

JAN 21 2026

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# 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,  
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 who  
12 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 improvements is consistently  
14 out of reach for private dam owners, and cost estimates often  
15 fluctuate according to economic shifts in the cost of goods and  
16 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 program funds to financially assist owners of  
21 private dams to improve or remove these structures. However,



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

17 Therefore, the legislature asserts that in the interest of  
18 public safety and efficient resource management, the department  
19 of land and natural resources should assume the burden of proof  
20 regarding the determinations of risk assessment associated with  
21 dam ownership, thereby establishing a multi-level partnership



1 between the State, the department, and private dam owners to  
2 ensure an equitable and efficient process where the safety of  
3 Hawaii's infrastructure and communities are prioritized by the  
4 most suitable entity.

5 The legislature concludes that the department of land and  
6 natural resources is the most appropriate entity to assess risks  
7 posed by dams, spillways, and reservoirs, because it has the  
8 necessary expertise in hydrology, civil engineering, and  
9 environmental science to accurately and consistently evaluate  
10 the safety of these critical structures. The legislature  
11 acknowledges that the intent of this measure is to balance  
12 public safety, ensure financial feasibility, and adequately  
13 address the persistent challenges that dam and reservoir owners  
14 face in the process of maintaining critical infrastructural  
15 water resources for the State.

16 Accordingly, the purpose of this Act is to:

- 17 (1) Require the department of land and natural resources  
18 to incorporate into their assessment process the  
19 possession of dam liability insurance or the active  
20 seeking of dam liability insurance by private dam



1 owners, as part of their valid mitigation measures, in  
2 conjunction with approved modifications or repairs;

3 (2) Authorize the department of land and natural resources  
4 to relax any restrictions and stringent standards on a  
5 dam or appurtenance upon verification of certain  
6 insurance coverage;

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

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

13 (5) Revise the definition of "hazard potential" to include  
14 the consideration of dam liability insurance as a  
15 hazard mitigation measure;

16 (6) Expand the definition of "high hazard" to include  
17 major economic losses; and

18 (7) Establish additional requirements for the department  
19 of land and natural resources and board of land and  
20 natural resources regarding the dam and appurtenance  
21 improvement or removal grant program.



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

4       "§179D-       Inspections; risk assessment; risk mitigation;  
5 insurance coverage; burden of proof; high hazard. (a) In  
6 conducting investigations pursuant to this part, the department  
7 shall consider:

8       (1) Whether an owner has or is in the process of obtaining  
9 insurance coverage that:

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

12       (B) Mitigates the risks associated with the dam,  
13 reservoir, or spillway;

14       (2) Whether the owner has other financial assurances to  
15 mitigate the risks associated with the dam, reservoir,  
16 or spillway; and

17       (3) The results of any engineering risk assessments  
18 conducted pursuant to subsection (d).

19       (b) The department shall consider proof of insurance or  
20 financial assurances pursuant to subsection (a)(1) or (2) a  
21 valid hazard mitigation measure. The department shall not



1 classify a dam, reservoir, or appurtenance as high hazard based  
2 only on the department's findings pursuant to subsection (a)(3).

3 (c) The department shall have the burden of proof to  
4 affirmatively establish that a dam, reservoir, or appurtenance  
5 is a high hazard dam, reservoir, or appurtenance, including when  
6 the owner does not possess dam liability insurance or other  
7 financial assurances acceptable to the department.

8 (d) Any finding that a dam, reservoir, or appurtenance  
9 qualifies as high hazard shall be supported by:

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

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

16 (A) Distances, including the distance to potentially  
17 threatened residences and properties;

18 (B) Natural water courses;

19 (C) Percolation rates of the soil; and



1           (D) A realistic assessment that the failure of the  
2           dam, reservoir, or appurtenance will result in  
3           probable loss of human life.

4           (e) The department may consider, as part of their  
5           assessment process, that any dam, reservoir, or appurtenance is  
6           safe absent the documents required under subsection (d).

7           (f) The department may relax any restrictions and  
8           stringent standards on a dam, reservoir, or appurtenance;  
9           provided that the owner verifies valid insurance coverage that  
10          meets the conditions of subsection (a).

11          (g) Nothing in this section shall be construed to relieve  
12          an owner or operator of any legal duties, obligations, or  
13          liabilities incident to the ownership, operation, or maintenance  
14          of a dam or reservoir."

15          SECTION 3. Section 179D-3, Hawaii Revised Statutes, is  
16          amended as follows:

17          1. By amending the definition of "hazard potential" to  
18          read:

19          ""Hazard potential" means the possible adverse incremental  
20          consequences that result from the release of water or stored  
21          contents due to the failure of the dam or reservoir or the





1 misoperation of the dam, reservoir, or appurtenances. The  
2 hazard potential classification of a dam or reservoir shall not  
3 reflect in any way on the current condition of the dam or  
4 reservoir and its appurtenant works, including the dam's or  
5 reservoir's safety, structural integrity, or flood routing  
6 capacity. The hazard potential classification of a dam or  
7 reservoir shall take into consideration the presence of dam  
8 liability insurance as an acceptable, viable, and valid hazard  
9 mitigation measure."

10 2. By amending the definition of "high hazard" to read:

11 ""High hazard" means a dam's or reservoir's failure will  
12 result in probable loss of human life[~~-~~], and major economic  
13 loss that is not mitigated by dam liability insurance."

14 SECTION 4. Section 179D-27, Hawaii Revised Statutes, is  
15 amended by amending subsection (f) to read as follows:

16 "(f) If, upon inspection or upon completion to the  
17 satisfaction of the board of all work that may be ordered, the  
18 board finds that the dam and reservoir are safe to impound  
19 water, a certificate of approval to impound shall be issued.  
20 The board may find that the dam or reservoir will not safely  
21 impound water, taking into consideration both structural and



1 non-structural factors, including whether the owner possesses  
2 dam liability insurance as a recognized hazard mitigation  
3 measure pursuant to section 179D- (b), and may refuse to issue  
4 a certificate of approval to impound[-] where the board finds  
5 that the mitigating measures are insufficient to minimize hazard  
6 potential. Upon finding that the dam or reservoir is unsafe to  
7 impound water, the board shall issue a written notice to the  
8 owner. After receipt of the notice, the owner shall no longer  
9 cause or allow the dam and reservoir to impound water[-] until  
10 the board, upon further inspection and consideration of remedial  
11 actions or mitigating measures, including but not limited to the  
12 purchase of dam liability insurance, determines that the dam,  
13 reservoir, or appurtenance is eligible for a certificate of  
14 approval to impound."

15 SECTION 5. Section 179D-31, Hawaii Revised Statutes, is  
16 amended to read as follows:

17 **"§179D-31 Dam and appurtenance improvement or removal**  
18 **grant program; special fund; established.** (a) There is  
19 established a dam and appurtenance improvement or removal grant  
20 program, to be developed and administered by the department for  
21 the improvement or removal of deficient dams in the State.



1 (b) The dam and appurtenance improvement or removal grant  
2 program shall provide funding to owners of private dams for  
3 plans, design, construction, and equipment to improve or remove  
4 deficient dams and appurtenances, as determined by the  
5 department.

6 (c) Each award shall be approved by the board before  
7 disbursement and shall be subject to conditions imposed by the  
8 board. The board shall consider any existing insurance policy  
9 in its assessment of risks associated with a dam.

10 (d) The department [~~may~~] shall award grants based on  
11 criteria that shall be developed by the department. The  
12 criteria developed by the department under this section shall be  
13 made publicly available.

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

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

18 (2) The applicant shall be the owner of a regulated dam or  
19 appurtenance that has been determined to have one or  
20 more deficiencies; provided that priority shall be



given to dams or appurtenances rated to be in poor or unsatisfactory condition;

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

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

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

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

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



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

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

(8) The applicant shall agree to make available to the department all records that the applicant may have relating to the grant and allow state agencies to monitor the applicant's compliance with the purpose of this chapter;

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



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

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

(B) The other requirements or conditions shall be:

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

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

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

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

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



1       ~~[(+e+)]~~ (g) Notwithstanding any provision to the contrary,  
2 there is established in the department a special fund to be  
3 designated as the dam and appurtenance improvement or removal  
4 grant program special fund. The fund shall be administered by  
5 the department. The following shall be deposited into the dam  
6 and appurtenance improvement or removal grant program special  
7 fund:

8       (1) Appropriations by the legislature;

9       (2) Moneys derived from public or private sources to  
10       benefit dam and appurtenance improvement or removal;

11       (3) Any other moneys collected pursuant to this section or  
12       any rules adopted pursuant to this section; and

13       (4) Moneys derived from interest, dividends, or other  
14       income from other sources.

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



1           SECTION 6. Statutory material to be repealed is bracketed  
2 and stricken. New statutory material is underscored.

3           SECTION 7. This Act shall take effect upon its approval.

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INTRODUCED BY: *David M. Rader*





# S.B. NO. 2164

**Report Title:**

DLNR; BLNR; Dam and Reservoir Safety; Inspections; Hazard Assessment; Hazard Mitigation; Dam Liability 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 liability insurance or the active seeking of dam liability insurance by private dam owners, as part of their valid mitigation measures, in conjunction with approved modifications or repairs. Prohibits the DLNR from classifying a dam as high hazard based only on its engineering risk assessment results. 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-hazard. Establishes additional requirements for the DLNR and Board of Land and Natural Resources regarding the Dam and Appurtenance Improvement or Removal Grant Program.

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