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



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

7 The purpose of this Act is to:

- 8 (1) Establish a public trust purpose for the commission on
9 water resource management;
- 10 (2) Allow the commission on water resource management to
11 retain independent legal counsel;
- 12 (3) Define public trust purposes of the commission on
13 water resource management;
- 14 (4) Repeal the deputy to the chairperson of the commission
15 on water resource management and establish the
16 executive director of the commission on water resource
17 management;
- 18 (5) Amend the composition of the commission on water
19 resource management;



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

4 (7) Establish fines for certain water use offenses.

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

8 "§174C- Public trust purpose. The commission shall act
9 upon water use permit applications, filed in accordance with
10 sections 174C-51, 174C-52, and 174C-53, for both existing and
11 new public trust purposes before acting upon water use permit
12 applications for other existing or new uses, or both, filed in
13 accordance with sections 174C-51, 174C-52, and 174C-53.
14 Proceedings for applications for public trust purposes shall be
15 held first and separate from proceedings for all other
16 applications filed in accordance with sections 174C-51, 174C-52,
17 and 174C-53."

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

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



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

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

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



- 1 judicial, or legislative office, subject to approval
2 by the court, 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~~] 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 full-
19 time basis, except an attorney employed by the public utilities
20 commission, the labor and industrial relations appeals board,
21 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~~] university of
- 20 Hawaii;



- 1 (23) The executive administrator of the board of regents of
- 2 the [~~University~~] university of Hawaii;
- 3 (24) The administrator of the office of Hawaiian affairs;
- 4 (25) The chief information officer;
- 5 (26) The executive director of the agribusiness development
- 6 corporation;
- 7 (27) The executive director of the campaign spending
- 8 commission;
- 9 (28) The executive director of the Hawaii community
- 10 development authority;
- 11 (29) The executive director of the Hawaii housing finance
- 12 and development corporation;
- 13 (30) The president and chief executive officer of the
- 14 Hawaii tourism authority;
- 15 (31) The executive officer of the public utilities
- 16 commission;
- 17 (32) The state auditor;
- 18 (33) The director of the legislative reference bureau;
- 19 (34) The ombudsman;



1 (35) The permanent employees of the legislature, other than
2 persons employed in clerical, secretarial, or similar
3 positions;

4 (36) The administrative director of the courts;

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

6 (38) The executive officer of the state land use
7 commission;

8 (39) The executive director of the natural energy
9 laboratory of Hawaii authority;

10 (40) The executive director of the Hawaii public housing
11 authority; and

12 (41) The [~~first deputy to the chairperson~~] executive
13 director of the commission on water resource
14 management;

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

19 SECTION 5. Section 174C-3, Hawaii Revised Statutes, is
20 amended by adding a new definition to be appropriately inserted
21 and to read as follows:



1 "Public trust purpose" means in accordance with the
2 principles outlined in articles XI and XII of the Hawaii State
3 Constitution, the maintenance of waters in its natural state,
4 the exercise of Native Hawaiian traditional and customary
5 practices, including appurtenant rights, domestic water uses as
6 defined in this section, and the reservations and homestead use
7 of water for the department of Hawaiian home lands."

8 SECTION 6. Section 174C-5, Hawaii Revised Statutes, is
9 amended to read as follows:

10 **"§174C-5 General powers and duties.** The general
11 administration of the state water code shall rest with the
12 commission on water resource management. In addition to its
13 other powers and duties, the commission:

14 (1) Shall carry out topographic surveys, research, and
15 investigations into all aspects of water use and water
16 quality;

17 (2) Shall designate water management areas for regulation
18 under this chapter where the commission, after the
19 research and investigations mentioned in paragraph
20 (1), shall consult with the appropriate county council
21 and county water agency, and after public hearing and



published notice, finds that the water resources of the areas are being threatened by existing or proposed withdrawals of water;

(3) Shall establish an instream use protection program designed to protect, enhance, and reestablish, where practicable, beneficial instream uses of water in the State;

(4) May contract and cooperate with the various agencies of the federal government and with state and local administrative and governmental agencies or private persons;

(5) May enter, after obtaining the consent of the property owner, at all reasonable times upon any property other than dwelling places for the purposes of conducting investigations and studies or enforcing any of the provisions of this code, being liable, however, for actual damage done. If consent cannot be obtained, reasonable notice shall be given prior to entry;

(6) Shall cooperate with federal agencies, other state agencies, county or other local governmental organizations, and all other public and private



1 agencies created for the purpose of utilizing and
2 conserving the waters of the State, and assist these
3 organizations and agencies in coordinating the use of
4 their facilities and participate in the exchange of
5 ideas, knowledge, and data with these organizations
6 and agencies. For this purpose, the commission shall
7 maintain an advisory staff of experts;

8 (7) Shall prepare, publish, and issue printed pamphlets
9 and bulletins as the commission deems necessary for
10 the dissemination of information to the public
11 concerning its activities;

12 (8) May appoint and remove agents, including hearings
13 officers and consultants, necessary to carry out the
14 purposes of this chapter, who may be engaged by the
15 commission without regard to the requirements of
16 chapter 76 and section 78-1;

17 (9) May hire employees in accordance with chapter 76;

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

20 [~~10~~] (11) May acquire, lease, and dispose of real and
21 personal property as may be necessary in the



1 performance of its functions, including the
2 acquisition of real property for the purpose of
3 conserving and protecting water and water related
4 resources as provided in section 174C-14;

5 ~~[(+11+)]~~ (12) Shall identify, by continuing study, those areas
6 of the State where salt water intrusion is a threat to
7 fresh water resources and report its findings to the
8 appropriate county mayor and council and the public;

9 ~~[(+12+)]~~ (13) Shall provide coordination, cooperation, or
10 approval necessary to the effectuation of any plan or
11 project of the federal government in connection with
12 or concerning the waters of the State. The commission
13 shall approve or disapprove any federal plans or
14 projects on behalf of the State. No other agency or
15 department of the State shall assume the duties
16 delegated to the commission under this paragraph;
17 except that the department of health shall continue to
18 exercise the powers vested in it with respect to water
19 quality, and except that the department of business,
20 economic development, and tourism shall continue to



1 carry out its duties and responsibilities under
2 chapter 205A;

3 ~~[(13)]~~ (14) Shall plan and coordinate programs for the
4 development, conservation, protection, control, and
5 regulation of water resources, based upon the best
6 available information, and in cooperation with federal
7 agencies, other state agencies, county or other local
8 governmental organizations, and other public and
9 private agencies created for the utilization and
10 conservation of water;

11 ~~[(14)]~~ (15) Shall catalog and maintain an inventory of all
12 water uses and water resources; and

13 ~~[(15)]~~ (16) Shall determine appurtenant water rights,
14 including but not limited to the quantification of the
15 amount of water and the specification of the water
16 course or the means of access and delivery entitled to
17 by that right, which determination shall be valid for
18 purposes of this chapter."

19 SECTION 7. Section 174C-6, Hawaii Revised Statutes, is
20 amended to read as follows:



1 "~~S174C-6 [Deputy to the chairperson]~~ Executive director of
2 the commission on water resource management. (a) There shall
3 be [~~a first deputy to the chairperson]~~ an executive director of
4 the commission on water resource management [~~("deputy for water~~
5 resource management") who shall be in addition to any other
6 first deputy to the chairperson as the chairperson of the board
7 of land and natural resources. The deputy], who shall have
8 experience in the area of water resources and shall be appointed
9 by [~~the chairperson with the approval of a majority of]~~ the
10 commission~~[-]~~ and serve at the pleasure of the commission.

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

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

20 (d) The salary of the [~~deputy]~~ executive director for
21 water resource management shall be [~~as provided in section 26-53~~



1 ~~for first deputies or first assistants to the head of any~~
2 ~~department.]~~ set by the board and the executive director shall
3 be included in any benefit program generally applicable to the
4 officers and employees of the State.

5 (e) The commission shall develop and document annual goals
6 and performance measures for the executive director that
7 authorize the commission to annually evaluate the executive
8 director's work to ensure compliance by the commission with
9 statutory and constitutional requirements and achievement of its
10 statutory and constitutional purposes.

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

16 SECTION 8. Section 174C-7, Hawaii Revised Statutes, is
17 amended to read as follows:

18 **"§174C-7 Commission on water resource management. (a)**
19 There is established within the department a commission on water
20 resource management consisting of seven members which shall have
21 exclusive jurisdiction and final authority in all matters



1 relating to implementation and administration of the state water
2 code, except as otherwise specifically provided in this chapter.
3 The commission shall be attached to the department of land and
4 natural resources for administrative purposes only.

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

15 (c) The chairperson of the board of land and natural
16 resources ~~[shall be the chairperson of the commission. The]~~ and
17 the director of health or the director's designee shall serve as
18 [an] ex officio[+],[+] voting [member.] members, but shall not
19 be eligible to serve as chairperson of the commission.

20 ~~[(e)]~~ (d) The members of the commission shall serve
21 without compensation but shall be reimbursed for expenses,



1 including travel expenses, necessary for the performance of
2 their duties.

3 ~~[(d)]~~ (e) In appointing a member to the commission, the
4 governor shall select from a list submitted by a nominating
5 committee. The nominating committee shall be composed of four
6 individuals chosen as follows: two persons appointed by the
7 governor; one person appointed by the president of the senate;
8 and one person appointed by the speaker of the house. The
9 committee shall solicit applications and send to the governor
10 the names of at least three individuals for each open position.

11 ~~[(e)]~~ (f) Except as otherwise provided in this chapter,
12 the commission shall be subject to sections 26-34, 26-35, and
13 26-36."

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

16 "~~[(f)]~~**\$174C-9**~~[(f)]~~ **Proceedings before the commission**
17 **concerning water resources.** (a) All proceedings before the
18 commission concerning the enforcement or application of any
19 provision of this chapter or any rule adopted pursuant thereto,
20 or the issuance, modification, or revocation of any permit or
21 license under this code by the commission, shall be conducted in



1 accordance with chapter 91. Hearings regarding particular water
2 resources shall be conducted on the island where those water
3 resources are located.

4 (b) Any party to whom an emergency order is directed may
5 challenge that order but shall immediately comply with the order
6 pending disposition of the party's challenge. The commission
7 shall give precedence to a hearing on the challenge over all
8 other pending matters."

9 SECTION 10. Section 174C-15, Hawaii Revised Statutes, is
10 amended to read as follows:

11 **"§174C-15 Penalties and common law remedies.** (a) The
12 commission may enforce its rules and orders adopted pursuant to
13 this chapter by suit for injunction or for damages or both.

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

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

16 (2) Violates any rule adopted pursuant to this chapter[~~, or~~
17 may];

18 (3) Violates any order of the commission;

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

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



1 (6) Fails to comply with standardized water audit
2 requirements pursuant to Act 169, Session Laws of
3 Hawaii 2016,
4 shall be subject to a fine imposed by the commission. [Such]
5 The fine shall be not less than \$50 and shall not exceed
6 [\$5,000. For a continuing offense, each day during which the
7 offense is committed is a separate violation.] \$60,000 per
8 violation. Each day that a violation exists or continues to
9 exist shall constitute a separate offense. Penalties for
10 continuing violations shall be assessed from the earliest known
11 date of the violation. The earliest known date of a violation
12 shall be determined by the commission by a preponderance of the
13 evidence; provided that if the earliest known date cannot be
14 determined by a preponderance of evidence, penalties for
15 continuing violations shall be assessed from the earliest date
16 the commission is made aware of the violation.

17 (c) When imposing a penalty, the commission shall consider
18 the following factors, which shall include but not be limited
19 to:

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



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

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

5 (4) Good faith efforts to comply;

6 (5) Degree of culpability; and

7 (6) Other matters as justice may require.

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

11 [~~d~~] (e) Except as otherwise provided by law, the
12 commission or its authorized representative by proper delegation
13 [~~may~~] shall set, charge, and collect administrative fines [~~or~~];
14 may bring legal action to recover administrative fees and costs
15 as documented by receipts or affidavit, including attorneys'
16 fees and costs; [~~or~~] and may bring legal action to recover
17 administrative fines, fees, and costs, including attorneys' fees
18 and costs, or payment for damages resulting from a violation of
19 this chapter or any rule adopted pursuant to this chapter."

20 SECTION 11. Section 174C-62, Hawaii Revised Statutes, is
21 amended to read as follows:



1 "[~~§~~§174C-62[~~§~~] **Declaration of water shortage.** (a) The
2 commission shall formulate a statewide plan for implementation
3 during periods of water shortage. As a part of the plan, the
4 commission shall adopt a reasonable system of permit
5 classification according to source of water supply, method of
6 extraction or diversion, use of water, or a combination thereof.

7 (b) The commission, by rule, may declare that a water
8 shortage exists within all or part of an area, whether within or
9 outside of a water management area, when insufficient water is
10 available to meet the requirements of the permit system or when
11 conditions [~~are such as to~~] require a temporary reduction in
12 total water use within the area to protect water resources from
13 serious harm. The commission shall publish a set of criteria
14 for determining when a water shortage exists[~~✓~~], including but
15 not limited to impacts and effects of the climate crisis.

16 (c) In accordance with the plan adopted under subsection
17 (a), the commission may impose [~~such~~] restrictions on one or
18 more classes of permits and outside of management areas on well
19 and stream diversion owners and operators as may be necessary to
20 protect the water resources of the area from serious harm and to



1 restore them to their previous water quantity or chloride level
2 condition.

3 (d) A declaration of water shortage and any measures
4 adopted pursuant thereto may be rescinded by rule by the
5 commission.

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

16 (f) The commission shall cause each permittee in the area
17 to be notified by regular and electronic mail of any change in
18 the conditions of the permittee's permit, any suspension
19 [~~thereof~~], of the permittee's permit, or of any other
20 restriction on the use of water for the duration of the water
21 shortage.



1 (g) If an emergency condition arises due to a water
2 shortage within any area, whether within or outside of a water
3 management area, and if the commission finds that the
4 restrictions imposed under subsection (c) are not sufficient to
5 protect the public health, safety, or welfare, or the health of
6 animals, fish, or aquatic life, or a public water supply, or
7 recreational, municipal, agricultural, or other reasonable uses,
8 the commission may issue orders reciting the existence of [~~such~~]
9 an emergency and requiring that such actions as the commission
10 deems necessary to meet the emergency be taken, including but
11 not limited to apportioning, rotating, limiting, or prohibiting
12 the use of the water resources of the area. Any party to whom
13 an emergency order is directed may challenge [~~such an~~] the order
14 but shall immediately comply with the order, pending disposition
15 of the party's challenge. The commission shall give precedence
16 to a hearing on [~~such~~] the challenge over all other pending
17 matters."

18 SECTION 12. If any provision of this Act, or the
19 application thereof to any person or circumstance, is held
20 invalid, the invalidity does not affect other provisions or
21 applications of the Act that can be given effect without the



1 invalid provision or application, and to this end the provisions
2 of this Act are severable.

3 SECTION 13. This Act does not affect rights and duties
4 that matured, penalties that were incurred, and proceedings that
5 were begun before its effective date.

6 SECTION 14. Statutory material to be repealed is bracketed
7 and stricken. New statutory material is underscored.

8 SECTION 15. This Act shall take effect on July 1, 2050.



Report Title:

CWRM; BLNR; Public Trust Purpose; Responsibilities; Board Membership

Description:

Establishes a public trust purpose for the Commission on Water Resource Management. Allows the Commission on Water Resource Management to retain independent counsel. Repeals the First Deputy to the Chairperson of the Commission on Water Resource Management. Establishes the Executive Director of the Commission on Water Resource Management. Administratively attaches the Commission on Water Resource Management to the Department of Land and Natural Resources. Authorizes members of the Commission on Water Resource Management to be eligible to serve as chairperson. Requires the Chairperson of the Board of Land and Natural Resources and Director of Health to serve as ex officio voting members ineligible to serve as chairperson. Authorizes entities to whom an emergency order is directed to challenge the order under certain conditions. Clarifies the notification requirements and contents of declarations of water shortages. Establishes fines. Makes conforming amendments. Effective 7/1/2050. (SD1)

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

