

JOSH GREEN, M.D.
GOVERNOR | KE KIA'ĀINA

SYLVIA LUKE
LIEUTENANT GOVERNOR | KA HOPE KIA'ĀINA



STATE OF HAWAII | KA MOKU'ĀINA 'O HAWAII'
DEPARTMENT OF LAND AND NATURAL RESOURCES
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KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

Testimony of
RYAN K.P. KANAKA'OLE
Acting Chairperson

Before the Senate Committee on
WATER, LAND, CULTURE AND THE ARTS

Friday, February 6, 2026
1:00 PM
State Capitol, Conference Room 224

In consideration of
SENATE BILL 2022
RELATING TO STATE WATER CODE PENALTIES

Senate Bill 2022 proposes to add a minimum penalty and a maximum penalty for each violation of the State Water Code; expand the types of potential violations of the State Water Code; and make each day that a violation exists or continues to exist a separate offense. This bill also requires the Commission on Water Resource Management (Commission) to consider certain factors when imposing penalties and makes the setting, charging, and collecting of administrative fines by the Commission mandatory, rather than discretionary. **The Department of Land and Natural Resources (Department) strongly supports this measure.**

The Commission has a constitutional and statutory obligation to protect and regulate Hawai'i's water resources for the benefit of present and future generations. Meaningful enforcement authority is essential to that responsibility. Experience has shown that the existing penalty structure does not always provide adequate deterrence, particularly where violations are ongoing, confer economic benefit, or are committed by repeat or well-resourced actors.

Last legislative session, the Department testified in support of a similar measure and emphasized the importance of a tiered approach to penalties that distinguishes between minor or first-time violations, and those that cause harm or reflect knowing or repeated noncompliance. A tiered penalty structure allows the Commission to target higher penalties toward the most serious violations—particularly repeat violations and those that harm other water users or the resource itself—while preserving flexibility to assess lower penalties where appropriate based on the facts and circumstances of a particular case. This approach promotes fairness, proportionality, and deterrence without adopting a one-size-fits-all enforcement model.

The Commission's enforcement history demonstrates that it exercises this discretion judiciously. Over its nearly four decades of operation, the Commission has issued relatively few fines overall, and the vast majority have resulted in penalties under \$5,000. Those fines, however, represent only a small fraction of the total dollar amount assessed, reflecting that meaningful penalties are imposed sparingly and reserved for the most egregious conduct. This bill supports the Commission's existing approach: measured, case-specific, and focused on deterrence where it is most needed.

Mahalo for the opportunity to testify in strong support of this bill.

JOSH GREEN, M.D.
GOVERNOR

SYLVIA LUKE
LT. GOVERNOR



WENDY GADY
EXECUTIVE DIRECTOR

STATE OF HAWAII
AGRIBUSINESS DEVELOPMENT CORPORATION
HUI HO'OU LU AINA MAHIAI

TESTIMONY OF WENDY L. GADY
EXECUTIVE DIRECTOR
AGRIBUSINESS DEVELOPMENT CORPORATION

BEFORE THE SENATE COMMITTEE ON WATER, LAND, CULTURE, AND THE ARTS
February 6, 2026
1:00 p.m.
Conference Room 224 & Videoconference

SENATE BILL NO. 2022
RELATING TO STATE WATER CODE PENALTIES

Chairperson Lee, Vice Chair Inouye, and Members of the Committee:

We respectfully submit **comments** regarding SB 2022, which proposes strengthening enforcement of the State Water Code by establishing a minimum penalty, increasing the maximum penalty per violation, clarifying separate offenses, and requiring the Commission on Water Resource Management (CWRM) to consider enumerated factors when setting fines.

While we support the overall intent to deter noncompliance with the State Water Code and protect Hawai'i's precious water resources, we request amendments to guard against unintended harm to agricultural producers, food security, and wildfire mitigation outcomes.

1. Overly rigid penalties could jeopardize productive agriculture.

SB 2022 would add a minimum penalty and expand per-day offense treatment. Without proportional discretion for minor or technical violations, small and mid-sized farmers risk penalties that exceed their capacity to absorb costs, potentially forcing them to reduce production or exit farming.

Agriculture is a cornerstone of local food availability and institutional purchasing goals. Disrupting active agricultural operations through inflexible penalties undermines Hawaii's ability to increase local food production and meet State food mandates.

2. Stability and predictability are critical for long-term food investments.

Investments in irrigation, crop diversification, and drought resilience require certainty in regulatory enforcement. Penalty structures that treat all continuations as separate violations without appropriate cure windows can disincentivize improvements and impede reliable water use planning by producers.

3. Active agricultural land management reduces fuel loads.

Many agricultural practices (e.g., grazing, cultivation) function as ongoing wildfire mitigation by reducing unmanaged vegetation. Policies that unintentionally push land out of active production can increase unmanaged fuel loads, undermining public safety and increasing emergency response costs.

4. Land abandonment increases unmanaged vegetation.

If enforcement penalties pose disproportionate economic risk, producers may reduce acreage under production, creating fallow lands that accumulate fine fuels and elevate wildfire risks.

To preserve the deterrence intent of SB 2022 while mitigating undue impacts on agriculture and food security, we propose the following refinements:

1. Tiered Enforcement with Cure Periods:

- Establish a warning and defined compliance period for first-time technical violations before financial penalties accrue.
- This ensures enforcement is **proportional to harm** and not punitive for inadvertent administrative errors.

2. Per-Day Penalties Commence After Notice and Cure Period:

- Current draft treats each ongoing day as a separate offense.
- Amend to start per-day penalties **only after written notice and an opportunity to cure**, except in cases of willful or reckless violations.

3. Sliding Scale Based on Operation Size and Impact:

- For non-willful violations, allow CWRM to scale penalties relative to operation size, actual water diversion/usage, and economic impact on the producer.
- This retains deterrence while protecting small and mid-sized farms.

4. Safe Harbor for Self-Reporting and Remediation:

- Provide penalty mitigation for users who self-report violations, promptly implement corrective actions, and demonstrate ongoing compliance efforts.

5. Penalty-in-Lieu Compliance Investments:

- Where appropriate, allow verified water-benefit actions (e.g., telemetry installation, leak repair, efficiency upgrades) to satisfy a percentage of penalties, directly advancing water code objectives.

SB 2022's objective of strengthening water code compliance is laudable and necessary to safeguard Hawai'i's water resources. However, without calibrated adjustments, the proposed penalty framework may inadvertently reduce productive agricultural activity, undermine food security goals, and increase wildfire risk by discouraging active land stewardship.

We urge the Committee to adopt the amendments above, ensuring that enforcement tools are effective without being disproportionate to the nature of violations or the size and economic realities of agricultural producers.

SENATE BILL NO. 2022
RELATING TO STATE WATER CODE PENALTIES
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Thank you for your consideration. We are available to provide additional analysis or suggested language for specific bill sections.

**BOARD OF WATER SUPPLY
KA 'OIHANA WAI
CITY AND COUNTY OF HONOLULU**

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February 6, 2026

The Honorable Chris Lee, Chair
and Members
Senate Committee on Water, Land, Culture and the Arts
Hawaii State Capitol, Room 224
Honolulu, Hawaii 96813

Dear Chair Lee and Members:

Subject: Senate Bill 2022: Relating to State Water Code Penalties

The Honolulu Board of Water Supply (BWS) offers comments regarding Senate Bill (SB) 2022, relating to the state water code penalties. The purpose of SB 2022 adds a minimum penalty and maximum penalty per violation of the State Water Code and authorizes the Commission on Water Resource Management to consider each day that a violation exists or continues to exist a separate offense. It automatically increases maximum fines every 5 years from 2031 to 2046.

The last time the Commission raised the maximum water code penalties and fines for damages resulting from a water code violation of Hawaii Revised Statutes (HRS) §174-15 was on June 6, 2004; and enacted into law 2004 Session Laws of Hawaii (SLH). In Section 2 (g), the BWS has concerns about the propriety of automatically raising the penalty ceiling for violations of the State Water Code without notice or outreach to the public. Stakeholder input is needed to determine if the increase in fines could potentially impose a financial burden. The BWS requests it be included in the rule making process when considering certain factors or criteria when imposing penalty amounts.

The maximum penalty should be reasonable in that it could deter future violations by farmers, individuals, water utilities, etc. It is for the betterment of our State to be as transparent as possible to the people of our Island State. Stakeholder input is needed to determine if the increase in fines could potentially impose a financial burden. Exercising all due diligence and outreach to the public for feedback would determine if the compounded increase per day per violation is an effective deterrent.

The Honorable Chris Lee, Chair
and Members
February 6, 2026
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Without a fixed procedure, respondents are left without due process protections provided by the civil natural resource violations system pursuant to HRS, section 174C-15.5, including, but not limited to, minimum notice requirements and response deadlines, the criteria used for calculating and assessing sanctions, procedures to contest the notice or address mitigation requests, and a stay of enforcement pending judicial review of the case.

Thank you for the opportunity to testify in support of SB 2022.

Very truly yours,

A handwritten signature in blue ink, appearing to read "Ernest Y. W. Lau". The signature is fluid and cursive, with a large initial "E" and "L".

ERNEST Y. W. LAU, P.E.
Manager and Chief Engineer



Email: communications@ulupono.com

SENATE COMMITTEE ON WATER, LAND, CULTURE AND THE ARTS
Friday, February 6, 2026 — 1:00 p.m.

Ulupono Initiative strongly supports SB 2022, Relating to State Water Code Penalties.

Dear Chair Lee and Members of the Committee:

My name is Micah Munekata, and I am the Vice President of Government Affairs at Ulupono Initiative. We are a Hawai'i-focused impact investment firm that strives to improve the quality of life throughout the islands by helping our communities become more resilient and self-sufficient through locally produced food, renewable energy, clean transportation choices, and better management of freshwater resources.

Ulupono strongly supports SB 2022, which adds a minimum penalty and maximum penalty per violation of the State Water Code; authorizes the Commission on Water Resource Management (CWRM) to consider each day that a citation exists or continues to exist a separate offense; establishes factors the CWRM must consider when determining the amount of the penalty; and increases maximum fines every five years from 2030 to 2045.

What value do we place on an irreplaceable resource? Currently, CWRM can only impose a maximum fine of \$5,000 per violation of the State Water Code. This stands in stark contrast to other jurisdictions like Arizona, California, and Texas that have the authority to issue fines of \$10,000 per day to water users who exceed their permitted allocations. Even within our own state, the Hawai'i Department of Health (DOH) can charge a maximum penalty of \$60,000 per water pollution violation.

We cannot issue a water pollution fine if there is no water in our streams or aquifers left to pollute. The State Water Code was established to protect Hawai'i's water resources, but its effectiveness depends on compliance and meaningful enforcement. This bill sends a message that we value the health and wellbeing of water, and mistreatment of such a vital resource can have serious financial consequences.

We applaud the Legislature for underscoring the immeasurable value of *wai* by considering this measure for passage.

Thank you for the opportunity to testify.

Respectfully,
Micah Munekata
Vice President of Government Affairs

Investing in a Sustainable Hawai'i

SB-2022

Submitted on: 2/5/2026 7:29:17 AM

Testimony for WLA on 2/6/2026 1:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Johnnie-Mae L. Perry	Individual	Support	Written Testimony Only

Comments:

I, Johnnie-Mae L.Perry Support

022 SB RELATING TO STATE WATER CODE PENALTIES.