

JAN 23 2020

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 water should be
2 retained in reservoirs for the public's health, safety, and
3 welfare by having fresh water available for fire safety
4 purposes. In 2019, west Maui was hit with a number of large
5 wildfires. It is important that there be water in the former
6 plantation reservoirs so that there is quicker access to fresh
7 water to control fires. Helicopters can retrieve the fresh
8 water in reservoirs quicker than going to the ocean. Also,
9 using ocean water to put out fires results in damage to flora
10 and fauna. Utilizing ocean water also requires the closure of
11 major thoroughfares.

12 The legislature further finds that there are a number of
13 key reservoirs that are currently not filled with water.
14 Examples of those reservoirs include Mahinahina reservoir,
15 Kahoma reservoir, Makila reservoir, Olowalu reservoir, and
16 Ukumehame reservoir. If key reservoirs have adequate water in



1 them, then the fresh reservoir water can be used for fire
2 safety.

3 The purpose of this Act is to:

4 (1) Specify that fire safety use is a beneficial use of
5 water; and

6 (2) Require the department of land and natural resources
7 to work with the county governments, Hawaii emergency
8 management agency, and owners to use reservoir water
9 for fire safety.

10 SECTION 2. Section 174C-2, Hawaii Revised Statutes, is
11 amended by amending subsection (c) to read as follows:

12 "(c) The state water code shall be liberally interpreted
13 to obtain maximum beneficial use of the waters of the State for
14 purposes such as domestic uses, aquaculture uses, irrigation and
15 other agricultural uses, power development, [~~and~~] commercial and
16 industrial uses[~~-~~], and to benefit the public's health, safety,
17 and welfare by maintaining available fresh water for fire safety
18 purposes. However, adequate provision shall be made for the
19 protection of traditional and customary Hawaiian rights, the
20 protection and procreation of fish and wildlife, the maintenance
21 of proper ecological balance and scenic beauty, and the



1 preservation and enhancement of waters of the State for
2 municipal uses, public recreation, public water supply,
3 agriculture, and navigation. Such objectives are declared to be
4 in the public interest."

5 SECTION 3. Section 179D-6, Hawaii Revised Statutes, is
6 amended to read as follows:

7 **"§179D-6 General powers and duties of the board of land**
8 **and natural resources.** (a) All dams or reservoirs in the State
9 shall be under the jurisdiction of the board until the board
10 declares which dams or reservoirs are to be removed from its
11 jurisdiction.

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

19 (1) Establish by rules adopted under chapter 91, policies,
20 requirements, or standards governing the design,
21 construction, operation, maintenance, enlargement,



1 alteration, repair, removal, and inspection of dams,
2 reservoirs, and appurtenant works for the protection
3 of life and property from structural failure of dams
4 and reservoirs;

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

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

20 (4) Be authorized to enter upon such private property of
21 the dam or reservoir as may be necessary in making, at



1 the owner's expense, any investigation or inspection
2 required or authorized by this chapter. The entry
3 shall not constitute a cause of action in favor of the
4 owner of the land, except for damages resulting from
5 wilful acts or negligence by the board or its agents;

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

11 (6) Require the owners to file an application and secure
12 the written approval of the board before commencing
13 the repair, alteration, or removal of a dam or
14 reservoir, including the alteration or removal of a
15 dam or reservoir so that it no longer constitutes a
16 dam or reservoir as defined in this chapter. Repairs
17 shall not be deemed to apply to routine maintenance
18 not affecting the safety of the structure;

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



- 1 (8) Require fees to cover a portion of the board's costs
2 in carrying out the administration of dam and
3 reservoir safety;
- 4 (9) Cooperate with all public and private agencies created
5 for the purpose of enhancing dam and reservoir safety
6 activities and training, assist these organizations
7 and agencies in coordinating the use of their
8 facilities, and participate in the exchange of ideas,
9 knowledge, and data with these organizations and
10 agencies;
- 11 (10) Consider dams and reservoirs as important water
12 resources for the State that provide significant
13 benefits to the general public, including irrigation
14 for agriculture and other important uses, and
15 acknowledge the need for dams and reservoirs to be
16 consistently maintained and operated in a safe and
17 feasible manner that sustains their roles as important
18 water resources; provided that public safety concerns
19 are addressed;
- 20 (11) Prepare, publish, and issue printed pamphlets,
21 bulletins, or advisories, or conduct training as the



- 1 board deems necessary for the dissemination of
2 information to the public;
- 3 (12) Appoint and remove agents and employees, including
4 hearing officers, specialists, and consultants, as
5 necessary to carry out the purposes of this chapter,
6 who may be engaged by the board without regard to the
7 requirements of chapter 76;
- 8 (13) Catalog and maintain an inventory of all regulated
9 dams and reservoirs in the State pursuant to this
10 chapter without regard to chapter 91;
- 11 (14) Establish similar or consistent hazard potential
12 classifications in conjunction with other applicable
13 state or federal guidelines for all regulated dams and
14 reservoirs in the State pursuant to this chapter
15 without regard to chapter 91;
- 16 (15) Examine and approve or disapprove applications for
17 approval of the construction, enlargement, repair,
18 alteration, or removal of a dam or reservoir and
19 applications for certificates of approval to impound;
- 20 (16) Order the suspension, revocation, or both, of any
21 application approval or certificate of approval to



1 impound for any act or failure to comply with this
2 chapter or with any rules or orders adopted pursuant
3 to this chapter, or with any of the conditions
4 contained in or attached to the application approval
5 or certificate of approval to impound;

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

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

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



- 1 (20) Recover from the owner, in the name of the State, the
2 expenses incurred in taking any action required by the
3 owner of the dam or reservoir in the same manner that
4 debts are recoverable by law;
- 5 (21) Assess civil penalties for violation of this chapter
6 or any rule or standard adopted or order issued by the
7 board pursuant to this chapter;
- 8 (22) Place liens, as needed, on the owner's property, to be
9 collected as delinquent taxes against the lands and
10 property, if the owner neglects to pay any costs,
11 expenses, or penalties chargeable to the owner under
12 this chapter or any rule, order, or condition adopted,
13 issued, or required under this chapter;
- 14 (23) With the assistance of the attorney general, institute
15 and prosecute all court actions that may be necessary
16 to obtain the enforcement of any order issued by the
17 board in carrying out this chapter; and
- 18 (24) Take any and all other actions as may be necessary to
19 carry out this chapter.

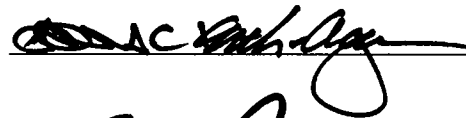


1 (c) The board shall work with the county governments,
2 Hawaii emergency management agency, and owners to use reservoir
3 water for fire safety."

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

6 SECTION 5. This Act shall take effect upon its approval.
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INTRODUCED BY:

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S.B. NO. 2828

Report Title:

Department of Land and Natural Resources; Water; Reservoirs;
Fire Safety

Description:

Specifies that fire safety use is a beneficial use of water.
Requires the department of land and natural resources to work
with the county governments, Hawaii emergency management agency,
and owners to use reservoir water for fire safety.

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