

COUNCIL OF THE COUNTY OF MAUI

GOVERNMENT RELATIONS, ETHICS, AND TRANSPARENCY COMMITTEE

September 13, 2024

**Committee
Report No. _____**

Honorable Chair and Members
of the County Council
County of Maui
Wailuku, Maui, Hawaii

Chair and Members:

Your Government Relations, Ethics, and Transparency Committee,
having met on August 20, 2024, makes reference to the following:

1. Resolution 24-130, entitled “APPROVING FOR INCLUSION IN THE 2025 HAWAII STATE ASSOCIATION OF COUNTIES LEGISLATIVE PACKAGE A STATE BILL RELATING TO THE COMMISSION ON WATER RESOURCE MANAGEMENT.”

Resolution 24-130’s purpose is to approve for inclusion in the 2025 Hawai‘i State Association of Counties (“HSAC”) Legislative Package a proposed State bill, attached as Exhibit “A,” entitled “A BILL FOR AN ACT RELATING TO THE COMMISSION ON WATER RESOURCE MANAGEMENT.”

2. Resolution 24-131, entitled “APPROVING FOR INCLUSION IN THE 2025 MAUI COUNTY COUNCIL LEGISLATIVE PACKAGE A STATE BILL RELATING TO THE COMMISSION ON WATER RESOURCE MANAGEMENT.”

Resolution 24-131’s purpose is to approve for inclusion in the 2025 Maui County Council Legislative Package a proposed State bill, attached as Exhibit “A,” entitled “A BILL FOR AN ACT RELATING TO THE COMMISSION ON WATER RESOURCE MANAGEMENT.”

The purposes of the proposed State bill attached to both resolutions are to:

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- 1) Define the public trust purposes of the Commission on Water Resource Management (“Commission”) and require the Commission, in acting upon water use permit applications, to prioritize applications for public trust purposes;
- 2) Allow the Commission to retain independent legal counsel;
- 3) Repeal the position of Deputy to the Chairperson of the Commission and establish the position of Executive Director of the Commission;
- 4) Amend the composition of the Commission and administratively attach it to the Department of Land and Natural Resources;
- 5) Authorize entities to challenge an emergency order of the Commission under certain conditions;
- 6) Establish fines for certain water use offenses; and
- 7) Amend the Commission’s authority to declare water emergencies and issue orders to address them and declare water shortages and related notice requirements.

Your Committee notes HSAC Bylaws Section 10C provides the following as it relates to policies, proposals, legislative priorities, and the HSAC Legislative Package:

- Prior to the State Legislature’s annual deadline for legislative package introductions, the HSAC Executive Committee may adopt

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and transmit an HSAC Legislative Package of bills and/or resolutions to the State Legislature for consideration.

- Each bill or resolution included in HSAC's Legislative Package must have been approved by all four county councils.

Your Committee further notes by correspondence dated June 19, 2024, the HSAC Executive Committee notified the Council of its 2025 HSAC Legislative Package timeline:

- July 2024 – HSAC Executive Committee to compile issues of interest from its members.
- August 2024 – HSAC Executive Committee members to submit legislative proposals to their full councils for consideration in the HSAC Legislative Package.
- September 30, 2024 – Deadline for the HSAC Executive Committee to receive Legislative Package proposals from each county to be considered for the 2025 HSAC Legislative Package.
- October 2024 – HSAC Executive Committee to discuss all proposals submitted by the counties and forward all approved proposals to each county for consideration.
- November 30, 2024 – Deadline for counties to approve the proposed 2025 HSAC Legislative Package and submit the County Clerk-certified resolution to the HSAC Executive Committee.
- No later than December 13, 2024 – HSAC Executive Committee to approve the final 2025 HSAC Legislative Package.
- December 20, 2024 – Deadline to transmit the HSAC Legislative Package to the Hawai'i State Legislature for bill introduction.

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Accordingly, the Council's deadline to submit its proposals to the HSAC Executive Committee for consideration to be included the 2025 HSAC Legislative Package is September 30, 2024.

Your Committee discussed the proposed bill relating to the Commission for inclusion in both the 2025 HSAC Legislative Package and 2025 Maui County Council Legislative Package, including its applicability statewide and just for Maui County.

Your Committee noted the proposed bill attached to Resolutions 24-130 and 24-131 was previously introduced as Senate Bill 3327 in the 2024 State Legislative Session.

Your Committee received testimony in support of the proposed legislation from Kaulu Lu'uwai, a post-JD Legal Fellow at the Ka Huli Ao Center for Excellence in Native Hawaiian Law at the William S. Richardson School of Law at the University of Hawai'i at Mānoa. Your Committee designated Ms. Lu'uwai as a resource person under Rule 18(A) of the Rules of the Council because of her expertise as a drafter of Senate Bill 3327.

Ms. Lu'uwai noted the overwhelming support Senate Bill 3327 received in the 2024 State Legislative Session and the multitude of discussions held on the bill through public hearings.

Your Committee noted amendments to Chapter 174C, Hawai'i Revised Statutes, are necessary to enable the Commission to more efficiently carry out its mandate under Article XI, Section 7, of the Hawai'i State Constitution.

Your Committee also noted further clarification of the Commission's leadership structure, composition, and purpose will provide greater accountability and protection of the State's water from third parties.

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Your Committee notes the August 8, 2023, Maui wildfires demonstrated the need for the Commission to be able to declare an emergency and take the necessary actions to address the emergency. Furthermore, the Commission's ability to effectively regulate ground and surface water standards will be crucial during the rebuilding of Lahaina to ensure there will be adequate water for years to come.

Your Committee received a revised version of the proposed State bill during the meeting, which incorporates additional information shared during public hearings and meetings with legislators during the 2024 State Legislative Session, and agreed to replace the bill attached to Resolutions 24-130 and 24-131 with the revised proposed bill.

Your Committee agreed with Ms. Lu'uwai and expressed support for the proposed legislation as revised.

Your Committee voted 9-0 to recommend adoption of Resolution 24-130, CD1 and Resolution 24-131, CD1. Committee Chair U'u-Hodgins, Vice-Chair Paltin, and members Cook, Johnson, Kama, Lee, Rawlins-Fernandez, Sinenci, and Sugimura voted "aye."

Your Committee is in receipt of Resolutions 24-130, CD1 and 24-131, CD1, incorporating your Committee's recommended and nonsubstantive revisions.

Your Government Relations, Ethics, and Transparency Committee RECOMMENDS the following:

1. That Resolution 24-130, CD1, as revised herein and attached hereto, entitled "APPROVING FOR INCLUSION IN THE 2025 HAWAII STATE ASSOCIATION OF COUNTIES LEGISLATIVE PACKAGE A STATE BILL RELATING TO THE COMMISSION ON WATER RESOURCE MANAGEMENT," be ADOPTED; and

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2. That Resolution 24-131, CD1, as revised herein and attached hereto, entitled "APPROVING FOR INCLUSION IN THE 2025 MAUI COUNTY COUNCIL LEGISLATIVE PACKAGE A STATE BILL RELATING TO THE COMMISSION ON WATER RESOURCE MANAGEMENT," be ADOPTED.

This report is submitted in accordance with Rule 8 of the Rules of the Council.



NOHELANI U'U-HODGINS, Chair

great:cr:24027(2)aa and 24028(2)aa:kmat

Resolution

No. 24-130, CD1

APPROVING FOR INCLUSION IN THE 2025
HAWAII STATE ASSOCIATION OF COUNTIES
LEGISLATIVE PACKAGE A STATE BILL
RELATING TO THE COMMISSION ON WATER
RESOURCE MANAGEMENT

WHEREAS, amendments to the State Water Code are necessary to enable the Commission on Water Resource Management to more effectively carry out its mandate under Article XI, Section 7, of the Hawai'i State Constitution; and

WHEREAS, further clarification of the Commission on Water Resource Management's purpose, including its leadership structure and composition, will provide greater accountability and protection of the State's water from third parties; and

WHEREAS, the August 8, 2023, Maui wildfires demonstrated the need for the Commission to be able to declare an emergency and take the necessary actions to address the emergency; and

WHEREAS, the Commission must be able to effectively regulate ground and surface water standards, as these will be crucial during the rebuilding of Lahaina to ensure there will be adequate water for years to come; now, therefore,

BE IT RESOLVED by the Council of the County of Maui:

1. That the proposed State bill attached as Exhibit "A," relating to the Commission on Water Resource Management be included in the 2025 Hawai'i State Association of Counties Legislative Package; and
2. That certified copies of this Resolution be transmitted to the Hawai'i State Association of Counties Executive Committee.

INTRODUCED BY:

Tamara A.M. Paltin

TAMARA PALTIN

HOUSE OF REPRESENTATIVES
THIRTY-THIRD LEGISLATURE, 2025
STATE OF HAWAII

H.B. NO.

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 continuous and
3 experienced leadership, especially given the climate crisis and
4 urgent need to properly steward water resources to meet the
5 affordable housing needs of local residents. On December 28,
6 1994, the review commission on the state water code submitted
7 its final report to the legislature pursuant to Act 45, Session
8 Laws of Hawaii 1987. The review commission determined that
9 amendments to the state water code were necessary to enable the
10 commission on water resource management to more effectively
11 carry out its mandate pursuant to article XI, section 7, of the
12 Hawaii State Constitution to "set overall water conservation,
13 quality and use policies; define beneficial and reasonable uses;
14 protect ground and surface water resources, watersheds and
15 natural stream environments; establish criteria for water use
16 priorities while assuring appurtenant rights and existing

1 correlative and riparian uses and establish procedures for
2 regulating all uses of Hawaii's water resources." Therefore,
3 further clarification of the commission on water resource
4 management's purpose, including its leadership structure and
5 composition of the board, will provide greater accountability
6 and protection of the State's waters.

7 The purpose of this Act is to:

- 8 (1) Define the public trust responsibilities of the
9 Commission on Water Resource Management and require
10 the Commission, in acting upon water use permit
11 applications, to prioritize applications for public
12 trust purposes;
- 13 (2) Allow the commission to retain independent legal
14 counsel;
- 15 (3) Amend the scope of the commission on water resource
16 management to include declaration of emergencies;
- 17 (4) Repeal the deputy to the chairperson of the commission
18 on water resource management and establish the
19 executive director of the commission on water resource
20 management;
- 21 (5) Amend the composition of the commission on water
22 resource management;

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

4 (7) Establish fines for certain water use offenses.

5 SECTION 2. Chapter 174C, Hawaii Revised Statutes, is
6 amended by adding a new section to part IV to be appropriately
7 designated and to read as follows:

8 "**§174C- Public trust purpose.** The commission shall act
9 upon water use permit applications, filed in accordance with
10 sections 174C-51, 174C-52, and 174C-53, for both existing and
11 new public trust purposes before acting upon water use permit
12 applications for other existing or new uses, or both, filed in
13 accordance with sections 174C-51, 174C-52, and 174C-
14 53. Proceedings for applications for public trust purposes
15 shall be held first and separate from proceedings for all other
16 applications filed in accordance with sections 174C-51, 174C-52,
17 and 174C-53."

18 SECTION 3. Section 28-8.3, Hawaii Revised Statutes, is
19 amended as follows:

20 1. By amending subsection (a) to read:

21 "(a) No department of the State other than the attorney
22 general may employ or retain any attorney, by contract or
23 otherwise, for the purpose of representing the State or the
24 department in any litigation, rendering legal counsel to the

1 department, or drafting legal documents for the department;
2 provided that the foregoing provision shall not apply to the
3 employment or retention of attorneys:

4 (1) By the public utilities commission, the labor and
5 industrial relations appeals board, and the Hawaii
6 labor relations board;

7 (2) By any court or judicial or legislative office of the
8 State; provided that if the attorney general is
9 requested to provide representation to a court or
10 judicial office by the chief justice or the chief
11 justice's designee, or to a legislative office by the
12 speaker of the house of representatives and the
13 president of the senate jointly, and the attorney
14 general declines to provide ~~such~~ representation on
15 the grounds of conflict of interest, the attorney
16 general shall retain an attorney for the court,
17 judicial, or legislative office, subject to approval
18 by the court, judicial, or legislative office;

19 (3) By the legislative reference bureau;

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

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

1 (6) By the contractors license board for any action
2 involving the contractors recovery fund;
3 (7) By the office of Hawaiian affairs;
4 (8) By the department of commerce and consumer affairs for
5 the enforcement of violations of chapters 480 and
6 485A;
7 (9) As grand jury counsel;
8 (10) By the Hawaii health systems corporation, or its
9 regional system boards, or any of their facilities;
10 (11) By the auditor;
11 (12) By the office of ombudsman;
12 (13) By the insurance division;
13 (14) By the University of Hawaii;
14 (15) By the Kahoolawe island reserve commission;
15 (16) By the division of consumer advocacy;
16 (17) By the office of elections;
17 (18) By the campaign spending commission;
18 (19) By the Hawaii tourism authority, as provided in
19 section 201B-2.5;
20 (20) By the division of financial institutions;
21 (21) By the office of information practices;
22 (22) By the school facilities authority;
23 (23) By the Mauna Kea stewardship and oversight authority;
24 [~~or~~]

1 (24) By the commission on water resource management; or
2 [~~(24)~~] (25) By a department, if the attorney general, for
3 reasons deemed by the attorney general to be good and
4 sufficient, declines to employ or retain an attorney
5 for a department; provided that the governor waives
6 the provision of this section."

7 2. By amending subsection (c) to read:

8 "(c) Every attorney employed by any department on a full-
9 time basis, except an attorney employed by the public utilities
10 commission, the labor and industrial relations appeals board,
11 the Hawaii labor relations board, the office of Hawaiian
12 affairs, the Hawaii health systems corporation or its regional
13 system boards, the department of commerce and consumer affairs
14 in prosecution of consumer complaints, insurance division, the
15 division of consumer advocacy, the University of Hawaii, the
16 Hawaii tourism authority as provided in section 201B-2.5, the
17 Mauna Kea stewardship and oversight authority, the commission on
18 water resource management, the office of information practices,
19 or as grand jury counsel, shall be a deputy attorney general."

20 SECTION 4. Section 84-18, Hawaii Revised Statutes, is
21 amended to read as follows:

22 "(e) Subject to the restrictions imposed in subsections
23 (a) through (d), the following individuals shall not represent
24 any person or business for a fee or other consideration

1 regarding any legislative action or administrative action, as
2 defined in section 97-1, for twelve months after termination
3 from their respective positions:

- 4 (1) The governor;
- 5 (2) The lieutenant governor;
- 6 (3) The administrative director of the State;
- 7 (4) The attorney general;
- 8 (5) The comptroller;
- 9 (6) The chairperson of the board of agriculture;
- 10 (7) The director of corrections and rehabilitation;
- 11 (8) The director of finance;
- 12 (9) The director of business, economic development, and
13 tourism;
- 14 (10) The director of commerce and consumer affairs;
- 15 (11) The adjutant general;
- 16 (12) The superintendent of education;
- 17 (13) The chairperson of the Hawaiian homes commission;
- 18 (14) The director of health;
- 19 (15) The director of human resources development;
- 20 (16) The director of human services;
- 21 (17) The director of labor and industrial relations;
- 22 (18) The chairperson of the board of land and natural
23 resources;
- 24 (19) The director of law enforcement;

- 1 (20) The director of taxation;
- 2 (21) The director of transportation;
- 3 (22) The president of the University of Hawaii;
- 4 (23) The executive administrator of the board of regents of
- 5 the University of Hawaii;
- 6 (24) The administrator of the office of Hawaiian affairs;
- 7 (25) The chief information officer;
- 8 (26) The executive director of the agribusiness development
- 9 corporation;
- 10 (27) The executive director of the campaign spending
- 11 commission;
- 12 (28) The executive director of the Hawaii community
- 13 development authority;
- 14 (29) The executive director of the Hawaii housing finance
- 15 and development corporation;
- 16 (30) The president and chief executive officer of the
- 17 Hawaii tourism authority;
- 18 (31) The executive officer of the public utilities
- 19 commission;
- 20 (32) The state auditor;
- 21 (33) The director of the legislative reference bureau;
- 22 (34) The ombudsman;

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

4 (36) The administrative director of the courts;

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

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

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

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

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

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

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

21 "**§174C-5 General powers and duties.** The general
22 administration of the state water code shall rest with the
23 commission on water resource management. In addition to its
24 other powers and duties, the commission:

- 1 (1) Shall carry out topographic surveys, research, and
2 investigations into all aspects of water use and water
3 quality;
- 4 (2) Shall designate water management areas for regulation
5 under this chapter where the commission, after the
6 research and investigations mentioned in paragraph
7 (1), shall consult with the appropriate county council
8 and county water agency, and after public hearing and
9 published notice, finds that the water resources of
10 the areas are being threatened by existing or proposed
11 withdrawals of water;
- 12 (3) Shall establish an instream use protection program
13 designed to protect, enhance, and reestablish, where
14 practicable, beneficial instream uses of water in the
15 State;
- 16 (4) May contract and cooperate with the various agencies
17 of the federal government and with state and local
18 administrative and governmental agencies or private
19 persons;
- 20 (5) May enter, after obtaining the consent of the property
21 owner, at all reasonable times upon any property other
22 than dwelling places for the purposes of conducting
23 investigations and studies or enforcing any of the
24 provisions of this code, being liable, however, for

- 1 actual damage done. If consent cannot be obtained,
2 reasonable notice shall be given prior to entry;
- 3 (6) Shall cooperate with federal agencies, other state
4 agencies, county or other local governmental
5 organizations, and all other public and private
6 agencies created for the purpose of utilizing and
7 conserving the waters of the State, and assist these
8 organizations and agencies in coordinating the use of
9 their facilities and participate in the exchange of
10 ideas, knowledge, and data with these organizations
11 and agencies. For this purpose the commission shall
12 maintain an advisory staff of experts;
- 13 (7) Shall prepare, publish, and issue printed pamphlets
14 and bulletins as the commission deems necessary for
15 the dissemination of information to the public
16 concerning its activities;
- 17 (8) May appoint and remove agents, including hearings
18 officers and consultants, necessary to carry out the
19 purposes of this chapter, who may be engaged by the
20 commission without regard to the requirements of
21 chapter 76 and section 78-1;
- 22 (9) May hire employees in accordance with chapter 76;
- 23 (10) May appoint and dismiss attorneys as may be necessary,
24 who shall be exempt from chapter 76;

1 ~~[(10)]~~ (11) May acquire, lease, and dispose of real and
2 personal property as may be necessary in the
3 performance of its functions, including the
4 acquisition of real property for the purpose of
5 conserving and protecting water and water related
6 resources as provided in section 174C-14;

7 ~~[(11)]~~ (12) Shall identify, by continuing study, those areas
8 of the State where salt water intrusion is a threat to
9 fresh water resources and report its findings to the
10 appropriate county mayor and council and the public;

11 ~~[(12)]~~ (13) Shall provide coordination, cooperation, or
12 approval necessary to the effectuation of any plan or
13 project of the federal government in connection with
14 or concerning the waters of the State. The commission
15 shall approve or disapprove any federal plans or
16 projects on behalf of the State. No other agency or
17 department of the State shall assume the duties
18 delegated to the commission under this paragraph;
19 except that the department of health shall continue to
20 exercise the powers vested in it with respect to water
21 quality, and except that the department of business,
22 economic development, and tourism shall continue to
23 carry out its duties and responsibilities under
24 chapter 205A;

1 ~~[(13)]~~ (14) Shall plan and coordinate programs for the
2 development, conservation, protection, control, and
3 regulation of water resources, based upon the best
4 available information, and in cooperation with federal
5 agencies, other state agencies, county or other local
6 governmental organizations, and other public and
7 private agencies created for the utilization and
8 conservation of water;

9 ~~[(14)]~~ (15) Shall catalog and maintain an inventory of all
10 water uses and water resources; ~~[and]~~

11 ~~[(15)]~~ (16) Shall determine appurtenant water rights,
12 including but not limited to the quantification of the
13 amount of water and the specification of the water
14 course or the means of access and delivery entitled to
15 by that right, which determination shall be valid for
16 purposes of this chapter~~[-]~~; and

17 (17) May declare an emergency if the commission determines,
18 in consultation with the governor, the appropriate
19 county, and the department of health, that there is an
20 absence of sufficient quantity and quality of water in
21 any area, whether within or outside of a water
22 management area, that immediately threatens the public
23 health, safety, and welfare. The commission may issue
24 orders reciting the existence of the emergency and

1 requiring those actions as the commission deems
2 necessary to address the emergency be taken, including
3 but not limited to apportioning, rotating, limiting,
4 or prohibiting the use of water resources of the area;
5 provided that an emergency order shall expire no later
6 than one year after issuance by the commission;
7 provided further that the order may be extended by a
8 separate or supplementary order."

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

11 **"§174C-6 ~~[Deputy to the chairperson]~~ Executive director of**
12 **the commission on water resource management.** (a) There shall
13 be ~~[a first deputy to the chairperson]~~ an executive director of
14 the commission on water resource management ~~[("deputy for water~~
15 ~~resource management") who shall be in addition to any other~~
16 ~~first deputy to the chairperson as the chairperson of the board~~
17 ~~of land and natural resources. The deputy]~~, who shall have
18 experience in the area of water resources and shall be appointed
19 by ~~[the chairperson with the approval of a majority of]~~ the
20 commission~~[-]~~ who serves at the pleasure of the commission.

21 (b) The duties of the ~~[deputy]~~ executive director for
22 water resource management shall be to administer and implement,
23 under the direction of the commission, the state water code ~~[and~~
24 ~~all]~~, the rules, and other directives ~~[promulgated in accordance~~

1 ~~therewith~~ adopted by the commission. Nothing in this
2 ~~[provision]~~ section shall be construed as limiting the authority
3 of the commission as to matters regarding water resources.

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

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

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

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

23 (g) The position of Red Hill Water Alliance Initiative
24 policy coordinator, established pursuant to section -2, Hawaii

1 Revised Statutes, shall be placed within the office of the
2 executive director."

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

5 **"§174C-7 Commission on water resource management. (a)**

6 There is established within the department a commission on water
7 resource management consisting of seven members which shall have
8 exclusive jurisdiction and final authority in all matters
9 relating to implementation and administration of the state water
10 code, except as otherwise specifically provided in this
11 chapter. The commission shall be attached to the department of
12 land and natural resources for administrative purposes only.

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

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

1 the director of health or the director's designee shall serve as
2 [~~an~~] ex officio[+],[+] voting [~~member.~~] members, but shall be
3 ineligible to serve as chairperson of the commission.

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

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

18 [~~(e)~~] (f) Except as otherwise provided in this chapter,
19 the commission shall be subject to sections 26-34, 26-35, and
20 26-36."

21 SECTION 8. Section 174C-7(d), Hawaii Revised Statute, is
22 amended to read as follows:

23 "(d) In appointing a member to the commission, the
24 governor shall select from a list submitted by a nominating

1 committee. The nominating committee shall be composed of [~~four~~]
2 five individuals chosen as follows: two persons appointed by
3 the governor; one person appointed by the president of the
4 senate; [~~and~~] one person appointed by the speaker of the
5 house[-]; and one person appointed by the executive director of
6 the Office of Hawaiian Affairs. The committee shall solicit
7 applications and send to the governor the names of at least
8 three individuals for each open position."

9 SECTION 9. Section 174C-9, Hawaii Revised Statutes, is
10 amended to include a new subsection as follows:

11 "**[+]§174C-9[+]** **Proceedings before the commission**
12 **concerning water resources.** (a) All proceedings before the
13 commission concerning the enforcement or application of any
14 provision of this chapter or any rule adopted pursuant thereto,
15 or the issuance, modification, or revocation of any permit or
16 license under this code by the commission, shall be conducted in
17 accordance with chapter 91. Hearings regarding particular water
18 resources shall be conducted on the island where those water
19 resources are located.

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

1 SECTION 10. Section 174C-15, Hawaii Revised Statutes, is
2 amended to read as follows:

3 **"§174C-15 Penalties and common law remedies.** (a) The
4 commission may enforce its rules and orders adopted pursuant to
5 this chapter by suit for injunction or for damages or both.

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

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

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

10 (3) Violates any order of the commission;

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

13 (5) Fails to comply with permit conditions; or

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

17 shall be subject to a fine imposed by the commission. [~~Such~~] The
18 fine shall be not less than \$50 and shall not exceed [\$5,000.

19 ~~For a continuing offense, each day during which the offense is~~
20 ~~committed is a separate violation.]~~ \$60,000 per violation. Each

21 day that a violation exists or continues to exist shall

22 constitute a separate offense. Penalties for continuing

23 violations shall be assessed from the earliest known date of the

24 violation. The earliest known date of a violation shall be

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

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

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

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

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

15 (4) Good faith efforts to comply;

16 (5) Degree of culpability; and

17 (6) Other matters as justice may require.

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

21 ~~[(d)]~~ (e) Except as otherwise provided by law, the
22 commission or its authorized representative by proper delegation
23 ~~[may]~~ shall set, charge, and collect administrative fines ~~[or]~~;
24 may bring legal action to recover administrative fees and costs

1 as documented by receipts or affidavit, including ~~[attorneys']~~
2 attorney's fees and costs; ~~[or]~~ and may bring legal action to
3 recover administrative fines, fees, and costs, including
4 ~~[attorneys']~~ attorney's fees and costs, or payment for damages
5 resulting from a violation of this chapter or any rule adopted
6 pursuant to this chapter."

7 SECTION 11. Section 174C-62, Hawaii Revised Statutes, is
8 amended to read as follows:

9 "~~[+]~~**\$174C-62**~~[+]~~ **Declaration of water shortage.** (a) The
10 commission shall formulate a statewide plan for implementation
11 during periods of water shortage. As a part of the plan, the
12 commission shall adopt a reasonable system of permit
13 classification according to source of water supply, method of
14 extraction or diversion, use of water, or a combination thereof.

15 (b) The commission, by rule, may declare that a water
16 shortage exists within all or part of an area, whether within or
17 outside of a water management area, when insufficient water is
18 available to meet the requirements of the permit system or when
19 conditions ~~[are such as to]~~ require a temporary reduction in
20 total water use within the area to protect water resources from
21 serious harm. The commission shall publish a set of criteria
22 for determining when a water shortage exists~~[+]~~, including but
23 not limited to impacts and effects of the climate crisis.

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

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

11 (e) When a water shortage is declared, the commission
12 shall cause a notice [~~thereof~~] of the water shortage to be
13 published in a prominent place in a newspaper of general
14 circulation throughout the area[~~-~~] and on the commission's
15 website. The notice shall be published each day for the first
16 week of the shortage and once a week [~~thereafter~~] for four
17 months, followed by monthly publications until the declaration
18 is rescinded. Publication of [~~such~~] the notice shall serve as
19 notice to all water users in the area of the condition of water
20 shortage.

21 (f) The commission shall cause each permittee in the area
22 to be notified by regular and electronic mail of any change in
23 the conditions of the permittee's permit, any suspension
24 [~~thereof~~] of the permittee's permit, or of any other

1 restriction on the use of water for the duration of the water
2 shortage.

3 (g) If an emergency condition arises due to a water
4 shortage within any area, whether within or outside of a water
5 management area, and if the commission finds that the
6 restrictions imposed under subsection (c) are not sufficient to
7 protect the public health, safety, or welfare, or the health of
8 animals, fish, or aquatic life, or a public water supply, or
9 recreational, municipal, agricultural, or other reasonable uses,
10 the commission may issue orders reciting the existence of such
11 an emergency and requiring that such actions as the commission
12 deems necessary to meet the emergency be taken, including but
13 not limited to apportioning, rotating, limiting, or prohibiting
14 the use of the water resources of the area. Any party to whom
15 an emergency order is directed may challenge such an order but
16 shall immediately comply with the order, pending disposition of
17 the party's challenge. The commission shall give precedence to
18 a hearing on such challenge over all other pending matters."

19 SECTION 12. If any provision of this Act, or the
20 application thereof to any person or circumstance, is held
21 invalid, the invalidity does not affect other provisions or
22 applications of the Act that can be given effect without the
23 invalid provision or application, and to this end the provisions
24 of this Act are severable.

1 SECTION 13. This Act does not affect rights and duties
2 that matured, penalties that were incurred, and proceedings that
3 were begun before its effective date.

4 SECTION 14. Statutory material to be repealed is bracketed
5 and stricken. New statutory material is underscored.

6 SECTION 15. This Act shall take effect on July 1, 2025.

Resolution

No. 24-131, CD1

APPROVING FOR INCLUSION IN THE 2025
MAUI COUNTY COUNCIL LEGISLATIVE
PACKAGE A STATE BILL RELATING TO THE
COMMISSION ON WATER RESOURCE
MANAGEMENT

WHEREAS, amendments to the state water code are necessary to enable the commission on water resource management to more effectively carry out its mandate under Article XI, Section 7, of the Hawai'i State Constitution; and

WHEREAS, further clarification of the Commission on Water Resource Management's purpose, including its leadership structure and composition, will provide greater accountability and protection of the State's water from third parties; and

WHEREAS, the August 8, 2023, Maui wildfires demonstrated the need for the Commission to be able to declare an emergency and take the necessary actions to address the emergency; and

WHEREAS, the Commission must be able to effectively regulate ground and surface water standards, as these will be crucial during the rebuilding of Lahaina to ensure there will be adequate water for years to come; now, therefore,

BE IT RESOLVED by the Council of the County of Maui:

1. That the proposed State bill attached as Exhibit "A," relating to the Commission on Water Resource Management be included in the 2025 Maui County Council Legislative Package; and
2. That certified copies of this Resolution be transmitted to the Mayor.

INTRODUCED BY:

Tamara A.M. Paltin

TAMARA PALTIN

HOUSE OF REPRESENTATIVES
THIRTY-THIRD LEGISLATURE, 2025
STATE OF HAWAII

H.B. NO.

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 continuous and
3 experienced leadership, especially given the climate crisis and
4 urgent need to properly steward water resources to meet the
5 affordable housing needs of local residents. On December 28,
6 1994, the review commission on the state water code submitted
7 its final report to the legislature pursuant to Act 45, Session
8 Laws of Hawaii 1987. The review commission determined that
9 amendments to the state water code were necessary to enable the
10 commission on water resource management to more effectively
11 carry out its mandate pursuant to article XI, section 7, of the
12 Hawaii State Constitution to "set overall water conservation,
13 quality and use policies; define beneficial and reasonable uses;
14 protect ground and surface water resources, watersheds and
15 natural stream environments; establish criteria for water use
16 priorities while assuring appurtenant rights and existing

1 correlative and riparian uses and establish procedures for
2 regulating all uses of Hawaii's water resources." Therefore,
3 further clarification of the commission on water resource
4 management's purpose, including its leadership structure and
5 composition of the board, will provide greater accountability
6 and protection of the State's waters.

7 The purpose of this Act is to:

- 8 (1) Define the public trust responsibilities of the
9 Commission on Water Resource Management and require
10 the Commission, in acting upon water use permit
11 applications, to prioritize applications for public
12 trust purposes;
- 13 (2) Allow the commission to retain independent legal
14 counsel;
- 15 (3) Amend the scope of the commission on water resource
16 management to include declaration of emergencies;
- 17 (4) Repeal the deputy to the chairperson of the commission
18 on water resource management and establish the
19 executive director of the commission on water resource
20 management;
- 21 (5) Amend the composition of the commission on water
22 resource management;

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

4 (7) Establish fines for certain water use offenses.

5 SECTION 2. Chapter 174C, Hawaii Revised Statutes, is
6 amended by adding a new section to part IV to be appropriately
7 designated and to read as follows:

8 "**§174C- Public trust purpose.** The commission shall act
9 upon water use permit applications, filed in accordance with
10 sections 174C-51, 174C-52, and 174C-53, for both existing and
11 new public trust purposes before acting upon water use permit
12 applications for other existing or new uses, or both, filed in
13 accordance with sections 174C-51, 174C-52, and 174C-
14 53. Proceedings for applications for public trust purposes
15 shall be held first and separate from proceedings for all other
16 applications filed in accordance with sections 174C-51, 174C-52,
17 and 174C-53."

18 SECTION 3. Section 28-8.3, Hawaii Revised Statutes, is
19 amended as follows:

20 1. By amending subsection (a) to read:

21 "(a) No department of the State other than the attorney
22 general may employ or retain any attorney, by contract or
23 otherwise, for the purpose of representing the State or the
24 department in any litigation, rendering legal counsel to the

1 department, or drafting legal documents for the department;
2 provided that the foregoing provision shall not apply to the
3 employment or retention of attorneys:

4 (1) By the public utilities commission, the labor and
5 industrial relations appeals board, and the Hawaii
6 labor relations board;

7 (2) By any court or judicial or legislative office of the
8 State; provided that if the attorney general is
9 requested to provide representation to a court or
10 judicial office by the chief justice or the chief
11 justice's designee, or to a legislative office by the
12 speaker of the house of representatives and the
13 president of the senate jointly, and the attorney
14 general declines to provide ~~such~~ representation on
15 the grounds of conflict of interest, the attorney
16 general shall retain an attorney for the court,
17 judicial, or legislative office, subject to approval
18 by the court, judicial, or legislative office;

19 (3) By the legislative reference bureau;

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

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

1 (6) By the contractors license board for any action
2 involving the contractors recovery fund;
3 (7) By the office of Hawaiian affairs;
4 (8) By the department of commerce and consumer affairs for
5 the enforcement of violations of chapters 480 and
6 485A;
7 (9) As grand jury counsel;
8 (10) By the Hawaii health systems corporation, or its
9 regional system boards, or any of their facilities;
10 (11) By the auditor;
11 (12) By the office of ombudsman;
12 (13) By the insurance division;
13 (14) By the University of Hawaii;
14 (15) By the Kahoolawe island reserve commission;
15 (16) By the division of consumer advocacy;
16 (17) By the office of elections;
17 (18) By the campaign spending commission;
18 (19) By the Hawaii tourism authority, as provided in
19 section 201B-2.5;
20 (20) By the division of financial institutions;
21 (21) By the office of information practices;
22 (22) By the school facilities authority;
23 (23) By the Mauna Kea stewardship and oversight authority;
24 [~~or~~]

1 (24) By the commission on water resource management; or
2 [~~(24)~~] (25) By a department, if the attorney general, for
3 reasons deemed by the attorney general to be good and
4 sufficient, declines to employ or retain an attorney
5 for a department; provided that the governor waives
6 the provision of this section."

7 2. By amending subsection (c) to read:

8 "(c) Every attorney employed by any department on a full-
9 time basis, except an attorney employed by the public utilities
10 commission, the labor and industrial relations appeals board,
11 the Hawaii labor relations board, the office of Hawaiian
12 affairs, the Hawaii health systems corporation or its regional
13 system boards, the department of commerce and consumer affairs
14 in prosecution of consumer complaints, insurance division, the
15 division of consumer advocacy, the University of Hawaii, the
16 Hawaii tourism authority as provided in section 201B-2.5, the
17 Mauna Kea stewardship and oversight authority, the commission on
18 water resource management, the office of information practices,
19 or as grand jury counsel, shall be a deputy attorney general."

20 SECTION 4. Section 84-18, Hawaii Revised Statutes, is
21 amended to read as follows:

22 "(e) Subject to the restrictions imposed in subsections
23 (a) through (d), the following individuals shall not represent
24 any person or business for a fee or other consideration

1 regarding any legislative action or administrative action, as
2 defined in section 97-1, for twelve months after termination
3 from their respective positions:

- 4 (1) The governor;
- 5 (2) The lieutenant governor;
- 6 (3) The administrative director of the State;
- 7 (4) The attorney general;
- 8 (5) The comptroller;
- 9 (6) The chairperson of the board of agriculture;
- 10 (7) The director of corrections and rehabilitation;
- 11 (8) The director of finance;
- 12 (9) The director of business, economic development, and
13 tourism;
- 14 (10) The director of commerce and consumer affairs;
- 15 (11) The adjutant general;
- 16 (12) The superintendent of education;
- 17 (13) The chairperson of the Hawaiian homes commission;
- 18 (14) The director of health;
- 19 (15) The director of human resources development;
- 20 (16) The director of human services;
- 21 (17) The director of labor and industrial relations;
- 22 (18) The chairperson of the board of land and natural
23 resources;
- 24 (19) The director of law enforcement;

- 1 (20) The director of taxation;
- 2 (21) The director of transportation;
- 3 (22) The president of the University of Hawaii;
- 4 (23) The executive administrator of the board of regents of
- 5 the University of Hawaii;
- 6 (24) The administrator of the office of Hawaiian affairs;
- 7 (25) The chief information officer;
- 8 (26) The executive director of the agribusiness development
- 9 corporation;
- 10 (27) The executive director of the campaign spending
- 11 commission;
- 12 (28) The executive director of the Hawaii community
- 13 development authority;
- 14 (29) The executive director of the Hawaii housing finance
- 15 and development corporation;
- 16 (30) The president and chief executive officer of the
- 17 Hawaii tourism authority;
- 18 (31) The executive officer of the public utilities
- 19 commission;
- 20 (32) The state auditor;
- 21 (33) The director of the legislative reference bureau;
- 22 (34) The ombudsman;

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

4 (36) The administrative director of the courts;

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

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

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

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

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

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

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

21 "**§174C-5 General powers and duties.** The general
22 administration of the state water code shall rest with the
23 commission on water resource management. In addition to its
24 other powers and duties, the commission:

- 1 (1) Shall carry out topographic surveys, research, and
2 investigations into all aspects of water use and water
3 quality;
- 4 (2) Shall designate water management areas for regulation
5 under this chapter where the commission, after the
6 research and investigations mentioned in paragraph
7 (1), shall consult with the appropriate county council
8 and county water agency, and after public hearing and
9 published notice, finds that the water resources of
10 the areas are being threatened by existing or proposed
11 withdrawals of water;
- 12 (3) Shall establish an instream use protection program
13 designed to protect, enhance, and reestablish, where
14 practicable, beneficial instream uses of water in the
15 State;
- 16 (4) May contract and cooperate with the various agencies
17 of the federal government and with state and local
18 administrative and governmental agencies or private
19 persons;
- 20 (5) May enter, after obtaining the consent of the property
21 owner, at all reasonable times upon any property other
22 than dwelling places for the purposes of conducting
23 investigations and studies or enforcing any of the
24 provisions of this code, being liable, however, for

- 1 actual damage done. If consent cannot be obtained,
2 reasonable notice shall be given prior to entry;
- 3 (6) Shall cooperate with federal agencies, other state
4 agencies, county or other local governmental
5 organizations, and all other public and private
6 agencies created for the purpose of utilizing and
7 conserving the waters of the State, and assist these
8 organizations and agencies in coordinating the use of
9 their facilities and participate in the exchange of
10 ideas, knowledge, and data with these organizations
11 and agencies. For this purpose the commission shall
12 maintain an advisory staff of experts;
- 13 (7) Shall prepare, publish, and issue printed pamphlets
14 and bulletins as the commission deems necessary for
15 the dissemination of information to the public
16 concerning its activities;
- 17 (8) May appoint and remove agents, including hearings
18 officers and consultants, necessary to carry out the
19 purposes of this chapter, who may be engaged by the
20 commission without regard to the requirements of
21 chapter 76 and section 78-1;
- 22 (9) May hire employees in accordance with chapter 76;
- 23 (10) May appoint and dismiss attorneys as may be necessary,
24 who shall be exempt from chapter 76;

1 ~~[(10)]~~ (11) May acquire, lease, and dispose of real and
2 personal property as may be necessary in the
3 performance of its functions, including the
4 acquisition of real property for the purpose of
5 conserving and protecting water and water related
6 resources as provided in section 174C-14;

7 ~~[(11)]~~ (12) Shall identify, by continuing study, those areas
8 of the State where salt water intrusion is a threat to
9 fresh water resources and report its findings to the
10 appropriate county mayor and council and the public;

11 ~~[(12)]~~ (13) Shall provide coordination, cooperation, or
12 approval necessary to the effectuation of any plan or
13 project of the federal government in connection with
14 or concerning the waters of the State. The commission
15 shall approve or disapprove any federal plans or
16 projects on behalf of the State. No other agency or
17 department of the State shall assume the duties
18 delegated to the commission under this paragraph;
19 except that the department of health shall continue to
20 exercise the powers vested in it with respect to water
21 quality, and except that the department of business,
22 economic development, and tourism shall continue to
23 carry out its duties and responsibilities under
24 chapter 205A;

1 ~~[(13)]~~ (14) Shall plan and coordinate programs for the
2 development, conservation, protection, control, and
3 regulation of water resources, based upon the best
4 available information, and in cooperation with federal
5 agencies, other state agencies, county or other local
6 governmental organizations, and other public and
7 private agencies created for the utilization and
8 conservation of water;

9 ~~[(14)]~~ (15) Shall catalog and maintain an inventory of all
10 water uses and water resources; ~~[and]~~

11 ~~[(15)]~~ (16) Shall determine appurtenant water rights,
12 including but not limited to the quantification of the
13 amount of water and the specification of the water
14 course or the means of access and delivery entitled to
15 by that right, which determination shall be valid for
16 purposes of this chapter~~[-]~~; and

17 (17) May declare an emergency if the commission determines,
18 in consultation with the governor, the appropriate
19 county, and the department of health, that there is an
20 absence of sufficient quantity and quality of water in
21 any area, whether within or outside of a water
22 management area, that immediately threatens the public
23 health, safety, and welfare. The commission may issue
24 orders reciting the existence of the emergency and

1 requiring those actions as the commission deems
2 necessary to address the emergency be taken, including
3 but not limited to apportioning, rotating, limiting,
4 or prohibiting the use of water resources of the area;
5 provided that an emergency order shall expire no later
6 than one year after issuance by the commission;
7 provided further that the order may be extended by a
8 separate or supplementary order."

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

11 "**\$174C-6** ~~[Deputy to the chairperson]~~ **Executive director** of
12 **the commission on water resource management.** (a) There shall
13 be ~~[a first deputy to the chairperson]~~ an executive director of
14 the commission on water resource management [~~("deputy for water~~
15 ~~resource management")~~ who shall be in addition to any other
16 ~~first deputy to the chairperson as the chairperson of the board~~
17 ~~of land and natural resources. The deputy]~~, who shall have
18 experience in the area of water resources and shall be appointed
19 by ~~[the chairperson with the approval of a majority of]~~ the
20 commission~~[-]~~ who serves at the pleasure of the commission.

21 (b) The duties of the ~~[deputy]~~ executive director for
22 water resource management shall be to administer and implement,
23 under the direction of the commission, the state water code ~~[and~~
24 ~~all]~~, the rules, and other directives ~~[promulgated in accordance~~

1 ~~therewith~~ adopted by the commission. Nothing in this
2 ~~[provision]~~ section shall be construed as limiting the authority
3 of the commission as to matters regarding water resources.

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

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

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

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

23 (g) The position of Red Hill Water Alliance Initiative
24 policy coordinator, established pursuant to section -2, Hawaii

1 Revised Statutes, shall be placed within the office of the
2 executive director."

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

5 **"§174C-7 Commission on water resource management. (a)**

6 There is established within the department a commission on water
7 resource management consisting of seven members which shall have
8 exclusive jurisdiction and final authority in all matters
9 relating to implementation and administration of the state water
10 code, except as otherwise specifically provided in this
11 chapter. The commission shall be attached to the department of
12 land and natural resources for administrative purposes only.

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

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

1 the director of health or the director's designee shall serve as
2 [~~an~~] ex officio[+], [] voting [~~member.~~] members, but shall be
3 ineligible to serve as chairperson of the commission.

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

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

18 [~~(e)~~] (f) Except as otherwise provided in this chapter,
19 the commission shall be subject to sections 26-34, 26-35, and
20 26-36."

21 SECTION 8. Section 174C-7(d), Hawaii Revised Statute, is
22 amended to read as follows:

23 "(d) In appointing a member to the commission, the
24 governor shall select from a list submitted by a nominating

1 committee. The nominating committee shall be composed of [~~four~~]
2 five individuals chosen as follows: two persons appointed by
3 the governor; one person appointed by the president of the
4 senate; [~~and~~] one person appointed by the speaker of the
5 house[-]; and one person appointed by the executive director of
6 the Office of Hawaiian Affairs. The committee shall solicit
7 applications and send to the governor the names of at least
8 three individuals for each open position."

9 SECTION 9. Section 174C-9, Hawaii Revised Statutes, is
10 amended to include a new subsection as follows:

11 "**[+]§174C-9[+]** **Proceedings before the commission**
12 **concerning water resources.** (a) All proceedings before the
13 commission concerning the enforcement or application of any
14 provision of this chapter or any rule adopted pursuant thereto,
15 or the issuance, modification, or revocation of any permit or
16 license under this code by the commission, shall be conducted in
17 accordance with chapter 91. Hearings regarding particular water
18 resources shall be conducted on the island where those water
19 resources are located.

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

1 SECTION 10. Section 174C-15, Hawaii Revised Statutes, is
2 amended to read as follows:

3 **"§174C-15 Penalties and common law remedies.** (a) The
4 commission may enforce its rules and orders adopted pursuant to
5 this chapter by suit for injunction or for damages or both.

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

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

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

10 (3) Violates any order of the commission;

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

13 (5) Fails to comply with permit conditions; or

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

17 shall be subject to a fine imposed by the commission. ~~[Such]~~ The
18 fine shall be not less than \$50 and shall not exceed [\$5,000.

19 ~~For a continuing offense, each day during which the offense is~~
20 ~~committed is a separate violation.]~~ \$60,000 per violation. Each

21 day that a violation exists or continues to exist shall

22 constitute a separate offense. Penalties for continuing

23 violations shall be assessed from the earliest known date of the

24 violation. The earliest known date of a violation shall be

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

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

- 9 (1) The nature, circumstances, extent, gravity, and
10 history of the violation and of any prior violations;
11 (2) The economic benefit to the violator, or anticipated
12 by the violator, resulting from the violation;
13 (3) The opportunity, difficulty, and history of corrective
14 action;
15 (4) Good faith efforts to comply;
16 (5) Degree of culpability; and
17 (6) Other matters as justice may require.

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

21 ~~[(d)]~~ (e) Except as otherwise provided by law, the
22 commission or its authorized representative by proper delegation
23 ~~[may]~~ shall set, charge, and collect administrative fines ~~[or]~~;
24 may bring legal action to recover administrative fees and costs

1 as documented by receipts or affidavit, including ~~[attorneys']~~
2 attorney's fees and costs; ~~[or]~~ and may bring legal action to
3 recover administrative fines, fees, and costs, including
4 ~~[attorneys']~~ attorney's fees and costs, or payment for damages
5 resulting from a violation of this chapter or any rule adopted
6 pursuant to this chapter."

7 SECTION 11. Section 174C-62, Hawaii Revised Statutes, is
8 amended to read as follows:

9 "~~[+]~~**\$174C-62**~~[+]~~ **Declaration of water shortage.** (a) The
10 commission shall formulate a statewide plan for implementation
11 during periods of water shortage. As a part of the plan, the
12 commission shall adopt a reasonable system of permit
13 classification according to source of water supply, method of
14 extraction or diversion, use of water, or a combination thereof.

15 (b) The commission, by rule, may declare that a water
16 shortage exists within all or part of an area, whether within or
17 outside of a water management area, when insufficient water is
18 available to meet the requirements of the permit system or when
19 conditions ~~[are such as to]~~ require a temporary reduction in
20 total water use within the area to protect water resources from
21 serious harm. The commission shall publish a set of criteria
22 for determining when a water shortage exists~~[+]~~, including but
23 not limited to impacts and effects of the climate crisis.

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

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

11 (e) When a water shortage is declared, the commission
12 shall cause a notice [~~thereof~~] of the water shortage to be
13 published in a prominent place in a newspaper of general
14 circulation throughout the area[~~-~~] and on the commission's
15 website. The notice shall be published each day for the first
16 week of the shortage and once a week [~~thereafter~~] for four
17 months, followed by monthly publications until the declaration
18 is rescinded. Publication of [~~such~~] the notice shall serve as
19 notice to all water users in the area of the condition of water
20 shortage.

21 (f) The commission shall cause each permittee in the area
22 to be notified by regular and electronic mail of any change in
23 the conditions of the permittee's permit, any suspension
24 [~~thereof~~] of the permittee's permit, or of any other

1 restriction on the use of water for the duration of the water
2 shortage.

3 (g) If an emergency condition arises due to a water
4 shortage within any area, whether within or outside of a water
5 management area, and if the commission finds that the
6 restrictions imposed under subsection (c) are not sufficient to
7 protect the public health, safety, or welfare, or the health of
8 animals, fish, or aquatic life, or a public water supply, or
9 recreational, municipal, agricultural, or other reasonable uses,
10 the commission may issue orders reciting the existence of such
11 an emergency and requiring that such actions as the commission
12 deems necessary to meet the emergency be taken, including but
13 not limited to apportioning, rotating, limiting, or prohibiting
14 the use of the water resources of the area. Any party to whom
15 an emergency order is directed may challenge such an order but
16 shall immediately comply with the order, pending disposition of
17 the party's challenge. The commission shall give precedence to
18 a hearing on such challenge over all other pending matters."

19 SECTION 12. If any provision of this Act, or the
20 application thereof to any person or circumstance, is held
21 invalid, the invalidity does not affect other provisions or
22 applications of the Act that can be given effect without the
23 invalid provision or application, and to this end the provisions
24 of this Act are severable.

1 SECTION 13. This Act does not affect rights and duties
2 that matured, penalties that were incurred, and proceedings that
3 were begun before its effective date.

4 SECTION 14. Statutory material to be repealed is bracketed
5 and stricken. New statutory material is underscored.

6 SECTION 15. This Act shall take effect on July 1, 2025.