

ACT 197

H.B. NO. 1188

A Bill for an Act Relating to the State Water Code.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 174C-2, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) There is a need for a program of comprehensive water resources planning to address the problems of supply and conservation of water. The [state] Hawaii water [use and protection] plan, with such future amendments, supplements,

and additions as may be necessary, is accepted as the guide for developing and implementing this policy.”

SECTION 2. Section 174C-31, Hawaii Revised Statutes, is amended to read as follows:

“**§174C-31 Hawaii water plan.** (a) The Hawaii water plan shall consist of four parts: (1) a water resource protection plan which shall be prepared by the [water resources] commission; (2) water use and development plans for each county which shall be prepared by each separate county and adopted by ordinance, setting forth the allocation of water to land use in that county; (3) a state water [project] projects plan which shall be prepared by the agency which has jurisdiction over such projects 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 [plan.] plans;
- (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) The cost of maintaining the water use and development plan shall be borne by the counties; state water capital improvement funds appropriated to the counties shall be deemed to satisfy Article VIII, section 5 of the State Constitution[.]; and
- (6) Each county in order to be eligible for state appropriations for county water projects must have developed an acceptable water use and development plan within the time frame established by this chapter.

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

- (1) Study and inventory the existing water resources of the State and the means and methods of conserving and augmenting such water resources;
- (2) Review existing and contemplated needs and uses of water including state and county land use plans and policies and study their effect on the environment, procreation of fish and wildlife, and water quality;
- (3) Study the quantity and quality of water needed for existing and contemplated uses, including irrigation, power development, geothermal power, and municipal uses;
- (4) Identify rivers or streams, or a portion of a river or stream, which appropriately may be placed within a wild and scenic rivers system, to be preserved and protected as part of the public trust. For the purposes of this paragraph, the term “wild and scenic rivers” means rivers or streams, or a portion of a river or stream of high natural quality or that possess significant scenic value, including but not limited to, rivers or streams which are within the natural area reserves system. The commission shall report its findings to the legislature twenty days prior to the convening of each regular legislative session; and

- (5) Study such other related matters as drainage, reclamation, flood hazards, floodplain zoning, dam safety, and selection of reservoir sites, as they relate to the protection, conservation, quantity, and quality of water.

(d) The water resource protection plan shall include, but not be limited to:

- (1) Nature and occurrence of water resources in the State;
- (2) Hydrologic units and their characteristics, including the quantity and quality of available resource, requirements for beneficial instream uses and environmental protection, desirable uses worthy of preservation by permit, and undesirable uses for which permits may be denied;
- (3) Existing and contemplated uses of water, as identified in the water use and development plans of the State and the counties, their impact on the resource, and their consistency with objectives and policies established in the water resource protection and¹ water quality [plan.] plans;
- (4) Programs to conserve, augment, and protect the water resource; and
- (5) Other elements necessary or desirable for inclusion in the plan.

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

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

(e) The department of agriculture shall prepare a state agricultural water use and development plan for agricultural uses in the State in accordance with chapter 167 and this chapter, and subsequently modify and update the plan as necessary. The state agricultural water use and development plan shall include but not be limited to a master irrigation inventory plan which shall:

- (1) Inventory the irrigation water systems;
- (2) Identify the extent of rehabilitation needed for each system;
- (3) Subsidize the cost of repair and maintenance of the systems;
- (4) Establish criteria to prioritize the rehabilitation of the systems;
- (5) Develop a five-year program to repair the systems; and
- (6) Set up a long-range plan to manage the systems.

The commission shall coordinate the incorporation of the state agricultural water use and development plan into the state water projects plan.

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

- (1) Status of water and related land development including an inventory of existing water uses for domestic, municipal, and industrial users, agriculture, aquaculture, hydropower development, drainage, reuse, reclamation, recharge, and resulting problems and constraints;
- (2) Future land uses and related water needs; and
- (3) Regional plans for water developments including recommended and alternative plans, costs, adequacy of plans, and relationship to the water resource protection and water quality [plan.] plans.

[(d)] (g) The Hawaii water plan shall be directed toward the achievement of the following objectives:

- (1) The attainment of maximum reasonable-beneficial use of water for such purposes as those referred to in subsection (a);
- (2) The proper conservation and development of the waters of the State;
- (3) The control of the waters of the State for such public purposes as navigation, drainage, sanitation, and flood control;

- (4) The attainment of adequate water quality as expressed in the [state] water resource protection and water quality [plan;] plans; and
- (5) The implementation of the water resources policies expressed in section 174C-2.

[(e)] (h) The Hawaii water plan shall divide each county into sections which shall each conform as nearly as practicable to a hydrologic unit. The [board] commission shall describe and inventory:

- (1) All water resources and systems in each hydrologic unit;
- (2) All presently exercised uses;
- (3) The quantity of water not presently used within that hydrologic unit; and
- (4) Potential threats to water resources, both current and future.

[(f)] (i) Within each hydrologic unit the commission shall establish the following:

- (1) An instream use and protection program for the surface watercourses in the area[.]; and
- (2) Sustainable yield. The sustainable yield shall be determined by the commission using the best information available and shall be reviewed periodically. Where appropriate the sustainable yield may be determined to reflect seasonal variation.

[(g)] (j) The commission shall condition permits under part IV of this chapter in such a manner as to protect instream flows and maintain sustainable yields of ground water established under this section.

[(h)] (k) The commission shall give careful consideration to the requirements of public recreation, the protection of the environment, and the procreation of fish and wildlife. The commission may prohibit or restrict other future uses on certain designated streams which may be inconsistent with these objectives.

[(i)] (l) The commission may designate certain uses in connection with a particular source of supply which, because of the nature of the activity or the amount of water required, would constitute an undesirable use for which the commission may deny a permit under the provisions of part IV.

[(j)] (m) The commission may also designate certain uses in connection with a particular source of supply which, because of the nature of the activity or amount of water required, would result in an enhancement or improvement of the water resources of the area. Such uses shall be preferred over other uses in any action pursuant to sections 174C-50(h) and 174C-54.

[(k)] (n) The commission may add to the Hawaii water plan any other information, directions, or objectives it feels necessary or desirable for the guidance of the counties in the administration and enforcement of this chapter.

[(l)] (o) In formulating or revising the plans, each county and the commission shall consult with and carefully evaluate the recommendations of concerned federal, state, and county agencies.

[(m)] (p) The commission shall not adopt, approve, or modify any portion of the Hawaii water plan which affects a county or any portion thereof without first holding a public hearing on the matter on the island on which the water resources are located. At least ninety days in advance of such hearing, the commission shall notify the affected county and shall give notice of such hearing by publication within the affected region and statewide.

[(n)] (q) In formulating or revising each county's water use and development plan, the state water [project] projects plan, the water resource protection 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 3. Section 174C-32, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Respective portions of the water resource protection and water quality [plan,] plans, and the water use and development plans of each county, shall be developed together to achieve maximum coordination.”

SECTION 4. Section 174C-41, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) The designation of a water management area by the commission may be initiated upon recommendation by the chairperson or by written petition. It shall be the duty of the chairperson to make recommendations when it is desirable or necessary to designate an area and there is factual data for a decision by the commission. The chairperson, after consultation with the appropriate county council,² county mayor, and county water board, shall act upon the petition by making a recommendation for or against the proposed designation to the commission within sixty days after receipt of the petition or such additional time as may be reasonably necessary to determine that there is factual data to warrant the proposed designation.”

SECTION 5. Section 174C-43, Hawaii Revised Statutes, is amended to read as follows:

“~~[[§174C-43]]~~ **Investigations required.** Before any proposed water management area is designated by the commission, the chairperson may conduct, cooperate with the appropriate federal or county water agency in conducting, or administer contracts for the conduct of, any scientific investigation or study deemed necessary for the commission to make a decision to designate a water management area. In connection with such investigation or study, the chairperson from time to time may require reports from water users as to the amount of water being withdrawn and as to the manner and extent of the beneficial use. Such reports shall be made on forms furnished by the ~~[department.]~~ commission.”

SECTION 6. Section 174C-44, Hawaii Revised Statutes, is amended to read as follows:

“~~[[§174C-44]]~~ **Ground water criteria for designation.** In designating an area for water use regulation, the commission shall consider the following:

- (1) Whether an increase in water use or authorized planned use may cause the maximum rate of withdrawal from the ground water source to reach ninety per cent of the sustainable yield of the proposed ground water management area;
- (2) There is an actual or threatened water quality degradation as determined by the department of health;
- (3) Whether regulation is necessary to preserve the diminishing ground water supply for future needs, as evidenced by excessively declining ground water levels;
- (4) Whether the rates, times, spatial patterns, or depths of existing withdrawals of ground water are endangering the stability or optimum

- development of the ground water body due to [upcoming] upcoming or encroachment of salt water;
- (5) Whether the chloride contents of existing wells are increasing to levels which materially reduce the value of their existing uses;
 - (6) Whether excessive preventable waste of ground water is occurring;
 - (7) Serious disputes respecting the use of ground water resources are occurring; or
 - (8) Whether water development projects that have received any federal, state, or county approval may result, in the opinion of the commission, in one of the above conditions.

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

SECTION 7. Section 174C-46, Hawaii Revised Statutes, is amended to read as follows:

"§174C-46 Findings of fact; decision of commission. After public hearing and any investigations deemed necessary have been completed, the chairperson, after consultation with the appropriate county council, county mayor, and county water board, shall make a recommendation to the commission for decision. The commission shall render its decision within ninety days after the chairperson's recommendation to the commission. If the commission decides to designate a water management area, it shall cause a public notice of its decision to be given in the appropriate county and when so given,² its decision shall be final unless judicially appealed."

SECTION 8. Section 174C-50, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

"(d) An application shall be acted upon by the commission within ninety calendar days of an application not requiring a hearing, or within one hundred eighty calendar days of an application requiring a hearing. The time periods prescribed in this subsection shall not be deemed to run for any period in which an application is not complete in all material respects in the judgment of the [board.] commission."

SECTION 9. Section 174C-59, Hawaii Revised Statutes, is amended to read as follows:

"[[§174C-59]] Transfer of permit. A permit may be transferred, in whole or in part, from the permittee to another, if:

- (1) The conditions of use of the permit, including, but not limited to, place, quantity, and purpose of the use, remain the same; and
- (2) The commission is informed of the transfer within ninety days.

Failure to inform the [department] commission of the transfer invalidates the transfer and constitutes a ground for revocation of the permit. A transfer which involves a change in any condition of the permit, including a change in use covered in section 174C-57, is also invalid and constitutes a ground for revocation."

SECTION 10. Section 174C-67, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) The commission shall submit to the department of health such information as the department of health shall require, for the performance of its water quality functions.”

SECTION 11. Section 174C-68, Hawaii Revised Statutes, is amended to read as follows:

“~~[[§174C-68]]~~ **Water quality plan.** (a) The department of health shall formulate a state water quality plan for all existing and potential sources of drinking water and that plan shall become part of the Hawaii water plan described in part III. Requirements for the plan shall be governed by chapters 340E and 342. The state water quality plan shall include water quality criteria for the designation of ground water management areas and surface water [sources] management areas pursuant to section 174C-44[.] and 174C-45.³

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

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

(d) The department of health may ban the importation into this State of any substances which the department of health reasonably believes may present a danger to the water quality of this State.”

SECTION 12. Section 174C-87, Hawaii Revised Statutes, is amended to read as follows:

“~~[[§174C-87]]~~ **Abandonment of wells.** When a well is abandoned, the owner shall fill and seal the well in a manner approved by the commission. Before abandonment, the owner shall file with the commission a report showing the owner's name and address; the water use permit number, if any; the name and address of the well driller who will be employed to perform the work required for abandonment; the reason for abandonment; a description of the work to be performed to effect the abandonment; and such other information as the [board] commission may require.”

SECTION 13. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 14. This Act shall take effect upon its approval.

(Approved July 2, 1999.)

Notes

1. “And” should be underscored.
2. Comma should be underscored.
3. “And 174C-45” should be underscored.