

JAN 17 2025

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 while the current
2 dam and reservoir safety rules, regulations, guidelines, and
3 laws move in the direction of fulfilling several public safety
4 initiatives, the aggregation of these regulations are producing
5 a significantly negative impact on the owners and operators of
6 existing dams. These negative impacts are often significant and
7 latently observed and experienced solely by the dam owners.

8 The legislature further finds that several underlying
9 issues impede dam owners' ability to implement the necessary
10 repairs to dams located on their property. The weight of the
11 current regulations place a significant burden on dam owners,
12 who do not possess the reserve capital or funding capability to
13 satisfy the requirements issued by the department of land and
14 natural resources. These regulations are inherently onerous and
15 represent an unfunded mandate on independent dam owners.

16 The legislature additionally finds that the current dams,
17 reservoirs, and spillways in the State function as key



1 agricultural components to the overall environmental health of
2 the State, providing conventional and practical benefits of
3 water storage; the potentiality of tying into water delivery
4 systems; erosion control; reductions in sediment loading;
5 wildfire management capabilities; and structures that can serve
6 as a reserve supply of potable water sources. However, as the
7 legislature has argued and demonstrated in previous legislative
8 sessions, these benefits are often offset by the increases in
9 compounding costs that are experienced by owners over time, in
10 the form of higher costs for materials, shipping, manufacturing,
11 and labor, which are considered in excess of the existing
12 operating costs that owners experience. Furthermore, access to
13 the necessary capital to implement such improvements are
14 consistently out of reach for private dam owners, and cost
15 estimates often fluctuate according to economic shifts in the
16 cost of goods and services.

17 The legislature notes that Act 232, Session Laws of Hawaii
18 2024, established a special fund to receive funds for the dam
19 and appurtenance improvement or removal grant program and to
20 reappropriate funds for the program to financially assist owners
21 of private dams to upkeep these structures. However, private



1 dam owners may not possess the specialized knowledge, financial
2 capacity, or ability to locate assessment firms to conduct
3 rigorous unbiased risk assessments, which may lead to potential
4 delays or inaccurate reporting. In contrast, the legislature
5 finds that the department of land and natural resources is
6 uniquely positioned to assess the risks posed by dams,
7 spillways, and reservoirs in the State due to its access to
8 technical resources, comprehensive oversight capabilities, and
9 public safety mandates. By shifting the burden of proof onto
10 the department of land and natural resources, the State can
11 ensure that assessments are performed uniformly, free of
12 conflicts of interest, and truly aligned with public safety
13 standards.

14 Therefore, the legislature asserts that in the interest of
15 public safety and efficient resource management, the department
16 of land and natural resources should assume the burden of proof
17 regarding the determinations of risk assessment associated with
18 dam ownership, thereby establishing a multi-level partnership
19 with the State, the department, and private dam owners to ensure
20 an equitable and efficient process where the safety of Hawaii's



1 infrastructure and communities are prioritized by the entity
2 best equipped to manage it.

3 The legislature concludes that the department of land and
4 natural resources is the most appropriate entity to assess risks
5 posed by dams, spillways, and reservoirs, because it has the
6 necessary expertise in hydrology, civil engineering, and
7 environmental science to accurately and consistently evaluate
8 the safety of these critical structures.

9 Accordingly, the purpose of this Act is to:

- 10 (1) Require the department of land and natural resources
11 to incorporate into their assessment process the
12 possession of dam insurance or the active seeking of
13 dam insurance by private dam owners, as part of their
14 valid mitigation strategies, in conjunction with
15 approved modifications or repairs;
- 16 (2) Authorize the department of land and natural resources
17 to relax any restrictions and stringent standards on a
18 dam or appurtenance upon verification of certain
19 insurance coverage;



(3) Authorize the department of land and natural resources to consider a dam, reservoir, or appurtenance is safe absent certain documents;

(4) Shift the burden of proof onto the department of land and natural resources to find that a dam is categorized as high-risk; and

(5) Establish additional requirements for the department of land and natural resources and board of land and natural resources regarding the dam and appurtenance improval or removal grant program.

SECTION 2. Chapter 179D, Hawaii Revised Statutes, is amended by adding two new sections to part II to be appropriately designated and to read as follows:

"§179D- Inspections; risk assessment; risk mitigation; insurance coverage; burden of proof; high hazard. (a) In conducting investigations pursuant to this part, the department shall:

(1) Consider whether an owner has or is in the process of obtaining insurance coverage that:

(A) Subjects the dam, reservoir, or appurtenance to reclassification; and



1 (B) Mitigates the risks associated with the dam,
2 reservoir, or spillway.

3 (b) The department shall have the burden of proof to
4 establish that a dam, reservoir, or appurtenance is a high
5 hazard dam, reservoir, or appurtenance.

6 (c) Any finding that a dam, reservoir, or appurtenance
7 qualifies as high hazard shall be supported by:

8 (1) An engineering report from a licensed engineer of the
9 department that finds that the failure of the dam,
10 reservoir, or appurtenance will result in probable
11 loss of human life; and

12 (2) An engineering study or report from a certified
13 hydraulic engineer that considers:

14 (A) Distances, including the distance to potentially
15 threatened residences and properties;

16 (B) Natural water courses;

17 (C) Percolation rates of the soil; and

18 (D) A realistic assessment that the failure of the
19 dam, reservoir, or appurtenance will result in
20 probable loss of human life.



1 (d) The department may consider, as part of their
2 assessment process, that any dam, reservoir, or appurtenance is
3 safe absent the documents required under subsection (c).

4 (e) The department may relax any restrictions and
5 stringent standards on a dam, reservoir, or appurtenance;
6 provided that the owner verifies valid insurance coverage that
7 meets the conditions of subsection (a)."

8 SECTION 3. Section 179D-31, Hawaii Revised Statutes, is
9 amended to read as follows:

10 **"§179D-31 Dam and appurtenance improvement or removal**
11 **grant program; special fund; established.** (a) There is
12 established a dam and appurtenance improvement or removal grant
13 program, to be developed and administered by the department for
14 the improvement or removal of deficient dams in the State.

15 (b) The dam and appurtenance improvement or removal grant
16 program shall provide funding to owners of private dams for
17 plans, design, construction, and equipment to improve or remove
18 deficient dams and appurtenances, as determined by the
19 department.

20 (c) Each award shall be approved by the board before
21 disbursement and shall be subject to conditions imposed by the



1 board. The board shall consider any existing insurance policy
2 in its assessment of risks associated with a dam.

3 (d) The department [~~may~~] shall award grants based on
4 criteria that shall be developed by the department. The
5 criteria developed by the department under this section shall be
6 made publicly available.

7 (e) Each applicant shall meet the following requirements:

8 (1) The applicant shall be an owner of a high hazard or
9 significant hazard dam or appurtenance that is
10 regulated under this chapter;

11 (2) The applicant shall be the owner of a regulated dam or
12 appurtenance that has been determined to have one or
13 more deficiencies; provided that priority shall be
14 given to dams or appurtenances rated to be in poor or
15 unsatisfactory condition;

16 (3) The applicant shall indicate on the application that
17 the proposed plans, design, construction, and
18 equipment shall be intended for remediation or removal
19 of the dam or appurtenance;

20 (4) If the applicant is an entity other than an
21 individual, the applicant shall:



1 (A) Be licensed to conduct business in the State; and

2 (B) Have bylaws or policies that describe the manner
3 in which business is conducted, prohibit
4 nepotism, and provide for the management of
5 potential conflicts of interest;

6 (5) The applicant shall agree to comply with all
7 applicable federal and state laws prohibiting
8 discrimination against any person on the basis of
9 race, color, national origin, religion, creed, sex,
10 age, sexual orientation, disability, or any other
11 characteristic protected under applicable federal or
12 state law;

13 (6) The applicant shall agree that grant moneys are not to
14 be used for purposes of entertainment or perquisites;

15 (7) The applicant shall agree that all activities and
16 improvements undertaken with funds received shall
17 comply with applicable federal, state, and county
18 laws, including statutes, ordinances, applicable
19 building codes, and rules;

20 (8) The applicant shall agree to make available to the
21 department all records that the applicant may have



1 relating to the grant and allow state agencies to
2 monitor the applicant's compliance with the purpose of
3 this chapter;

4 (9) The applicant shall establish, to the satisfaction of
5 the department, that sufficient funds are available
6 for the completion of plans, design, and construction,
7 or equipment needed for the purpose for which the
8 grant is awarded; provided that the grant amount shall
9 be included among the calculation of sufficient funds;
10 and

11 (10) The applicant shall comply with other requirements or
12 conditions as the department or board may
13 prescribe~~[-]~~; provided that:

14 (A) The board shall prescribe other requirements or
15 conditions in a manner that is consistent with
16 the principles of fairness and equal treatment;

17 (B) The other requirements or conditions shall be:

18 (i) Based on reasonable and justifiable grounds
19 and relevant to the purpose for which the
20 grant is awarded;



1 (ii) Communicated to the applicant in a clear,
2 transparent, and reasonable manner; and

3 (iii) Readily available to the applicant in
4 writing, with one copy submitted to the
5 applicant and another made publicly
6 available; and

7 (C) The applicant may seek clarification of the other
8 requirements or conditions prescribed.

9 (f) The applicant may appeal the board's determination of
10 its application in accordance with section 179D-7.

11 ~~[(e)]~~ (g) Notwithstanding any provision to the contrary,
12 there is established in the department a special fund to be
13 designated as the dam and appurtenance improvement or removal
14 grant program special fund. The fund shall be administered by
15 the department. The following shall be deposited into the dam
16 and appurtenance improvement or removal grant program special
17 fund:

18 (1) Appropriations by the legislature;

19 (2) Moneys derived from public or private sources to

20 benefit dam and appurtenance improvement or removal;



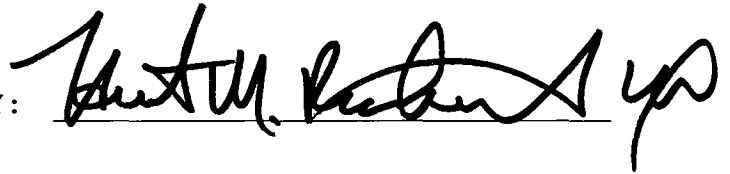
(3) Any other moneys collected pursuant to this section or
any rules adopted pursuant to this section; and
(4) Moneys derived from interest, dividends, or other
income from other sources.

~~[(f)]~~ (h) The department may expend moneys from the dam
and appurtenance improvement or removal grant program special
fund in accordance with this section and other purposes for the
administration of the dam and appurtenance improvement or
removal grant program under this section or any rule adopted
pursuant to this section, including but not limited to funding
for permanent or temporary positions."

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

SECTION 5. This Act shall take effect upon its approval.

INTRODUCED BY:





Report Title:

DLNR; BLNR; Dam and Reservoir Safety; Inspections; Risk Assessment; Risk Mitigation; Dam Insurance; High Hazard; Burden of Proof; Dam and Appurtenance Improvement or Removal Grant Program

Description:

Requires the Department of Land and Natural Resources to incorporate into their assessment process the possession of dam insurance or the active seeking of dam insurance by private dam owners, as part of their valid mitigation strategies, in conjunction with approved modifications or repairs. Authorizes the DLNR to relax any restrictions and stringent standards on a dam or appurtenance upon verification of certain insurance coverage. Authorizes the DLNR to consider a dam, reservoir, or appurtenance is safe absent certain documents. Shifts the burden of proof to the DLNR to find that a dam is categorized as high-risk. Establishes additional requirements for the DLNR and Board of Land and Natural Resources regarding the Dam and Appurtenance Improvement or Removal Grant Program.

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

