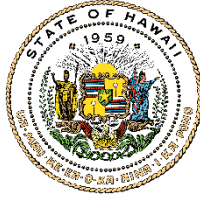


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KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

Testimony of
DAWN N.S. CHANG
Chairperson

Before the Senate Committee on
WATER & LAND

Monday, February 13, 2023
12:30 PM

State Capitol, Conference Room 229 & Videoconference

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

Senate Bill 44 proposes to: 1) add a minimum penalty of \$50 per violation of the State Water Code and makes each day that a violation exists or continues a separate offense; and 2) require 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. **The Department strongly supports the intent, and offers the following comments and amendments on this measure.**

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)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.

To be consistent with the Department of Health's (DOH) authority to issue penalties for violations that affect water, a public trust resource, and to increase deterrence, the Department suggests raising the penalty ceiling from \$5,000 to \$25,000 per violation. This change aligns with the DOH's authority in HRS Sections 340E-8 Penalties and remedies, 340F-9 Injunctions and civil penalty, and 342D-30 Civil

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

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

penalties³ that a penalty should “*not [be] more than \$25,000.*” Thus, the Department respectfully requests amending 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]~~\$25,000~~[. For a continuing offense, each day during which the offense is committed is a separate violation.]~~ 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.

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. Therefore, the Department kindly requests the establishment of two full-time positions in the Commission dedicated to compliance and enforcement and suggests adding the following section to Senate Bill 44:

SECTION 3. 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 2023-2024 for two full-time equivalent (2.0 FTE) general professional positions in the commission on water resource management.

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

Mahalo for the opportunity to provide comments and proposed amendments on this measure.

³ Senate Bill 445 Senate Draft 1 proposes to increase this amount to \$59,973, the Department notes that in case Senate Bill 445 Senate Draft 1 passes the penalty ceiling in HRS section 174C-15 should be the same.