THE SENATE
THIRTY-THIRD LEGISLATURE, 2025
STATE OF HAWAII

S.B. NO. 3

JAN 15 2025

A BILL FOR AN ACT

RELATING TO WATER.

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

SECTION 1. The legislature finds that effective and efficient water resource management requires continuous and experienced leadership, especially given the climate crisis and urgent need to properly steward water resources to meet the housing needs of local residents. On December 28, 1994, the review commission on the state water code submitted its final report to the legislature pursuant to Act 45, Session Laws of Hawaii 1987. The review commission determined that amendments to the state water code were necessary to enable the commission on water resource management to more effectively carry out its mandate pursuant to article XI, section 7, of the Hawaii State Constitution to "set overall water conservation, quality and use policies; define beneficial and reasonable uses; protect ground and surface water resources, watersheds and natural stream environments; establish criteria for water use priorities while assuring appurtenant rights and existing correlative and riparian uses and establish procedures for regulating all uses

of Hawaii's water resources." Therefore, further clarification of the commission on water resource management's purpose, including its leadership structure and composition of the commission, will provide greater accountability and protection of the State's waters.

The purpose of this Act is to:

(1) Authorize the commission on water resource management to retain independent legal counsel;

(2) Amend the powers and duties of the commission on water resource management regarding the declaration of emergencies;

(3) Specify that the commission on water resource management shall be responsible for the management of groundwater near the Red Hill Bulk Fuel Storage Facility;

(4) Repeal the position of first deputy to the chairperson of the commission on water resource management and establish the position of executive director of the commission on water resource management;

(5) Amend the composition, and designation of the chairperson, of the commission on water resource

management, limit the commission's placement within the department of land and natural resources for administrative purposes only, and add one member to the nominating committee for the commission;

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

(7) Establish fines for certain water use offenses; and

(8) Transfer all rights, powers, functions, and duties of the department of land and natural resources relating to water resource management to the commission on water resource management.

SECTION 2. 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 justice's designee, or to a legislative office by the speaker of the house of representatives and the president of the senate jointly, and the attorney general declines to provide [~~such~~] representation on the grounds of conflict of interest, the attorney general shall retain an attorney for the court, judicial, or legislative office, subject to approval by the court, judicial, or legislative office;

(3) By the legislative reference bureau;

(4) By any compilation commission that may be constituted from time to time;

(5) By the real estate commission for any action involving the real estate recovery fund;

(6) By the contractors license board for any action involving the contractors recovery fund;

(7) By the office of Hawaiian affairs;

(8) By the department of commerce and consumer affairs for the enforcement of violations of chapters 480 and 485A;

(9) As grand jury counsel;

(10) By the Hawaii health systems corporation, or its regional system boards, or any of their facilities;

(11) By the auditor;

(12) By the office of ombudsman;

(13) By the insurance division;

(14) By the University of Hawaii;

(15) By the Kahoolawe island reserve commission;

(16) By the division of consumer advocacy;

(17) By the office of elections;

(18) By the campaign spending commission;

(19) By the Hawaii tourism authority, as provided in section 201B-2.5;

(20) By the division of financial institutions;

(21) By the office of information practices;

(22) By the school facilities authority;

(23) By the Mauna Kea stewardship and oversight authority; [~~or~~]

(24) By the commission on water resource management; or

[~~(24)~~] (25) By a department, if the attorney general, for reasons deemed by the attorney general to be good and sufficient, declines to employ or retain an attorney for a department; provided that the governor waives the provision of this section."

2. By amending subsection (c) to read:

"(c) Every attorney employed by any department on a full-time basis, except an attorney employed by the public utilities commission, the labor and industrial relations appeals board, the Hawaii labor relations board, the office of Hawaiian affairs, the Hawaii health systems corporation or its regional system boards, the department of commerce and consumer affairs in prosecution of consumer complaints, insurance division, the division of consumer advocacy, the University of Hawaii, the Hawaii tourism authority as provided in section 201B-2.5, the

Mauna Kea stewardship and oversight authority, the commission on water resource management, the office of information practices, or as grand jury counsel, shall be a deputy attorney general."

SECTION 3. Section 84-18, Hawaii Revised Statutes, is amended by amending subsection (e) to read as follows:

"(e) Subject to the restrictions imposed in subsections (a) through (d), the following individuals shall not represent any person or business for a fee or other consideration regarding any legislative action or administrative action, as defined in section 97-1, for twelve months after termination from their respective positions:

(1) The governor;

(2) The lieutenant governor;

(3) The administrative director of the State;

(4) The attorney general;

(5) The comptroller;

(6) The chairperson of the board of agriculture;

(7) The director of corrections and rehabilitation;

(8) The director of finance;

(9) The director of business, economic development, and tourism;

(10) The director of commerce and consumer affairs;

(11) The adjutant general;

(12) The superintendent of education;

(13) The chairperson of the Hawaiian homes commission;

(14) The director of health;

(15) The director of human resources development;

(16) The director of human services;

(17) The director of labor and industrial relations;

(18) The chairperson of the board of land and natural resources;

(19) The director of law enforcement;

(20) The director of taxation;

(21) The director of transportation;

(22) The president of the University of Hawaii;

(23) The executive administrator of the board of regents of the University of Hawaii;

(24) The administrator of the office of Hawaiian affairs;

(25) The chief information officer;

(26) The executive director of the agribusiness development corporation;

(27) The executive director of the campaign spending commission;

(28) The executive director of the Hawaii community development authority;

(29) The executive director of the Hawaii housing finance and development corporation;

(30) The president and chief executive officer of the Hawaii tourism authority;

(31) The executive officer of the public utilities commission;

(32) The state auditor;

(33) The director of the legislative reference bureau;

(34) The ombudsman;

(35) The permanent employees of the legislature, other than persons employed in clerical, secretarial, or similar positions;

(36) The administrative director of the courts;

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

(38) The executive officer of the state land use commission;

(39) The executive director of the natural energy laboratory of Hawaii authority;

(40) The executive director of the Hawaii public housing authority; and

(41) The [~~first deputy to the chairperson~~] executive director of the commission on water resource management;

provided that this subsection shall not apply to any person who has held one of the positions listed above only on an interim or acting basis and for a period of less than one hundred eighty-one days."

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

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

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

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

(3) Shall establish an instream use protection program designed to protect, enhance, and reestablish, where practicable, beneficial instream uses of water in the State;

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

(5) May enter, after obtaining the consent of the property owner, at all reasonable times upon any property other than dwelling places for the purposes of conducting investigations and studies or enforcing any of the provisions of this code, being liable, however, for

actual damage done. If consent cannot be obtained, reasonable notice shall be given prior to entry;

(6) Shall cooperate with federal agencies, other state agencies, county or other local governmental organizations, and all other public and private agencies created for the purpose of utilizing and conserving the waters of the State, and assist these organizations and agencies in coordinating the use of their facilities and participate in the exchange of ideas, knowledge, and data with these organizations and agencies. For this purpose the commission shall maintain an advisory staff of experts;

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

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

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

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

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

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

[~~(12)~~] (13) Shall provide coordination, cooperation, or approval necessary to the effectuation of any plan or project of the federal government in connection with or concerning the waters of the State. The commission shall approve or disapprove any federal plans or projects on behalf of the State. No other agency or department of the State shall assume the duties

delegated to the commission under this paragraph; except that the department of health shall continue to exercise the powers vested in it with respect to water quality, and except that the department of business, economic development, and tourism shall continue to carry out its duties and responsibilities under chapter 205A;

[~~(13)~~] (14) Shall plan and coordinate programs for the development, conservation, protection, control, and regulation of water resources, based upon the best available information, and in cooperation with federal agencies, other state agencies, county or other local governmental organizations, and other public and private agencies created for the utilization and conservation of water;

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

[~~(15)~~] (16) Shall determine appurtenant water rights, including but not limited to the quantification of the amount of water and the specification of the water course or the means of access and delivery entitled to

by that right, which determination shall be valid for purposes of this chapter[~~.~~]; and

(17) May declare an emergency if the commission determines, in consultation with the governor, the appropriate county, and the department of health, that there is an absence of sufficient quantity and quality of water in any area, whether within or outside of a water management area, that immediately threatens the public health, safety, and welfare. The commission may issue orders reciting the existence of the emergency and requiring those actions as the commission deems necessary to address the emergency be taken, including but not limited to apportioning, rotating, limiting, or prohibiting the use of water resources of the area; provided that an emergency order shall expire no later than one year after issuance by the commission; provided further that the order may be extended by a separate or supplementary order; and

(18) Shall manage the groundwater near the Red Hill Bulk Fuel Storage Facility."

SECTION 5. Section 174C-6, Hawaii Revised Statutes, is amended to read as follows:

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

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

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

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

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

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

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

"§174C-7 **Commission on water resource management.** (a) There is established [~~within the department~~] a commission on water resource management consisting of seven members [~~which~~] that shall have exclusive jurisdiction and final authority in all matters relating to implementation and administration of the state water code, except as otherwise specifically provided in this chapter. The commission shall be placed within the department for administrative purposes only.

(b) Five members shall be appointed by the governor subject to confirmation by the senate in the manner prescribed in subsection [~~(d).~~] (e). Each member shall have substantial experience in the area of water resource management; provided that at least one member shall have substantial experience or expertise in traditional Hawaiian water resource management techniques and in traditional Hawaiian riparian usage such as those preserved by section 174C-101. Each of the members shall be eligible to serve as the chairperson of the commission upon election by a majority of the commission members, except as provided in subsection (c).

(c) The chairperson of the board of land and natural resources [~~shall be the chairperson of the commission. The~~] and

the director of health or the director's designee shall serve as [~~an~~] ex officio[~~,~~],[~~+~~] voting [~~member.~~] members; provided that neither the chairperson nor the director or the director's designee shall be eligible to serve as chairperson of the commission.

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

[~~(d)~~] (e) In appointing a member to the commission, the governor shall select from a list submitted by a nominating committee. The nominating committee shall be composed of [~~four~~] five individuals chosen as follows: two persons appointed by the governor; one person appointed by the president of the senate; one person appointed by the speaker of the house[~~.~~] of representatives; and one person appointed by the chief executive officer of the office of Hawaiian affairs. The committee shall solicit applications and send to the governor the names of at least three individuals for each open position.

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

SECTION 7. Section 174C-9, Hawaii Revised Statutes, is amended to read as follows:

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

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

SECTION 8. Section 174C-15, Hawaii Revised Statutes, is amended to read as follows:

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

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

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

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

(3) Violates any order of the commission;

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

(5) Fails to comply with permit conditions; or

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

shall be subject to a fine imposed by the commission. [~~Such~~] The fine shall be not less than $50 and shall not exceed [~~$5,000. For a continuing offense, each day during which the offense is committed is a separate violation.~~] $25,000 per violation. Each day that a violation exists or continues to exist shall constitute a separate offense. Penalties for continuing violations shall be assessed from the earliest known

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

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

(1) The nature, circumstances, extent, gravity, and history of the violation and of any prior violations;

(2) The economic benefit to the violator, or anticipated by the violator, resulting from the violation;

(3) The opportunity, difficulty, and history of corrective action;

(4) Good faith efforts to comply;

(5) Degree of culpability; and

(6) Other matters as justice may require.

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

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

SECTION 9. Section 174C-62, Hawaii Revised Statutes, is amended to read as follows:

"**[~~†~~]§174C-62[~~†~~] Declaration of water shortage.** (a) The commission shall formulate a statewide plan for implementation during periods of water shortage. As a part of the plan, the commission shall adopt a reasonable system of permit classification according to source of water supply, method of extraction or diversion, use of water, or a combination thereof.

(b) The commission, by rule, may declare that a water shortage exists within all or part of an area, whether within or outside of a water management area, when insufficient water is

available to meet the requirements of the permit system or when conditions [~~are such as to~~] require a temporary reduction in total water use within the area to protect water resources from serious harm. The commission shall publish a set of criteria for determining when a water shortage exists[~~.~~], including but not limited to impacts and effects of the climate crisis.

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

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

(e) When a water shortage is declared, the commission shall cause a notice [~~thereof~~] of the water shortage to be published in a prominent place in a newspaper of general circulation throughout the area[~~.~~] and on the commission's website. The notice shall be published each day for the first

week of the shortage and once a week [~~thereafter~~] for four months, followed by monthly publications until the declaration is rescinded. Publication of [~~such~~] the notice shall serve as notice to all water users in the area of the condition of water shortage.

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

[~~(g) If an emergency condition arises due to a water shortage within any area, whether within or outside of a water management area, and if the commission finds that the restrictions imposed under subsection (c) are not sufficient to protect the public health, safety, or welfare, or the health of animals, fish, or aquatic life, or a public water supply, or recreational, municipal, agricultural, or other reasonable uses, the commission may issue orders reciting the existence of such an emergency and requiring that such actions as the commission deems necessary to meet the emergency be taken, including but~~

~~not limited to apportioning, rotating, limiting, or prohibiting the use of the water resources of the area. Any party to whom an emergency order is directed may challenge such an order but shall immediately comply with the order, pending disposition of the party's challenge. The commission shall give precedence to a hearing on such challenge over all other pending matters.~~]"

SECTION 10. All rights, powers, functions, and duties of the department of land and natural resources relating to water resource management are transferred to the commission on water resource management.

SECTION 11. All appropriations, records, equipment, machines, files, supplies, contracts, books, papers, documents, maps, and other personal property heretofore made, used, acquired, or held by the department of land and natural resources relating to the functions transferred to the commission on water resource management shall be transferred with the functions to which they relate.

All employees who occupy civil service positions and whose functions are transferred to the commission on water resource management by this Act shall retain their civil service status, whether permanent or temporary. Employees shall be transferred

without loss of salary, seniority (except as prescribed by applicable collective bargaining agreements), retention points, prior service credit, any vacation and sick leave credits previously earned, and other rights, benefits, and privileges, in accordance with state personnel laws and this Act; provided that the employees possess the minimum qualifications and public employment requirements for the class or position to which transferred or appointed, as applicable; provided further that subsequent changes in status may be made pursuant to applicable civil service and compensation laws.

Any employee who, prior to this Act, is exempt from civil service and is transferred as a consequence of this Act may retain the employee's exempt status but shall not be appointed to a civil service position as a consequence of this Act. An exempt employee who is transferred by this Act shall not suffer any loss of prior service credit, vacation or sick leave credits previously earned, or other employee benefits or privileges as a consequence of this Act; provided that the employees possess legal and public employment requirements for the position to which transferred or appointed, as applicable; provided further that subsequent changes in status may be made pursuant to

applicable employment and compensation laws. The executive director of the commission on water resource management may prescribe the duties and qualifications of these employees and fix their salaries without regard to chapter 76, Hawaii Revised Statutes.

SECTION 12. All rules, policies, procedures, guidelines and other material relating to water resource management adopted or developed by the board or department of land and natural resources shall remain in full force and effect until amended or repealed by the commission on water resource management pursuant to chapter 91, Hawaii Revised Statutes.

In the interim, every reference to the board or department of land and natural resources or chairperson of the board of land and natural resources in those rules, policies, procedures, guidelines, and other material is amended to refer to the commission on water resource management or executive director of the commission on water resource management, as appropriate.

SECTION 13. All deeds, leases, contracts, loans, agreements, permits, or other documents executed or entered into by or on behalf of the board or department of land and natural resources relating to water resource management shall remain in

full force and effect. Upon the effective date of this Act, every reference to the board or department of land and natural resources or the chairperson of the board of land and natural resources therein shall be construed as a reference to the commission on water resource management or executive director of the commission on water resource management, as appropriate.

SECTION 14. If any provision of this Act, or the application thereof to any person or circumstance, is held invalid, the invalidity does not affect other provisions or applications of the Act that can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

SECTION 15. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun before its effective date.

SECTION 16. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 17. This Act shall take effect upon its approval; provided that section 6 of this Act shall take effect on July 1, 2026.

INTRODUCED BY: Lorraine R. Inouye

S.B. NO. 3

Report Title:
DLNR; CWRM; OHA; Responsibilities; Commission Membership; Executive Director; Independent Legal Counsel; Emergency Order; Water Emergencies; Water Shortage Declarations; Red Hill Bulk Fuel Storage Facility; Fines

Description:
Authorizes the Commission of Water Resource Management to retain independent legal counsel. Repeals the position of First Deputy to the Chairperson of the CWRM and establishes the position of Executive Director of the CWRM. Authorizes entities to challenge an emergency order of the CWRM under certain conditions. Establishes fines for certain water use offenses. Amends the CWRM's authority to declare water emergencies and issue orders to address them and declare water shortages and related notice requirements. Adds the management of groundwater near the Red Hill Bulk Fuel Storage Facility to the powers and duties of the CWRM. Transfers all rights, powers, functions, and duties of DLNR relating to water resource management to CWRM. Effective 7/1/2026, amends the composition of the CWRM, amends the designation of the Chairperson of the CWRM, limits CWRM's placement within the Department of Land and Natural Resources for administrative purposes only, and adds one member to the nominating committee for CWRM, to be appointed and 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.