
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 consistent,
3 experienced, and independent leadership, especially considering
4 the climate crisis. Proper stewardship of the State's water
5 resources will benefit present and future generations by
6 perpetuating the natural lifeblood and cultural lifeways of
7 these islands and providing for essential uses such as the
8 affordable housing needs of local residents. In 1978, the
9 people of the State established article XI, section 7, of the
10 Hawaii State Constitution, mandating the legislature to "provide
11 for a water resources agency" to uphold the State's "obligation
12 to protect, control and regulate the use of Hawaii's water
13 resources for the benefit of its people". Pursuant to this
14 mandate, in 1987, the legislature promulgated the comprehensive
15 state water code, chapter 174C, Hawaii Revised Statutes, which
16 established the commission on water resource management
17 (commission) to administer and implement the state water code.



1 The legislature is concerned that impediments and threats
2 to the independence of the commission have undermined its
3 ability to fulfill its constitutional and statutory duties.
4 Based on historical and recent experiences, the legislature
5 finds that certain administrative structures of the commission
6 create inherent conflicts and dependencies that impair its
7 critical function of comprehensive water planning and
8 management.

9 In *In re Waiahole Ditch Contested Case Hearing*, 94 Haw. 97,
10 9 P.3 409 (2000) (*Waiahole case*), for example, the Hawaii
11 supreme court expressed "serious misgivings" about the conflicts
12 and political pressures influencing the commission which "did
13 nothing to improve public confidence in government and the
14 administration of justice in this state". These problems
15 include the inherent conflict of interest that stems from the
16 chairperson of the board and land and natural resources
17 (chairperson), who serves as both the head of the department of
18 land and natural resources and chairperson of the commission.
19 The commission also lacks the ability to employ its own legal
20 staff and consequently was left without the assistance of legal
21 counsel in the momentous, precedent-setting *Waiahole* case when



1 the department of the attorney general terminated its
2 representation of the commission and opposed the commission's
3 recommendations.

4 More recently, in the aftermath of the August 2023 Maui
5 wildfires, the commission has undergone further challenges that
6 have undermined its effectiveness and eroded public confidence
7 in the agency. These include controversies that arose due to
8 the chairperson's exercise of unilateral authority over the
9 commission in response to external political influences. In one
10 highly publicized example, the chairperson summarily suspended
11 legal protections of instream flows and removed the commission's
12 deputy director, until community objections forced the
13 administration to rescind those actions.

14 The legislature further finds that the basic governance and
15 administrative structures of the commission do not adequately
16 protect or ensure the commission's independence. For many
17 years, these concerns have been acknowledged, but no action has
18 been taken. While reform measures have been recommended as
19 solutions, none have been adopted.

20 In 1994, the review commission tasked with comprehensively
21 reviewing the state water code recognized the potential for



1 significant conflicts in the chairperson also being designated
2 by law as the chairperson of the commission. To provide the
3 commission with "greater autonomy" and "accountability" and
4 increase "administrative distance" from the department of land
5 and natural resources, the review commission's final report
6 recommended various amendments to the state water code. These
7 recommendations included removing the commission from the
8 department of land and natural resources and "attaching the
9 commission to the [department] for administrative purposes
10 only"; specifying that the chairperson of the board of land and
11 natural resources shall "be ineligible to serve as chairperson
12 of the [commission]"; and providing that the chief executive
13 officer of the commission shall not be a deputy director of the
14 department of land and natural resources, but an "executive
15 director of the [commission], appointed by and answerable to the
16 [commission]".

17 The legislature also finds that in a similar fashion, the
18 Model Water Code, which guided the legislature's development of
19 the state water code, recognizes the need to establish a water
20 commission as "an independent board" and recommends model
21 governance and administrative provisions to support that



1 independence. These include provisions that members of the
2 board "shall elect" their own chairperson, and that the board
3 "shall employ an executive director as chief administrative
4 officer" and "may employ a legal staff" to provide legal
5 counsel, represent it in proceedings, and otherwise assist it in
6 the administration of the water code.

7 The legislature additionally finds that as the fortieth
8 anniversary of the establishment of the state water code and
9 commission approaches, and the State confronts escalating
10 challenges in the management of its freshwater resources, there
11 is an urgent and overdue need to update the provisions for the
12 leadership, governance, and administration of the commission so
13 that it may be best positioned to fulfill its constitutionally
14 and statutorily mandated responsibilities for the people of the
15 State going forward in the twenty-first century.

16 Therefore, the legislature believes that clarification of
17 these provisions, as well as other updates to provisions
18 regarding penalties and emergency orders in the state water
19 code, are necessary to provide greater accountability and
20 protection for the State's public trust water resources.



1 Accordingly, the purpose of this Act is to establish a
2 working group within the department of land and natural
3 resources to evaluate and make recommendations regarding the
4 governance and structure of the commission on water resource
5 management to ensure that it effectively fulfills its
6 constitutional public trust responsibilities while maintaining
7 operational efficiency and implementation capacity.

8 SECTION 2. (a) There is established within the department
9 of land and natural resources a working group to evaluate and
10 make recommendations regarding the governance and structure of
11 the commission on water resource management to ensure that it
12 effectively fulfills its constitutional public trust
13 responsibilities while maintaining operational efficiency and
14 implementation capacity.

15 (b) The working group shall consist of the following
16 voting members:

17 (1) The chairperson of the board of land and natural
18 resources, or the chairperson's designee, who shall
19 convene the working group;



- 1 (2) The first deputy to the chairperson of the commission
- 2 on water resource management, or the first deputy's
- 3 designee;
- 4 (3) The attorney general, or the attorney general's
- 5 designee;
- 6 (4) The director of health, or the director's designee;
- 7 (5) Two members of the commission on water resource
- 8 management; provided that the members do not
- 9 constitute a quorum of the commission;
- 10 (6) A representative of the office of Hawaiian affairs;
- 11 (7) A representative of the department of Hawaiian home
- 12 lands;
- 13 (8) A staff-level representative of the commission on
- 14 water resource management;
- 15 (9) Two representatives from county water supply agencies;
- 16 provided that one representative shall represent the
- 17 Honolulu board of water supply and one representative
- 18 shall represent a water supply agency from a neighbor
- 19 island;
- 20 (10) A representative of a large landowner or agricultural
- 21 water user;



1 (11) A representative from the development or housing
2 sector; and

3 (12) A member of a community organization with a background
4 in environmental advocacy.

5 (c) The working group may invite additional participants
6 to serve in an advisory capacity, including:

7 (1) County planning and permitting agencies;

8 (2) Experts in engineering and hydrology;

9 (3) Cultural practitioners; and

10 (4) Labor representatives.

11 Participants who serve in an advisory capacity may provide input
12 to the working group but shall not be eligible to vote.

13 (d) The working group shall:

14 (1) Evaluate whether the existing leadership structure of
15 the commission on water resource management supports
16 effective governance and implementation, including:

17 (A) Whether the chairperson of the board of land and
18 natural resources should serve as chairperson of
19 the commission on water resource management;

20 (B) The expectations, workload, and support necessary
21 for the chairperson and members of the commission



- 1 on water resource management to perform their
2 duties effectively; and
- 3 (C) Whether compensation or other structural supports
4 for members of the commission on water resource
5 management are necessary to enable them to
6 perform their duties effectively;
- 7 (2) Assess the appropriate administrative relationship
8 between the commission on water resource management
9 and department of land and natural resources;
- 10 (3) Evaluate the need for:
- 11 (A) The commission on water resource management to be
12 able to retain independent legal counsel; and
- 13 (B) Dedicated executive leadership for the commission
14 on water resource management, such as the hiring
15 of an executive director;
- 16 (4) Identify targeted statutory amendments to improve the
17 accountability, efficiency, and clarity of authority
18 of the commission of water resource management; and
- 19 (5) Develop recommendations for implementation of any
20 changes, including any necessary transition plans, to



1 ensure the continuity of operations of the commission
2 on water resource management.

3 The working group shall focus on governance and structural
4 issues and shall not duplicate or replace existing permitting or
5 regulatory processes of the commission on water resource
6 management.

7 (e) The working group shall submit to the legislature:

8 (1) An interim report no later than twenty days prior to
9 the convening of the regular session of 2027; and

10 (2) A final report no later than two years after the
11 convening of the working group, including any
12 findings, recommendations, and proposed legislation.

13 (f) The working group shall cease to exist on January 1,
14 2028.

15 SECTION 3. This Act shall take effect on July 1, 3000.



Report Title:

DLNR; CWRM; Working Group

Description:

Establishes within the Department of Land and Natural Resources a working group to evaluate and make recommendations regarding the governance and structure of the Commission on Water Resource Management to ensure that it effectively fulfills its constitutional public trust responsibilities while maintaining operational efficiency and implementation capacity. Sunsets the working group on 1/1/2028. Effective 7/1/3000. (HD1)

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

