

JAN 17 2025

---

# A BILL FOR AN ACT

RELATING TO WATER.

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

PART I

SECTION 1. The legislature finds that the United States Navy's Red Hill Bulk Fuel Storage Facility consists of twenty steel-lined underground storage tanks that were built from 1940 to 1943. Each tank can store 12.5 million gallons of fuel; in total, the Red Hill Bulk Fuel Storage Facility can store up to two hundred fifty million gallons. The tanks are located only about one hundred feet above the United States Environmental Protection Agency's designated sole-source groundwater aquifer that provides drinking water to approximately four hundred thousand residents of the island of Oahu. Over the past eighty years, numerous spills have occurred at Red Hill. Specifically, on November 20, 2021, about ninety-three thousand individuals served by the Navy's potable water system for Joint Base Pearl Harbor-Hickam were directly affected when the Navy's Red Hill shaft was contaminated by the release of up to nineteen thousand gallons of fuel, including JP-5 jet fuel, older fuels stored at



1 the Red Hill Bulk Fuel Storage Facility, and any additives used.  
2 Over six thousand individuals sought medical attention, and one  
3 thousand were forced to leave their homes due to the  
4 contamination. Much of the fuel released from the Red Hill Bulk  
5 Fuel Storage Facility remains in the environment, trapped within  
6 the complex geological formations beneath and near the tanks.

7 The legislature further finds that on May 9, 2023,  
8 officials from the State and city and county of Honolulu signed  
9 a unified statement on Red Hill, recognizing the stewardship  
10 responsibility to ensure that there is clean water on Oahu for  
11 future generations. The Red Hill Water Alliance Initiative  
12 (WAI), a working group, met regularly in 2023 since the signing  
13 of the unified statement. The Red Hill WAI posed questions,  
14 conducted research, listened to subject-matter experts, and  
15 formulated recommended policies.

16 The legislature also finds that the Red Hill WAI's approach  
17 of total stewardship responsibility required a stance of  
18 extending beyond statutory roles, specific responsibilities,  
19 tenure in those roles, and even personal lifetimes. Its inquiry  
20 included the pursuit of critical questions for which there may



1 currently be no answers. Thus, the pursuit of those answers is  
2 part of the ongoing work.

3 The legislature notes that besides its regulatory functions  
4 under federal and state environmental laws, the State also has  
5 unique public trust responsibilities set forth in the Hawaii  
6 State Constitution, which establishes an affirmative duty of the  
7 State to preserve and protect public trust resources, including  
8 water resources.

9 The legislature additionally finds that the focus of the  
10 Red Hill WAI's inquiry is the remediation needs after the  
11 defueling of the tanks and removal of residual fuel and  
12 contaminants from the Red Hill Bulk Fuel Storage Facility. In  
13 particular, the Red Hill WAI is concerned with the unknowns  
14 posed by fuel contaminants already in the ground, as well as the  
15 residuals of the fuel plume in the aquifer as a result of the  
16 spill that occurred on November 20, 2021. In fact, there may be  
17 as many as 1,940,000 gallons of fuel constituents in the ground  
18 that have leaked or spilled over eight decades. Pursuant to a  
19 proactive approach, the Red Hill WAI seeks to describe the  
20 remediation it believes necessary for the future well-being of  
21 the aquifer in which there is a negligible risk to current and



1 future water sources, including the Halawa Shaft, Halawa wells,  
2 and Aiea wells; the water distribution system; and the  
3 ecosystem, including springs, streams, and nearshore waters.

4 After much diligent work, the Red Hill WAI issued a public  
5 report in November 2023 that set forth its findings and  
6 recommendations. Some of the recommendations can only be  
7 addressed by the federal government, while other recommendations  
8 can be undertaken by the State and city and county of Honolulu.  
9 Moreover, the legislature finds that there must be no delay in  
10 adopting the recommendations of the Red Hill WAI, especially  
11 those that can be implemented at the state and county levels.

12 Therefore, the purpose of this Act is to:

- 13 (1) Establish within the office of the executive director  
14 of the commission on water resource management a  
15 policy lead and coordinator for Red Hill WAI  
16 initiatives;
- 17 (2) Create the Red Hill remediation special fund; and
- 18 (3) Appropriate funds for these purposes.

19 SECTION 2. The Hawaii Revised Statutes is amended by  
20 adding a new chapter to be appropriately designated and to read  
21 as follows:



1                                   **"CHAPTER**

2                                   **RED HILL WATER ALLIANCE INITIATIVE**

3           **§ -1 Definitions.** As used in this chapter, unless a  
4 different meaning is plainly required by the context:

5           "Board" means the board of land and natural resources.

6           "Chairperson" means the chairperson of the board of land  
7 and natural resources.

8           "Department" means the department of land and natural  
9 resources.

10          "Red Hill Water Alliance Initiative" means the group of  
11 individuals composed of the governor, speaker of the house of  
12 representatives, president of the senate, chairperson of the  
13 board of land and natural resources and commission on water  
14 resource management, president of the university of Hawaii,  
15 mayor of the city and county of Honolulu, chairperson of the  
16 Honolulu city council, and manager and chief engineer of the  
17 Honolulu board of water supply that issued a public report in  
18 November 2023 concerning the remediation of Red Hill following  
19 the defueling of the Red Hill Bulk Fuel Storage Facility.

20          "Special fund" means the Red Hill remediation special fund.

21          "WAI" means the Red Hill Water Alliance Initiative.



1       §   -2   **Policy lead and coordination.**   (a)   The department  
2   shall serve as the State's policy lead on WAI initiatives  
3   through the position of the WAI policy coordinator, to be placed  
4   in the office of the executive director of the commission on  
5   water resource management once the position of executive  
6   director of the commission on water resource management is  
7   established and filled pursuant to section 174C-6.   The WAI  
8   policy coordinator shall work with respective state and county  
9   agencies and other groups.

10       (b)   The WAI policy coordinator shall:

11       (1)   Facilitate implementation and monitoring and interface  
12             with federal entities on WAI initiatives outlined in  
13             the WAI's November 2023 report;

14       (2)   Periodically and regularly review:

15             (A)   The health status of the ecosystem; and

16             (B)   The state of science and opportunities for  
17                     remediation and rehabilitation;

18       (3)   Develop and maintain a public-facing test results  
19             dashboard describing the significance of results from  
20             the State and city and county of Honolulu, as part of  
21             a broader public education program; and



(4) Coordinate the implementation of a thirty-six-month public information and education program to describe, inform, and educate the general public and institutions on the post-defueling remediation phases for Red Hill to restore public trust, secure public support, and address health and environmental concerns.

(c) No later than December 1, 2025, the WAI policy coordinator shall submit a report to the legislature regarding the potential organizational structure, responsibilities, duties, and powers of a proposed Red Hill remediation authority based on the provisions of House Bill No. 2691, introduced during the regular session of 2024, as a starting point.

**§ -3 Red Hill remediation special fund.** (a) There is established in the state treasury the Red Hill remediation special fund into which shall be deposited the following moneys:

- (1) Appropriations by the legislature to the special fund;
- (2) Gifts, donations, and grants from public agencies, including the United States government, and private persons; and



(3) All interest earned on or accrued to moneys deposited in the special fund.

(b) The special fund shall be administered by the WAI policy coordinator.

(c) The moneys in the special fund shall be used to address contamination resulting from the Red Hill Bulk Fuel Storage Facility, including monitoring, applied research, public outreach and education, and evaluation; provided that the cost of remediation of the aquifer shall be borne by the federal government.

**§ -4 Cooperation by state and county agencies.** All state and county agencies shall provide all information and data requested by the WAI policy coordinator within thirty calendar days; provided that the WAI policy coordinator may, in the coordinator's discretion, set a longer deadline.

**§ -5 Report.** The WAI policy coordinator shall submit a report of the coordinator's activities and expenditures to the legislature, governor, and mayor and city council of the city and county of Honolulu no later than December 1 of each year, beginning in 2025."





SECTION 3. The following positions, which shall be exempt from chapter 76, Hawaii Revised Statutes, are established in the office of the chairperson of the board of land and natural resources for the purposes of Red Hill WAI policy coordination:

(1) full-time equivalent ( FTE) policy coordinator;

(2) full-time equivalent ( FTE) outreach coordinator; and

(3) full-time equivalent ( FTE) administrative assistant.

SECTION 4. There is appropriated out of the general revenues of the State of Hawaii the sum of \$ or so much thereof as may be necessary for fiscal year 2025-2026 and the same sum or so much thereof as may be necessary for fiscal year 2026-2027 for the positions identified in section 3 of this Act for Red Hill WAI policy coordination.

The sums appropriated shall be expended by the department of land and natural resources for the purposes of this Act.

SECTION 5. There is appropriated out of the general revenues of the State of Hawaii the sum of \$ or so much thereof as may be necessary for fiscal year 2025-2026 and



1 the same sum or so much thereof as may be necessary for fiscal  
2 year 2026-2027 for ecosystem monitoring of the area surrounding  
3 the Red Hill Bulk Fuel Storage Facility by the department of  
4 land and natural resources.

5 The sums appropriated shall be expended by the department  
6 of land and natural resources for the purposes of this Act.

7 PART II

8 SECTION 6. The legislature finds that effective and  
9 efficient water resource management requires continuous and  
10 experienced leadership, especially given the climate crisis and  
11 urgent need to properly steward water resources to meet the  
12 affordable housing needs of local residents. On December 28,  
13 1994, the review commission on the state water code submitted  
14 its final report to the legislature pursuant to Act 45, Session  
15 Laws of Hawaii 1987. The review commission determined that  
16 amendments to the state water code were necessary to enable the  
17 commission on water resource management to more effectively  
18 carry out its mandate pursuant to article XI, section 7, of the  
19 Hawaii State Constitution to "set overall water conservation,  
20 quality and use policies; define beneficial and reasonable uses;  
21 protect ground and surface water resources, watersheds and



1 natural stream environments; establish criteria for water use  
2 priorities while assuring appurtenant rights and existing  
3 correlative and riparian uses and establish procedures for  
4 regulating all uses of Hawaii's water resources". Therefore,  
5 further clarification of the commission on water resource  
6 management's purpose, including its leadership structure and  
7 composition of the board, will provide greater accountability  
8 and protection of the State's waters.

9 The purpose of this Act is to:

- 10 (1) Allow the commission to retain independent legal  
11 counsel;
- 12 (2) Amend the scope of the commission on water resource  
13 management to include declaration of emergencies;
- 14 (3) 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 (4) Amend the composition of the commission on water  
19 resource management;



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

(6) Establish fines for certain water use offenses.

SECTION 7. Section 28-8.3, Hawaii Revised Statutes, is amended as follows:

1. By amending subsection (a) to read:

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

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

(2) By any court or judicial or legislative office of the State; provided that if the attorney general is requested to provide representation to a court or 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  
5 the grounds of conflict of interest, the attorney  
6 general shall retain an attorney for the court,  
7 judicial, or legislative office, subject to approval  
8 by the court, 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~~] 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 full-  
5   time basis, except an attorney employed by the public utilities  
6   commission, the labor and industrial relations appeals board,  
7   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~~] university of  
12   Hawaii, the Hawaii tourism authority as provided in section  
13   201B-2.5, the Mauna Kea stewardship and oversight authority, the  
14   commission on water resource management, the office of  
15   information practices, or as grand jury counsel, shall be a  
16   deputy attorney general."

17           SECTION 8. Section 84-18, Hawaii Revised Statutes, is  
18   amended by amending subsection (e) to read as follows:

19           "(e) Subject to the restrictions imposed in subsections  
20   (a) through (d), the following individuals shall not represent  
21   any person or business for a fee or other consideration



1 regarding any legislative action or administrative action, as  
2 defined in section 97-1, for twelve months after termination  
3 from their respective positions:

- 4 (1) The governor;
- 5 (2) The lieutenant governor;
- 6 (3) The administrative director of the State;
- 7 (4) The attorney general;
- 8 (5) The comptroller;
- 9 (6) The chairperson of the board of agriculture;
- 10 (7) The director of corrections and rehabilitation;
- 11 (8) The director of finance;
- 12 (9) The director of business, economic development, and  
13 tourism;
- 14 (10) The director of commerce and consumer affairs;
- 15 (11) The adjutant general;
- 16 (12) The superintendent of education;
- 17 (13) The chairperson of the Hawaiian homes commission;
- 18 (14) The director of health;
- 19 (15) The director of human resources development;
- 20 (16) The director of human services;
- 21 (17) The director of labor and industrial relations;





- 1       (18)   The chairperson of the board of land and natural  
2           resources;
- 3       (19)   The director of law enforcement;
- 4       (20)   The director of taxation;
- 5       (21)   The director of transportation;
- 6       (22)   The president of the University of Hawaii;
- 7       (23)   The executive administrator of the board of regents of  
8           the [~~University~~] university of Hawaii;
- 9       (24)   The administrator of the office of Hawaiian affairs;
- 10      (25)   The chief information officer;
- 11      (26)   The executive director of the agribusiness development  
12           corporation;
- 13      (27)   The executive director of the campaign spending  
14           commission;
- 15      (28)   The executive director of the Hawaii community  
16           development authority;
- 17      (29)   The executive director of the Hawaii housing finance  
18           and development corporation;
- 19      (30)   The president and chief executive officer of the  
20           Hawaii tourism authority;



1 (31) The executive officer of the public utilities

2 commission;

3 (32) The state auditor;

4 (33) The director of the legislative reference bureau;

5 (34) The ombudsman;

6 (35) The permanent employees of the legislature, other than

7 persons employed in clerical, secretarial, or similar

8 positions;

9 (36) The administrative director of the courts;

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

11 (38) The executive officer of the state land use

12 commission;

13 (39) The executive director of the natural energy

14 laboratory of Hawaii authority;

15 (40) The executive director of the Hawaii public housing

16 authority; and

17 (41) The [~~first deputy to the chairperson~~] executive

18 director of the commission on water resource

19 management;

20 provided that this subsection shall not apply to any person who

21 has held one of the positions listed above only on an interim or



1 acting basis and for a period of less than one hundred eighty-  
2 one days."

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

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

9 (1) Shall carry out topographic surveys, research, and  
10 investigations into all aspects of water use and water  
11 quality;

12 (2) Shall designate water management areas for regulation  
13 under this chapter where the commission, after the  
14 research and investigations mentioned in paragraph  
15 (1), shall consult with the appropriate county council  
16 and county water agency, and after public hearing and  
17 published notice, finds that the water resources of  
18 the areas are being threatened by existing or proposed  
19 withdrawals of water;

20 (3) Shall establish an instream use protection program  
21 designed to protect, enhance, and reestablish, where



1 practicable, beneficial instream uses of water in the  
2 State;

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

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

14 (6) Shall cooperate with federal agencies, other state  
15 agencies, county or other local governmental  
16 organizations, and all other public and private  
17 agencies created for the purpose of utilizing and  
18 conserving the waters of the State, and assist these  
19 organizations and agencies in coordinating the use of  
20 their facilities and participate in the exchange of  
21 ideas, knowledge, and data with these organizations



1 and agencies. For this purpose the commission shall  
2 maintain an advisory staff of experts;

3 (7) Shall prepare, publish, and issue printed pamphlets  
4 and bulletins as the commission deems necessary for  
5 the dissemination of information to the public  
6 concerning its activities;

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

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

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

15 [~~(10)~~] (11) May acquire, lease, and dispose of real and  
16 personal property as may be necessary in the  
17 performance of its functions, including the  
18 acquisition of real property for the purpose of  
19 conserving and protecting water and water related  
20 resources as provided in section 174C-14;



1       ~~[(11)]~~ (12) Shall identify, by continuing study, those areas  
2               of the State where salt water intrusion is a threat to  
3               fresh water resources and report its findings to the  
4               appropriate county mayor and council and the public;

5       ~~[(12)]~~ (13) Shall provide coordination, cooperation, or  
6               approval necessary to the effectuation of any plan or  
7               project of the federal government in connection with  
8               or concerning the waters of the State. The commission  
9               shall approve or disapprove any federal plans or  
10              projects on behalf of the State. No other agency or  
11              department of the State shall assume the duties  
12              delegated to the commission under this paragraph;  
13              except that the department of health shall continue to  
14              exercise the powers vested in it with respect to water  
15              quality, and except that the department of business,  
16              economic development, and tourism shall continue to  
17              carry out its duties and responsibilities under  
18              chapter 205A;

19       ~~[(13)]~~ (14) Shall plan and coordinate programs for the  
20               development, conservation, protection, control, and  
21               regulation of water resources, based upon the best



1 available information, and in cooperation with federal  
2 agencies, other state agencies, county or other local  
3 governmental organizations, and other public and  
4 private agencies created for the utilization and  
5 conservation of water;

6 [~~(14)~~] (15) Shall catalog and maintain an inventory of all  
7 water uses and water resources; [~~and~~]

8 [~~(15)~~] (16) Shall determine appurtenant water rights,  
9 including but not limited to the quantification of the  
10 amount of water and the specification of the water  
11 course or the means of access and delivery entitled to  
12 by that right, which determination shall be valid for  
13 purposes of this chapter[~~-~~] and

14 (17) May declare an emergency if the commission determines,  
15 in consultation with the governor, the appropriate  
16 county, and the department of health, that there is an  
17 absence of sufficient quantity and quality of water in  
18 any area, whether within or outside of a water  
19 management area, that immediately threatens the public  
20 health, safety, and welfare. The commission may issue  
21 orders reciting the existence of the emergency and



1        requiring those actions as the commission deems  
2        necessary to address the emergency be taken, including  
3        but not limited to apportioning, rotating, limiting,  
4        or prohibiting the use of water resources of the area;  
5        provided that an emergency order shall expire no later  
6        than one year after issuance by the commission;  
7        provided further that the order may be extended by a  
8        separate or supplementary order."

9        SECTION 10. Section 174C-6, Hawaii Revised Statutes, is  
10       amended to read as follows:

11        **"§174C-6   ~~[Deputy to the chairperson]~~ Executive director of**  
12       **the commission on water resource management.** (a) There shall  
13       be ~~[a first deputy to the chairperson]~~ an executive director of  
14       the commission on water resource management ~~[("deputy for water~~  
15       ~~resource management") who shall be in addition to any other~~  
16       ~~first deputy to the chairperson as the chairperson of the board~~  
17       ~~of land and natural resources. The deputy], who shall have~~  
18       experience in the area of water resources and shall be appointed  
19       by ~~[the chairperson with the approval of a majority of]~~ the  
20       commission~~[-]~~ and serve at the pleasure of the commission.





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

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

10 (d) The salary of the ~~[deputy]~~ executive director for  
11 water resource management shall be ~~[as provided in section 26-53~~  
12 ~~for first deputies or first assistants to the head of any~~  
13 ~~department.]~~ set by the board and the executive director shall  
14 be included in any benefit program generally applicable to the  
15 officers and employees of the State.

16 (e) The commission shall develop and document annual goals  
17 and performance measures for the executive director that  
18 authorize the commission to annually evaluate the executive  
19 director's work to ensure compliance by the commission with  
20 statutory and constitutional requirements and achievement of its  
21 statutory and constitutional purposes.



1        (f) The commission shall evaluate and document the  
2 evaluation of the executive director's performance annually, or  
3 more frequently upon the request of at least four members of the  
4 commission, based on annual goals, performance measures, and  
5 other relevant criteria.

6        (g) The position of Red Hill Water Alliance Initiative  
7 policy coordinator, established pursuant to section -2, Hawaii  
8 Revised Statutes, shall be placed within the office of the  
9 executive director."

10        SECTION 11. Section 174C-7, Hawaii Revised Statutes, is  
11 amended to read as follows:

12        **"§174C-7 Commission on water resource management. (a)**  
13 There is established within the department a commission on water  
14 resource management consisting of seven members which shall have  
15 exclusive jurisdiction and final authority in all matters  
16 relating to implementation and administration of the state water  
17 code, except as otherwise specifically provided in this chapter.  
18 The commission shall be attached to the department of land and  
19 natural resources for administrative purposes only.

20        (b) Five members shall be appointed by the governor  
21 subject to confirmation by the senate in the manner prescribed



1 in subsection ~~[(d)-]~~ (e). Each member shall have substantial  
2 experience in the area of water resource management; provided  
3 that at least one member shall have substantial experience or  
4 expertise in traditional Hawaiian water resource management  
5 techniques and in traditional Hawaiian riparian usage ~~[such as]~~  
6 including those preserved by section 174C-101. Each of the  
7 members shall be eligible to serve as the chairperson of the  
8 commission upon election by a majority of the commission  
9 members.

10 (c) The chairperson of the board of land and natural  
11 resources ~~[shall be the chairperson of the commission. The]~~ and  
12 the director of health or the director's designee shall serve as  
13 [an] ex officio[+], [+] voting [member.] members, but shall be  
14 ineligible to serve as chairperson of the commission.

15 ~~[(e)-]~~ (d) The members of the commission shall serve  
16 without compensation but shall be reimbursed for expenses,  
17 including travel expenses, necessary for the performance of  
18 their duties.

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



1 five individuals chosen as follows: two persons appointed by  
2 the governor; one person appointed by the president of the  
3 senate; and one person appointed by the speaker of the house~~[+]~~;  
4 and one person appointed by the chief executive officer of the  
5 office of Hawaiian affairs. The committee shall solicit  
6 applications and send to the governor the names of at least  
7 three individuals for each open position.

8 ~~[-e+]~~ (f) Except as otherwise provided in this chapter,  
9 the commission shall be subject to sections 26-34, 26-35, and  
10 26-36."

11 SECTION 12. Section 174C-9, Hawaii Revised Statutes, is  
12 amended to read as follows:

13 **"[+]§174C-9[+] Proceedings before the commission**  
14 **concerning water resources.** (a) All proceedings before the  
15 commission concerning the enforcement or application of any  
16 provision of this chapter or any rule adopted pursuant thereto,  
17 or the issuance, modification, or revocation of any permit or  
18 license under this code by the commission, shall be conducted in  
19 accordance with chapter 91. Hearings regarding particular water  
20 resources shall be conducted on the island where those water  
21 resources are located.



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

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

8        **"§174C-15 Penalties and common law remedies.** (a) The  
9        commission may enforce its rules and orders adopted pursuant to  
10       this chapter by suit for injunction or for damages or both.

11       (b) Any person who [violates any]:

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

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

15       (3) Violates any order of the commission;

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

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

19       (6) Fails to comply with standardized water audit  
20       requirements pursuant to Act 169, Session Laws of  
21       Hawaii 2016,



1 shall be subject to a fine imposed by the commission. [Such]  
2 The fine shall be not less than \$50 and shall not exceed  
3 [\$5,000. For a continuing offense, each day during which the  
4 offense is committed is a separate violation.] \$25,000 per  
5 violation. Each day that a violation exists or continues to  
6 exist shall constitute a separate offense. Penalties for  
7 continuing violations shall be assessed from the earliest known  
8 date of the violation. The earliest known date of a violation  
9 shall be determined by the commission by a preponderance of the  
10 evidence; provided that if the earliest known date cannot be  
11 determined by a preponderance of evidence, penalties for  
12 continuing violations shall be assessed from the earliest date  
13 the commission is made aware of the violation.

14 (c) When imposing a penalty, the commission shall consider  
15 the following factors, which shall include but not be limited  
16 to:

- 17 (1) The nature, circumstances, extent, gravity, and  
18 history of the violation and of any prior violations;  
19 (2) The economic benefit to the violator, or anticipated  
20 by the violator, resulting from the violation;



- 1        (3) The opportunity, difficulty, and history of corrective  
2            action;  
3        (4) Good faith efforts to comply;  
4        (5) Degree of culpability; and  
5        (6) Other matters as justice may require.

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

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

18        SECTION 14. Section 174C-62, Hawaii Revised Statutes, is  
19 amended to read as follows:

20        "[~~{~~]**\$174C-62**[~~}~~] **Declaration of water shortage.** (a) The  
21 commission shall formulate a statewide plan for implementation



1 during periods of water shortage. As a part of the plan, the  
2 commission shall adopt a reasonable system of permit  
3 classification according to source of water supply, method of  
4 extraction or diversion, use of water, or a combination thereof.

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

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





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

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

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

20 (g) If an emergency condition arises due to a water  
21 shortage within any area, whether within or outside of a water



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

15 PART III

16 SECTION 15. If any provision of this Act, or the  
17 application thereof to any person or circumstance, is held  
18 invalid, the invalidity does not affect other provisions or  
19 applications of the Act that can be given effect without the  
20 invalid provision or application, and to this end the provisions  
21 of this Act are severable.

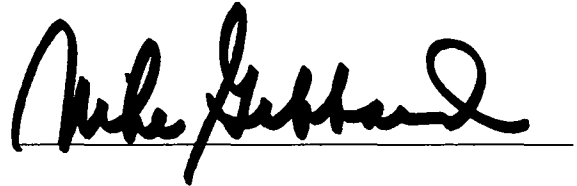


1       SECTION 16. This Act does not affect rights and duties  
2 that matured, penalties that were incurred, and proceedings that  
3 were begun before its effective date.

4       SECTION 17. Statutory material to be repealed is bracketed  
5 and stricken. New statutory material is underscored.

6       SECTION 18. This Act shall take effect upon its approval;  
7 provided that sections 3, 4, and 5 of this Act shall take effect  
8 on July 1, 2025.

9  
INTRODUCED BY:

A handwritten signature in black ink, appearing to read "Mike Hubbard", is written over a horizontal line.

**Report Title:**

DLNR; CWRM; Red Hill WAI; Policy Lead and Coordination; Red Hill Remediation Special Fund; Public Trust Purpose; Responsibilities; Commission Membership; Executive Director; Independent Legal Counsel; Emergency Order; Water Emergencies; Water Shortage Declarations; Fines; Reports; Appropriations

**Description:**

Part I: Establishes a WAI Policy Coordinator and other positions within the Commission on Water Resource Management for coordination of Red Hill WAI initiatives. Creates the Red Hill Remediation Special Fund. Requires reports to the Legislature, Governor, and Mayor and City Council of the City and County of Honolulu. Appropriates funds. Part II: Allows the Commission of Water Resource Management to retain independent legal counsel. Repeals the position of Deputy to the Chairperson of the Commission and establishes the position of Executive Director of the Commission. Amends the composition of the Commission and administratively attaches it to DLNR. Authorizes entities to challenge an emergency order of the Commission under certain conditions. Establishes fines for certain water use offenses. Amends the Commission's authority to declare water emergencies and issue orders to address them and declare water shortages and related notice requirements. Specifies that the nominating committee of the Commission shall include one person appointed by the Chief Executive Officer of the Office of Hawaiian Affairs.

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

