

JAN 19 2024

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 water code's penalties and fines must be amended and increased
7 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 creating a minimum penalty of \$50 and a maximum penalty of
11 \$60,000 for every violation.

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

14 "**§174C-15 Penalties and common law remedies.** (a) The
15 commission may enforce its rules and orders adopted pursuant to
16 this chapter by suit for injunction or for damages or both.

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



- 1 (1) Violates any provision of this chapter[~~7~~ or any];
- 2 (2) Violates any rule adopted pursuant to this chapter[~~7~~
- 3 may];
- 4 (3) Violates any order of the commission;
- 5 (4) Fails to obtain a permit when a permit is required
- 6 under this chapter;
- 7 (5) Fails to comply with permit conditions; or
- 8 (6) Fails to comply with standardized water audit
- 9 requirements pursuant to Act 169, Session Laws of
- 10 Hawaii 2016,
- 11 shall be subject to a fine imposed by the commission. [~~Such~~
- 12 The fine shall be no less than \$50 and shall not exceed [~~\$5,000.~~
- 13 For a continuing offense, each day during which the offense is
- 14 committed is a separate violation.] \$60,000 per violation. Each
- 15 day that a violation exists or continues to exist shall
- 16 constitute a separate offense. Penalties for continuing
- 17 violations shall be assessed from the earliest known date of the
- 18 violation. The earliest known date of a violation shall be
- 19 determined by the commission by a preponderance of the evidence;
- 20 provided that if the earliest known date cannot be determined by
- 21 a preponderance of the evidence, penalties for continuing



1 violations shall be assessed from the earliest date the
2 commission is made aware of the violation.

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

5 (1) The nature, circumstances, extent, gravity, and
6 history of the violation and of any prior violations;

7 (2) The economic benefit to the violator, or anticipated
8 by the violator, resulting from the violation;

9 (3) The opportunity, difficulty, and history of corrective
10 action;

11 (4) Good faith efforts to comply;

12 (5) Degree of culpability; and

13 (6) Such other matters as justice may require.

14 [~~e~~] (d) No provision of this chapter shall bar the right
15 of any injured person to seek other legal or equitable relief
16 against a violator of this chapter.

17 [~~d~~] (e) Except as otherwise provided by law, the
18 commission or its authorized representative by proper delegation
19 [~~may~~] shall set, charge, and collect administrative fines [~~e~~];
20 may bring legal action to recover administrative fees and costs
21 as documented by receipts or affidavit, including [~~attorneys'~~]



1 attorney's fees and costs; ~~[or]~~ and may bring legal action to
2 recover administrative fines, fees, and costs, including
3 ~~[attorneys']~~ attorney's fees and costs, or payment for damages
4 resulting from a violation of this chapter or any rule adopted
5 pursuant to this chapter."

6 SECTION 3. Statutory material to be repealed is bracketed
7 and stricken. New statutory material is underscored.

8 SECTION 4. This Act shall take effect on July 1, 2024.

9

INTRODUCED BY: Kal Rhoad



S.B. NO. 2394

Report Title:

State Water Code; Commission on Water Resource Management;
Penalties

Description:

Adds a minimum penalty of \$50 and a maximum penalty of \$60,000 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.

