

---

---

# 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. The legislature finds that native Hawaiians  
2 have been farming successfully on lands throughout the State for  
3 nearly two thousand years without creating adverse impacts to  
4 the land in which they operated. Traditional farming practices  
5 of native Hawaiians and the native Hawaiian culture generally  
6 play a vital role in preserving and advancing the quality of  
7 life and cultural vitality of Hawaii. Article XII, section 7,  
8 of the Hawaii State Constitution mandates that such traditional  
9 and customary practices of native Hawaiians be protected.

10           The legislature further finds that it is the State's  
11 responsibility as that of a trustee to act with the diligence  
12 and care of a fiduciary in assuring that bona fide trust  
13 purposes, including the preservation and enhancement of the  
14 water for various uses in the public interest, are protected  
15 when deciding what constitutes maximum beneficial use. However,  
16 in carrying out this responsibility, the regulatory actions of  
17 the State may adversely hamper and impact the constitutionally



1 protected rights of native Hawaiians. The State has an  
2 obligation to ensure that traditional and customary practices of  
3 native Hawaiians continue to be protected.

4 The purpose of this Act is to exempt the instream use of  
5 water for traditional and customary kalo cultivation practices  
6 from the existing process for disposition of water rights.

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

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

18 (b) Disposition of mineral rights shall be in accordance  
19 with the laws relating to the disposition of mineral rights  
20 enacted or hereafter enacted by the legislature.



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



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



1 (1) preserve human life and (2) preserve animal life, in that  
2 order of priority; and that from waters leased from the State  
3 the board, at any time during the term of the lease of water  
4 rights, may also withdraw so much water as it may deem necessary  
5 to preserve crops; provided that payment for the waters shall be  
6 made in the same manner as provided in this section.

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

18 (f) Upon renewal, any lease of water rights shall contain  
19 a covenant that requires the lessee and the department of land  
20 and natural resources to jointly develop and implement a  
21 watershed management plan. The board shall not renew any lease



1 of water rights without the foregoing covenant or a watershed  
2 management plan. The board shall prescribe the minimum content  
3 of a watershed management plan; provided that the watershed  
4 management plan shall require the prevention of the degradation  
5 of surface water and ground water quality to the extent that  
6 degradation can be avoided using reasonable management  
7 practices.

8 (g) The department of land and natural resources shall  
9 notify the department of Hawaiian home lands of its intent to  
10 execute any new lease, or to renew any existing lease of water  
11 rights. After consultation with affected beneficiaries, these  
12 departments shall jointly develop a reservation of water rights  
13 sufficient to support current and future homestead needs. Any  
14 lease of water rights or renewal shall be subject to the rights  
15 of the department of Hawaiian home lands as provided by section  
16 221 of the Hawaiian Homes Commission Act.

17 (h) This section shall not apply to the disposition of  
18 water rights for the instream use of water for traditional and  
19 customary kalo cultivation practices."

20 SECTION 3. New statutory material is underscored.

21 SECTION 4. This Act shall take effect upon its approval.



# H.B. NO. 1768

1

INTRODUCED BY:

David Carnes

JAN 21 2022



# H.B. NO. 1768

**Report Title:**

Water Rights; Kalo Farming; Exemption

**Description:**

Exempts the instream use of water for traditional and customary kalo cultivation practices from the existing process for disposition of water rights.

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

