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



1 rights of native Hawaiians. The State has an obligation to
2 ensure that traditional and customary practices of native
3 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 as well as for commercial kalo cultivation conducted in a manner
7 consistent with traditional and customary Native Hawaiian
8 practices, from the existing process for disposition of water
9 rights.

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

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



1 (b) Disposition of mineral rights shall be in accordance
2 with the laws relating to the disposition of mineral rights
3 enacted or hereafter enacted by the legislature.

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



1 the prior authorization of the legislature by concurrent
2 resolution.

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



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

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

20 (f) Upon renewal, any lease of water rights shall contain
21 a covenant that requires the lessee and the department of land



1 and natural resources to jointly develop and implement a
2 watershed management plan. The board shall not renew any lease
3 of water rights without the foregoing covenant or a watershed
4 management plan. The board shall prescribe the minimum content
5 of a watershed management plan; provided that the watershed
6 management plan shall require the prevention of the degradation
7 of surface water and ground water quality to the extent that
8 degradation can be avoided using reasonable management
9 practices.

10 (g) The department of land and natural resources shall
11 notify the department of Hawaiian home lands of its intent to
12 execute any new lease, or to renew any existing lease of water
13 rights. After consultation with affected beneficiaries, these
14 departments shall jointly develop a reservation of water rights
15 sufficient to support current and future homestead needs. Any
16 lease of water rights or renewal shall be subject to the rights
17 of the department of Hawaiian home lands as provided by section
18 221 of the Hawaiian Homes Commission Act.

19 (h) This section shall not apply to the disposition of
20 water rights for the instream use of water for traditional and
21 customary kalo cultivation practices, as well as commercial kalo



1 cultivation conducted in a manner consistent with traditional
2 and customary Native Hawaiian practices."

3 SECTION 3. New statutory material is underscored.

4 SECTION 4. This Act shall take effect on July 1, 2050.



Report Title:

Water Rights; Kalo Farming; Exemption

Description:

Exempts the instream use of water for (1) traditional and customary kalo cultivation practices and (2) commercial kalo cultivation conducted in a manner consistent with traditional and customary Native Hawaiian practices from the existing process for disposition of water rights. Effective 7/1/2050.
(HD2)

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