
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 believes that the water
6 code's penalties and fines must be amended and increased to
7 serve as an effective deterrence to violators.

8 The legislature also believes that increasing potential
9 fines for water code violations will help:

10 (1) Preserve water resources by ensuring the sustainable
11 management and conservation of limited water resources
12 for future generations, particularly in areas facing
13 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 equity and justice by ensuring fair access to
14 water resources for all, including marginalized
15 communities that may be disproportionately affected by
16 water scarcity or poor water management;
- 17 (7) Increase accountability for violations to deter
18 illegal activities, such as unauthorized diversions,
19 pollution, or overuse of water resources, by imposing
20 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 Accordingly, the purpose of this Act is to:

6 (1) Ensure that all violators of the state water code are
 7 held accountable for their violations by adding a
 8 minimum penalty and amending the maximum penalty, with
 9 scheduled incremental increases, per violation of the
 10 state water code, and by clarifying what constitutes a
 11 separate offense; and

12 (2) Require the commission on water resource management to
 13 consider certain factors when imposing penalties.

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

16 "**§174C-15 Penalties and common law remedies.** (a) The
 17 commission may enforce its rules and orders adopted pursuant to
 18 this chapter by suit for injunction or for damages or both.

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). Each day that a
16 violation exists or continues to exist may be considered a
17 separate offense. Penalties for continuing violations shall be
18 assessed from the earliest known date of the violation. The
19 earliest known date of a violation shall be determined by the
20 commission by a preponderance of the evidence; provided that if
21 the earliest known date cannot be determined by a preponderance



1 of the evidence, penalties for continuing violations shall be
2 assessed from the earliest date the commission is made aware of
3 the violation.

4 (c) A fine imposed pursuant to this section shall be not
5 less than \$ _____ and shall not exceed:

6 (1) \$ _____ per violation; provided that the
7 commission has not fined the violator within the five
8 years preceding the violation; provided further that
9 the violation does not cause harm to other water
10 users, the environment, or water source; or

11 (2) \$ _____ per violation if the commission has fined
12 the violator within the five years preceding the
13 violation or the violation causes harm to other water
14 users, the environment, or a water source.

15 (d) When imposing a fine, the commission shall consider
16 factors including:

17 (1) The nature, circumstances, extent, gravity, and
18 history of the violation and 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 for, difficulty of, and history of any
- 2 corrective action;
- 3 (4) The violator's good faith efforts to comply;
- 4 (5) The violator's degree of culpability;
- 5 (6) The quantity of water affected by the violation,
- 6 including the quantity of water unlawfully diverted,
- 7 wasted, or contaminated;
- 8 (7) The potential or actual harm to other water users, the
- 9 environment, or water source caused by the violation;
- 10 and
- 11 (8) Any other matters as justice may require.

12 [~~e~~] (e) 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~~] (f) 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' fees
20 and costs; [~~e~~] and may bring legal action to recover
21 administrative fines, fees, and costs, including attorneys' fees



1 and costs, or payment for damages resulting from a violation of
2 this chapter or any rule adopted pursuant to this chapter.

3 (g) The maximum fine per violation pursuant to subsection
4 (c) (2) shall increase to:

5 (1) \$ _____ beginning January 1, 2031;

6 (2) \$ _____ beginning January 1, 2036;

7 (3) \$ _____ beginning January 1, 2041; and

8 (4) \$ _____ beginning January 1, 2046."

9 SECTION 3. This Act does not affect rights and duties that
10 matured, penalties that were incurred, and proceedings that were
11 begun before its effective date.

12 SECTION 4. Statutory material to be repealed is bracketed
13 and stricken. New statutory material is underscored.

14 SECTION 5. This Act shall take effect on July 1, 2050.



Report Title:

State Water Code; CWRM; Penalties

Description:

Adds a minimum penalty and maximum penalty per violation of the State Water Code. Authorizes the Commission on Water Resource Management to consider each day that a violation exists or continues to exist a separate offense. Establishes factors the CWRM must consider when determining the amount of the penalty. Increases maximum fines every 5 years from 2031 to 2046. Effective 7/1/2050. (SD1)

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