

JAN 18 2023

A BILL FOR AN ACT

RELATING TO WATER USE PERMITS.

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

1 SECTION 1. The legislature finds that the current process
2 to issue water user permits across the State is bifurcated
3 between the board of land and natural resources and the
4 commission on water resource management. Presently, the
5 commission on water resource management is the primary agency
6 responsible for the approval and issuance of water use permits.
7 The legislature further finds that the current licensing system
8 does not issue permits in a timely manner. Additionally,
9 anticipated revenue from water use permits are seldom collected,
10 as water use permits are not regularly issued.

11 Accordingly, the purpose of this Act is to:

12 (1) Repeal section 171-58, Hawaii Revised Statutes, to
13 eliminate the board of land and natural resources'
14 power to issue water permits; and

15 (2) Establish positions within the commission on water
16 resource management to effectuate this Act.



1 SECTION 2. Section 171-58, Hawaii Revised Statutes, is
2 repealed.

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~~
18 ~~that will best serve the interests of the State and subject to a~~
19 ~~maximum term of one year and other restrictions under the law,~~
20 ~~provided that any disposition by lease shall be subject to~~
21 ~~disapproval by the legislature by two thirds vote of either the~~



1 ~~senate or the house of representatives or by majority vote of~~
2 ~~both in any regular or special session next following the date~~
3 ~~of disposition; provided further that after a certain land or~~
4 ~~water use has been authorized by the board subsequent to public~~
5 ~~hearings and conservation district use application and~~
6 ~~environmental impact statement approvals, water used in~~
7 ~~nonpolluting ways, for nonconsumptive purposes because it is~~
8 ~~returned to the same stream or other body of water from which it~~
9 ~~was drawn, essentially not affecting the volume and quality of~~
10 ~~water or biota in the stream or other body of water, may also be~~
11 ~~leased by the board with the prior approval of the governor and~~
12 ~~the prior authorization of the legislature by concurrent~~
13 ~~resolution.~~

14 ~~(d) Any lease of water rights shall contain a covenant on~~
15 ~~the part of the lessee that the lessee shall provide from waters~~
16 ~~leased from the State under the lease or from any water sources~~
17 ~~privately owned by the lessee to any farmer or rancher engaged~~
18 ~~in irrigated pasture operations, crop farming, pen feeding~~
19 ~~operations, or raising of grain and forage crops, or for those~~
20 ~~public uses and purposes as may be determined by the board, at~~
21 ~~the same rental price paid under the lease, plus the~~



1 ~~proportionate actual costs, as determined by the board, to make~~
2 ~~these waters available, so much of the waters as are determined~~
3 ~~by the board to be surplus to the lessee's needs and for that~~
4 ~~minimum period as the board shall accordingly determine,~~
5 ~~provided that in lieu of payment for those waters as the State~~
6 ~~may take for public uses and purposes the board may elect to~~
7 ~~reduce the rental price under the lease of water rights in~~
8 ~~proportion to the value of the waters and the proportionate~~
9 ~~actual costs of making the waters available. Subject to the~~
10 ~~applicable provisions of section 171-37(3), the board, at any~~
11 ~~time during the term of the lease of water rights, may withdraw~~
12 ~~from waters leased from the State and from sources privately~~
13 ~~owned by the lessee so much water as it may deem necessary to~~
14 ~~(1) preserve human life and (2) preserve animal life, in that~~
15 ~~order of priority; and that from waters leased from the State~~
16 ~~the board, at any time during the term of the lease of water~~
17 ~~rights, may also withdraw so much water as it may deem necessary~~
18 ~~to preserve crops; provided that payment for the waters shall be~~
19 ~~made in the same manner as provided in this section.~~

20 ~~(e) Any new lease of water rights shall contain a covenant~~
21 ~~that requires the lessee and the department of land and natural~~



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



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

10 ~~(h) This section shall not apply to the disposition of~~
11 ~~water rights for the instream use of water for traditional and~~
12 ~~customary kalo cultivation practices."]~~

13 SECTION 3. There is appropriated out of the general
14 revenues of the State of Hawaii the sum of \$ or so
15 much thereof as may be necessary for fiscal year 2023-2024 and
16 the same sum or so much thereof as may be necessary for fiscal
17 year 2024-2025 for full-time equivalent (FTE) positions
18 within the commission on water resource management for the
19 purposes of this Act.

20 The sums appropriated shall be expended by the department
21 of land and natural resources for the purposes of this Act.



S.B. NO. 90

1 SECTION 4. Statutory material to be repealed is bracketed
2 and stricken.

3 SECTION 5. This Act shall take effect on July 1, 2023.

4

INTRODUCED BY: *Maurice L. Jones*



S.B. NO. 90

Report Title:

Water Use Permits; Board of Land and Natural Resources;
Establish Positions; Repeal; Appropriation

Description:

Repeals section 171-58, Hawaii Revised Statutes to eliminate the Board of Land and Natural Resources' power to issue water use permits. Establishes positions within the Commission on Water Resource Management. Appropriates funds.

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

