

JAN 26 2022

A BILL FOR AN ACT

RELATING TO DAM AND RESERVOIR SAFETY.

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

1 SECTION 1. The legislature finds that some plantation era
2 reservoirs across the State, including locations on Maui county,
3 are on lands sold by plantation landowners to developers.
4 Following the sale, developers constructed subdivisions, often
5 including dams and reservoirs within deeds to the homeowners or
6 a homeowner's association.

7 However, the dams and reservoirs located on the subdivision
8 are not properly maintained. During periods of extreme weather,
9 the surrounding neighborhoods face significant risks from
10 flooding. Despite potential hazards posed by the dams and
11 reservoirs, the department of land and natural resources
12 consider the dams and reservoirs to be privately owned and the
13 responsibility of homeowners or homeowner's associations to
14 maintain proper safety standards. Costly permits are required
15 to conduct repairs or removal, which results in dams and
16 reservoirs remaining in an unsafe state.



1 Therefore, the purpose of this Act is to include dams and
2 reservoirs situated on lands prior to the construction of
3 subdivisions in the board of land and natural resources' dam and
4 reservoir safety program. Additionally, this Act appropriates
5 funding for a two-year pilot project studying dam removal for
6 counties with populations of less than two hundred thousand
7 people.

8 SECTION 2. Section 179D-6, Hawaii Revised Statutes, is
9 amended by amending subsection (b) to read as follows:

10 "(b) The board shall administer the dam and reservoir
11 safety program established by this chapter. In carrying out
12 this chapter, the board shall cooperate, advise, consult,
13 contract, and enter into cooperative agreements with the United
14 States government or any of its agencies, other state agencies,
15 and the county governments or any of their agencies. In the
16 performance of its duties, the board shall:

- 17 (1) Establish by rules adopted under chapter 91, policies,
18 requirements, or standards governing the design,
19 construction, operation, maintenance, enlargement,
20 alteration, repair, removal, and inspection of dams,
21 reservoirs, and appurtenant works for the protection



1 of life and property from structural failure of dams
2 and reservoirs;

3 (2) Conduct investigations and collect data, including
4 technological advances made in dam and reservoir
5 safety practices elsewhere, as may be needed for the
6 proper review and study of the various features of the
7 design, construction, repair, removal, inspection,
8 operation, maintenance, alteration, and enlargement of
9 dams, reservoirs, and appurtenant works. The board
10 may require submittal of reports of investigations
11 from all owners;

12 (3) Conduct investigations and require reports from all
13 owners to be made from time to time, including
14 watershed investigations and studies, as may be
15 necessary to keep abreast of developments affecting
16 stream runoff and as required to facilitate its
17 decisions;

18 (4) Be authorized to enter upon such private property of
19 the dam or reservoir as may be necessary in making, at
20 the owner's expense, any investigation or inspection
21 required or authorized by this chapter. The entry



1 shall not constitute a cause of action in favor of the
2 owner of the land, except for damages resulting from
3 wilful acts or negligence by the board or its agents;

4 (5) Require the owners to apply for, and obtain from the
5 board written approval of plans and specifications on
6 the construction of any new dam or reservoir or the
7 enlargement of any dam or reservoir prior to
8 commencement of any work;

9 (6) Require the owners to file an application and secure
10 the written approval of the board before commencing
11 the repair, alteration, or removal of a dam or
12 reservoir, including the alteration or removal of a
13 dam or reservoir so that it no longer constitutes a
14 dam or reservoir as defined in this chapter[-];
15 provided that for a homeowner association or owner of
16 a single-family home on whose property a dam or
17 reservoir was situated at the time the association was
18 established or at the time of conveyance to the
19 homeowner, respectively upon request to the board by
20 the homeowner association or the homeowner, the board
21 shall prepare all studies required to determine the



1 health and safety issues arising from rain and
2 possible flooding of the surrounding area and safe
3 removal or retirement of the dam or reservoir.

4 Repairs shall not be deemed to apply to routine
5 maintenance not affecting the safety of the structure;

6 (7) Require owners to secure the written approval of the
7 board to impound water;

8 (8) Require fees to cover a portion of the board's costs
9 in carrying out the administration of dam and
10 reservoir safety;

11 (9) Cooperate with all public and private agencies created
12 for the purpose of enhancing dam and reservoir safety
13 activities and training, assist these organizations
14 and agencies in coordinating the use of their
15 facilities, and participate in the exchange of ideas,
16 knowledge, and data with these organizations and
17 agencies;

18 (10) Consider dams and reservoirs as important water
19 resources for the State that provide significant
20 benefits to the general public, including irrigation
21 for agriculture and other important uses, and



1 acknowledge the need for dams and reservoirs to be
2 consistently maintained and operated in a safe and
3 feasible manner that sustains their roles as important
4 water resources; provided that public safety concerns
5 are addressed;

6 (11) Prepare, publish, and issue printed pamphlets,
7 bulletins, or advisories, or conduct training as the
8 board deems necessary for the dissemination of
9 information to the public;

10 (12) Appoint and remove agents and employees, including
11 hearing officers, specialists, and consultants, as
12 necessary to carry out the purposes of this chapter,
13 who may be engaged by the board without regard to the
14 requirements of chapter 76;

15 (13) Catalog and maintain an inventory of all regulated
16 dams and reservoirs in the State pursuant to this
17 chapter without regard to chapter 91;

18 (14) Establish similar or consistent hazard potential
19 classifications in conjunction with other applicable
20 state or federal guidelines for all regulated dams and



1 reservoirs in the State pursuant to this chapter
2 without regard to chapter 91;

3 (15) Examine and approve or disapprove applications for
4 approval of the construction, enlargement, repair,
5 alteration, or removal of a dam or reservoir and
6 applications for certificates of approval to impound;

7 (16) Order the suspension, revocation, or both, of any
8 application approval or certificate of approval to
9 impound for any act or failure to comply with this
10 chapter or with any rules or orders adopted pursuant
11 to this chapter, or with any of the conditions
12 contained in or attached to the application approval
13 or certificate of approval to impound;

14 (17) Issue orders requiring the adoption by an owner of
15 remedial measures necessary for the safety of life or
16 public or private property, or for carrying out this
17 chapter or rules issued under this chapter;

18 (18) Order the immediate cessation of any act that is
19 started or continued without an application approval
20 or certificate of approval to impound as required by
21 this chapter;



1 (19) Enter private property and immediately take actions
2 necessary to provide protection to life or property at
3 the owner's expense, including removal of the dam or
4 reservoir. The entry shall not constitute a cause of
5 action in favor of the owner of the land, except for
6 damages resulting from wilful acts or gross negligence
7 by the board or its agents;

8 (20) Recover from the owner, in the name of the State, the
9 expenses incurred in taking any action required by the
10 owner of the dam or reservoir in the same manner that
11 debts are recoverable by law;

12 (21) Assess civil penalties for violation of this chapter
13 or any rule or standard adopted or order issued by the
14 board pursuant to this chapter;

15 (22) Place liens, as needed, on the owner's property, to be
16 collected as delinquent taxes against the lands and
17 property, if the owner neglects to pay any costs,
18 expenses, or penalties chargeable to the owner under
19 this chapter or any rule, order, or condition adopted,
20 issued, or required under this chapter;



1 (23) With the assistance of the attorney general, institute
2 and prosecute all court actions that may be necessary
3 to obtain the enforcement of any order issued by the
4 board in carrying out this chapter; and

5 (24) Take any and all other actions as may be necessary to
6 carry out this chapter."

7 SECTION 3. The department of land and natural resources
8 shall conduct a two-year pilot program to study dam removal in
9 any county with a population of less than two hundred thousand
10 persons and shall submit a report of its findings and
11 recommendations, including any proposed legislation, to the
12 legislature no later than twenty days prior to the convening of
13 the regular session of 2024.

14 SECTION 4. There is appropriated out of the general
15 revenues of the State of Hawaii the sum of \$375,000 or so much
16 thereof as may be necessary for fiscal year 2022-2023 for a two-
17 year pilot program to study dam removal in counties with a
18 population below two hundred thousand people.

19 The sum appropriated shall be expended by the department of
20 land and natural resources for the purposes of this Act.



1 SECTION 5. Statutory material to be repealed is bracketed
2 and stricken. New statutory material is underscored.

3 SECTION 6. This Act shall take effect on July 1, 2022.

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INTRODUCED BY:

~~SEN~~ AC Smith



Report Title:

Dam and Reservoir Removal; Studies; Board of Land and Natural Resources; Appropriation; Report

Description:

Requires the Board of Land and Natural Resources to prepare all studies to determine the health and safety issues of flooding to surrounding areas and safe removal or retirement of a dam or reservoir upon the request of a homeowner association or homeowner of property where a dam or reservoir is situated. Appropriates funds for a two-year pilot program to study dam removal in counties with a population of less than two hundred thousand people. Requires a report to the legislature.

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