THE SENATE
THIRTY-THIRD LEGISLATURE, 2026
STATE OF HAWAII

S.B. NO. 3323

JAN 30 2026

A BILL FOR AN ACT

RELATING TO ECOSYSTEM RIGHTS.

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

SECTION 1. This Act shall be known and may be cited as the Na Aina no Ia Act, or NANI Act.

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

"CHAPTER

ECOSYSTEM RIGHTS: WATERSHEDS AND CORAL REEFS

§ **-1 Definitions.** As used in this chapter:

"Coral reef" means a coral reef ecosystem, including the fish, invertebrates, limu (algae), marine mammals, and all other living components that form a functional marine life ecosystem.

"Ecosystem person" means a coral reef or watershed with legal personhood.

"Legal personhood" or "legal person" means recognition in law as a rights-bearing entity, with the capacity to be represented in legal proceedings and to exercise rights and protections under the law.

"Recognized customary knowledge" means knowledge derived from established Native Hawaiian or local community practices that have been consistently observed, transmitted, and validated within those communities and that are relevant to the stewardship, protection, or restoration of the affected ecosystem person.

"Science-backed claim" means a claim supported by credible evidence, including peer-reviewed research, governmental resource data, or expert testimony grounded in marine science, environmental science, recognized customary knowledge, or Kanaka Maoli traditional ecological knowledge.

"Watershed" has the same meaning as in section 183-31.

§ **-2 Watersheds and coral reefs; legal personhood.** (a) Each watershed or coral reef located in the State shall be recognized as a legal person and shall have the rights, powers, and protections of a legal person, including the right to exist, flourish, and naturally evolve, defined to include measurable ecological conditions such as maintaining or increasing live coral cover, avoiding activities that impair recruitment or resilience, and ensuring conditions that allow natural recovery processes, and as reflected by Kanaka Māoli traditional and

customary cultural values, practice, and worldview, including the notion and practice of malama aina. All rights secured by this chapter shall be inherent, fundamental, and inalienable and shall be self-executing and enforceable against both private and public actors, including through injunctive relief, mandatory corrective actions, and court-ordered restoration. Courts shall issue mandatory injunctions whenever a violation of an ecosystem person's rights is established, regardless of the availability of monetary or administrative remedies. By codifying these rights, the State seeks to ensure the restoration and vitality of watershed and coral reef ecosystems for the benefit of present and future generations, in harmony with Kanaka Māoli knowledge and stewardship practices.

(b) State agencies, entities, and subdivisions shall recognize the legal personhood of watersheds and coral reefs in the State and shall not engage in, authorize, or attempt to engage in activities that violate the rights, powers, and protections bestowed upon any ecosystem person by its establishment as a legal person.

§ **-3 Natural resources; uses; activities; leases.** The natural resources found associated with watersheds and coral

reefs, including all flora and fauna, shall be considered to have an inalienable connection to the health and well-being of the ecosystem person. No use, activity, or lease involving watersheds or coral reefs shall be approved that compromises or endangers this connection.

§ **-4 Right of action.** Any individual, public agency, or private entity may bring an action against another individual or entity that violates or attempts to violate the rights of an ecosystem person in the State, and courts may order injunctive relief, moratoria on harmful activities, restoration plans, monitoring, penalties proportionate to harm, and long-term stewardship obligations. If liability is established, the court shall require ecological restoration sufficient to return the ecosystem person to its ecological baseline that existed before the harm, or, if that baseline was already degraded, to the best scientifically achievable functional condition necessary to fully remedy the injury without imposing liability for unrelated historic degradation, unless the plaintiff requests an alternative remedy based on cultural or customary considerations. An action brought by a private individual shall be accompanied by a science-backed claim. Courts shall

liberally grant standing to persons enforcing this chapter, in recognition of their kuleana (responsibility) as stewards of the affected ecosystem person.

§ **-5 Relationship to the public trust; no diminishment; rule of construction.** (a) This chapter shall be considered cumulative of and complementary to the public trust doctrine recognized in article XI of the Constitution of the State of Hawaii and in the decisions of the Hawaii supreme court. It establishes additional avenues for stewardship and enforcement and shall not be construed to supplant, replace, or diminish the public trust.

(b) Nothing in this chapter shall be construed to limit, modify, diminish, or otherwise affect:

(1) The State's fiduciary duties as public trustee over public natural resources; or

(2) The protection of Native Hawaiian traditional and customary rights, appurtenant rights, or other rights safeguarded under the Hawaii State Constitution and laws.

(c) In any case of ambiguity or potential overlap, this chapter shall be construed, to the fullest extent permitted by

law, to harmonize with and enhance, not conflict with, public trust duties, and to advance the purposes of both this chapter and the public trust doctrine.

§ **-6 Representation and stewardship duties; open guardianship.** (a) Any person, organization, or community may act to uphold the rights of an ecosystem person under this chapter. Formal appointment or recognition shall not be required as a condition of standing.

(b) All persons asserting or defending rights on behalf of an ecosystem person shall act in good faith and in a manner consistent with the principles of malama aina, pono governance, and the public trust doctrine.

(c) Before initiating a claim or enforcement action, any person or group acting on behalf of an ecosystem person shall make reasonable efforts to consult with Native Hawaiian practitioners and community stewardship organizations connected to the affected ecosystem, and to consider their perspectives in good faith.

(d) Parties acting under this chapter shall disclose to the court the nature of their relationship to the affected

ecosystem and any material interest they hold in the outcome of the action.

(e) A court, upon motion or its own initiative, may dismiss or limit participation in an action if the court finds that a person or entity is acting in retaliation, bad faith, for private gain, or in a manner inconsistent with the purposes of this chapter. Nothing in this section shall preclude community-based processes for accountability or mediation consistent with Native Hawaiian customary practices.

(f) No individual or organization shall have exclusive authority to represent an ecosystem person. Multiple parties may act concurrently or cooperatively, provided their actions are consistent with this chapter and the public trust doctrine.

§ **-7 Enforcement; no waiver of accountability; supremacy; retroactive application.** (a) Notwithstanding any law to the contrary, no officer, agency, or authority of the executive branch of the State shall enter into or enforce any waiver, indemnity agreement, memorandum of understanding, lease, permit, or other legal instrument that purports to release, excuse, or shield any person, corporation, agency (including any branch of the United States Armed Forces), or any other entity

from liability or accountability under this chapter for harm to an ecosystem person. Any provision or agreement, whether now existing or executed in the future, shall be void and unenforceable as contrary to public policy.

For the avoidance of doubt, any enforcement, claims or suits under this chapter shall be in addition to, and shall not preclude, limit, or be deemed to satisfy any duty, remedy, or cause of action arising under the public trust doctrine or other applicable law.

(b) If any conflict between this chapter and any other provision of the Hawaii Revised Statutes or other state law occurs, including any law, rule, regulation, permit condition, contract, or agreement that would limit or immunize any party's responsibility for harm to a watershed or coral reef, the provisions of this chapter shall govern. This subsection shall be construed in harmony with sections -5 and -10 so that this chapter and the public trust doctrine are mutually reinforcing. Nothing in this subsection may be interpreted to limit, restrict, or subordinate any right, duty, or remedy created by this chapter. This chapter shall supersede and preempt any state or local law to the extent of the conflict,

particularly with respect to the accountability of any person or entity for injury to an ecosystem person recognized under this chapter.

(c) This chapter shall apply retroactively to all acts and omissions occurring on or after August 21, 1959, that have harmed or would have violated the rights of any watershed or coral reef as recognized by this chapter.

(d) Any claim alleging injury, degradation, or loss to an ecosystem person may be brought under this chapter for conduct occurring on or after August 21, 1959, regardless of whether the conduct has ceased or been previously addressed through settlement or administrative action. Prior judgments or agreements shall not bar restorative relief if the ecological or cultural harm remains unremedied or continues to impair the health, function, or rights of the affected ecosystem person. Remedies under this subsection may include restoration, mitigation, monitoring, or any other equitable measures necessary to repair and reconcile the continuing effects of the harm.

§ **-8 Citizen enforcement safeguards and community protections.** (a) Citizen enforcement under this chapter shall

strengthen, and not undermine, lawful cultural practices and community stewardship that are conducted in good faith under Native Hawaiian tradition or state and county management.

(b) Any person or organization intending to bring an action under this chapter, no fewer than sixty days before filing, shall provide written notice of intent to file suit to:

(1) The relevant public trustee agency or agencies; and

(2) Native Hawaiian practitioners, community organizations, or stewardship groups known to have a connection to the affected ecosystem.

The notice shall describe the alleged harm, the relief sought, and proposed cooperative steps toward resolution.

(c) Within the notice period, any practitioner, community group, or public trustee may respond and propose actions to address the concern through cooperative or customary means. A court may stay proceedings to allow such resolution if it serves the purposes of this chapter.

(d) No enforcement action under this chapter shall be maintained against the exercise of Native Hawaiian traditional and customary rights, lawful subsistence, or recognized

community restoration or management activities conducted in good faith.

(e) A court shall dismiss, and may impose costs, fees, or sanctions upon any action brought in bad faith, for harassment, retaliation, or to impede legitimate cultural or stewardship practices.

(f) Parties are encouraged to resolve disputes through Native Hawaiian dispute-resolution practices, hooponopono, or other forms of mediation before or during litigation. Courts may refer matters to the processes authorized under this subsection upon request or agreement of the parties.

§ **-9 Restorative retroactivity; continuing duty of repair.** (a) With the acknowledgement that many harms to Hawaii's ecosystems occurred under legal regimes that failed to recognize nature's inherent rights and the reciprocal kuleana between people, āina, and kai, historic injuries to ecosystems and their descendant communities shall not be excluded from justice merely because the conduct causing them has ceased. Restoration of degraded lands and waters is a continuing moral and fiduciary duty owed to present and future generations.

(b) This chapter shall apply to ecological harms, discharges, extractions, diversions, land-use or other practices originating before its effective date if the resulting injury, degradation, or loss (whether active or dormant) continues to impair ecological integrity, cultural practice, or public trust values. Remedies under this chapter shall be restorative and equitable in nature, prioritizing rehabilitation, remediation, reconciliation, and cultural healing.

(c) Any person, corporation, government, or other entity that caused, contributed to, benefitted from, or failed to remedy a condition of ecological degradation, even if the original act has ceased, shall have a continuing duty of repair under this chapter commensurate with its role, capacity, and present control, management, or influence.

(d) Courts and public trustee agencies shall give priority to cases where:

(1) The harm remains ecologically or culturally significant;

(2) The ecosystem or aquifer retains potential for recovery or rehabilitation; and

(3) Restoration will materially advance justice, ecological integrity, or community well-being.

Courts may phase remedies or employ cooperative plans to prevent excessive burden while ensuring long-term repair.

(e) In addressing historic harms, courts are encouraged to employ mediation, restorative justice, and customary Native Hawaiian reconciliation processes, and to recognize that many harms arose from systemic neglect rather than isolated acts.

(f) Nothing in this section shall preclude the State or any community from acknowledging, documenting, or educating about historic ecological harms as part of an official record of reconciliation, even where full physical restoration is not feasible.

§ **-10 Preservation of water commission authority and existing protections.** (a) Nothing in this chapter shall be construed to limit, modify, or supersede the constitutional public trust duties recognized in article XI, sections 1 and 7 of the Constitution of the State of Hawaii, nor to alter the standards or protections established in In re Water Use Permit Applications (Waiahole Ditch), 94 Haw. 97 (2000); Ka Paakai o ka Aina v. Land Use Commission, 94 Haw. 31 (2000); or any other

cases affirming Native Hawaiian rights and environmental stewardship obligations. These decisions shall remain the governing law of the State.

(b) The commission on water resource management shall continue to exercise its powers and duties under chapter 174C to manage, allocate, and protect the waters of the State as a public trust resource. Nothing in this chapter shall be construed to diminish the authority of the commission.

(c) The rights and remedies created by this chapter are complementary to, and not contingent upon, agency enforcement. Persons and communities retain independent authority to act when necessary to protect or restore any ecosystem person. Actions under this chapter and agency proceedings may proceed concurrently, each reinforcing the other's responsibility toward the same constitutional trust.

(d) Courts and agencies are encouraged to coordinate information sharing and cooperative planning to avoid duplication and promote efficiency. However, no agency proceeding, investigation, or decision shall delay, preclude, or limit a citizen action brought under this chapter. The people's

right to enforce the public trust shall remain independent, continuous, and unimpaired.

§ -11 Co-governance and coordination with the commission on water resource management and community stewardship councils. (a) The enduring well-being of Hawaii's ecosystems depends upon shared governance grounded in both Native Hawaiian ancestral knowledge and best available science. Co-governance under this chapter is intended to foster partnership, transparency, and mutual accountability among State agencies, Native Hawaiian practitioners, and community organizations engaged in malama aina and wai.

(b) Communities may form voluntary kahu aina councils or other stewardship bodies to advise, coordinate, and collaborate in actions under this chapter. The councils shall operate as inclusive forums for cultural, scientific, and community guidance and shall have the opportunity to consult with the commission on water resource management and any other relevant agencies regarding restoration, monitoring, and enforcement priorities.

(c) Nothing in this section shall be construed to limit who may bring a claim, assert a right, or participate in

proceedings under this chapter. Citizens and communities shall retain independent authority to act; actions under this chapter may proceed concurrently with agency proceedings, each reinforcing the other's responsibility toward the same constitutional trust. The rights and duties established herein belong equally to all persons and communities who act in good faith to protect or restore any protected ecosystem persons, regardless of ancestry, cultural affiliation, or organizational membership.

(d) Without conditioning or delaying any person's right to file or prosecute an action, the commission on water resource management or other relevant agency shall consult and coordinate in good faith with any person, community, stewardship group or kahu aina council relevant to any proceeding or project under this chapter. Coordination shall include, but is not limited to, data sharing, joint restoration planning, and recognition of customary knowledge as valid evidence in decision-making. The coordination shall not diminish or condition any person's independent enforcement rights under this chapter.

(e) No agency, council, or organization may use coordination or co-governance under this section to obstruct,

delay, or discourage lawful action brought under this chapter. Co-governance shall enhance accountability, not restrict it.

§ **-12 Void against public policy.** Any law, rule, lease, contract, permit, memorandum of understanding, or other agreement that limits, waives, or indemnifies liability for harm to any ecosystem person shall be void and unenforceable as contrary to public policy.

§ **-13 Nonbinding instruments.** No memorandum of understanding, statement of principles, or other nonbinding instrument may be used to delay, waive, or diminish any duty, right, or remedy established under this chapter.

§ **-14 State land leases and contracts.** All leases, permits, or contracts involving state lands or resources shall include or imply binding terms requiring full compliance with this chapter. Any term to the contrary shall be void.

§ **-15 Indemnification and minimum standards.** (a) No state agency or subdivision shall indemnify, insure, or otherwise shield any contractor, lessee, or partner from liability arising under this chapter.

(b) Compliance with other permits, standards, or regulations shall not constitute a defense to liability for harm to any ecosystem person.

§ **-16 Federal and public oversight.** (a) This chapter shall apply to all persons and entities, including federal agencies and military activities, to the maximum extent permitted by law. Remedies against federal entities shall permit declaratory and injunctive relief to the maximum extent allowed under federal law.

(b) Any agreement concerning natural resources that could affect the rights recognized by this chapter shall be publicly disclosed and made continuously available for public inspection online and in an accessible repository upon execution.

§ **-17 Civil penalties.** (a) Any person or entity that violates the rights of an ecosystem person shall be subject to civil penalties imposed by the court in addition to any injunctive or restorative relief ordered under this chapter.

(b) Civil penalties shall be determined by the court based on science-backed evidence and shall be commensurate with:

(1) The severity, extent, and duration of the harm to the ecosystem person;

(2) The measures necessary to return the ecosystem person to its ecological baseline that existed before the harm, or, if that baseline was already degraded, to the best scientifically achievable functional condition necessary to fully remedy the injury without imposing liability for unrelated historic degradation; and

(3) Any additional monitoring, stewardship, or long-term obligations required to ensure full ecological recovery.

(c) Civil penalties may be structured to support or accelerate restoration, monitoring, cultural stewardship, scientific assessment, or long-term ecological resilience of the affected ecosystem person.

(d) Compliance with any permit, standard, or regulatory requirement shall not constitute a defense to liability or a basis for reducing civil penalties under this section.

(e) Penalties collected under this section shall be deposited into a dedicated fund established for the restoration, monitoring, and long-term protection of ecosystem persons and shall be used exclusively for those purposes."

SECTION 3. This Act shall take effect upon its approval.

INTRODUCED BY: _____

S.B. NO. 3323

Report Title:
Ecosystem Rights; Watersheds; Coral Reefs; Legal Personhood; Enforcement; Ecosystem Persons

Description:
Recognizes watersheds and coral reef ecosystems as legal persons with inherent and inalienable rights to exist, flourish, and naturally evolve. Establishes enforceable ecosystem rights grounded in public trust doctrine and Native Hawaiian customary stewardship. Authorizes citizen enforcement, restorative and injunctive remedies, civil penalties, and continuing duties of ecological repair, including for historic harms. Provides for open representation, community consultation, co-governance, and supremacy over conflicting laws.

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