
A BILL FOR AN ACT

RELATING TO THE ADMINISTRATION OF THE COMMISSION ON WATER
RESOURCE MANAGEMENT.

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

1 SECTION 1. Section 26-52, Hawaii Revised Statutes, is
2 amended to read as follows:

3 "**§26-52 Department heads and executive officers.** The
4 salaries of the following state officers shall be as follows:

5 (1) The salary of the superintendent of education shall be
6 set by the board of education at a rate no greater
7 than \$250,000 a year. The superintendent shall be
8 subject to an annual performance evaluation that is in
9 alignment with other employee evaluations within the
10 department of education and are based on outcomes
11 determined by the board of education; provided that
12 nothing shall prohibit the board of education from
13 conditioning a portion of the salary on performance;

14 (2) The salary of the president of the University of
15 Hawaii shall be set by the board of regents;



- 1 (3) Effective July 1, 2004, the salaries of all department
2 heads or executive officers of the departments of
3 accounting and general services, agriculture, attorney
4 general, budget and finance, business, economic
5 development, and tourism, commerce and consumer
6 affairs, corrections and rehabilitation, Hawaiian home
7 lands, health, human resources development, human
8 services, labor and industrial relations, land and
9 natural resources, law enforcement, taxation, and
10 transportation, and the commission on water resource
11 management shall be as last recommended by the
12 executive salary commission. Effective July 1, 2007,
13 and every six years thereafter, the salaries shall be
14 as last recommended by the commission on salaries
15 pursuant to section 26-56, unless rejected by the
16 legislature; and
- 17 (4) The salary of the adjutant general shall be \$85,302 a
18 year. Effective July 1, 2007, and every six years
19 thereafter, the salary of the adjutant general shall
20 be as last recommended by the commission on salaries
21 pursuant to section 26-56, unless rejected by the



1 legislature, except that if the state salary is in
 2 conflict with the pay and allowance fixed by the
 3 tables of the regular Army or Air Force of the United
 4 States, the latter shall prevail."

5 SECTION 2. Section 28-8.3, Hawaii Revised Statutes, is
 6 amended as follows:

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

8 "(a) No department of the State other than the attorney
 9 general may employ or retain any attorney, by contract or
 10 otherwise, for the purpose of representing the State or the
 11 department in any litigation, rendering legal counsel to the
 12 department, or drafting legal documents for the department;
 13 provided that the foregoing provision shall not apply to the
 14 employment or retention of attorneys:

15 (1) By the public utilities commission, the labor and
 16 industrial relations appeals board, and the Hawaii
 17 labor relations board;

18 (2) By any court or judicial or legislative office of the
 19 State; provided that if the attorney general is
 20 requested to provide representation to a court or
 21 judicial office by the chief justice or the chief



- 1 justice's designee, or to a legislative office by the
2 speaker of the house of representatives and the
3 president of the senate jointly, and the attorney
4 general declines to provide such representation on the
5 grounds of conflict of interest, the attorney general
6 shall retain an attorney for the court, judicial, or
7 legislative office, subject to approval by the court,
8 judicial, or legislative office;
- 9 (3) By the legislative reference bureau;
- 10 (4) By any compilation commission that may be constituted
11 from time to time;
- 12 (5) By the real estate commission for any action involving
13 the real estate recovery fund;
- 14 (6) By the contractors license board for any action
15 involving the contractors recovery fund;
- 16 (7) By the office of Hawaiian affairs;
- 17 (8) By the department of commerce and consumer affairs for
18 the enforcement of violations of chapters 480 and
19 485A;
- 20 (9) As grand jury counsel;



- 1 (10) By the Hawaii health systems corporation, or its
- 2 regional system boards, or any of their facilities;
- 3 (11) By the auditor;
- 4 (12) By the office of ombudsman;
- 5 (13) By the insurance division;
- 6 (14) By the University of Hawaii;
- 7 (15) By the Kahoolawe island reserve commission;
- 8 (16) By the division of consumer advocacy;
- 9 (17) By the office of elections;
- 10 (18) By the campaign spending commission;
- 11 (19) By the Hawaii tourism authority, as provided in
- 12 section 201B-2.5;
- 13 (20) By the division of financial institutions;
- 14 (21) By the office of information practices;
- 15 (22) By the school facilities authority;
- 16 (23) By the Mauna Kea stewardship and oversight authority;
- 17 [~~or~~]
- 18 (24) By the commission on water resource management; or
- 19 ~~[(24)]~~ (25) By a department, if the attorney general, for
- 20 reasons deemed by the attorney general to be good and
- 21 sufficient, declines to employ or retain an attorney



1 for a department; provided that the governor waives
2 the provision of this section."

3 2. By amending subsection (c) to read:

4 "(c) Every attorney employed by any department on a
5 full-time basis, except an attorney employed by the public
6 utilities commission, the labor and industrial relations appeals
7 board, the Hawaii labor relations board, the office of Hawaiian
8 affairs, the Hawaii health systems corporation or its regional
9 system boards, the department of commerce and consumer affairs
10 in prosecution of consumer complaints, insurance division, the
11 division of consumer advocacy, the University of Hawaii, the
12 Hawaii tourism authority as provided in section 201B-2.5, the
13 Mauna Kea stewardship and oversight authority, the commission on
14 water resource management, the office of information practices,
15 or as grand jury counsel, shall be a deputy attorney general."

16 SECTION 3. Section 174C-5, Hawaii Revised Statutes, is
17 amended to read as follows:

18 "**§174C-5 General powers and duties.** (a) The general
19 administration of the state water code shall rest with the
20 commission on water resource management. In addition to its
21 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[7],
5 and engage employees as necessary for the commission
6 to perform its duties;
- 7 (10) May acquire, lease, and dispose of real and personal
8 property as may be necessary in the performance of its
9 functions, including the acquisition of real property
10 for the purpose of conserving and protecting water and
11 water related resources as provided in section
12 174C-14;
- 13 (11) Shall identify, by continuing study, those areas of
14 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) Shall provide coordination, cooperation, or approval
18 necessary to the effectuation of any plan or project
19 of the federal government in connection with or
20 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) 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) Shall catalog and maintain an inventory of all water
19 uses and water resources; [~~and~~]

20 (15) Shall determine appurtenant water rights, including
21 but not limited to the quantification of the amount of



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

5 (16) May appoint or retain independent legal counsel and
 6 attorneys to provide legal services to the commission;
 7 provided that chapter 76 shall not apply; provided
 8 further that nothing in this paragraph shall preclude
 9 the executive officer or the commission from
 10 requesting and securing legal services from the
 11 department of the attorney general.

12 (b) Each department and agency of the State shall make
 13 available to the commission any data, facilities, supplies,
 14 personnel, and administrative support reasonably necessary for
 15 the commission to perform its duties."

16 SECTION 4. Section 174C-6, Hawaii Revised Statutes, is
 17 amended to read as follows:

18 "**§174C-6** ~~[Deputy to the chairperson]~~ **Executive officer of**
 19 **the commission on water resource management.** (a) There shall
 20 be ~~[a first deputy to the chairperson]~~ an executive officer of
 21 the commission on water resource management [~~-"deputy for water~~



1 ~~resource management")]~~ who shall be in addition to any other
2 ~~[first deputy to the chairperson as the chairperson of the board~~
3 ~~of land and natural resources.]~~ employees the commission deems
4 necessary for the commission to perform its duties. The
5 ~~[deputy]~~ executive officer shall have experience in the area of
6 water resources and shall be appointed by the ~~[chairperson]~~
7 commission ~~[with the approval of a majority]~~ and serve at the
8 pleasure of the commission.

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

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

18 (d) The salary of the ~~[deputy for water resource~~
19 ~~management]~~ executive officer shall be as provided in section
20 ~~[26-53 for first deputies or first assistants to the head of any~~
21 ~~department.]~~ 26-52 for department heads and executive officers.



1 (e) The commission shall develop and document annual goals
2 and performance measures for the executive officer that
3 authorize the commission to annually evaluate the executive
4 officer's work to ensure compliance by the commission with
5 statutory and constitutional requirements and achievement of its
6 statutory and constitutional purposes.

7 (f) The commission shall evaluate and document the
8 evaluation of the executive officer's performance annually, or
9 more frequently upon the request of at least four members of the
10 commission, based on annual goals, performance measures, and
11 other relevant criteria."

12 (g) Only the commission shall take disciplinary action
13 against the executive officer."

14 SECTION 5. Section 174C-7, Hawaii Revised Statutes, is
15 amended to read as follows:

16 "**§174C-7 Commission on water resource management.** (a)
17 There is established within the department a commission on water
18 resource management consisting of seven members which shall have
19 exclusive jurisdiction and final authority in all matters
20 relating to implementation and administration of the state water
21 code, except as otherwise specifically provided in this chapter.



1 (b) Five members shall be appointed by the governor
2 subject to confirmation by the senate in the manner prescribed
3 in subsection (d). Each member shall have substantial
4 experience in the area of water resource management; provided
5 that at least one member shall have substantial experience or
6 expertise in traditional Hawaiian water resource management
7 techniques and in traditional Hawaiian riparian usage such as
8 those preserved by section 174C-101. [~~The chairperson of the~~
9 ~~board of land and natural resources shall be the chairperson of~~
10 ~~the commission.~~] The commission shall elect its chairperson from
11 among its members by a majority vote. The director of health
12 and the chairperson of the board of land and natural resources
13 or [~~the director's designee~~] their designees shall serve as [~~an~~
14 ex officio[+,+] voting [~~member.~~] members. No ex officio member
15 shall serve as chairperson of the commission.

16 (c) The members of the commission shall serve without
17 compensation but shall be reimbursed for expenses, including
18 travel expenses, necessary for the performance of their duties.

19 (d) In appointing a member to the commission, the governor
20 shall select from a list submitted by a nominating committee.
21 The nominating committee shall be composed of four individuals



1 chosen as follows: two persons appointed by the governor; one
2 person appointed by the president of the senate; and one person
3 appointed by the speaker of the house. The committee shall
4 solicit applications and send to the governor the names of at
5 least three individuals for each open position.

6 (e) Except as otherwise provided in this chapter, the
7 commission shall be subject to sections 26-34, 26-35, and 26-36.

8 (f) The department of land and natural resources and the
9 commission shall establish procedures and safeguards to avoid
10 actual or perceived conflicts of interest that may otherwise
11 arise as a result of any proceedings before the commission to
12 which the department of land and natural resources is a party.
13 These procedures and safeguards shall include a reporting
14 structure for the commission and its executive officer and
15 employees that is separate from the reporting structure of the
16 department of land and natural resources."

17 SECTION 6. Statutory material to be repealed is bracketed
18 and stricken. New statutory material is underscored.

19 SECTION 7. This Act shall take effect on June 29, 3000;
20 provided that the amendments made to section 26-52, Hawaii
21 Revised Statutes, by section 1 of this Act shall not be repealed



1 when that section is reenacted on June 30, 2024, pursuant to
2 section 4 of Act 90, Session Laws of Hawaii 2014.



Report Title:

CWRM; DLNR; Executive Officer; Independent Legal Counsel;
Conflicts of Interest

Description:

Replaces the position of Deputy to the Chairperson of the Commission on Water Resource Management with the position of Executive Officer, who shall be appointed and managed by the Commission. Authorizes the Commission on Water Resource Management to retain independent legal counsel. Makes the Chairperson of the Board of Land and Natural Resources an ex officio member of the Commission on Water Resource Management and provides that the Commission shall elect a chairperson from among its non ex officio members. Requires the Commission on Water Resource Management and Department of Land and Natural Resources to establish procedures and safeguards to avoid conflicts of interest. Effective 6/29/3000. (HD1)

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

