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## A BILL FOR AN ACT

RELATING TO THE RED HILL BULK FUEL STORAGE FACILITY DEFUELING  
COMMISSION.

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

PART I

SECTION 1. The legislature finds that the State has a constitutional duty to protect Hawaii's water resources. Specifically, Article XI, section 7, of the state constitution provides that the "State has an obligation to protect, control, and regulate the use of Hawaii's water resources for the benefit of its people."

The legislature also finds that the United States Navy is the owner and operator of the Red Hill Bulk Fuel Storage Facility, which is an underground storage tank system on Oahu, located approximately two and one-half miles northeast of Pearl Harbor. The facility, which was originally constructed during World War II and began operations in 1943, includes twenty field-constructed underground storage tanks, pipelines, and other infrastructure that stores and transports marine diesel and two types of jet fuel.



1       The Red Hill Bulk Fuel Storage Facility sits directly above  
2   the Southern Oahu Basal Aquifer, which supplies seventy-seven  
3   per cent of Oahu's water. This aquifer is one of nine sole-  
4   source aquifers within the United States Environmental  
5   Protection Agency's region IX and has been previously identified  
6   by the Environmental Protection Agency as the "principal source  
7   of drinking water" for Oahu, which, if contaminated, "would  
8   create a significant hazard to public health."

9       The legislature also finds that in November 2021, a release  
10   of approximately fourteen thousand gallons of fuel from the Red  
11   Hill Bulk Fuel Storage Facility contaminated the Red Hill shaft,  
12   one of the drinking water sources that services the United  
13   States Navy's water system. Many residents who drank the  
14   tainted water became acutely ill, experiencing rashes, aches,  
15   vomiting, and other symptoms. As a result of the contamination,  
16   more than four thousand military families were forced to move  
17   out of their homes. The water contamination also affected seven  
18   department of education schools and several private schools,  
19   forcing the schools to remove sinks from use and instead use  
20   bottled water for handwashing, dishwashing, and drinking  
21   purposes.



1       The legislature also finds that the discharged fuel has  
2 entered the Oahu groundwater aquifer. Data suggests that the  
3 fuel in the aquifer will migrate through porous rocks toward the  
4 Halawa shaft, which is one of Oahu's largest sources of water.  
5 As a result, the city and county of Honolulu board of water  
6 supply was forced to shut down its Aiea well, the Aiea gulch  
7 well, the Halawa well, and the Halawa shaft, which together  
8 supply twenty-four per cent of water to urban Honolulu. The  
9 board of water supply has indicated that the closure may be  
10 permanent and that these wells will not be used again until the  
11 board of water supply has one hundred per cent confidence that  
12 they will not be contaminated by fuel migrating from Red Hill.  
13 However, expert testimony at a recent evidentiary hearing  
14 indicated that future releases of fuel from the Red Hill Bulk  
15 Fuel Storage Facility are inevitable. More specifically, the  
16 probability of a one thousand to thirty thousand gallon leak  
17 over the next five years is approximately eighty per cent.

18       On December 6, 2021, the department of health issued an  
19 emergency order requiring the United States Navy to immediately  
20 suspend operations at the Red Hill Bulk Fuel Storage Facility,  
21 as it represents "an imminent peril to human health and safety



1 or the environment" and to also take measures to treat  
2 contaminated drinking water at the Red Hill Shaft and safely  
3 remove fuel from the twenty underground storage tanks at Red  
4 Hill. The emergency order stated that, given the number of  
5 incidents that have occurred at Red Hill over the last year, and  
6 in view of the current drinking water contamination, the United  
7 States Navy has not demonstrated and cannot ensure that  
8 immediate and appropriate response actions are available or will  
9 be available should another release occur in the future.

10 It is the intent of the legislature to hold the United  
11 States accountable for the significant and foreseeable costs to  
12 the State's economy and way of life as the result of the ongoing  
13 Red Hill water pollution crisis. The legislature further  
14 intends to ensure that the United States Navy remediates the  
15 damage caused to the Oahu groundwater aquifer, land surrounding  
16 the Red Hill Bulk Fuel Storage Facility, and Pearl Harbor, and  
17 to ensure that the remediation meets the standards set under  
18 state law. The legislature also intends to improve the trust  
19 between the residents of Oahu and the United States Navy and  
20 engage in planning activities between federal, state, and county



1 agencies to ensure the safety of Oahu's water supply for future  
2 generations.

3 Accordingly, the purpose of this Act is to:

- 4 (1) Establish a temporary Red Hill Bulk Fuel Storage  
5 Facility defueling commission to monitor the  
6 compliance of the United States Department of Defense  
7 or other agencies with orders or laws relating to the  
8 2021 drinking water contamination event;
- 9 (2) Establish a Red Hill compliance office to support the  
10 commission; and
- 11 (3) Appropriate moneys.

12 PART II

13 SECTION 2. (a) Notwithstanding part IV of chapter 342L,  
14 Hawaii Revised Statutes, there is established a temporary Red  
15 Hill Bulk Fuel Storage Facility defueling commission, which  
16 shall be attached to the department of health for administrative  
17 purposes. The commission shall consist of:

- 18 (1) The executive director of the Red Hill compliance  
19 office appointed pursuant to section 3 of this part,  
20 who shall serve as chair;
- 21 (2) The director of health or the director's designee;



(3) The chairperson of the commission on water resource management or the chairperson's designee;

(4) The manager and chief engineer of the Honolulu board of water supply or the manager and chief engineer's designee;

(5) Two members of the Senate representing areas that have been affected by the 2021 drinking water contamination event, to be appointed by the president of the senate;

(6) Three members of the house of representatives representing areas that have been affected by the 2021 drinking water contamination event, to be appointed by the speaker of the house of representatives; and

(7) One person who has a background in fuel storage, transportation and logistics, who shall be appointed by the director of health.

(b) Members of the commission shall serve without compensation but shall be reimbursed for expenses, including travel expenses, necessary for the performance of their duties.

(c) The commission shall:

(1) Monitor the compliance of the United States Department of Defense or other entities regarding any:



- 1 (A) Court orders;
- 2 (B) Administrative orders of consent;
- 3 (C) Enforcement orders pursuant to section 342L-8,
- 4 Hawaii Revised Statutes;
- 5 (D) Emergency orders pursuant to section 342L-9,
- 6 Hawaii Revised Statutes, including the emergency
- 7 order issued on December 6, 2021, and affirmed by
- 8 the deputy director of health on January 3, 2022
- 9 (docket no. 21-UST-EA-02);
- 10 (E) Other relevant administrative or judicial orders;
- 11 and
- 12 (F) Other relevant laws,
- 13 relating to the Red Hill Bulk Fuel Storage Facility or
- 14 any United States Department of Defense infrastructure
- 15 involved in the 2021 Red Hill drinking water
- 16 contamination event; and
- 17 (2) Provide regular updates to the governor, legislature,
- 18 and public regarding progress toward complying with
- 19 the orders or laws.
- 20 (d) The executive director, on behalf of the commission,
- 21 may issue subpoenas requiring the attendance of witnesses or a



1 permit to inspect a premises and subpoenas duces tecum requiring  
2 the production of books, documents, or other evidence, necessary  
3 to monitor the compliance of a party with any order or law  
4 pursuant to subsection (c)(1); provided that:

5 (1) A person subpoenaed to attend a hearing of an  
6 investigating committee shall receive the same fees  
7 and allowances as a person legally required to attend  
8 upon a circuit court or a grand jury in any criminal  
9 case pursuant to section 621-7, Hawaii Revised  
10 Statutes; and

11 (2) Upon application of the executive director, obedience  
12 to the subpoena may be enforced by the circuit court  
13 in the county in which the person subpoenaed resides,  
14 or is found, in the same manner as a subpoena issued  
15 by the clerk of the circuit court.

16 (e) The commission shall meet at least once per quarter.

17 The commission shall provide a written update to the:

18 (1) Governor;

19 (2) President of the senate; and

20 (3) Speaker of the house of representatives,





1 on the commission's activities within thirty days of each  
2 quarterly meeting.

3 (f) The commission shall submit an annual report to the  
4 governor and legislature no later than twenty days prior to the  
5 convening of each regular session, which shall include:

6 (1) An update on the compliance of the United States  
7 Department of Defense or other relevant agency with  
8 any order or law pursuant to subsection (c)(1); and

9 (2) Any other findings and recommendations, including any  
10 proposed legislation.

11 SECTION 3. (a) There is established a Red Hill compliance  
12 office within the department of health.

13 (b) The Red Hill compliance office shall be headed by an  
14 executive director who shall be appointed by the director of  
15 health without regard to chapters 76 and 89, Hawaii Revised  
16 Statutes. The executive director's salary shall be set by the  
17 director of health and shall be entitled to participate in any  
18 employee benefit plan generally available to state employees.

19 (c) The Red Hill compliance office shall provide technical  
20 expertise to the Red Hill Bulk Fuel Storage Facility defueling  
21 commission necessary for the commission to properly ensure that



1 relevant parties are complying with all applicable laws and  
2 orders.

3 (d) The executive director may:

4 (1) Hire additional staff necessary to assist in the  
5 performance of the Red Hill compliance office's duties  
6 and responsibilities; provided that the staff shall be  
7 hired without regard to chapter 76, Hawaii Revised  
8 Statutes, but shall be eligible to participate in any  
9 state employee benefit plan generally available to  
10 state employees; and

11 (2) Contract with outside specialists or consultants with  
12 the expertise necessary to conduct its duties;  
13 provided that procurements conducted pursuant to this  
14 paragraph shall be exempt from chapter 103D, Hawaii  
15 Revised Statutes.

16 SECTION 4. The powers and responsibilities assigned to the  
17 Red Hill Bulk Fuel Storage Facility defueling commission and the  
18 Red Hill compliance office pursuant to this part are assigned to  
19 these entities notwithstanding any other agency, advisory  
20 committee, or other entity with similar jurisdiction. Nothing  
21 in this part shall be construed to limit the power or authority



1 of any other agency, advisory committee, or other entity from  
2 conducting activities within that entity's jurisdiction.

3 SECTION 5. As used in this part:

4 "2021 drinking water contamination event" means the event  
5 that began in 2021 in which fuel stored at the Red Hill Bulk  
6 Fuel Storage Facility contaminated the United States Navy's  
7 water distribution system.

8 "Commission" means the Red Hill Bulk Fuel Storage Facility  
9 defueling commission established by section 2 of this part.

10 "Executive director" means the executive director of the  
11 Red Hill compliance office established by section 3 of this  
12 part.

13 "Red Hill Bulk Fuel Storage Facility" includes the Red Hill  
14 Bulk Fuel Storage Facility and all infrastructure that  
15 transports fuel to or from that facility.

16 "United States Department of Defense" includes any agencies  
17 within the Department of Defense, including the Department of  
18 the Navy and the Defense Logistics Agency, and any relevant  
19 employees or contractors.



## PART III

SECTION 6. The department of health shall keep a detailed accounting of all expenses of the Red Hill Bulk Fuel Storage Facility defueling commission and the Red Hill compliance office and shall seek reimbursement of those expenses from the United States Department of Defense.

SECTION 7. There is appropriated out of the general revenues of the State of Hawaii the sum of \$ or so much thereof as may be necessary for fiscal year 2022-2023 to establish and fund the operations of the Red Hill compliance office, including the hiring of an executive director and other staff, the engagement of contractors or consultants, and the acquisition of office space and any necessary equipment.

The sum appropriated shall be expended by the department of health for the purposes of this Act.

## PART IV

SECTION 8. This Act shall take effect on July 1, 2022, and shall be repealed on June 30, 2027.

INTRODUCED BY: 

JAN 25 2022



# H.B. NO. 2316

**Report Title:**

Environment; DOH; Underground Fuel Tanks; Red Hill; Commission; Compliance Monitoring; Water Contamination

**Description:**

Establishes within the Department of Health a temporary Red Hill Bulk Fuel Storage Facility Defueling Commission to monitor the compliance of the United States Department of Defense or other agencies with any orders or laws relating to the Red Hill Bulk Fuel Storage Facility or United States Department of Defense infrastructure involved in the 2021 drinking water contamination event. Establishes a Red Hill Compliance Office to support the Commission. Appropriates moneys. Sunsets on 6/30/2027.

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

