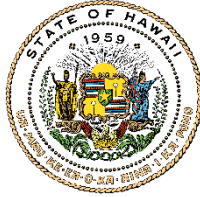


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KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

Testimony of
DAWN N. S. CHANG
Chairperson

Before the Senate Committees on
JUDICIARY
and
WAYS AND MEANS

Wednesday, March 1, 2023
10:05 AM

State Capitol, Conference Room 211 & Videoconference

In consideration of
SENATE BILL 44, SENATE DRAFT 1
RELATING TO STATE WATER CODE PENALTIES

Senate Bill 44, Senate Draft 1 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 this measure and offers the following comments and amendments.**

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.

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

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

The Department also appreciates the amendment made to the bill in Senate Draft 1 to raise the penalty ceiling from \$5,000 to \$25,000³ per 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, Senate Draft 1:

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 testimony in support of this measure with a proposed amendment.

³ Senate Bill 445, Senate Draft 1 proposes to increase the penalty ceiling of the Department of Health (DOH) 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 amount to be consistent with DOH.