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# A BILL FOR AN ACT

RELATING TO STATE WATER CODE PENALTIES.

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

1           SECTION 1. The legislature finds that in 1987, the state  
2 water code was adopted to protect the precious water resources  
3 of the State. To better enable the department of land and  
4 natural resources and commission on water resource management to  
5 carry out that mission, the legislature further finds that the  
6 water code's penalties and fines must be amended and increased  
7 to serve as an effective deterrence to violators.

8           The legislature further finds that increasing potential  
9 fines for water code violations will also:

- 10           (1) Help to preserve water resources by ensuring the  
11                 sustainable management and conservation of limited  
12                 water resources for future generations, particularly  
13                 in areas facing over-extraction or misuse;
- 14           (2) Protect the ecosystems by safeguarding wetlands,  
15                 rivers, and aquifers that depend on healthy water  
16                 systems to maintain biodiversity and environmental  
17                 balance;



- 1           (3) Promote public health and safety by preventing  
2           contamination of drinking water supplies and reducing  
3           health risks associated with waterborne diseases and  
4           pollutants;
- 5           (4) Promote climate change resilience by regulating water  
6           usage and protecting vulnerable water sources to  
7           address challenges posed by prolonged droughts,  
8           erratic rainfall, and rising sea levels;
- 9           (5) Promote economic stability by helping to avoid  
10          economic losses in agriculture, tourism, and other  
11          industries that rely heavily on consistent and clean  
12          water supplies;
- 13          (6) Promote enforcement of equity and justice to ensure  
14          fair access to water resources for all, including  
15          marginalized communities that may be  
16          disproportionately affected by water scarcity or poor  
17          water management;
- 18          (7) Increase accountability for violations to deter  
19          illegal activities such as unauthorized diversions,  
20          pollution, or overuse of water resources by imposing  
21          stricter penalties and fines; and



1 (8) Increase compliance with federal and state mandates to  
2 meet legal obligations under federal or state  
3 environmental protection laws, ensuring alignment with  
4 broader water management and conservation goals.

5 The purpose of this Act is to:

- 6 (1) Make failure to maintain a natural stream channel that  
7 causes an unreasonable and substantial physical  
8 obstruction of the natural flow of water a violation  
9 of the state water code, with certain exceptions;
- 10 (2) Establish a period of time after receipt of written  
11 notice of certain violations of the state water code  
12 during which a violator may remedy the violation or  
13 enter into a corrective action plan with the  
14 commission on water resource management;
- 15 (3) Give the commission on water resource management the  
16 discretion to impose a minimum penalty per state water  
17 code violation; amend the maximum penalty per  
18 violation of the state water code; and clarify what  
19 constitutes a separate offense; and
- 20 (4) Require the commission on water resource management to  
21 consider certain factors when imposing penalties.



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

3 **"§174C-15 Penalties and common law remedies.** (a) The  
4 commission may enforce its rules and orders adopted pursuant to  
5 this chapter by suit for injunction or for damages or both. It  
6 shall be a violation of this chapter to fail to maintain a  
7 natural stream channel under a person's ownership if the failure  
8 to maintain the channel causes an unreasonable and substantial  
9 physical obstruction of the natural flow of water; provided that  
10 obstructions caused strictly by acts of nature, including severe  
11 weather events, shall not constitute a violation if the owner  
12 promptly reports the obstruction and takes reasonable steps to  
13 coordinate removal; provided further that the term "natural  
14 stream channel" shall not include ephemeral streams or dry  
15 gulches; provided further that routine grading or redirection of  
16 water flow for agricultural or flood management purposes shall  
17 not constitute an unreasonable and substantial physical  
18 obstruction.

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

20 (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 regarding the
- 4                enforcement or application of any provision of this
- 5                chapter or rule adopted under this chapter;
- 6        (4) Fails to obtain a permit when a permit is required
- 7                under this chapter;
- 8        (5) Fails to comply with permit conditions; or
- 9        (6) Fails to comply with standardized water audit
- 10                requirements pursuant to Act 169, Session Laws of
- 11                Hawaii 2016,
- 12 shall be subject to a fine imposed by the commission. [Such
- 13 fine shall not exceed \$5,000. For a continuing offense, each
- 14 day during which the offense is committed is a separate
- 15 violation.] as provided under subsection (c). Prior to the
- 16 assessment of any fine under this section for a failure to
- 17 maintain a natural stream channel or a failure to comply with
- 18 permit conditions under paragraph (5), the commission shall
- 19 issue a written notice of violation to the property owner or
- 20 permittee. The property owner or permittee shall have a notice
- 21 period of thirty days from receipt of the notice to remedy the



1 violation or enter into a corrective action plan with the  
2 commission. If the violation is remedied or a plan is approved  
3 within this period, no fine shall be assessed. Each day that a  
4 violation exists or continues to exist may be considered a  
5 separate offense. Penalties for continuing violations shall be  
6 assessed from the earliest known date of the violation; provided  
7 that for violations involving a failure to maintain a natural  
8 stream channel without malicious intent or substantial harm to  
9 the environment, penalties for a continuing violation shall only  
10 begin to accrue after the expiration of the notice period.

11 The earliest known date of a violation shall be determined  
12 by the commission by a preponderance of the evidence; provided  
13 that if the earliest known date cannot be determined by a  
14 preponderance of the evidence, penalties for continuing  
15 violations shall be assessed from the earliest date the  
16 commission is made aware of the violation.

17 (c) A fine imposed pursuant to this section shall not be  
18 less than \$50 and shall not exceed:

19 (1) \$5,000 per violation; provided that the commission has  
20 not fined the violator within the five years preceding  
21 the violation; provided further that the violation



1           does not cause harm to other water users, the  
2           environment, or water source; or  
3           (2) \$15,000 per violation; provided that the commission  
4           has fined the violator within the five years preceding  
5           the violation; provided further that the violation  
6           causes harm to other water users, the environment, or  
7           water source.

8           (d) When imposing a fine, the commission shall consider  
9 the following factors:

- 10           (1) The nature, circumstances, extent, gravity, and  
11           history of the violation and of any prior violations;
- 12           (2) The economic benefit to the violator, or anticipated  
13           by the violator, resulting from the violation;
- 14           (3) The opportunity, difficulty, and history of corrective  
15           action;
- 16           (4) The violator's good faith efforts to comply;
- 17           (5) The violator's degree of culpability;
- 18           (6) The quantity of water affected by the violation,  
19           including the quantity of water unlawfully diverted,  
20           wasted, or contaminated;



1        (7) The potential or actual harm to other water users, the  
2                    environment, or water source caused by the violation;  
3                    and

4        (8) Any other matters as justice may require.

5        (e) The State shall not acquire a fee simple interest in  
6 any artificial watercourse, including a canal or ditch, if the  
7 current or prior owner of the artificial watercourse has been  
8 subject to a fine under this section for the artificial  
9 watercourse; provided that the State may acquire a fee simple  
10 interest in the artificial watercourse if the legislature  
11 provides prior approval by concurrent resolution.

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

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



1 [~~attorneys'~~] attorney's fees and costs, or payment for damages  
2 resulting from a violation of this chapter or any rule adopted  
3 pursuant to this chapter."

4 SECTION 3. If any provision of this Act, or the  
5 application thereof to any person or circumstance, is held  
6 invalid, the invalidity does not affect other provisions or  
7 applications of the Act that can be given effect without the  
8 invalid provision or application, and to this end the provisions  
9 of this Act are severable.

10 SECTION 4. This Act does not affect rights and duties that  
11 matured, penalties that were incurred, and proceedings that were  
12 begun before its effective date.

13 SECTION 5. Statutory material to be repealed is bracketed  
14 and stricken. New statutory material is underscored.

15 SECTION 6. This Act shall take effect on July 1, 2026.



**Report Title:**

State Water Code; CWRM; Penalties

**Description:**

Makes failure to maintain a natural stream channel that causes an unreasonable and substantial physical obstruction of the natural flow of water a violation of the State Water Code, with certain exceptions. Establishes a period of time after receipt of written notice of certain violations of the State Water Code during which a violator may remedy the violation or enter into a corrective action plan with the Commission on Water Resource Management (CWRM). Gives CWRM the discretion to impose a minimum penalty per State Water Code violation, increases the maximum penalty per violation, and authorizes CWRM to consider each day that a violation exists or continues to exist a separate offense. Establishes factors CWRM must consider when determining the amount of the penalty. Prohibits the State from acquiring a fee simple interest in any artificial watercourse, including a canal or ditch, under certain circumstances. Allows the State to acquire a fee simple interest in the artificial watercourse if the Legislature provides prior approval by concurrent resolution. (CD1)

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

