
A BILL FOR AN ACT

RELATING TO WATER.

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

1 PART I

2 SECTION 1. The legislature finds that the United States
3 Navy's Red Hill Bulk Fuel Storage Facility consists of twenty
4 steel-lined underground storage tanks that were built from 1940
5 to 1943. Each tank can store 12.5 million gallons of fuel; in
6 total, the Red Hill Bulk Fuel Storage Facility can store up to
7 two hundred fifty million gallons. The tanks are located only
8 about one hundred feet above the United States Environmental
9 Protection Agency's designated sole-source groundwater aquifer
10 that provides drinking water to approximately four hundred
11 thousand residents of the island of Oahu. Over the past eighty
12 years, numerous spills have occurred at Red Hill. Specifically,
13 on November 20, 2021, about ninety-three thousand individuals
14 served by the Navy's potable water system for Joint Base Pearl
15 Harbor-Hickam were directly affected when the Navy's Red Hill
16 shaft was contaminated by the release of up to nineteen thousand
17 gallons of fuel, including JP-5 jet fuel, older fuels stored at



1 the Red Hill Bulk Fuel Storage Facility, and any additives used.
2 Over six thousand individuals sought medical attention, and one
3 thousand were forced to leave their homes due to the
4 contamination. Much of the fuel released from the Red Hill Bulk
5 Fuel Storage Facility remains in the environment, trapped within
6 the complex geological formations beneath and near the tanks.

7 The legislature further finds that on May 9, 2023,
8 officials from the State and city and county of Honolulu signed
9 a unified statement on Red Hill, recognizing the stewardship
10 responsibility to ensure that there is clean water on Oahu for
11 future generations. The Red Hill Water Alliance Initiative
12 (WAI), a working group, met regularly in 2023 since the signing
13 of the unified statement. The Red Hill WAI posed questions,
14 conducted research, listened to subject-matter experts, and
15 formulated recommended policies.

16 The legislature also finds that the Red Hill WAI's approach
17 of total stewardship responsibility required a stance of
18 extending beyond statutory roles, specific responsibilities,
19 tenure in those roles, and even personal lifetimes. Its inquiry
20 included the pursuit of critical questions for which there may



1 currently be no answers. Thus, the pursuit of those answers is
2 part of the ongoing work.

3 The legislature notes that besides its regulatory functions
4 under federal and state environmental laws, the State also has
5 unique public trust responsibilities set forth in the Hawaii
6 State Constitution, which establishes an affirmative duty of the
7 State to preserve and protect public trust resources, including
8 water resources.

9 The legislature additionally finds that the focus of the
10 Red Hill WAI's inquiry is the remediation needs after the
11 defueling of the tanks and removal of residual fuel and
12 contaminants from the Red Hill Bulk Fuel Storage Facility. In
13 particular, the Red Hill WAI is concerned with the unknowns
14 posed by fuel contaminants already in the ground, as well as the
15 residuals of the fuel plume in the aquifer as a result of the
16 spill that occurred on November 20, 2021. In fact, there may be
17 as many as 1,940,000 gallons of fuel constituents in the ground
18 that have leaked or spilled over eight decades. Pursuant to a
19 proactive approach, the Red Hill WAI seeks to describe the
20 remediation it believes necessary for the future well-being of
21 the aquifer in which there is a negligible risk to current and



1 future water sources, including the Halawa Shaft, Halawa wells,
2 and Aiea wells; the water distribution system; and the
3 ecosystem, including springs, streams, and nearshore waters.

4 After much diligent work, the Red Hill WAI issued a public
5 report in November 2023 that set forth its findings and
6 recommendations. Some of the recommendations can only be
7 addressed by the federal government, while other recommendations
8 can be undertaken by the State and city and county of Honolulu.
9 Moreover, the legislature finds that there must be no delay in
10 adopting the recommendations of the Red Hill WAI, especially
11 those that can be implemented at the state and county levels.

12 Therefore, the purpose of this Act is to:

- 13 (1) Establish within the office of the executive director
14 of the commission on water resource management a
15 policy lead and coordinator for Red Hill WAI
16 initiatives;
- 17 (2) Create the Red Hill remediation special fund; and
- 18 (3) Appropriate funds for these purposes.

19 SECTION 2. The Hawaii Revised Statutes is amended by
20 adding a new chapter to be appropriately designated and to read
21 as follows:



1 "CHAPTER

2 RED HILL WATER ALLIANCE INITIATIVE

3 § -1 Definitions. As used in this chapter, unless a
4 different meaning is plainly required by the context:

5 "Board" means the board of land and natural resources.

6 "Chairperson" means the chairperson of the board of land
7 and natural resources.

8 "Department" means the department of land and natural
9 resources.

10 "Red Hill Water Alliance Initiative" means the group of
11 individuals composed of the governor, speaker of the house of
12 representatives, president of the senate, chairperson of the
13 board of land and natural resources and commission on water
14 resource management, president of the University of Hawaii,
15 mayor of the city and county of Honolulu, chairperson of the
16 Honolulu city council, and manager and chief engineer of the
17 Honolulu board of water supply that issued a public report in
18 November 2023 concerning the remediation of Red Hill following
19 the defueling of the Red Hill Bulk Fuel Storage Facility.

20 "Special fund" means the Red Hill remediation special fund.

21 "WAI" means the Red Hill Water Alliance Initiative.



1 § -2 Policy lead and coordination. (a) The department
2 shall serve as the State's policy lead on WAI initiatives
3 through the position of the WAI policy coordinator, to be placed
4 in the office of the executive director of the commission on
5 water resource management once the position of executive
6 director of the commission on water resource management is
7 established and filled pursuant to section 174C-6. The WAI
8 policy coordinator shall work with respective state and county
9 agencies and other groups.

10 (b) The WAI policy coordinator shall:

11 (1) Facilitate implementation and monitoring and interface
12 with federal entities on WAI initiatives outlined in
13 the WAI's November 2023 report;

14 (2) Periodically and regularly review:

15 (A) The health status of the ecosystem; and

16 (B) The state of science and opportunities for
17 remediation and rehabilitation;

18 (3) Develop and maintain a public-facing test results
19 dashboard describing the significance of results from
20 the State and city and county of Honolulu, as part of
21 a broader public education program; and



1 (4) Coordinate the implementation of a thirty-six-month
2 public information and education program to describe,
3 inform, and educate the general public and
4 institutions on the post-defueling remediation phases
5 for Red Hill to restore public trust, secure public
6 support, and address health and environmental
7 concerns.

8 (c) No later than December 1, 2024, the WAI policy
9 coordinator shall submit a report to the legislature regarding
10 the potential organizational structure, responsibilities,
11 duties, and powers of a proposed Red Hill remediation authority,
12 based on the provisions of House Bill No. 2691, introduced
13 during the regular session of 2024, as the starting point.

14 § -3 **Red Hill remediation special fund.** (a) There is
15 established in the state treasury the Red Hill remediation
16 special fund into which shall be deposited the following moneys:

- 17 (1) Appropriations by the legislature to the special fund;
- 18 (2) Gifts, donations, and grants from public agencies,
19 including the United States government, and private
20 persons; and



1 (3) All interest earned on or accrued to moneys deposited
2 in the special fund.

3 (b) The special fund shall be administered by the WAI
4 policy coordinator.

5 (c) The moneys in the special fund shall be used to
6 address contamination resulting from the Red Hill Bulk Fuel
7 Storage Facility, including monitoring, applied research, public
8 outreach and education, and evaluation; provided that the cost
9 of remediation of the aquifer shall be borne by the federal
10 government.

11 **§ -4 Cooperation by state and county agencies.** All
12 state and county agencies shall provide all information and data
13 requested by the WAI policy coordinator within thirty calendar
14 days; provided that the WAI policy coordinator may, in the
15 coordinator's discretion, set a longer deadline.

16 **§ -5 Report.** The WAI policy coordinator shall submit a
17 report of the coordinator's activities and expenditures to the
18 legislature, governor, and mayor and city council of the city
19 and county of Honolulu no later than December 1 of each year,
20 beginning in 2024."



1 SECTION 3. The following positions, which shall be exempt
2 from chapter 76, Hawaii Revised Statutes, are established in the
3 office of the chairperson of the board of land and natural
4 resources for the purposes of Red Hill WAI policy coordination:

5 (1) full-time equivalent (FTE) policy
6 coordinator;

7 (2) full-time equivalent (FTE) outreach
8 coordinator; and

9 (3) full-time equivalent (FTE) administrative
10 assistant.

11 SECTION 4. In accordance with section 9 of article VII of
12 the Hawaii State Constitution and sections 37-91 and 37-93,
13 Hawaii Revised Statutes, the legislature has determined that the
14 appropriations contained in H.B. No. , will cause the state
15 general fund expenditure ceiling for fiscal year 2024-2025 to be
16 exceeded by \$ or per cent. In addition, the
17 appropriations contained in this Act will cause the general fund
18 expenditure ceiling for fiscal year 2024-2025 to be further
19 exceeded by \$ or per cent. The combined total
20 amount of general fund appropriations contained in only these
21 two Acts will cause the state general fund expenditure ceiling



1 for fiscal year 2024-2025 to be exceeded by
2 \$ or per cent. The reasons for exceeding the
3 general fund expenditure ceiling are that:

4 (1) The appropriations made in this Act are necessary to
5 serve the public interest; and

6 (2) The appropriations made in this Act meet the needs
7 addressed by this Act.

8 SECTION 5. There is appropriated out of the general
9 revenues of the State of Hawaii the sum of \$ or so
10 much thereof as may be necessary for fiscal year 2024-2025 for
11 the positions identified in section 3 of this Act for Red Hill
12 WAI policy coordination.

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

15 SECTION 6. There is appropriated out of the general
16 revenues of the State of Hawaii the sum of \$ or so
17 much thereof as may be necessary for fiscal year 2024-2025 for
18 ecosystem monitoring of the area surrounding the Red Hill Bulk
19 Fuel Storage Facility by the department of land and natural
20 resources.



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

3 PART II

4 SECTION 7. The legislature finds that effective and
5 efficient water resource management requires continuous and
6 experienced leadership, especially given the climate crisis and
7 urgent need to properly steward water resources to meet the
8 affordable housing needs of local residents. On December 28,
9 1994, the review commission on the state water code submitted
10 its final report to the legislature pursuant to Act 45, Session
11 Laws of Hawaii 1987. The review commission determined that
12 amendments to the state water code were necessary to enable the
13 commission on water resource management to more effectively
14 carry out its mandate pursuant to article XI, section 7, of the
15 Hawaii State Constitution to "set overall water conservation,
16 quality and use policies; define beneficial and reasonable uses;
17 protect ground and surface water resources, watersheds and
18 natural stream environments; establish criteria for water use
19 priorities while assuring appurtenant rights and existing
20 correlative and riparian uses and establish procedures for
21 regulating all uses of Hawaii's water resources." Therefore,



1 further clarification of the commission on water resource
2 management's purpose, including its leadership structure and
3 composition of the board, will provide greater accountability
4 and protection of the State's waters.

5 The purpose of this Act is to:

- 6 (1) Allow the commission to retain independent legal
7 counsel;
- 8 (2) Amend the scope of the commission on water resource
9 management to include declaration of emergencies;
- 10 (3) Repeal the deputy to the chairperson of the commission
11 on water resource management and establish the
12 executive director of the commission on water resource
13 management;
- 14 (4) Amend the composition of the commission on water
15 resource management;
- 16 (5) Authorize entities to challenge an emergency order of
17 the commission on water resource management under
18 certain conditions; and
- 19 (6) Establish fines for certain water use offenses.

20 SECTION 8. Section 28-8.3, Hawaii Revised Statutes, is
21 amended as follows:



1 1. By amending subsection (a) to read:

2 "(a) No department of the State other than the attorney
3 general may employ or retain any attorney, by contract or
4 otherwise, for the purpose of representing the State or the
5 department in any litigation, rendering legal counsel to the
6 department, or drafting legal documents for the department;
7 provided that the foregoing provision shall not apply to the
8 employment or retention of attorneys:

9 (1) By the public utilities commission, the labor and
10 industrial relations appeals board, and the Hawaii
11 labor relations board;

12 (2) By any court or judicial or legislative office of the
13 State; provided that if the attorney general is
14 requested to provide representation to a court or
15 judicial office by the chief justice or the chief
16 justice's designee, or to a legislative office by the
17 speaker of the house of representatives and the
18 president of the senate jointly, and the attorney
19 general declines to provide [~~such~~] representation on
20 the grounds of conflict of interest, the attorney
21 general shall retain an attorney for the court,



- 1 judicial, or legislative office, subject to approval
- 2 by the court, judicial, or legislative office;
- 3 (3) By the legislative reference bureau;
- 4 (4) By any compilation commission that may be constituted
- 5 from time to time;
- 6 (5) By the real estate commission for any action involving
- 7 the real estate recovery fund;
- 8 (6) By the contractors license board for any action
- 9 involving the contractors recovery fund;
- 10 (7) By the office of Hawaiian affairs;
- 11 (8) By the department of commerce and consumer affairs for
- 12 the enforcement of violations of chapters 480 and
- 13 485A;
- 14 (9) As grand jury counsel;
- 15 (10) By the Hawaii health systems corporation, or its
- 16 regional system boards, or any of their facilities;
- 17 (11) By the auditor;
- 18 (12) By the office of ombudsman;
- 19 (13) By the insurance division;
- 20 (14) By the University of Hawaii;
- 21 (15) By the Kahoolawe island reserve commission;



- 1 (16) By the division of consumer advocacy;
- 2 (17) By the office of elections;
- 3 (18) By the campaign spending commission;
- 4 (19) By the Hawaii tourism authority, as provided in
- 5 section 201B-2.5;
- 6 (20) By the division of financial institutions;
- 7 (21) By the office of information practices;
- 8 (22) By the school facilities authority;
- 9 (23) By the Mauna Kea stewardship and oversight authority;
- 10 [~~or~~]
- 11 (24) By the commission on water resource management; or
- 12 ~~[(+24)]~~ (25) By a department, if the attorney general, for
- 13 reasons deemed by the attorney general to be good and
- 14 sufficient, declines to employ or retain an attorney
- 15 for a department; provided that the governor waives
- 16 the provision of this section."
- 17 2. By amending subsection (c) to read:
- 18 "(c) Every attorney employed by any department on a full-
- 19 time basis, except an attorney employed by the public utilities
- 20 commission, the labor and industrial relations appeals board,
- 21 the Hawaii labor relations board, the office of Hawaiian



1 affairs, the Hawaii health systems corporation or its regional
2 system boards, the department of commerce and consumer affairs
3 in prosecution of consumer complaints, insurance division, the
4 division of consumer advocacy, the University of Hawaii, the
5 Hawaii tourism authority as provided in section 201B-2.5, the
6 Mauna Kea stewardship and oversight authority, the commission on
7 water resource management, the office of information practices,
8 or as grand jury counsel, shall be a deputy attorney general."

9 SECTION 9. Section 84-18, Hawaii Revised Statutes, is
10 amended by amending subsection (e) to read as follows:

11 "(e) Subject to the restrictions imposed in subsections
12 (a) through (d), the following individuals shall not represent
13 any person or business for a fee or other consideration
14 regarding any legislative action or administrative action, as
15 defined in section 97-1, for twelve months after termination
16 from their respective positions:

- 17 (1) The governor;
- 18 (2) The lieutenant governor;
- 19 (3) The administrative director of the State;
- 20 (4) The attorney general;
- 21 (5) The comptroller;



- 1 (6) The chairperson of the board of agriculture;
- 2 (7) The director of corrections and rehabilitation;
- 3 (8) The director of finance;
- 4 (9) The director of business, economic development, and
- 5 tourism;
- 6 (10) The director of commerce and consumer affairs;
- 7 (11) The adjutant general;
- 8 (12) The superintendent of education;
- 9 (13) The chairperson of the Hawaiian homes commission;
- 10 (14) The director of health;
- 11 (15) The director of human resources development;
- 12 (16) The director of human services;
- 13 (17) The director of labor and industrial relations;
- 14 (18) The chairperson of the board of land and natural
- 15 resources;
- 16 (19) The director of law enforcement;
- 17 (20) The director of taxation;
- 18 (21) The director of transportation;
- 19 (22) The president of the University of Hawaii;
- 20 (23) The executive administrator of the board of regents of
- 21 the University of Hawaii;



- 1 (24) The administrator of the office of Hawaiian affairs;
- 2 (25) The chief information officer;
- 3 (26) The executive director of the agribusiness development
- 4 corporation;
- 5 (27) The executive director of the campaign spending
- 6 commission;
- 7 (28) The executive director of the Hawaii community
- 8 development authority;
- 9 (29) The executive director of the Hawaii housing finance
- 10 and development corporation;
- 11 (30) The president and chief executive officer of the
- 12 Hawaii tourism authority;
- 13 (31) The executive officer of the public utilities
- 14 commission;
- 15 (32) The state auditor;
- 16 (33) The director of the legislative reference bureau;
- 17 (34) The ombudsman;
- 18 (35) The permanent employees of the legislature, other than
- 19 persons employed in clerical, secretarial, or similar
- 20 positions;
- 21 (36) The administrative director of the courts;



1 (37) The executive director of the state ethics commission;

2 (38) The executive officer of the state land use
3 commission;

4 (39) The executive director of the natural energy
5 laboratory of Hawaii authority;

6 (40) The executive director of the Hawaii public housing
7 authority; and

8 (41) The [~~first deputy to the chairperson~~] executive
9 director of the commission on water resource
10 management;

11 provided that this subsection shall not apply to any person who
12 has held one of the positions listed above only on an interim or
13 acting basis and for a period of less than one hundred eighty-
14 one days."

15 SECTION 10. Section 174C-5, Hawaii Revised Statutes, is
16 amended to read as follows:

17 "§174C-5 **General powers and duties.** The general
18 administration of the state water code shall rest with the
19 commission on water resource management. In addition to its
20 other powers and duties, the commission:



- 1 (1) Shall carry out topographic surveys, research, and
2 investigations into all aspects of water use and water
3 quality;
- 4 (2) Shall designate water management areas for regulation
5 under this chapter where the commission, after the
6 research and investigations mentioned in paragraph
7 (1), shall consult with the appropriate county council
8 and county water agency, and after public hearing and
9 published notice, finds that the water resources of
10 the areas are being threatened by existing or proposed
11 withdrawals of water;
- 12 (3) Shall establish an instream use protection program
13 designed to protect, enhance, and reestablish, where
14 practicable, beneficial instream uses of water in the
15 State;
- 16 (4) May contract and cooperate with the various agencies
17 of the federal government and with state and local
18 administrative and governmental agencies or private
19 persons;
- 20 (5) May enter, after obtaining the consent of the property
21 owner, at all reasonable times upon any property other



1 than dwelling places for the purposes of conducting
2 investigations and studies or enforcing any of the
3 provisions of this code, being liable, however, for
4 actual damage done. If consent cannot be obtained,
5 reasonable notice shall be given prior to entry;

6 (6) Shall cooperate with federal agencies, other state
7 agencies, county or other local governmental
8 organizations, and all other public and private
9 agencies created for the purpose of utilizing and
10 conserving the waters of the State, and assist these
11 organizations and agencies in coordinating the use of
12 their facilities and participate in the exchange of
13 ideas, knowledge, and data with these organizations
14 and agencies. For this purpose the commission shall
15 maintain an advisory staff of experts;

16 (7) Shall prepare, publish, and issue printed pamphlets
17 and bulletins as the commission deems necessary for
18 the dissemination of information to the public
19 concerning its activities;

20 (8) May appoint and remove agents, including hearings
21 officers and consultants, necessary to carry out the



1 purposes of this chapter, who may be engaged by the
2 commission without regard to the requirements of
3 chapter 76 and section 78-1;

4 (9) May hire employees in accordance with chapter 76;

5 (10) May appoint and dismiss attorneys as may be necessary,
6 who shall be exempt from chapter 76;

7 [~~10~~] (11) May acquire, lease, and dispose of real and
8 personal property as may be necessary in the
9 performance of its functions, including the
10 acquisition of real property for the purpose of
11 conserving and protecting water and water related
12 resources as provided in section 174C-14;

13 [~~11~~] (12) Shall identify, by continuing study, those areas
14 of the State where salt water intrusion is a threat to
15 fresh water resources and report its findings to the
16 appropriate county mayor and council and the public;

17 [~~12~~] (13) Shall provide coordination, cooperation, or
18 approval necessary to the effectuation of any plan or
19 project of the federal government in connection with
20 or concerning the waters of the State. The commission
21 shall approve or disapprove any federal plans or



1 projects on behalf of the State. No other agency or
2 department of the State shall assume the duties
3 delegated to the commission under this paragraph;
4 except that the department of health shall continue to
5 exercise the powers vested in it with respect to water
6 quality, and except that the department of business,
7 economic development, and tourism shall continue to
8 carry out its duties and responsibilities under
9 chapter 205A;

10 [~~(13)~~] (14) Shall plan and coordinate programs for the
11 development, conservation, protection, control, and
12 regulation of water resources, based upon the best
13 available information, and in cooperation with federal
14 agencies, other state agencies, county or other local
15 governmental organizations, and other public and
16 private agencies created for the utilization and
17 conservation of water;

18 [~~(14)~~] (15) Shall catalog and maintain an inventory of all
19 water uses and water resources; [~~and~~]

20 [~~(15)~~] (16) Shall determine appurtenant water rights,
21 including but not limited to the quantification of the



1 amount of water and the specification of the water
2 course or the means of access and delivery entitled to
3 by that right, which determination shall be valid for
4 purposes of this chapter[-]; and

5 (17) May declare an emergency if the commission determines,
6 in consultation with the governor, the appropriate
7 county, and the department of health, that there is an
8 absence of sufficient quantity and quality of water in
9 any area, whether within or outside of a water
10 management area, that immediately threatens the public
11 health, safety, and welfare. The commission may issue
12 orders reciting the existence of the emergency and
13 requiring those actions as the commission deems
14 necessary to address the emergency be taken, including
15 but not limited to apportioning, rotating, limiting,
16 or prohibiting the use of water resources of the area;
17 provided that an emergency order shall expire no later
18 than one year after issuance by the commission;
19 provided further that the order may be extended by a
20 separate or supplementary order."



1 SECTION 11. Section 174C-6, Hawaii Revised Statutes, is
2 amended to read as follows:

3 "§174C-6 [~~Deputy to the chairperson~~] Executive director of
4 the commission on water resource management. (a) There shall
5 be [~~a first deputy to the chairperson~~] an executive director of
6 the commission on water resource management [~~("deputy for water
7 resource management") who shall be in addition to any other
8 first deputy to the chairperson as the chairperson of the board
9 of land and natural resources. The deputy]~~, who shall have
10 experience in the area of water resources and shall be appointed
11 by [~~the chairperson with the approval of a majority of~~] the
12 commission~~[-]~~ and serve at the pleasure of the commission.

13 (b) The duties of the [~~deputy~~] executive director for
14 water resource management shall be to administer and implement,
15 under the direction of the commission, the state water code [~~and
16 all~~], the rules, and other directives [~~promulgated in accordance
17 therewith~~] adopted by the commission. Nothing in this
18 [~~provision~~] section shall be construed as limiting the authority
19 of the commission as to matters regarding water resources.

20 (c) The position of [~~deputy~~] executive director for water
21 resource management [~~is not~~] shall not be subject to chapter 76.



1 (d) The salary of the [~~deputy~~] executive director for
2 water resource management shall be [~~as provided in section 26-53~~
3 ~~for first deputies or first assistants to the head of any~~
4 ~~department.~~] set by the board and the executive director shall
5 be included in any benefit program generally applicable to the
6 officers and employees of the State.

7 (e) The commission shall develop and document annual goals
8 and performance measures for the executive director that
9 authorize the commission to annually evaluate the executive
10 director's work to ensure compliance by the commission with
11 statutory and constitutional requirements and achievement of its
12 statutory and constitutional purposes.

13 (f) The commission shall evaluate and document the
14 evaluation of the executive director's performance annually, or
15 more frequently upon the request of at least four members of the
16 commission, based on annual goals, performance measures, and
17 other relevant criteria.

18 (g) The position of Red Hill Water Alliance Initiative
19 policy coordinator, established pursuant to section -2, Hawaii
20 Revised Statutes, shall be placed within the office of the
21 executive director."



1 SECTION 12. Section 174C-7, Hawaii Revised Statutes, is
2 amended to read as follows:

3 "§174C-7 Commission on water resource management. (a)

4 There is established within the department a commission on water
5 resource management consisting of seven members which shall have
6 exclusive jurisdiction and final authority in all matters
7 relating to implementation and administration of the state water
8 code, except as otherwise specifically provided in this chapter.
9 The commission shall be attached to the department of land and
10 natural resources for administrative purposes only.

11 (b) Five members shall be appointed by the governor
12 subject to confirmation by the senate in the manner prescribed
13 in subsection [~~(d)~~] (e). Each member shall have substantial
14 experience in the area of water resource management; provided
15 that at least one member shall have substantial experience or
16 expertise in traditional Hawaiian water resource management
17 techniques and in traditional Hawaiian riparian usage such as
18 those preserved by section 174C-101. Each of the members shall
19 be eligible to serve as the chairperson of the commission upon
20 election by a majority of the commission members.



1 (c) The chairperson of the board of land and natural
2 resources [~~shall be the chairperson of the commission. The~~] and
3 the director of health or the director's designee shall serve as
4 [~~an~~] ex officio[+], [+] voting [~~member.~~] members, but shall be
5 ineligible to serve as chairperson of the commission.

6 [~~(c)~~] (d) The members of the commission shall serve
7 without compensation but shall be reimbursed for expenses,
8 including travel expenses, necessary for the performance of
9 their duties.

10 [~~(d)~~] (e) In appointing a member to the commission, the
11 governor shall select from a list submitted by a nominating
12 committee. The nominating committee shall be composed of [~~four~~]
13 five individuals chosen as follows: two persons appointed by
14 the governor; one person appointed by the president of the
15 senate; one person appointed by the speaker of the house[~~;~~]; and
16 one person appointed by the chief executive officer of the
17 office of Hawaiian affairs. The committee shall solicit
18 applications and send to the governor the names of at least
19 three individuals for each open position.



1 ~~[(e)]~~ (f) Except as otherwise provided in this chapter,
2 the commission shall be subject to sections 26-34, 26-35, and
3 26-36."

4 SECTION 13. Section 174C-9, Hawaii Revised Statutes, is
5 amended to read as follows:

6 "~~[\d]~~§174C-9~~[\d]~~ Proceedings before the commission
7 concerning water resources. (a) All proceedings before the
8 commission concerning the enforcement or application of any
9 provision of this chapter or any rule adopted pursuant thereto,
10 or the issuance, modification, or revocation of any permit or
11 license under this code by the commission, shall be conducted in
12 accordance with chapter 91. Hearings regarding particular water
13 resources shall be conducted on the island where those water
14 resources are located.

15 (b) Any party to whom an emergency order is directed may
16 challenge that order but shall immediately comply with the order
17 pending disposition of the party's challenge. The commission
18 shall give precedence to a hearing on the challenge over all
19 other pending matters."

20 SECTION 14. Section 174C-15, Hawaii Revised Statutes, is
21 amended to read as follows:



1 "§174C-15 Penalties and common law remedies. (a) The
2 commission may enforce its rules and orders adopted pursuant to
3 this chapter by suit for injunction or for damages or both.

4 (b) Any person who ~~[violates any]~~ ;

5 (1) Violates any provision of this chapter [, or any] ;
6 (2) Violates any rule adopted pursuant to this chapter [,
7 may] ;

8 (3) Violates any order of the commission;
9 (4) Fails to obtain a permit when a permit is required
10 pursuant to this chapter;
11 (5) Fails to comply with permit conditions; or
12 (6) Fails to comply with standardized water audit
13 requirements pursuant to Act 169, Session Laws of
14 Hawaii 2016,

15 shall be subject to a fine imposed by the commission. [~~Sueh~~]
16 The fine shall be not less than \$50 and shall not exceed
17 [\$5,000. For a continuing offense, each day during which the
18 offense is committed is a separate violation.] \$25,000 per
19 violation. Each day that a violation exists or continues to
20 exist shall constitute a separate offense. Penalties for
21 continuing violations shall be assessed from the earliest known



1 date of the violation. The earliest known date of a violation
2 shall be determined by the commission by a preponderance of the
3 evidence; provided that if the earliest known date cannot be
4 determined by a preponderance of evidence, penalties for
5 continuing violations shall be assessed from the earliest date
6 the commission is made aware of the violation.

7 (c) When imposing a penalty, the commission shall consider
8 the following factors, which shall include but not be limited
9 to:

- 10 (1) The nature, circumstances, extent, gravity, and
11 history of the violation and of any prior violations;
12 (2) The economic benefit to the violator, or anticipated
13 by the violator, resulting from the violation;
14 (3) The opportunity, difficulty, and history of corrective
15 action;
16 (4) Good faith efforts to comply;
17 (5) Degree of culpability; and
18 (6) Other matters as justice may require.

19 ~~(e)~~ (d) No provision of this chapter shall bar the right
20 of any injured person to seek other legal or equitable relief
21 against a violator of this chapter.



1 [~~(d)~~] (e) Except as otherwise provided by law, the
2 commission or its authorized representative by proper delegation
3 [~~may~~] shall set, charge, and collect administrative fines [~~or~~];
4 may bring legal action to recover administrative fees and costs
5 as documented by receipts or affidavit, including [~~attorneys~~]
6 attorney's fees and costs; [~~or~~] and may bring legal action to
7 recover administrative fines, fees, and costs, including
8 [~~attorneys~~] attorney's fees and costs, or payment for damages
9 resulting from a violation of this chapter or any rule adopted
10 pursuant to this chapter."

11 SECTION 15. Section 174C-62, Hawaii Revised Statutes, is
12 amended to read as follows:

13 "~~[§]174C-62[§]~~ **Declaration of water shortage.** (a) The
14 commission shall formulate a statewide plan for implementation
15 during periods of water shortage. As a part of the plan, the
16 commission shall adopt a reasonable system of permit
17 classification according to source of water supply, method of
18 extraction or diversion, use of water, or a combination thereof.

19 (b) The commission, by rule, may declare that a water
20 shortage exists within all or part of an area, whether within or
21 outside of a water management area, when insufficient water is



1 available to meet the requirements of the permit system or when
2 conditions [~~are such as to~~] require a temporary reduction in
3 total water use within the area to protect water resources from
4 serious harm. The commission shall publish a set of criteria
5 for determining when a water shortage exists[-], including but
6 not limited to impacts and effects of the climate crisis.

7 (c) In accordance with the plan adopted under subsection
8 (a), the commission may impose [~~such~~] restrictions on one or
9 more classes of permits and outside of management areas on well
10 and stream diversion owners and operators as may be necessary to
11 protect the water resources of the area from serious harm and to
12 restore them to their previous water quantity or chloride level
13 condition.

14 (d) A declaration of water shortage and any measures
15 adopted pursuant thereto may be rescinded by rule by the
16 commission.

17 (e) When a water shortage is declared, the commission
18 shall cause a notice [~~thereof~~] of the water shortage to be
19 published in a prominent place in a newspaper of general
20 circulation throughout the area[-] and on the commission's
21 website. The notice shall be published each day for the first



1 week of the shortage and once a week [~~thereafter~~] for four
2 months, followed by monthly publications until the declaration
3 is rescinded. Publication of [~~such~~] the notice shall serve as
4 notice to all water users in the area of the condition of water
5 shortage.

6 (f) The commission shall cause each permittee in the area
7 to be notified by regular and electronic mail of any change in
8 the conditions of the permittee's permit, any suspension
9 [~~thereof,~~] of the permittee's permit, or of any other
10 restriction on the use of water for the duration of the water
11 shortage.

12 (g) If an emergency condition arises due to a water
13 shortage within any area, whether within or outside of a water
14 management area, and if the commission finds that the
15 restrictions imposed under subsection (c) are not sufficient to
16 protect the public health, safety, or welfare, or the health of
17 animals, fish, or aquatic life, or a public water supply, or
18 recreational, municipal, agricultural, or other reasonable uses,
19 the commission may issue orders reciting the existence of such
20 an emergency and requiring that such actions as the commission
21 deems necessary to meet the emergency be taken, including but



1 not limited to apportioning, rotating, limiting, or prohibiting
2 the use of the water resources of the area. Any party to whom
3 an emergency order is directed may challenge such an order but
4 shall immediately comply with the order, pending disposition of
5 the party's challenge. The commission shall give precedence to
6 a hearing on such challenge over all other pending matters."

7 PART III

8 SECTION 16. If any provision of this Act, or the
9 application thereof to any person or circumstance, is held
10 invalid, the invalidity does not affect other provisions or
11 applications of the Act that can be given effect without the
12 invalid provision or application, and to this end the provisions
13 of this Act are severable.

14 SECTION 17. This Act does not affect rights and duties
15 that matured, penalties that were incurred, and proceedings that
16 were begun before its effective date.

17 SECTION 18. Statutory material to be repealed is bracketed
18 and stricken. New statutory material is underscored.

19 SECTION 19. This Act shall take effect on July 1, 2050;
20 provided that sections 3, 5, and 6 of this Act shall take effect
21 on July 1, 2024.



Report Title:

DLNR; CWRM; Red Hill WAI; Policy Lead and Coordination; Red Hill Remediation Special Fund; Public Trust Purpose; Responsibilities; Commission Membership; Executive Director; Independent Legal Counsel; Emergency Order; Water Emergencies; Water Shortage Declarations; Fines; Expenditure Ceiling; Appropriation

Description:

Part I: Establishes a WAI Policy Coordinator and other positions within the Commission on Water Resource Management for coordination of Red Hill WAI initiatives. Creates the Red Hill Remediation Special Fund. Declares that the general fund expenditure ceiling is exceeded. Appropriates funds. Part II: Allows the Commission of Water Resource Management to retain independent legal counsel. Repeals the position of deputy to the chairperson of the Commission and establishes the position of Executive Director of the Commission. Amends the composition of the Commission and administratively attaches it to DLNR. Authorizes entities to challenge an emergency order of the Commission under certain conditions. Establishes fines for certain water use offenses. Amends the Commission's authority to declare water emergencies and issue orders to address them and declare water shortages and related notice requirements. Specifying that the nominating committee of the Commission shall include one person appointed by the Chief Executive Officer of the Office of Hawaiian Affairs. Declares that the general fund expenditure ceiling is exceeded. Takes effect 7/1/2050. (SD1)

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

