
A BILL FOR AN ACT

RELATING TO WATER.

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

1 SECTION 1. The legislature finds that effective and
2 efficient water resource management requires continuous and
3 experienced leadership, especially given the climate crisis and
4 the urgent necessity to properly steward water resources to meet
5 the affordable housing needs of local residents.

6 On December 28, 1994, the review commission on the state
7 water code submitted its final report to the legislature
8 pursuant to Act 45, Session Laws of Hawaii 1987. The review
9 commission determined that amendments to the state water code
10 were necessary to enable the commission on water resource
11 management to more effectively carry out its mandate pursuant to
12 article XI, section 7, of the Hawaii State Constitution to "set
13 overall water conservation, quality and use policies; define
14 beneficial and reasonable uses; protect ground and surface water
15 resources, watersheds and natural stream environments; establish
16 criteria for water use priorities while assuring appurtenant
17 rights and existing correlative and riparian uses and establish



1 procedures for regulating all uses of Hawaii's water resources."
2 Therefore, further clarification of the commission on water
3 resource management's purpose, including its leadership
4 structure and composition of the commission's board, will
5 provide greater accountability and protection of the State's
6 waters.

7 The purpose of this Act is to:

- 8 (1) Define the public trust responsibilities of the
9 commission on water resource management and require
10 the commission, in acting upon water use permit
11 applications, to prioritize applications for public
12 trust purposes;
- 13 (2) Allow the commission to retain independent legal
14 counsel;
- 15 (3) Amend the scope of the commission on water resource
16 management to include declarations of emergencies;
- 17 (4) Repeal the position of deputy to the chairperson of
18 the commission on water resource management and
19 establish the position of executive director of the
20 commission on water resource management;



(5) Amend the composition of the commission on water resource management;

(6) Authorize entities to challenge an emergency order of the commission on water resource management under certain conditions; and

(7) Establish fines for certain water use offenses.

SECTION 2. Chapter 174C, Hawaii Revised Statutes, is amended by adding a new section to part IV to be appropriately designated and to read as follows:

"§174C- Public trust purpose. The commission shall act upon water use permit applications, filed in accordance with sections 174C-51, 174C-52, and 174C-53, for both existing and new public trust purposes before acting upon water use permit applications for other existing or new uses, or both, filed in accordance with sections 174C-51, 174C-52, and 174C-53. Proceedings for applications for public trust purposes shall be held first and separate from proceedings for all other applications filed in accordance with sections 174C-51, 174C-52, and 174C-53."

SECTION 3. Section 28-8.3, Hawaii Revised Statutes, is amended as follows:



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

2 "(a) No department of the State other than the attorney
3 general may employ or retain any attorney, by contract or
4 otherwise, for the purpose of representing the State or the
5 department in any litigation, rendering legal counsel to the
6 department, or drafting legal documents for the department;
7 provided that the foregoing provision shall not apply to the
8 employment or retention of attorneys:

9 (1) By the public utilities commission, the labor and
10 industrial relations appeals board, and the Hawaii
11 labor relations board;

12 (2) By any court or judicial or legislative office of the
13 State; provided that if the attorney general is
14 requested to provide representation to a court or
15 judicial office by the chief justice or the chief
16 justice's designee, or to a legislative office by the
17 speaker of the house of representatives and the
18 president of the senate jointly, and the attorney
19 general declines to provide such representation on the
20 grounds of conflict of interest, the attorney general
21 shall retain an attorney for the court, judicial, or



- 1 legislative office, subject to approval by the court,
- 2 judicial, or legislative office;
- 3 (3) By the legislative reference bureau;
- 4 (4) By any compilation commission that may be constituted
- 5 from time to time;
- 6 (5) By the real estate commission for any action involving
- 7 the real estate recovery fund;
- 8 (6) By the contractors license board for any action
- 9 involving the contractors recovery fund;
- 10 (7) By the office of Hawaiian affairs;
- 11 (8) By the department of commerce and consumer affairs for
- 12 the enforcement of violations of chapters 480 and
- 13 485A;
- 14 (9) As grand jury counsel;
- 15 (10) By the Hawaii health systems corporation, or its
- 16 regional system boards, or any of their facilities;
- 17 (11) By the auditor;
- 18 (12) By the office of ombudsman;
- 19 (13) By the insurance division;
- 20 (14) By the University of Hawaii;
- 21 (15) By the Kahoolawe island reserve commission;



1 (16) By the division of consumer advocacy;

2 (17) By the office of elections;

3 (18) By the campaign spending commission;

4 (19) By the Hawaii tourism authority, as provided in
5 section 201B-2.5;

6 (20) By the division of financial institutions;

7 (21) By the office of information practices;

8 (22) By the school facilities authority;

9 (23) By the Mauna Kea stewardship and oversight authority;

10 [~~or~~]

11 (24) By the commission on water resource management; or

12 [~~(24)~~] (25) By a department, if the attorney general, for
13 reasons deemed by the attorney general to be good and
14 sufficient, declines to employ or retain an attorney
15 for a department; provided that the governor waives
16 the provision of this section."

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

18 "(c) Every attorney employed by any department on a
19 full-time basis, except an attorney employed by the public
20 utilities commission, the labor and industrial relations appeals
21 board, the Hawaii labor relations board, the office of Hawaiian



1 affairs, the Hawaii health systems corporation or its regional
2 system boards, the department of commerce and consumer affairs
3 in prosecution of consumer complaints, insurance division, the
4 division of consumer advocacy, the University of Hawaii, the
5 Hawaii tourism authority as provided in section 201B-2.5, the
6 Mauna Kea stewardship and oversight authority, the commission on
7 water resource management, the office of information practices,
8 or as grand jury counsel, shall be a deputy attorney general."

9 SECTION 4. Section 84-18, Hawaii Revised Statutes, is
10 amended by amending subsection (e) to read as follows:

11 "(e) Subject to the restrictions imposed in subsections
12 (a) through (d), the following individuals shall not represent
13 any person or business for a fee or other consideration
14 regarding any legislative action or administrative action, as
15 defined in section 97-1, for twelve months after termination
16 from their respective positions:

- 17 (1) The governor;
18 (2) The lieutenant governor;
19 (3) The administrative director of the State;
20 (4) The attorney general;
21 (5) The comptroller;



- 1 (6) The chairperson of the board of agriculture;
- 2 (7) The director of corrections and rehabilitation;
- 3 (8) The director of finance;
- 4 (9) The director of business, economic development, and
- 5 tourism;
- 6 (10) The director of commerce and consumer affairs;
- 7 (11) The adjutant general;
- 8 (12) The superintendent of education;
- 9 (13) The chairperson of the Hawaiian homes commission;
- 10 (14) The director of health;
- 11 (15) The director of human resources development;
- 12 (16) The director of human services;
- 13 (17) The director of labor and industrial relations;
- 14 (18) The chairperson of the board of land and natural
- 15 resources;
- 16 (19) The director of law enforcement;
- 17 (20) The director of taxation;
- 18 (21) The director of transportation;
- 19 (22) The president of the University of Hawaii;
- 20 (23) The executive administrator of the board of regents of
- 21 the University of Hawaii;



- 1 (24) The administrator of the office of Hawaiian affairs;
- 2 (25) The chief information officer;
- 3 (26) The executive director of the agribusiness development
- 4 corporation;
- 5 (27) The executive director of the campaign spending
- 6 commission;
- 7 (28) The executive director of the Hawaii community
- 8 development authority;
- 9 (29) The executive director of the Hawaii housing finance
- 10 and development corporation;
- 11 (30) The president and chief executive officer of the
- 12 Hawaii tourism authority;
- 13 (31) The executive officer of the public utilities
- 14 commission;
- 15 (32) The state auditor;
- 16 (33) The director of the legislative reference bureau;
- 17 (34) The ombudsman;
- 18 (35) The permanent employees of the legislature, other than
- 19 persons employed in clerical, secretarial, or similar
- 20 positions;
- 21 (36) The administrative director of the courts;



1 (37) The executive director of the state ethics commission;

2 (38) The executive officer of the state land use
3 commission;

4 (39) The executive director of the natural energy
5 laboratory of Hawaii authority;

6 (40) The executive director of the Hawaii public housing
7 authority; and

8 (41) The [~~first deputy to the chairperson~~] executive
9 director of the commission on water resource
10 management;

11 provided that this subsection shall not apply to any person who
12 has held one of the positions listed above only on an interim or
13 acting basis and for a period of less than one hundred
14 eighty-one days."

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

17 "§174C-5 General powers and duties. The general
18 administration of the state water code shall rest with the
19 commission on water resource management. In addition to its
20 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;

5 (10) May appoint and dismiss attorneys as may be necessary,
6 who shall be exempt from chapter 76;

7 ~~[(10)]~~ (11) May acquire, lease, and dispose of real and
8 personal property as may be necessary in the
9 performance of its functions, including the
10 acquisition of real property for the purpose of
11 conserving and protecting water and water related
12 resources as provided in section 174C-14;

13 ~~[(11)]~~ (12) Shall identify, by continuing study, those areas
14 of 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)]~~ (13) Shall provide coordination, cooperation, or
18 approval necessary to the effectuation of any plan or
19 project of the federal government in connection with
20 or 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)]~~ (14) 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)]~~ (15) Shall catalog and maintain an inventory of all
19 water uses and water resources; ~~[and~~

20 ~~(15)]~~ (16) Shall determine appurtenant water rights,
21 including but not limited to the quantification of the



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

5 (17) May declare an emergency if the commission determines,
6 in consultation with the governor, the appropriate
7 county, and the department of health, that there is an
8 absence of sufficient quantity and quality of water in
9 any area, whether within or outside of a water
10 management area, that immediately threatens the public
11 health, safety, and welfare. The commission may issue
12 orders reciting the existence of the emergency and
13 requiring those actions as the commission deems
14 necessary to address the emergency be taken, including
15 but not limited to apportioning, rotating, limiting,
16 or prohibiting the use of the water resources of the
17 area; provided that an emergency order shall expire no
18 later than one year after issuance by the commission;
19 provided further that the order may be extended by a
20 separate or supplementary order."



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

"§174C-6 ~~[Deputy to the chairperson]~~ Executive director of the commission on water resource management. (a) There shall be ~~[a first deputy to the chairperson]~~ an executive director of the commission on water resource management [~~("deputy for water resource management")~~ who shall be in addition to any other first deputy to the chairperson as the chairperson of the board of land and natural resources. The deputy], who shall have experience in the area of water resources and shall be appointed by ~~[the chairperson with the approval of a majority of]~~, and serve at the pleasure of, the commission.

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



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

3 (d) The salary of the [~~deputy for water resource~~
4 ~~management~~] executive director shall be [as provided in section
5 26-53 for first deputies or first assistants to the head of any
6 department.] set by the board, and the executive director shall
7 be included in any benefit program generally applicable to the
8 officers and employees of the State.

9 (e) The commission shall develop and document annual goals
10 and performance measures for the executive director that allow
11 the commission to annually evaluate the executive director's
12 work to ensure compliance by the commission with statutory and
13 constitutional requirements and achievement of its statutory and
14 constitutional purposes.

15 (f) The commission shall evaluate and document the
16 evaluation of the executive director's performance annually, or
17 more frequently upon the request of at least four members of the
18 commission, based on annual goals, performance measures, and
19 other relevant criteria."

20 SECTION 7. Section 174C-7, Hawaii Revised Statutes, is
21 amended to read as follows:



1 "§174C-7 Commission on water resource management. (a)

2 There is established within the department a commission on water
3 resource management consisting of seven members which shall have
4 exclusive jurisdiction and final authority in all matters
5 relating to implementation and administration of the state water
6 code, except as otherwise specifically provided in this chapter.
7 The commission shall be attached to the department of land and
8 natural resources for administrative purposes only.

9 (b) Five members shall be appointed by the governor
10 subject to confirmation by the senate in the manner prescribed
11 in subsection ~~[(d)-]~~ (e). Each member shall have substantial
12 experience in the area of water resource management; provided
13 that at least one member shall have substantial experience or
14 expertise in traditional Hawaiian water resource management
15 techniques and in traditional Hawaiian riparian usage such as
16 those preserved by section 174C-101. Each of the members shall
17 be eligible to serve as the chairperson of the commission upon
18 election by a majority of the commission members.

19 (c) The chairperson of the board of land and natural
20 resources ~~[shall be the chairperson of the commission. The]~~ and
21 the director of health or the director's designee shall serve as



1 ~~[an]~~ ex officio~~[+]~~, ~~[+]~~ voting ~~[member-]~~ members, but shall be
2 ineligible to serve as chairperson of the commission.

3 ~~[(e)]~~ (d) The members of the commission shall serve
4 without compensation but shall be reimbursed for expenses,
5 including travel expenses, necessary for the performance of
6 their duties.

7 ~~[(d)]~~ (e) In appointing a member to the commission, the
8 governor shall select from a list submitted by a nominating
9 committee. The nominating committee shall be composed of ~~[four]~~
10 five individuals chosen as follows: two persons appointed by
11 the governor; one person appointed by the president of the
12 senate; ~~[and]~~ one person appointed by the speaker of the
13 house~~[-]~~; and one person appointed by the chief executive
14 officer of the office of Hawaiian affairs. The committee shall
15 solicit applications and send to the governor the names of at
16 least three individuals for each open position.

17 ~~[(e)]~~ (f) Except as otherwise provided in this chapter,
18 the commission shall be subject to sections 26-34, 26-35, and
19 26-36."

20 SECTION 8. Section 174C-9, Hawaii Revised Statutes, is
21 amended to read as follows:



1 " ~~[+]~~§174C-9~~[+]~~ Proceedings before the commission
2 concerning water resources. (a) All proceedings before the
3 commission concerning the enforcement or application of any
4 provision of this chapter or any rule adopted pursuant thereto,
5 or the issuance, modification, or revocation of any permit or
6 license under this code by the commission, shall be conducted in
7 accordance with chapter 91. Hearings regarding particular water
8 resources shall be conducted on the island where those water
9 resources are located.

10 (b) Any party to whom an emergency order is directed may
11 challenge that order but shall immediately comply with the order
12 pending disposition of the party's challenge. The commission
13 shall give precedence to a hearing on the challenge over all
14 other pending matters."

15 SECTION 9. Section 174C-15, Hawaii Revised Statutes, is
16 amended to read as follows:

17 "§174C-15 Penalties and common law remedies. (a) The
18 commission may enforce its rules and orders adopted pursuant to
19 this chapter by suit for injunction or for damages or both.

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

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



1 (2) Violates any rule adopted pursuant to this chapter[7
2 may];

3 (3) Violates any order of the commission;

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

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

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

10 shall be subject to a fine imposed by the commission. [Such]

11 The fine shall be not less than \$50 and shall not exceed

12 ~~[\$5,000. For a continuing offense, each day during which the~~
13 ~~offense is committed is a separate violation.] \$60,000 per~~

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

15 exist shall constitute a separate offense. Penalties for

16 continuing violations shall be assessed from the earliest known

17 date of the violation. The earliest known date of a violation

18 shall be determined by the commission by a preponderance of the

19 evidence; provided that if the earliest known date cannot be

20 determined by a preponderance of evidence, penalties for



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

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

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

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

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

12 (4) Good faith efforts to comply;

13 (5) Degree of culpability; and

14 (6) Other matters as justice may require.

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

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



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

7 SECTION 10. Section 174C-62, Hawaii Revised Statutes, is
8 amended as follows:

9 1. By amending subsections (a) through (c) to read:

10 "(a) The commission shall formulate a statewide plan for
11 implementation during periods of water shortage. As a part of
12 the plan, the commission shall adopt a reasonable system of
13 permit classification according to source of water supply,
14 method of extraction or diversion, use of water, or a
15 combination thereof.

16 (b) The commission, by rule, may declare that a water
17 shortage exists within all or part of an area, whether within or
18 outside of a water management area, when insufficient water is
19 available to meet the requirements of the permit system or when
20 conditions ~~[are such as to]~~ require a temporary reduction in
21 total water use within the area to protect water resources from



1 serious harm. The commission shall publish a set of criteria
2 for determining when a water shortage exists~~[-]~~, including but
3 not limited to impacts and effects of the climate crisis.

4 (c) In accordance with the plan adopted under subsection
5 (a), the commission may impose [~~such~~] restrictions on one or
6 more classes of permits and outside of management areas on well
7 and stream diversion owners and operators as may be necessary to
8 protect the water resources of the area from serious harm and to
9 restore them to their previous water quantity or chloride level
10 condition."

11 2. By amending subsections (e) and (f) to read:

12 "(e) When a water shortage is declared, the commission
13 shall cause a notice [~~thereof~~] of the water shortage to be
14 published in a prominent place in a newspaper of general
15 circulation throughout the area~~[-]~~ and on the commission's
16 website. The notice shall be published each day for the first
17 week of the shortage and once a week [~~thereafter~~] for four
18 months, followed by monthly publications until the declaration
19 is rescinded. Publication of [~~such~~] the notice shall serve as
20 notice to all water users in the area of the condition of water
21 shortage.



1 (f) The commission shall cause each permittee in the area
2 to be notified by regular and electronic mail of any change in
3 the conditions of the permittee's permit, any suspension
4 [~~thereof,~~] of the permittee's permit, or of any other
5 restriction on the use of water for the duration of the water
6 shortage."

7 SECTION 11. This Act does not affect rights and duties
8 that matured, penalties that were incurred, and proceedings that
9 were begun before its effective date.

10 SECTION 12. If any provision of this Act, or the
11 application thereof to any person or circumstance, is held
12 invalid, the invalidity does not affect other provisions or
13 applications of the Act that can be given effect without the
14 invalid provision or application, and to this end the provisions
15 of this Act are severable.

16 SECTION 13. Statutory material to be repealed is bracketed
17 and stricken. New statutory material is underscored.

18 SECTION 14. This Act shall take effect on July 1, 2025.

19
INTRODUCED BY:

Nedie K. Parker

By Request

JAN 16 2025



H.B. NO. 405

Report Title:

Maui County Council Package; Water; CWRM; Emergency Orders;
Water Shortages; Fines

Description:

Defines the public trust responsibilities of the Commission on Water Resource Management. Allows the Commission to retain independent legal counsel. Amends the scope of the Commission to include declaration of emergencies. Repeals the position of Deputy to the Chairperson of the Commission on Water Resource Management and establishes the position of Executive Director. Amends the composition of the Commission. Authorizes entities to challenge an emergency order of the Commission under certain conditions. Establishes fines for certain water use offenses.

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

