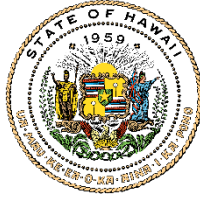


JOSH GREEN, M.D.  
GOVERNOR | KE KIA'ĀINA

SYLVIA LUKE  
LIEUTENANT GOVERNOR | KA HOPE KIA'ĀINA



STATE OF HAWAII | KA MOKU'ĀINA 'O HAWAII'  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
KA 'OIHANA KUMUWAIWAI 'ĀINA

P.O. BOX 621  
HONOLULU, HAWAII 96809

DAWN N.S. CHANG  
CHAIRPERSON  
BOARD OF LAND AND NATURAL RESOURCES  
COMMISSION ON WATER RESOURCE  
MANAGEMENT

LAURA H.E. KAAKUA  
FIRST DEPUTY

M. KALEO MANUEL  
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES  
BOATING AND OCEAN RECREATION  
BUREAU OF CONVEYANCES  
COMMISSION ON WATER RESOURCE  
MANAGEMENT  
CONSERVATION AND COASTAL LANDS  
CONSERVATION AND RESOURCES  
ENFORCEMENT  
ENGINEERING  
FORESTRY AND WILDLIFE  
HISTORIC PRESERVATION  
KAHOOLAWE ISLAND RESERVE COMMISSION  
LAND  
STATE PARKS

Testimony of  
DAWN N. S. CHANG  
Chairperson

Before the House Committee on  
WATER AND LAND

Tuesday, March 14, 2023  
9:30 AM

State Capitol, Conference Room 430 & Videoconference

In consideration of  
SENATE BILL 44, SENATE DRAFT 2  
RELATING TO STATE WATER CODE PENALTIES

Senate Bill 44, Senate Draft 2 creates a minimum penalty of \$50 for every violation of the State Water Code. Raises the maximum penalty to \$25,000 for every violation of the State Water Code. Clarifies that each day a violation exists or continues is a separate offense. Requires the Commission on Water Resource Management (Commission) of the Department of Land and Natural Resources (Department) to determine the amount of the penalty based on the circumstances of the violation. Appropriates funds for two-full-time equivalent (2.0 FTE) general professional positions in the Commission. **The Department strongly supports this measure and offers a proposed amendment.**

The Department appreciates the clarification of a continuing violation and the guidance for the determination of the penalty amount in the newly added subsection (c) to Hawai'i Revised Statutes (HRS) Section 174C-15. The guidance in subsection (c) corresponds with the Commission on Water Resource Management's (Commission) Administrative and Civil Penalty Guideline (G14-01)<sup>1</sup> that the Commission adopted on October 1, 2014.<sup>2</sup> The Department notes that G14-01 provides for an initial administrative fee of \$500, if the Commission issued a written notice of alleged violation, in addition to any fine.

The Department appreciates the amendment made to the bill in Senate Draft 1 to raise the penalty ceiling from \$5,000 to \$25,000 per violation to be consistent with the Department of Health's (DOH) current authority to issue penalties for violations that affect water. However, there are two bills, Senate Bill 445 Senate Draft 2 and Senate Bill 1377, which crossed over and are scheduled for hearings, that propose to

<sup>1</sup> [https://files.hawaii.gov/dlnr/cwrm/planning/wrpp2019update/WRPP\\_AppP\\_201907.pdf](https://files.hawaii.gov/dlnr/cwrm/planning/wrpp2019update/WRPP_AppP_201907.pdf)

<sup>2</sup> <https://files.hawaii.gov/dlnr/cwrm/submittal/2014/sb201410D1.pdf>

increase the penalty ceiling of the DOH to \$59,973 to increase deterrence and match penalties promulgated by the United States Environmental Protection Agency (EPA) for similar violations. Thus, the Department humbly requests to amend HRS section 174C-15 (b) as follows (grey highlight):

(b) Any person who violates any provision of this chapter, ~~[or]~~ violates any rule adopted pursuant to this chapter, [may] violates any order of the commission, fails to obtain a permit when a permit is required under this chapter, or fails to comply with permit conditions, shall be subject to a fine imposed by the commission. ~~[Such]~~ The fine shall be not less than \$50 and shall not exceed [\$5,000. For a continuing offense, each day during which the offense is committed is a separate violation.] ~~\$25,000~~ \$60,000 per violation. Each day that a violation exists or continues to exist shall constitute a separate offense. Penalties for continuing violations shall be assessed from the earliest known date of the violation. The earliest known date of a violation shall be determined by the commission by a preponderance of the evidence; provided that if the earliest known date cannot be determined by a preponderance of the evidence, penalties for continuing violations shall be assessed from the earliest date the commission is made aware of the violation.

The Department also appreciates the amendment made to the bill in Senate Draft 2 to add an appropriation for two full-time equivalent (2.0 FTE) general professional positions.

This bill will support the Commission in its affirmative duty “*to protect, control and regulate the use of Hawaii’s water resources*” as articulated in article XI section 7 of the Constitution of the State of Hawai‘i. Currently, the Commission is overseeing 5,334 groundwater wells, 1,226 surface water diversion, and 376 perennial streams, 100 of which have a numeric interim instream flow standard that requires monitoring and enforcement. The Commission regulates the use of water in water management areas on the islands of O‘ahu, Moloka‘i and Maui with the total amount of 411 groundwater use permits and 176 surface water use permits. Many violations go unchecked due to the limited number of Commission staff, none of which are dedicated solely to investigating and correcting violations.

Mahalo for the opportunity to provide testimony in support of this measure with a proposed amendment.

**SB-44-SD-2**

Submitted on: 3/13/2023 1:00:08 PM

Testimony for WAL on 3/14/2023 9:30:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Testify</b>
Dana Keawe	Individual	Support	Written Testimony Only

Comments:

Support

**SB-44-SD-2**

Submitted on: 3/14/2023 7:47:37 AM

Testimony for WAL on 3/14/2023 9:30:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Testify</b>
Regina Peterson(Nani)	Individual	Support	Written Testimony Only

Comments:

I support