, is amended to read as follows:

**"§174C-32 Coordination.** (a) Respective portions of the water resource protection and [~~water~~] quality [plans,] plan, and the water use and development plans of each county, shall be developed together to achieve maximum coordination.



1           (b) The development of the Hawaii water plan or any  
2           portion thereof shall proceed in coordination with and with  
3           attention to the Hawaii state plan described in chapter 226.

4           (c) The Hawaii water plan and its constituent parts[~~7~~  
5           ~~except for the water quality plan,~~] shall be adopted by the  
6           commission [~~not later than three years from July 1, 1987. The~~  
7           ~~commission shall receive the water quality plan from the~~  
8           ~~department of health and incorporate this part in the Hawaii~~  
9           ~~water plan]~~."

10          SECTION 9. Section 174C-44, Hawaii Revised Statutes, is  
11          amended to read as follows:

12          "**§174C-44 Ground water criteria for designation.** In  
13          designating an area for water use regulation, the commission  
14          shall consider the following:

- 15           (1) Whether an increase in water use or authorized planned  
16                use may cause the maximum rate of withdrawal from the  
17                ground water source to reach ninety per cent of the  
18                sustainable yield of the proposed ground water  
19                management area;



- 1           (2)    There is an actual or threatened water quality  
2                degradation [~~as determined by the department of~~  
3                ~~health~~];
- 4           (3)    Whether regulation is necessary to preserve the  
5                diminishing ground water supply for future needs, as  
6                evidenced by excessively declining ground water  
7                levels;
- 8           (4)    Whether the rates, times, spatial patterns, or depths  
9                of existing withdrawals of ground water are  
10               endangering the stability or optimum development of  
11               the ground water body due to upconing or encroachment  
12               of salt water;
- 13          (5)    Whether the chloride contents of existing wells are  
14                increasing to levels which materially reduce the value  
15                of their existing uses;
- 16          (6)    Whether excessive preventable waste of ground water is  
17                occurring;
- 18          (7)    Whether serious disputes respecting the use of ground water  
19                resources are occurring; or
- 20          (8)    Whether water development projects that have received  
21                any federal, state, or county approval may result, in





1           the opinion of the commission, in one of the above  
2           conditions.

3           Notwithstanding an imminent designation of a ground water  
4   management area conditioned on a rise in the rate of ground  
5   water withdrawal to a level of ninety per cent of the area's  
6   sustainable yield, the commission, when such level reaches the  
7   eighty per cent level of the sustainable yield, may invite the  
8   participation of water users in the affected area to an  
9   informational hearing for the purposes of assessing the ground  
10   water situation and devising mitigative measures."

11          SECTION 10.   Section 174C-51.5, Hawaii Revised Statutes, is  
12   amended by amending subsections (a) and (b) to read as follows:

13          "(a)   The commission, as a condition for issuing permits  
14   pursuant to this part, may require the use of dual line water  
15   supply systems in new industrial and commercial developments  
16   located in designated water management areas.   The commission  
17   shall not require the use of dual line water supply systems if:

18          (1)   There is a threat to existing water quality or to  
19                public health and safety[, ~~as determined by the~~  
20                ~~department of health~~];



1           (2) A source of nonpotable water will not be reasonably  
2           available in the near future as determined by the  
3           commission; or

4           (3) There is a serious threat to permitted ground or  
5           surface water uses within a designated water  
6           management area as determined by the commission.

7           (b) The county boards of water supply, in consultation  
8 with the [~~department of health,~~] commission on water resource  
9 management, shall adopt standards for nonpotable water  
10 distributed through dual line water supply systems, and rules  
11 regarding the use of nonpotable water. The standards and rules  
12 shall be adopted in accordance with chapter 91 and shall protect  
13 existing water quality and the health and safety of the public."

14           SECTION 11. Section 174C-66, Hawaii Revised Statutes, is  
15 amended to read as follows:

16           "~~[§]174C-66[§]~~ Jurisdiction over water quality. The  
17 [~~department of health~~] commission on water resource management  
18 shall exercise the powers and duties vested in it for the  
19 administration of the State's water quality control program as  
20 provided [~~by law~~] in chapters 340B, 340E, 340F, 342D, and 342E,



1 and all rules and policies promulgated in accordance therewith  
2 by the commission on water resource management."

3 SECTION 12. Section 174C-71, Hawaii Revised Statutes, is  
4 amended to read as follows:

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

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

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

19 (B) In acting upon the establishment of instream flow  
20 standards, the commission shall set forth in  
21 writing its conclusion that the public interest



1 does or does not require, as is appropriate, an  
2 instream flow standard to be set for the stream,  
3 the reasons therefor, and the findings supporting  
4 the reasons;

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

15 (D) Establishment or modification of an instream flow  
16 standard shall be initiated by the commission by  
17 providing notice of its intention to set an  
18 instream flow standard in a newspaper of general  
19 circulation published in the vicinity of the  
20 stream in question, to the mayor of the



1 appropriate county, and to persons who have  
2 previously requested such notice in writing;

3 (E) After giving notice of its intention to set an  
4 instream flow standard, the commission or other  
5 agencies in participation with the commission  
6 shall investigate the stream. During the process  
7 of this investigation, the commission shall  
8 consult with and consider the recommendations of  
9 the ~~[department of health, the]~~ aquatic biologist  
10 of the department of land and natural resources,  
11 the natural area reserves system commission, the  
12 University of Hawaii cooperative fishery unit,  
13 the United States Fish and Wildlife Service, the  
14 mayor of the county in which the stream is  
15 located, and other agencies having interest in or  
16 information on the stream, and may consult with  
17 and consider the recommendations of persons  
18 having interest in or information on the stream.  
19 In formulating the proposed standard, the  
20 commission shall weigh the importance of the  
21 present or potential instream values with the



1 importance of the present or potential uses of  
2 water from the stream for noninstream purposes,  
3 including the economic impact of restriction of  
4 such uses. In order to avoid or minimize the  
5 impact on existing uses of preserving, enhancing,  
6 or restoring instream values, the commission  
7 shall consider physical solutions, including  
8 water exchanges, modifications of project  
9 operations, changes in points of diversion,  
10 changes in time and rate of diversion, uses of  
11 water from alternative sources, or any other  
12 solution;

13 (F) Before adoption of an instream flow standard or  
14 modification of an established instream flow  
15 standard, the commission shall give notice and  
16 hold a hearing on its proposed standard or  
17 modification;

18 (2) Establish interim instream flow standards;

19 (A) Any person with the proper standing may petition  
20 the commission to adopt an interim instream flow  
21 standard for streams in order to protect the



1 public interest pending the establishment of a  
2 permanent instream flow standard;

3 (B) Any interim instream flow standard adopted under  
4 this section shall terminate upon the  
5 establishment of a permanent instream flow  
6 standard for the stream on which the interim  
7 standards were adopted;

8 (C) A petition to adopt an interim instream flow  
9 standard under this section shall set forth data  
10 and information concerning the need to protect  
11 and conserve beneficial instream uses of water  
12 and any other relevant and reasonable information  
13 required by the commission;

14 (D) In considering a petition to adopt an interim  
15 instream flow standard, the commission shall  
16 weigh the importance of the present or potential  
17 instream values with the importance of the  
18 present or potential uses of water for  
19 noninstream purposes, including the economic  
20 impact of restricting such uses;



1           (E)   The commission shall grant or reject a petition  
2                   to adopt an interim instream flow standard under  
3                   this section within one hundred eighty days of  
4                   the date the petition is filed. The one hundred  
5                   eighty days may be extended a maximum of one  
6                   hundred eighty days at the request of the  
7                   petitioner and subject to the approval of the  
8                   commission;

9           (F)   Interim instream flow standards may be adopted on  
10                  a stream-by-stream basis or may consist of a  
11                  general instream flow standard applicable to all  
12                  streams within a specified area;

13       (3)   Protect stream channels from alteration whenever  
14              practicable to provide for fishery, wildlife,  
15              recreational, aesthetic, scenic, and other beneficial  
16              instream uses;

17           (A)   The commission shall require persons to obtain a  
18                  permit from the commission prior to undertaking a  
19                  stream channel alteration; provided that routine  
20                  streambed and drainageway maintenance activities





1 and maintenance of existing facilities are exempt  
2 from obtaining a permit;

3 (B) Projects which have commenced construction or  
4 projects reviewed and approved by the appropriate  
5 federal, state, or county agency prior to July 1,  
6 1987, shall not be affected by this part;

7 (C) The commission shall establish guidelines for  
8 processing and considering applications for  
9 stream channel alterations consistent with  
10 section 174C-93;

11 (D) The commission shall require filing fees by users  
12 to accompany each application for stream channel  
13 alteration;

14 (4) Establish an instream flow program to protect,  
15 enhance, and reestablish, where practicable,  
16 beneficial instream uses of water. The commission  
17 shall conduct investigations and collect instream flow  
18 data including fishing, wildlife, aesthetic,  
19 recreational, water quality, and ecological  
20 information and basic streamflow characteristics  
21 necessary for determining instream flow requirements.



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

6       SECTION 13. Section 174C-84, Hawaii Revised Statutes, is  
7   amended as follows:

8       1. By amending subsection (c) to read:

9       "(c) The commission may issue a permit only if the  
10   proposed construction complies with all applicable laws, rules,  
11   and standards. Before acting on any application, the commission  
12   shall cause the application [~~to be reviewed by the department of~~  
13   ~~health~~] for compliance with [~~their~~] its rules and standards  
14   concerning, among other things, the appropriateness of the well  
15   location."

16      2. By amending subsection (e) to read:

17      "(e) The holder of a permit for well construction, with  
18   the approval of the commission, may change the location of the  
19   well before construction is completed. An application to change  
20   the location shall describe the location, the proposed depth and  
21   method of construction, and the size and expected capacity of



1 the new well. It shall also describe the manner of sealing or  
2 plugging the incomplete and abandoned well. The commission  
3 shall ~~[cause]~~ review all such applications ~~[to be reviewed by~~  
4 ~~the department of health]~~ for compliance with ~~[their]~~ its rules  
5 and standards concerning, among other things, the  
6 appropriateness of the location of the well. The commission may  
7 issue an amended permit if it determines that the proposed new  
8 well location will serve the same use as the original well and  
9 draw upon the same supply of water and will not be contrary to  
10 any applicable law, rule, order, or regulation, and that the  
11 incomplete and abandoned well will be sealed or plugged in a  
12 manner to prevent waste of water and damage to the water supply  
13 and to protect the public from harm."

14 SECTION 14. Section 174C-67, Hawaii Revised Statutes, is  
15 repealed.

16 ~~["§174C-67 Exchange of information. (a) The department~~  
17 ~~of health shall submit to the commission such information as the~~  
18 ~~commission shall require as prescribed in its rules, provided it~~  
19 ~~does not jeopardize any pending or ongoing enforcement action.~~



1       ~~(b) The commission shall submit to the department of~~  
2       ~~health such information as the department of health shall~~  
3       ~~require, for the performance of its water quality functions."]~~

4       SECTION 15. Section 174C-68, Hawaii Revised Statutes, is  
5       repealed.

6       ~~["§174C-68 Water quality plan. (a) The department of~~  
7       ~~health shall formulate a state water quality plan for all~~  
8       ~~existing and potential sources of drinking water and that plan~~  
9       ~~shall become part of the Hawaii water plan described in part~~  
10      ~~III. Requirements for the plan shall be governed by chapters~~  
11      ~~340E and 342. The state water quality plan shall include water~~  
12      ~~quality criteria for the designation of ground water management~~  
13      ~~areas and surface water management areas pursuant to section~~  
14      ~~174C-44 and 174C-45.~~

15      ~~(b) The state water quality plan shall be periodically~~  
16      ~~reviewed and revised by the department of health as needed.~~

17      ~~(c) In formulating or revising the state water quality~~  
18      ~~plan, the department of health shall consult with and carefully~~  
19      ~~evaluate the recommendations of concerned federal, state, and~~  
20      ~~local agencies, particularly county water supply agencies.~~



1       ~~(d) The department of health may ban the importation into~~  
2       ~~this State of any substances which the department of health~~  
3       ~~reasonably believes may present a danger to the water quality of~~  
4       ~~this State." ]~~

5       SECTION 16. Chapters 340B, 340E, 340F, 342D, and 342E,  
6       Hawaii Revised Statutes, are amended by transferring and  
7       appropriately designating those chapters as Subtitle 2, Water  
8       and Land Development, of Title 12, Conservation and Resources,  
9       and by substituting the term "commission on water resource  
10      management", or a similar term, wherever the term "department of  
11      health" or "director", or similar term, appears as the context  
12      requires.

13      SECTION 17. (a) Within ninety days of the effective date  
14      of this Act, the governor shall designate a representative who  
15      shall facilitate the commission on water resource management's  
16      orderly succession to the jurisdiction, powers, functions,  
17      rights, benefits, obligations, assets, liabilities, funds,  
18      accounts, contracts, and all other things currently held, used,  
19      incurred, or performed by the department of health in the  
20      regulation of water quality, or its director and staff, in  
21      administering and exercising the authority and fulfilling the



1 responsibilities authorized or conferred upon the department of  
2 health and the director of health, by the chapters transferred  
3 in section 16 of this Act.

4 (b) Within one hundred eighty days of the effective date  
5 of this Act, the governor shall appoint two commissioners with  
6 substantial experience in the area of water quality.

7 (c) To facilitate the commission on water resource  
8 management's timely assumption of the commission's authority and  
9 responsibilities, the department of health, department of  
10 accounting and general services, department of human resources  
11 development, state procurement office, and any other state  
12 department or agency shall, if requested by the commission on  
13 water resource management, enter into a memorandum of  
14 understanding with the commission on water resource management  
15 to:

16 (1) Provide administrative support services for the  
17 commission pending the transfer of employees to the  
18 commission on water resource management pursuant to  
19 section 16 of this Act;

20 (2) Develop a policy and set of robust procurement  
21 procedures that foster accountability, transparency,



1           and oversight of contracts, including compliance with  
2           federal procurement requirements;

3       (3)   Assist the commission on water resource management  
4           with the organization of its human resources  
5           development functions, including establishing:

6           (A)   A human resources office; and

7           (B)   The commission on water resource management's  
8                 civil service and civil service positions, and  
9                 the classification system, merit appeals board,  
10                recruitment system, performance appraisal system,  
11                and administrative rules, policies, standards,  
12                and procedures, including internal complaint  
13                procedures, adopted to support its civil service.

14       (4)   Assist the commission on water resource management in  
15           establishing its accounting, budgeting, fund  
16           management, and communication and electronic  
17           information systems, and creating appropriate  
18           interfaces between the commission's accounting,  
19           budgeting, fund management, communication and  
20           electronic information systems, and those of the other  
21           departments and other state agencies;



1           (5) Assist the commission on water resource management in  
2           identifying the plans and reports that the department  
3           of health is required to prepare for the governor,  
4           legislature, or another state department or agency;  
5           determining whether those plans and reports have been  
6           prepared and will be transferred to the commission on  
7           the transfer completion date; and preparing the same  
8           for the commission on water resource management, if  
9           they do not exist; and

10          (6) Expeditiously transfer or otherwise facilitate the  
11          commission on water resource management's acquisition  
12          or assumption of all of the powers, functions, rights,  
13          benefits, obligations, assets, funds, accounts,  
14          contracts, and all other things held, used, incurred,  
15          or performed by the department of health, director of  
16          health, and staff of the department of health, in  
17          exercising, fulfilling, and administering the  
18          responsibilities conferred upon the commission on  
19          water resource management by transfer of chapters  
20          340B, 340E, 340F, 342D, and 342E, Hawaii Revised  
21          Statutes.





1 (d) As soon as feasible, the commission on water resource  
2 management with the concurrence of the director of health, and  
3 the governor, shall establish the transfer completion date,  
4 which shall be no later than December 31, 2022, and publish  
5 notice of the transfer completion date by:

6 (1) Publishing the notice in a daily publication of  
7 statewide circulation pursuant to section 1-28.5,  
8 Hawaii Revised Statutes;

9 (2) Posting a copy of the notice on an electronic calendar  
10 on a website maintained by the State; and

11 (3) Providing a copy of the notice to the head of every  
12 state department.

13 SECTION 18. All appropriations, records, equipment,  
14 machines, files, supplies, contracts, books, papers, documents,  
15 maps, and other personal property heretofore made, used,  
16 acquired, or held by the department of health relating to the  
17 functions transferred to the commission on water resource  
18 management shall be transferred with the functions to which they  
19 relate.

20 SECTION 19. All rights, powers, functions, and duties of  
21 the department of health relating to the functions transferred



1 by this Act are transferred to the commission on water resource  
2 management.

3 All employees who occupy civil service positions and whose  
4 functions are transferred to the commission on water resource  
5 management by this Act shall retain their civil service status,  
6 whether permanent or temporary. Employees shall be transferred  
7 without loss of salary, seniority (except as prescribed by  
8 applicable collective bargaining agreements), retention points,  
9 prior service credit, any vacation and sick leave credits  
10 previously earned, and other rights, benefits, and privileges,  
11 in accordance with state personnel laws and this Act; provided  
12 that the employees possess the minimum qualifications and public  
13 employment requirements for the class or position to which  
14 transferred or appointed, as applicable; provided further that  
15 subsequent changes in status may be made pursuant to applicable  
16 civil service and compensation laws.

17 Any employee who, prior to this Act, is exempt from civil  
18 service and is transferred as a consequence of this Act may  
19 retain the employee's exempt status, but shall not be appointed  
20 to a civil service position as a consequence of this Act. An  
21 exempt employee who is transferred by this Act shall not suffer



1 any loss of prior service credit, vacation or sick leave credits  
2 previously earned, or other employee benefits or privileges as a  
3 consequence of this Act; provided that the employees possess  
4 legal and public employment requirements for the position to  
5 which transferred or appointed, as applicable; provided further  
6 that subsequent changes in status may be made pursuant to  
7 applicable employment and compensation laws. The chairperson of  
8 the commission on water resource management may prescribe the  
9 duties and qualifications of these employees and fix their  
10 salaries without regard to chapter 76, Hawaii Revised Statutes.

11 SECTION 20. All rules, policies, procedures, guidelines,  
12 and other materials adopted or developed by the department of  
13 health to implement provisions of the Hawaii Revised Statutes  
14 that are reenacted or made applicable to the commission on water  
15 resource management by this Act shall remain in full force and  
16 effect on and after the transfer completion date established  
17 pursuant to section 17 of this Act, until amended or repealed by  
18 the commission on water resource management protection pursuant  
19 to chapter 91, Hawaii Revised Statutes. In the interim, every  
20 reference to the department of health and director of health, in  
21 those rules, policies, procedures, guidelines, and other



1 material is amended to refer to the commission on water resource  
2 management or chairperson of the commission on water resource  
3 management, as appropriate.

4 SECTION 21. This Act does not affect rights and duties  
5 that matured, penalties that were incurred, and proceedings that  
6 were begun before its effective date.

7 SECTION 22. If any provision of this Act, or the  
8 application thereof to any person or circumstance, is held  
9 invalid, the invalidity does not affect other provisions or  
10 applications of the Act that can be given effect without the  
11 invalid provision or application, and to this end the provisions  
12 of this Act are severable.

13 SECTION 23. Statutory material to be repealed is bracketed  
14 and stricken. New statutory material is underscored.

15 SECTION 24. This Act shall take effect upon its approval.

16  
INTRODUCED BY: 



# S.B. NO. 2650

**Report Title:**

Commission on Water Resource Management; Department of Health; Jurisdiction; Water Quality and Protection Plan; Definitions; Membership

**Description:**

Transfers functions regarding water quality, including water pollution, nonpoint source pollution management and control, drinking water standards, mandatory certification of public water system operates, and wastewater, from the Department of Health to the Commission on Water Resource Management. Increases membership on the Commission on Water Resource Management from five members to seven members. Replaces the Director of Health with the Chairperson of the Department of Hawaiian Homes Commission as an ex-officio voting member on the Commission on Water Resource Management.

*The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.*

