

JAN 25 2023

A BILL FOR AN ACT

RELATING TO DECLARATION OF WATER SHORTAGE AND EMERGENCY.

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

1 SECTION 1. Section 174C-62, Hawaii Revised Statutes, is
2 amended to read as follows:

3 "§174C-62 Declaration of water shortage~~[-]~~ and
4 emergency. (a) The commission shall formulate a statewide plan
5 for implementation during periods of water shortage. As a part
6 of the plan, the commission shall adopt a reasonable system of
7 permit classification according to source of water supply,
8 method of extraction or diversion, use of water, or a
9 combination thereof.

10 (b) The commission, by rule, may declare that a water
11 shortage exists within all or part of an area, whether within or
12 outside of a water management area, when insufficient water is
13 available to meet the requirements of the permit system or when
14 conditions are such as to require a temporary reduction in total
15 water use within the area to protect water resources from
16 serious harm. The commission shall publish a set of criteria
17 for determining when a water shortage exists~~[-]~~, including but
18 not limited to impacts and effects of the climate crisis.

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1 (c) In accordance with the plan adopted under subsection
2 (a), the commission may impose such restrictions on one or more
3 classes of permits and outside of management areas on well and
4 stream diversion owners and operators as may be necessary to
5 protect the water resources of the area from serious harm and to
6 restore them to their previous water quantity or chloride level
7 condition.

8 (d) A declaration of water shortage and any measures
9 adopted pursuant thereto may be rescinded by rule by the
10 commission.

11 (e) When a water shortage is declared, the commission
12 shall cause a notice thereof to be published in a prominent
13 place in a newspaper of general circulation throughout the
14 area~~[-]~~ and the commission's website. The notice shall be
15 published each day for the first week of the shortage and once a
16 week ~~[thereafter]~~ for four months, followed by monthly
17 publications until the declaration is rescinded. Publication of
18 such notice shall serve as notice to all water users in the area
19 of the condition of water shortage.

20 (f) The commission shall cause each permittee in the area
21 to be notified by regular and electronic mail of any change in
22 the conditions of the permittee's permit, any suspension

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1 thereof, or of any other restriction on the use of water for the
2 duration of the water shortage.

3 (g) If an emergency condition arises [~~due to a water~~
4 ~~shortage within any area~~], whether within or outside of a water
5 management area, [~~and if the commission finds that the~~
6 ~~restrictions imposed under subsection (c) are not sufficient to~~
7 ~~protect the public health, safety, or welfare, or the health of~~
8 ~~animals, fish, or aquatic life, or a public water supply, or~~
9 ~~recreational, municipal, agricultural, or other reasonable~~
10 ~~uses,~~] the commission may issue orders reciting the existence of
11 such an emergency and requiring that such actions as the
12 commission deems necessary to meet the emergency be taken,
13 including but not limited to apportioning, rotating, limiting,
14 or prohibiting the use of the water resources of the area. Any
15 party to whom an emergency order is directed may challenge such
16 an order but shall immediately comply with the order, pending
17 disposition of the party's challenge. The commission shall give
18 precedence to a hearing on such challenge over all other pending
19 matters.

20 (h) When a water shortage or emergency results in a long
21 term or permanent reduction of the available water source, the

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1 commission may, after a hearing, modify, suspend, or revoke
2 water use permits relying on that water source."

3 SECTION 2. Statutory material to be repealed is bracketed
4 and stricken. New statutory material is underscored.

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

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INTRODUCED BY: *Wm N. Off.*

8

BY REQUEST

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Report Title:

Water Shortage and Emergency; Declaration

Description:

Clarifies the conditions, manner, and areas in which the Commission on Water Resource Management of the Department of Land and Natural Resources can declare water shortages and emergencies.

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

JUSTIFICATION SHEET

SB. NO. 1386

DEPARTMENT: Land and Natural Resources

TITLE: A BILL FOR AN ACT RELATING TO DECLARATION OF WATER SHORTAGE AND EMERGENCY.

PURPOSE: To clarify the conditions, manner, and areas in which the Commission on Water Resource Management (Commission) of the Department can declare water shortages and emergencies.

MEANS: Amend section 174C-62, Hawaii Revised Statutes (HRS).

JUSTIFICATION: Section 174C-62, HRS, has not contemplated the existence of a water shortage and/or emergency due to an immediate degradation of water quality. As the Red Hill crisis has revealed, such shortages and emergencies and can come into existence in an instant. This statute has undergone review and the Commission is proposing amendments in order to implement water shortage and emergency declarations to be able to react to crises in a swift and comprehensive manner. This bill serves to clearly define the Commission's authority to declare water shortages and emergencies and the Commission's measures.

Currently, section 174C-62(g), HRS, with its reference to subsection (c) requires that a water shortage has to be declared by rule in accordance with the water shortage plan before the Commission can declare an emergency. This has resulted in overly burdensome and unnecessary constraints to the emergency declarations process in instances where the emergency is due to an instant degradation in water quality, unlike a slower processing decline in water quantity, which can be anticipated and planned for. This bill would allow the Commission to declare a water emergency without a prior water shortage declaration by rule.

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This bill would require water shortage plans statewide and provide clarity that the Commission has authority to declare water shortages in any area, within and outside of a water management area. The Commission would be required to consider the impacts of the climate crisis in its determination of criteria for water shortage declarations. The bill also proposes to modernize notice requirements by adding notification of water use permit holders per electronic mail and publication of a water shortage and emergency on the Commission's website.

Finally, the bill clarifies the Commission's authority to modify, suspend, and revoke water use permits in the case of a permanent water shortage.

Impact on the public: The bill supports protection of the public trust resource by clarifying the water shortage and emergency declaration process and providing the Commission with measure to swiftly address any crisis.

Impact on the department and other agencies: This bill clearly defines the Commission's authority to declare water shortages and emergencies, and the Commission's measures in any area regardless of water management area status.

GENERAL FUND:	None.
OTHER FUNDS:	None.
PPBS PROGRAM DESIGNATION:	LNR 404.
OTHER AFFECTED AGENCIES:	Department of Health.
EFFECTIVE DATE:	Upon approval.