
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 commission on water resource management to
5 carry out that mission, the legislature further finds that the
6 state water code's penalties and fines must be amended and
7 increased to serve as an effective deterrent to violators.

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

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



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

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

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

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

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

10 (3) Violates any order of the commission;

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

13 (5) Fails to comply with permit conditions; or

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

17 shall be subject to a fine imposed by the commission. [~~Sueh~~]

18 The fine shall be no less than \$ _____ and shall not exceed

19 [~~\$5,000. For a continuing offense, each day during which the~~

20 ~~offense is committed is a separate violation.] \$~~ _____ per

21 violation. Each day that a violation exists or continues to



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

9 (c) When imposing a penalty, the commission shall consider
10 the following factors, including but not limited to:

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



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

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

14 SECTION 3. Statutory material to be repealed is bracketed
15 and stricken. New statutory material is underscored.

16 SECTION 4. This Act shall take effect on July 1, 3000.



Report Title:

State Water Code; Commission on Water Resource Management;
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. Makes the setting, charging, and collecting of administrative fines by the Commission on Water Resource Management mandatory, rather than discretionary. Effective 7/1/3000. (HD1)

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