



University of Hawai'i at Mānoa

Environmental Center

A Unit of Water Resources Research Center
Crawford 317 • 2550 Campus Road • Honolulu, Hawai'i 96822
Telephone: (808) 956-7361 • Facsimile: (808) 956-3980

RL:1332

HB 3763

RELATING TO THE STATE WATER CODE

House Committee on Water and Land Use Planning

Public Hearing - February 9, 1996
9:00 A.M., Room 312, State Capitol

By

John T. Harrison, Environmental Center
Malia Akutagawa, School of Law
David Penn, Geography

HB 3763 would enact amendments to Chapter 174C, HRS, the State Water Code: to require reports to be filed by an owner or operator of a well or stream diversion; to allow judicial review of final decisions; to require the commission to confirm a declared water use rather than issuing a certification; to repeal the requirement that water uses be reasonable and beneficial; to allow transfer of a water use; to allow the commission to impose conditions on the termination or transfer of a declared water use; and to require contested cases to be appealed to the circuit court rather than the state Supreme Court.

Our statement on this measure is compiled from voluntarily submitted opinions of the listed academic reviewers, and as such does not constitute an institutional position of the University of Hawaii.

Although we have specific concerns regarding this bill, we would urge restraint on all proposed measures that would amend the State Water Code at this time, for two reasons:

1. Ongoing litigation in the Waiahole Ditch contested case centers around provisions of the Water Code, and we suggest that it would be inappropriate to enact amendments which would have the effect of creating substantial legal uncertainty, thereby unduly influencing the proceedings.
2. Both legal and resource utilization issues are in the process of being refined, clarified, and reinterpreted by the Waiahole case. It is arguable that the recent findings and recommendations of the Water Code Review Commission may be subject to change in view of the outcome of this case. In any event, we are likely to be in a far better position to rationally and judiciously approach amendment of Chapter 174C at the conclusion of the Waiahole litigation than we are now.

Apart from these considerations, we strongly disagree with the intent of several provisions, particularly those developed in Section 4. The effect of removing the commission's duty to determine that a proposed use is reasonable and beneficial reduces the commission to a ministerial rather than a discretionary body, in complete contradiction of the original intent of the State Water Code. Such a fundamental alteration in the function of the commission effectively would nullify its ability to act as an agent of statewide, comprehensive water resources planning.