

JAN 23 2025

A BILL FOR AN ACT

RELATING TO STATE WATER CODE PENALTIES.

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

1 SECTION 1. The legislature finds that, in 1987, the state
2 water code was adopted to protect the precious water resources
3 of the State. To better enable the department of land and
4 natural resources and the commission on water resource
5 management to carry out that mission, the legislature further
6 finds that the state water code's penalties and fines must be
7 amended and increased to serve as an effective deterrent to
8 violators.

9 The purpose of this Act is to ensure that all violators of
10 the state water code are held accountable for their violations
11 by:

- 12 (1) Adding a minimum penalty and amending the maximum
13 penalty per violation of the state water code and
14 clarifying what constitutes a separate offense; and
15 (2) Requiring the commission on water resource management
16 to consider certain factors when imposing penalties
17 and to set, charge, and collect administrative fines.

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SECTION 2. Section 174C-15, Hawaii Revised Statutes, is amended to read as follows:

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

(b) Any person who ~~[violates any]~~:

(1) Violates any provision of this chapter ~~[, or any]~~;

(2) Violates any rule adopted pursuant to this chapter ~~[, or any]~~;

(3) Violates any order of the commission;

(4) Fails to obtain a permit when a permit is required under this chapter;

(5) Fails to comply with permit conditions; or

(6) Fails to comply with standardized water audit requirements pursuant to Act 169, Session Laws of Hawaii 2016,

shall be subject to a fine imposed by the commission. [Such]
The fine shall be no 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 per
violation. Each day that a violation exists or continues to
exist shall constitute a separate offense. Penalties for

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

8 (c) When imposing a penalty, the commission shall
9 consider the following factors, including but not limited 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) Such 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.

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1 [~~(d)~~] (e) Except as otherwise provided by law, the
2 commission or its authorized representative by proper delegation
3 may set, charge, and collect administrative fines [~~or~~]; may
4 bring legal action to recover administrative fees and costs as
5 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 (f) The maximum fine per violation pursuant to subsection
12 (b) shall increase to:

13 (1) \$30,000 beginning January 1, 2030;

14 (2) \$40,000 beginning January 1, 2035;

15 (3) \$55,000 beginning January 1, 2040; and

16 (4) \$75,000 beginning January 1, 2045."

17 SECTION 3. If any provision of this Act, or the
18 application thereof to any person or circumstance, is held
19 invalid, the invalidity does not affect other provisions or
20 applications of the Act that can be given effect without the
21 invalid provision or application, and to this end the provisions
22 of this Act are severable.

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1 SECTION 4. This Act does not affect rights and duties that
2 matured, penalties that were incurred, and proceedings that were
3 begun before its effective date.

4 SECTION 5. Statutory material to be repealed is bracketed
5 and stricken. New statutory material is underscored.

6 SECTION 6. This Act shall take effect upon its approval.

7

8

INTRODUCED BY: 

9

BY REQUEST

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Report Title:

DLNR; CWRM; State Water Code; Penalties

Description:

Adds a minimum penalty and amends the maximum penalty per violation of the State Water Code, expands the types of potential violations of the State Water Code, and makes each day that a violation exists or continues to exist a separate offense. Requires the Commission on Water Resource Management to consider certain factors when imposing penalties.

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

JUSTIFICATION SHEET

SB. NO. 1461

DEPARTMENT: Land and Natural Resources

TITLE: A BILL FOR AN ACT RELATING TO STATE WATER CODE PENALTIES.

PURPOSE: To ensure that all violators of the State Water Code are held accountable for their violations by adding a minimum penalty and amending the maximum penalty per violation of the State Water Code and clarifying what constitutes a separate offense; and by requiring the Commission on Water Resource Management (Commission) to consider certain factors when imposing penalties and to set, charge, and collect administrative fines.

MEANS: Amend section 174C-15, Hawaii Revised Statutes (HRS).

JUSTIFICATION: The maximum penalty of the State Water Code has been increased only once from \$1,000 to \$5,000 by Act 142 in 2004 since its adoption thirty-eight years ago. The current maximum penalty does not have a sufficient deterrent effect as it has become the cost of doing business for some violators.

To encourage compliance and deter potential violators, this bill proposes to amend section 174C-15, HRS, to require a minimum penalty of \$50 and a maximum penalty of \$25,000 effective upon approval.

The Commission as the primary guardian of the water resource public trust intends to create parity with its co-trustee the Department of Health. The maximum penalty of water quality violations is \$60,000, which was increased by Act 233 in 2023 to match the federal maximum penalty, which increases yearly due to inflation. Violations of the State Water Code and the Commission's rules and orders regarding water quantity are as detrimental to the resource as violations of Department of

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Health's statutes and rules regarding water quality.

To create parity with maximum penalty of the Department of Health, an incremental increase of the maximum fine is proposed in subsection (f) effective every five years.

This bill also requires the Commission to consider exacerbating and mitigating factors when assessing the amount of the fine. Thus, this bill makes the setting, charging, and collecting of administrative fines by the Commission mandatory, rather than discretionary.

Impact on the public: The bill supports protection of the public trust resource by increasing deterrence of any violation of the state water code.

Impact on the department and other agencies:

This bill 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 Hawaii. 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 Oahu, Molokai, and Maui with the total amount of 411 groundwater use permits and 176 surface water use permits. This bill will protect water quantity and encourage compliance with the State Water Code.

GENERAL FUND: None.

OTHER FUNDS: None.

PPBS PROGRAM
DESIGNATION: LNR 404.

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OTHER AFFECTED
AGENCIES:

County water boards or departments.

EFFECTIVE DATE:

Upon approval.