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# A BILL FOR AN ACT

RELATING TO THE DISPOSITION OF WATER RIGHTS.

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

1 SECTION 1. Section 171-58, Hawaii Revised Statutes, is  
2 amended to read as follows:

3 "**§171-58 Minerals and water rights.** (a) Except as  
4 provided in this section, the right to any mineral or surface or  
5 ground water shall not be included in any lease, agreement, or  
6 sale, this right being reserved to the State; provided that the  
7 board may make provisions in the lease, agreement, or sale, for  
8 the payment of just compensation to the surface owner for  
9 improvements taken as a condition precedent to the exercise by  
10 the State of any reserved rights to enter, sever, and remove  
11 minerals or to capture, divert, or impound water.

12 (b) Disposition of mineral rights shall be in accordance  
13 with the laws relating to the disposition of mineral rights  
14 enacted or hereafter enacted by the legislature.

15 (c) Disposition of water rights may be made by lease at  
16 public auction as provided in this chapter or by permit for  
17 temporary use on a month-to-month basis under those conditions



1 that will best serve the interests of the State and subject to a  
2 maximum term of one year and other restrictions under the law;  
3 provided that any disposition by lease shall be subject to  
4 disapproval by the legislature by two-thirds vote of either the  
5 senate or the house of representatives or by majority vote of  
6 both in any regular or special session next following the date  
7 of disposition; provided further that after a certain land or  
8 water use has been authorized by the board subsequent to public  
9 hearings and conservation district use application and  
10 environmental impact statement approvals, water used in  
11 nonpolluting ways, for nonconsumptive purposes because it is  
12 returned to the same stream or other body of water from which it  
13 was drawn, essentially not affecting the volume and quality of  
14 water or biota in the stream or other body of water, may also be  
15 leased by the board with the prior approval of the governor and  
16 the prior authorization of the legislature by concurrent  
17 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 human life and (2) preserve animal life, in that  
19 order of priority; and that from waters leased from the State  
20 the board, at any time during the term of the lease of water  
21 rights, may also withdraw so much water as it may deem necessary



1 to preserve crops; provided that payment for the waters shall be  
2 made in the same manner as provided in this section.

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

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



1 of surface water and ground water quality to the extent that  
2 degradation can be avoided using reasonable management  
3 practices.

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

13 (h) This section shall not apply to the disposition of  
14 water rights for the instream use of water for traditional and  
15 customary kalo cultivation practices.

16 (i) The public auction requirement in subsection (c) shall  
17 not be required for a lease of water for commercial kalo  
18 cultivation."

19 SECTION 2. New statutory material is underscored.

20 SECTION 3. This Act shall take effect on June 30, 3000.



**Report Title:**

Water Rights; Commercial Kalo Farming; Native Hawaiian Practices; Exemptions

**Description:**

Establishes that the public auction requirement for the disposition of water rights shall not be required for a lease of water for commercial kalo cultivation. Effective 6/30/3000.  
(HD1)

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