

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

SYLVIA LUKE  
LIEUTENANT GOVERNOR | KA HOPE KIA'ĀINA



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

P.O. BOX 621  
HONOLULU, HAWAII 96809

DAWN N.S. CHANG  
CHAIRPERSON  
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KAHOOLAWE ISLAND RESERVE COMMISSION  
LAND  
STATE PARKS

Testimony of  
DAWN N. S. CHANG  
Chairperson

Before the House Committee on  
WATER & LAND

Tuesday, January 30, 2024  
9:00 AM

State Capitol, Conference Room 430 & Videoconference

In consideration of  
HOUSE BILL 1544  
RELATING TO STATE WATER CODE PENALTIES

House Bill 1544 proposes to: add a minimum penalty of \$50 and a maximum penalty of \$60,000 per violation of the State Water Code; expand the types of potential violations of the State Water Code; and make each day that a violation exists or continues to exist a separate offense. This bill also requires the Commission on Water Resource Management (Commission) to consider certain factors when imposing penalties. **The Department of Land and Natural Resources (Department) strongly supports 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's 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.

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 appreciates the raising of the penalty ceiling from \$5,000 to \$60,000 per violation. This change aligns with Act 233, Session Laws

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

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

of Hawai'i (SLH) 2023, which increased DOH's maximum penalty to \$60,000 to conform with federal inflation adjusted civil penalty amounts pursuant to the Clean Water Act.<sup>3</sup>

HRS Section 174C-15 has only been amended once since its adoption by Act 45, SLH 1987 (Act 45). In 2004, Act 142 raised the maximum penalty from \$1,000 to \$5,000 and added subsection (d). However, in its 1994 Report to the State Legislature, the Review Commission on the State Water Code, pursuant to Section 5 of Act 45, had already proposed a maximum fine of \$25,000 for reckless, knowing, or intentional violations.

This bill will supports 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 diversions, and 376 perennial streams, approximately 100 of which have a measurable 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.

Thank you for the opportunity to testify in strong support of this measure.

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<sup>3</sup> The federal penalty amount for violations of the Clean Water Act is provided for in the federal regulation 33 C.F.R. § 326.6. This regulation is adjusted *annually to improve its effectiveness and maintain its deterrent effect*, as required by the Federal Civil Penalties Adjustment Act Improvements Act of 2015, Public Law 114-74, sec. 701, November 2, 2015. The current maximum federal penalty is \$64,619. See <https://www.federalregister.gov/documents/2023/08/03/2023-16025/civil-monetary-penalty-inflation-adjustment-rule>



DEPARTMENT OF WATER SUPPLY • COUNTY OF HAWAII

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TELEPHONE (808) 961-8050 • FAX (808) 961-8657

January 29, 2024

TESTIMONY OF KEITH K. OKAMOTO, MANAGER-CHIEF ENGINEER  
DEPARTMENT OF WATER SUPPLY, COUNTY OF HAWAII

HEARING BEFORE THE HOUSE COMMITTEE ON WATER & LAND

DATE: Tuesday, January 30, 2024

TIME: 9:30 a.m.

PLACE: Conference Room 430 & Videoconference

**HB 1544 - RELATING TO STATE WATER CODE PENALTIES**

Honorable Chair Linda Ichiyama, Vice-Chair Mahina Poepoe, and committee members of the House Committee on Water & Land.

The County of Hawaii, Department of Water Supply (DWS) submits this letter to respectfully express its deep concerns regarding House Bill (HB) 1544. This measure proposes to enable the Department of Land and Natural Resources (DLNR) and the Commission on Water Resource management (CWRM or Commission) to increase the water code's penalties, from a minimum of \$50 to a maximum of \$60,000, to serve as a deterrence to violators of the State Water Code in section 174C-15, Hawaii Revised Statutes (HRS).

The proposed language under Section 2 could be used capriciously to assess and impose penalties by the Commission. The lack of form and procedures to determine penalties could lead to arbitrary and inconsistent applications; and could result in disagreements, litigation, and associated delays to resolve the imposed penalty, divert resources away from the greater community benefit of providing safe drinking water.

We thank you for your attention to this matter, and for your dedication and commitment you have shown in serving our State. We remain hopeful that you will carefully weigh the concerns raised by DWS and others.

Please feel free to contact me at (808) 961-8050 or via email at [dws@hawaiidws.org](mailto:dws@hawaiidws.org) with any questions you may have regarding DWS' comments.

Thank you for your time and consideration on our testimony on HB 1544.

*...Water, Our Most Precious Resource...Ka Wai A Kāne...*

The Department of Water Supply is an Equal Opportunity provider and employer.

**BOARD OF WATER SUPPLY**  
**KA 'OIHANA WAI**  
**CITY AND COUNTY OF HONOLULU**

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MEIA

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DEPUTY MANAGER  
HOPE MANAKIA



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GENE C. ALBANO, P.E., Ex-Officio

January 30, 2024

The Honorable Linda Ichiyama, Chair  
and Members  
Committee on Water and Land  
House of Representatives  
Hawai'i State Capitol, Room 430  
Honolulu, Hawai'i 96813

Dear Chair Ichiyama and Members:

**SUBJECT: House Bill 1544: Relating to State Water Code Penalties**

The Honolulu Board of Water Supply (BWS) submits this letter to respectfully express its concerns regarding House Bill (HB) 1544, which mirrors a similar bill introduced and vetoed by Governor Green from the 2023 Legislative Session. The purpose of HB 1544 proposes to do the same, it enables the Department of Land and Natural Resources (DLNR) and Commission of Water Resource Management (CWRM or Commission) to increase the water code's penalties and fines from a minimum of \$50 to a maximum of \$60,000 to serve as a deterrence to violators of the State Water Code in section 174C-15, Hawaii Revised Statutes (HRS).

BWS has concerns about the propriety of raising the penalty ceiling for violations of the State Water Code, as determined by the CWRM, from \$5,000 to \$60,000 per violation, far in excess of (1) DLNR's initial testimony before the House Committee on Water & Land dated January 31, 2023 requesting that the penalty be raised to a maximum violation of \$25,000, and (2) the rate of inflation measured by the Consumer Price Index.

According to DLNR Chairperson Dawn Chang's testimony in 2023 before the Senate Committee on Water and Land, the penalty ceiling was raised from the original request of \$25,000 to \$60,000 solely "to be consistent with Senate Bill (SB) 445 SD2, HD1 that proposed a \$59,973 penalty ceiling for Department of Health (DOH) violations "to increase deterrence and match penalties promulgated by the United States

Environmental Protection Agency (EPA) for similar violations.” No other justification was provided by DLNR in support of the \$60,000 figure.<sup>1</sup>

Similar to last legislative session, HB1544 does not explicitly set forth the Commission’s practice and procedure relating to the administrative proceedings of civil resource violations of State law and to the assessment of administrative sanctions for such violations. While HRS § 174C-15.5 (“With the mutual consent of both the commission and the department, the commission may use the civil natural resource violations system of the department of land and natural resources . . .”) appears to permit the commission to use the Civil Resource Violations System (HAR chapter 13-1, subchapter 7), there is no requirement that the commission do so.

Without a fixed procedure, respondents are left without the due process protections provided by the Civil Resource Violations System, including, but not limited to, minimum notice requirements and response deadlines, the criteria used for calculating and assessing sanctions, procedures to contest the notice or address mitigation requests, and a stay of enforcement pending judicial review of the case.

Notwithstanding the fact that SB 445 is a failed bill that did not pass the 2023 legislative session, the DOH’s apparent basis for proposing that penalties assessed under section 342D-50(a) from \$25,000 to \$56,460 was that “[t]he last time some of these fines were updated was more than twenty years ago.”<sup>2</sup> SB 445’s proposed penalty ceiling was further raised “from \$56,460 to \$59,973, per the Department of Health’s [(DOH)] recommendation, to align with the recent inflation adjusted penalty promulgated by the United States Environmental Protection Agency [(EPA)] for similar violations[.]”<sup>3</sup> Notably, the measure proposing the \$59,973 DOH penalty ceiling (SB1377 S.D. 1) was deferred on March 16, 2023.

Turning then to the issue of inflation adjustments, we note that EPA amended its civil penalty policies to account for inflation by using the increase established by the Consumer Price Index for all Urban Consumers (CPI-U).<sup>4</sup> Following EPA’s methodology the appropriate increase for updating DOH’s section \$25,000 penalty pursuant to HRS § 342D-30, effective since June 1997, to account for inflation, is an increase to \$47,430.91.<sup>5</sup>

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<sup>1</sup> [https://www.capitol.hawaii.gov/sessions/session2023/Testimony/HB153\\_SD1\\_TESTIMONY\\_JDC-WAM\\_04-04-23\\_.PDF](https://www.capitol.hawaii.gov/sessions/session2023/Testimony/HB153_SD1_TESTIMONY_JDC-WAM_04-04-23_.PDF)

<sup>2</sup> [https://www.capitol.hawaii.gov/sessions/session2023/Testimony/SB445\\_HD1\\_TESTIMONY\\_FIN\\_03-31-23\\_.PDF](https://www.capitol.hawaii.gov/sessions/session2023/Testimony/SB445_HD1_TESTIMONY_FIN_03-31-23_.PDF)

<sup>3</sup> [https://www.capitol.hawaii.gov/sessions/session2023/CommReports/SB445\\_SD1\\_SSCR90\\_.htm](https://www.capitol.hawaii.gov/sessions/session2023/CommReports/SB445_SD1_SSCR90_.htm)

<sup>4</sup> [https://www.epa.gov/system/files/documents/2022-01/2022amendmentstopenaltypoliciesforinflation\\_0.pdf](https://www.epa.gov/system/files/documents/2022-01/2022amendmentstopenaltypoliciesforinflation_0.pdf)

<sup>5</sup> [https://www.bls.gov/data/inflation\\_calculator.htm](https://www.bls.gov/data/inflation_calculator.htm)

The Honorable Linda Ichiyama  
and Members  
January 30, 2024  
Page 3

Correspondingly, the appropriate increase for updating CWRM's \$5,000 penalty pursuant to HRS § 174C-15, effective since June 2004, to account for inflation, is an increase to \$8,016.00. Any amount exceeding \$8,016.00 must be supported by a cost analysis and evaluation, similar to the CWRM Staff Submittal relating to the Commission's Administrative and Civil Penalty Guidelines (G14-01) dated October 1, 2014.

The DLNR and CWRM staff should have exercised its due diligence and outreach to the general public for feedback before reintroducing HB1544 to the 2024 Legislature; this increase of \$60,000 penalty could negatively impact the agriculture industry, individuals, water utilities, etc. It is apparent the previous bill introduced last legislative session "flew under the radar" without public scrutiny as written testimony was primarily submitted by the DLNR. It is for the betterment of our State to be as transparent as possible to the people of our Island State.

Thank you for your consideration and the opportunity to testify on HB 1544.

Very truly yours,



ERNEST Y. W. LAU, P.E.  
Manager and Chief Engineer





## DEPARTMENT OF WATER

### COUNTY OF KAUAI

4398 PUA LOKE STREET LIHUE, HAWAII 96766

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JOSEPH E. TAIT  
MANAGER AND CHIEF ENGINEER

MICHAEL K. HINAZUMI, P.E.  
DEPUTY MANAGER-ENGINEER

January 29, 2024

The Honorable Linda Ichiyama, Chair  
and Committee Members  
House Committee on Water and Land  
Hawaii State Capitol, Room 430  
415 S. Beretania Street  
Honolulu, Hawaii 96813

Dear Chair Ichiyama and Committee Members:

### **Subject: HB 1544 – Relating to State Water Code Penalties**

The County of Kauai, Department of Water (DOW) submits this letter to respectfully express its deep concerns regarding House Bill (HB) 1544. This measure enables the Department of Land and Natural Resources (DLNR) and the Commission on Water Resource management (CWRM or Commission) to increase the water code's penalties and fines, from a minimum of \$50 to a maximum of \$60,000, to serve as a deterrence to violators of the State Water Code in section 174C-15, Hawaii Revised Statutes (HRS).

The DOW has reviewed the provisions outlined in HB1544 is very concerned with the proposed language of Section 2, by which violation penalties would be set by the Commission. The lack of established processes and procedures to determine penalties could lead to arbitrary and inconsistent application; and, could result in disagreements, litigation and associated delays to resolve any imposed penalty, diverting already limited resources away from the greater community benefit of providing safe drinking water, affordable housing, medical and other services.

Thank you for your attention to this matter, and for your dedication and commitment you have shown in serving our State. We remain hopeful that you will carefully weigh the concerns raised by the DOW and others.

Please feel free to contact me at (808) 245-5403 or via email at [jtait@kauaiwater.org](mailto:jtait@kauaiwater.org) with any questions you may have regarding DOW's comments.

Sincerely,

A handwritten signature in black ink, appearing to read "J. Tait".

Joseph E. Tait

Manager and Chief Engineer



# SIERRA CLUB OF HAWAI'I

## HOUSE COMMITTEE ON WATER & LAND

January 30, 2024      9:00 AM      Conference Room 430

**In SUPPORT of HB1544:** Relating to State Water Code Penalties

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Aloha Chair Ichiyama, Vice Chair Poepoe, and Members of the Water & Land Committee,

On behalf of our 20,000 members and supporters, the Sierra Club of Hawai'i **SUPPORTS** HB1544, to allow the Commission on Water Resource Management ("CWRM") to more meaningfully enforce laws concerning the management and allocation of our public trust water resources.

HB1544 would allow CWRM to impose meaningful fines against powerful entities who could otherwise over pump our aquifers and drain our streams dry with impunity, notwithstanding the law or the needs of our communities. CWRM's current \$5,000 maximum daily fine is wholly insufficient to hold multinational corporations or the Department of Defense accountable if and when their water code violations impact priority public needs – such as, but not limited to, affordable housing, or fire prevention.

**Without the increased fines authorized under this measure, millions of gallons of water per day could be illegally monopolized by deep pocket entities for a fraction of a cent per gallon in penalties, harming our precious water resources and the houses, schools, farms, small businesses, and others that rely on them.**

Notably, this measure requires CWRM to consider an explicit set of factors in setting and imposing fines, such as the gravity of a violation, any economic benefit realized by the violator, and degree of culpability. This will ensure that fines are appropriate to the circumstances of each case. Concerns about automatic and excessive fines that ignore the realities of any given situation, including mitigating and extenuating circumstances and impacts to local residents, would therefore appear unfounded.

Accordingly, the Sierra Club respectfully urges the Committee to **PASS** this measure.

Mahalo nui for the opportunity to testify.



**HB-1544**

Submitted on: 1/28/2024 10:31:04 AM

Testimony for WAL on 1/30/2024 9:00:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Testify</b>
Regina Gregory	Individual	Support	Written Testimony Only

Comments:

May require extra manpower?

**HB-1544**

Submitted on: 1/29/2024 8:46:13 AM

Testimony for WAL on 1/30/2024 9:00:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Testify</b>
Ted Bohlen	Individual	Support	Written Testimony Only

Comments:

I SUPPORT this bill to increase penalties for violations of the State Water Code. Based on my experience as a Deputy Attorney General enforcing water pollution violations for DOH for 15 years, I believe the penalty increases in this bill are reasonable and necessary to uphold the law.

Thank you for the opportunity to submit testimony.

Ted Bohlen