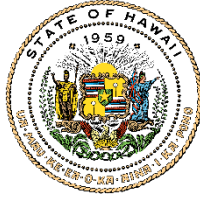


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KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

Testimony of
DAWN N. S. CHANG
Chairperson

Before the Senate Committee on
WATER AND LAND

Monday, March 13, 2023
1:00 PM

State Capitol, Conference Room 229 & Videoconference

In consideration of
HOUSE BILL 153, HOUSE DRAFT 1
RELATING TO STATE WATER CODE PENALTIES

House Bill 153, House Draft 1 proposes to: 1) add a minimum penalty of \$50 per violation of the State Water Code; 2) make each day that a violation exists or continues a separate offense; and 3) require the Commission on Water Resource Management of the Department of Land and Natural Resources (Department) to determine the amount of the penalty based on the circumstances of the violation. **The Department strongly supports this measure, and proposes an amendment to deter violations.**

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 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)¹ that the Commission adopted on October 1, 2014.² 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 also appreciates the amendments made to the bill in House 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 increase the penalty ceiling of the DOH to \$59,973 to increase deterrence and match penalties

¹ https://files.hawaii.gov/dlnr/cwrm/planning/wrpp2019update/WRPP_AppP_201907.pdf

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

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 to add an appropriation for two full-time equivalent (2.0 FTE) general professional positions. These two general professional positions will help the Commission in ensuring compliance and enforcement of the State Water Code penalties.

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.

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



To: The Honorable Chair Lorraine Inouye, Vice-chair Brandon Elefante, and members of the Senate Committee on Agriculture and Environment

From: Hawai'i Reef and Ocean Coalition (by Ted Bohlen)

Re: Hearing HB153 HD1 **RELATING TO STATE WATER CODE PENALTIES**

Hearing: Monday, March 13, 2023, 1:00 p.m. CR229

Aloha Chair Inouye, Vice Chair Elefante, and members of the Committee:

The Hawai'i Reef and Ocean Coalition (HIROC) is a group of scientists, educators, filmmakers and environmental advocates who have been working since 2017 to protect Hawaii's coral reefs and ocean.

The Hawai'i Reef and Ocean Coalition STRONGLY SUPPORTS HB153 HD1 to enhance the Water Code enforcement!

As a Deputy Attorney General working on water pollution enforcement, I have seen how the lack of adequate penalties and staff hampers the Commission on Water Resources in enforcing the State Water Code.

We thank the committee for hearing this important measure and respectfully urge your passage of HB153 HD1.

Mahalo!

Hawai'i Reef and Ocean Coalition (by Ted Bohlen)
