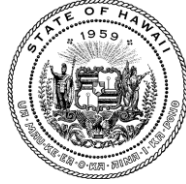


DAVID Y. IGE
GOVERNOR

JOSH GREEN M.D.
LT. GOVERNOR



ISAAC W. CHOY
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STATE OF HAWAII
DEPARTMENT OF TAXATION
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To: The Honorable David A. Tarnas, Chair;
The Honorable Patrick Pihana Branco, Vice Chair;
and Members of the House Committee on Water & Land

From: Isaac W. Choy, Director
Department of Taxation

Date: Tuesday, March 15, 2022
Time: 8:30 A.M.
Place: Via Video Conference, State Capitol

Re: S.B. 3225, S.D. 1, Relating to Dam and Reservoir Safety

The Department of Taxation (Department) opposes the tax credit provision in S.B. 3225, S.D. 1, in its current form and offers the following comments for the Committee's consideration.

In regard to taxes, S.B. 3225, S.D. 1, creates a new nonrefundable income tax credit of an unspecified amount for taxpayers who are private dam owners that make improvements to bring dams and spillways up to code. "Dam and spillway improvements" is defined as plans, design, construction, and equipment that is used to improve deficient dams and spillways as determined by the Department of Land and Natural Resources (DLNR). There is an unspecified annual aggregate cap amount on the tax credit. The measure has a defective effective date of July 1, 2050.

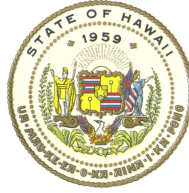
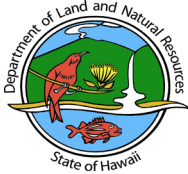
First, the Department notes that this proposed credit is extremely vague and broad. As drafted, there would be no limit on the amount of credit that could be claimed by any individual private dam owner taxpayer, as long as their amount of claimed expenses fell under the unspecified aggregate cap. The Department strongly recommends amending this measure to specify a precise credit amount, include definitions of "qualified expenses" and "qualified taxpayers," and further limit and clarify the parameters of this credit in order to prevent unintended losses in revenue.

Second, the Department defers to DLNR on determining what sort of improvements should be eligible for this credit, however, if the intent is to have DLNR certify the credit and administer the aggregate cap, this should be specified in the measure. The Department is not able to administer an aggregate tax credit cap.

Finally, if the Committee wishes to insert a functional effective date and advance this measure, the Department respectfully requests that the proposed income tax credit in Section 3 be made applicable to tax years beginning after December 31, 2022. This will allow the Department sufficient time to make the necessary administrative and computer system changes.

Thank you for the opportunity to testify on this measure.

DAVID Y. IGE
GOVERNOR OF HAWAII



**STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES**

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

**Testimony of
SUZANNE D. CASE
Chairperson**

**Before the House Committee on
WATER & LAND**

**Tuesday, March 15, 2022
8:30 AM**

State Capitol, Conference Room 430 & Videoconference

**In consideration of
SENATE BILL 3225, SENATE DRAFT 1
RELATING TO DAM AND RESERVOIR SAFETY**

Senate Bill 3225, Senate Draft 1 proposes to: (1) Establish the dam and spillway loan and grant programs for plans, design, construction, and equipment that is used to improve deficient dams and spillways as determined by the Department of Land and Natural Resources and approved by the Board of Land and Natural Resources; (2) Specify eligibility requirements for dam and spillway improvement grants; and (3) Establish the dam and spillway improvement tax credit for expenditures for dam and spillway improvements that bring dams and spillways up to code. **The Department of Land and Natural Resources (Department) supports this measure with the following amendments.**

The Department acknowledges the intent of this bill to reduce potential hazards associated with non-compliant dams and to assist private dam owners finance the repair or rehabilitation of their dams to meet current standards. Dams provide many beneficial uses, and approximately 73% or 93 dams out of a total 127 dams regulated by the Department are fully or partly privately owned.

The Department recommends the measure be amended by keeping the grant program portion and deleting the loan program portion for the following reasons:

1. The typical dam owner who this measure is intended to help will unlikely have a consistent revenue stream therefore, they will unlikely be able to qualify for a loan or service the debt on a loan.
2. If a dam owner does choose to secure financial assistance via a loan, Special Purpose Revenue Bonds is a mechanism already in place that can be utilized, therefore there is no need to create a redundant loan program within the Department.
3. The debt service payments on a loan will take away much needed funds from the dam owner that are needed to finance operations and maintenance of the improvements once they are built.

SUZANNE D. CASE
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

ROBERT K. MASUDA
FIRST DEPUTY

M. KALEO MANUEL
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
BUREAU OF CONVEYANCES
COMMISSION ON WATER RESOURCE MANAGEMENT
CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCES ENFORCEMENT
ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

4. Inability of the dam owner to make loan payments and collection by the State to recover funds that are either in default or past due will place a further financial burden on the dam owner
5. A loan program will require much more Departmental resources to administer, including at least three new positions and necessary operating funds for a total budget of \$300,000 to \$350,000 per year.

If this committee elects to incorporate the Department's recommendation by deleting the loan portion of the program, establishing and administering the grant portion of the program will require the following resources: Two (2) new positions (Planner, and Accountant) and annual operating expenses for a total budget of \$220,000 per year. The Department request these funds be appropriated as recurring general funds (MOF A) and established as a base budget under Program ID LNR810. Without these resources, the Department cannot implement the grant program.

For a grant program to be successful and provide the most opportunities to the widest pool of applicants, adequate initial funding and subsequent replenishment of grant funds are necessary. The Department recommends a one-time seed funding of \$15,000,000 in general funds into the dam and spillway grant special fund for use as the initial source of funding for grants. A provision for recurring deposits to replenish the balance of the funding should also be included to sustain the program. Depending on the extent of the deficiencies, repairs to a single dam could easily cost in the millions of dollars.

In SECTION 2 of this measure, the Department suggests the following revisions:

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

~~"§179D — Dam and spillway improvement loan program. (a) There is established a dam and spillway improvement loan program, which shall be a loan program as defined under section 39-51. The program shall be administered by the department in a manner consistent with chapter 39, part III.~~

~~(b) Loans shall be used for plans, design, construction, and equipment that is utilized to improve deficient high hazard~~

and significant hazard dams and spillways as determined by the department. Loans shall not exceed \$ _____ for a term not to exceed forty years.

_____ (c) All loans approved and administered by this section shall require board approval and shall be subject to conditions imposed by the board.

§179D- Dam and spillway improvement grant

program. (a) There is established a dam and spillway improvement grant program, to be developed and administered by the department for the improvement of deficient dams in the State.

(b) The dam and spillway improvement grant program shall provide funding to private dam owners for plans, design, construction, and equipment that is used to improve deficient dams and spillways as determined by the department.

(c) Grants awarded under the program shall not exceed \$ _____. All awards shall be approved by the board prior to disbursement and shall be subject to conditions imposed by the board.

(d) The department may award grants based on criteria that shall be developed by the department. Applicants shall meet the following requirements:

(1) The applicant shall be an owner of a dam, reservoir, or spillway that is regulated as high hazard or significant hazard as defined under chapter 179D;

(2) The applicant shall be the owner of a regulated dam, reservoir, or spillway that has been determined to have one or more deficiencies; provided that priority shall be given to dams, reservoirs, or spillways 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 of the dam, reservoir, or spillway and not seek to remove the dam, reservoir, or spillway;

(4) If the applicant is an organization, the entity shall:

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

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

(5) The applicant shall 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 grant shall not be used for purposes of entertainment or perquisites;

(7) All activities and improvements undertaken with funds received shall comply with applicable federal, state, and county

statutes and ordinances, including applicable building codes and agency rules;

(8) The applicant shall agree to make available to the department all records 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; and

(10) The applicant shall comply with other requirements or conditions as the department or board may prescribe.

§179D- Dam and spillway improvement revolving grant special fund. (a) There is established within the state treasury a revolving special fund to be known as the dam and spillway improvement revolving grant special fund, which shall be administered by the department and into which shall be deposited all revenues from the dam and spillway improvement loan program and appropriations made by the legislature to the fund.

(b) Moneys from the fund shall be expended by the department to support the awarding loans or of grants under the dam and spillway improvement loan or grant program for eligible private dam and spillway owners."

Thank you for the opportunity to testify on this measure.

SB-3225-SD-1

Submitted on: 3/13/2022 11:05:30 PM

Testimony for WAL on 3/15/2022 8:30:00 AM

Submitted By	Organization	Testifier Position	Testify
Edwin Matsuda	DLNR	Support	Remotely Via Zoom

Comments:

I am available for questions to DLNR. Please allow me Zoom access.

DAVID Y. IGE
GOVERNOR



CRAIG K. HIRAI
DIRECTOR

GLORIA CHANG
DEPUTY DIRECTOR

STATE OF HAWAII
DEPARTMENT OF BUDGET AND FINANCE
P.O. BOX 150
HONOLULU, HAWAII 96810-0150

EMPLOYEES' RETIREMENT SYSTEM
HAWAII EMPLOYER-UNION HEALTH BENEFITS TRUST FUND
OFFICE OF THE PUBLIC DEFENDER

ADMINISTRATIVE AND RESEARCH OFFICE
BUDGET, PROGRAM PLANNING AND
MANAGEMENT DIVISION
FINANCIAL ADMINISTRATION DIVISION
OFFICE OF FEDERAL AWARDS MANAGEMENT (OFAM)

WRITTEN ONLY
TESTIMONY BY CRAIG K. HIRAI
DIRECTOR, DEPARTMENT OF BUDGET AND FINANCE
TO THE HOUSE COMMITTEE ON WATER & LAND
ON
SENATE BILL NO. 3225, S.D. 1

March 15, 2022
8:30 a.m.
Room 430 and Videoconference

RELATING TO DAM AND RESERVOIR SAFETY

The Department of Budget and Finance (B&F) offers comments on this bill.

Senate Bill (S.B.) No. 3225, S.D. 1: establishes the Dam and Spillway Improvement Loan and Grant Programs for plans, design, construction, and equipment to improve deficient dams and spillways as determined by the Department of Land and Natural Resources and approved by the Board of Land and Natural Resources; creates a Dam and Spillway Improvement Revolving Fund (DSIRF) that would generate revenues through revenues from the Dam and Spillway Improvement Loan Program and legislative appropriations; appropriates an unspecified amount of general funds for FY 23 for one-time seed funding into the DSIRF and establishment of three full-time positions; and establishes a Dam and Spillway Improvement tax credit for qualifying expenditures for the improvement of deficient dams and spillways.

As a matter of general policy, B&F does not support the creation of any revolving fund which does not meet the requirements of Section 37-52.4, HRS. Revolving funds should: 1) serve a need as demonstrated by the purpose, scope of work, and an

explanation why the program cannot be implemented successfully under the general fund appropriation process; 2) reflect a clear nexus between the benefits sought and charges made upon the users or beneficiaries or a clear link between the program and the sources of revenue; 3) provide an appropriate means of financing for the program or activity; and 4) demonstrate the capacity to be financially self-sustaining. In regards to S.B. No. 3225, S.D. 1, it is difficult to determine whether the proposed source of revenues will be self-sustaining for the revolving fund that is created.

B&F notes that the federal American Rescue Plan (ARP) Act restricts states from using ARP Coronavirus State Fiscal Recovery Funds (CSFRF) to directly or indirectly offset a reduction in net tax revenue resulting from a change in law, regulation, or administrative interpretation beginning on March 3, 2021, through the last day of the fiscal year in which the CSFRF have been spent. If a state cuts taxes during this period, it must demonstrate how it paid for the tax cuts from sources other than the CSFRF, such as:

- By enacting policies to raise other sources of revenue;
- By cutting spending; or
- Through higher revenue due to economic growth.

If the CSFRF provided have been used to offset tax cuts, the amount used for this purpose must be repaid to the U.S. Treasury.

The U.S. Department of Treasury has issued rules governing how this restriction is to be administered. B&F will be working with the money committees of the Legislature to ensure that the State of Hawai'i complies with this ARP restriction.

B&F further notes that, with respect to the general fund appropriation in this bill, the federal Coronavirus Response and Relief Supplemental Appropriations Act requires

that states receiving Elementary and Secondary School Emergency Relief (ESSER) II funds and Governor's Emergency Education Relief II funds must maintain state support for:

- Elementary and secondary education in FY 22 at least at the proportional level of the state's support for elementary and secondary education relative to the state's overall spending, averaged over FYs 17, 18 and 19; and
- Higher education in FY 22 at least at the proportional level of the state's support for higher education relative to the state's overall spending, averaged over FYs 17, 18 and 19.

Further, the federal ARP Act requires that states receiving ARP ESSER funds must maintain state support for:

- Elementary and secondary education in FY 22 and FY 23 at least at the proportional level of the state's support for elementary and secondary education relative to the state's overall spending, averaged over FYs 17, 18 and 19; and
- Higher education in FY 22 and FY 23 at least at the proportional level of the state's support for higher education relative to the state's overall spending, averaged over FYs 17, 18 and 19.

The U.S. Department of Education has issued rules governing how these maintenance of effort (MOE) requirements are to be administered. B&F will be working with the money committees of the Legislature to ensure that the State of Hawai'i complies with these ESSER MOE requirements.

Thank you for your consideration of our comments.



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March 15, 2022

HEARING BEFORE THE
HOUSE COMMITTEE ON WATER & LAND

TESTIMONY ON SB 3225, SD1
RELATING TO DAM AND RESERVOIR SAFETY

Conference Room 430 & Videoconference
8:30 AM

Aloha Chair Tarnas, Vice-Chair Branco, and Members of the Committee:

I am Brian Miyamoto, Executive Director of the Hawai'i Farm Bureau (HFB). Organized since 1948, the HFB is comprised of 1,800 farm family members statewide and serves as Hawai'i's voice of agriculture to protect, advocate and advance the social, economic, and educational interests of our diverse agricultural community.

The Hawai'i Farm Bureau supports SB 3225, SD1, which establishes the dam and spillway loan and grant programs for plans, design, construction, and equipment that is used to improve deficient dams and spillways as determined by the Department of Land and Natural Resources and approved by the Board of Land and Natural Resources.

While dam and reservoir safety rules represent an important public safety initiative, the unintended consequence of the Dam and Reservoir Safety program continues to have an adverse effect by reducing water storage capacity across the state. At a time when changing weather patterns have demonstrated alternating periods of drought punctuated by significant storm events, coupled with the noble goal of achieving food security for our island state, water storage is more critical than ever. The new rules have discouraged new dam and reservoir construction, and in many cases cause dam and reservoir owners to minimize the capacity or decommission existing storage capability.

Many of the reservoirs – built in an era of plantation agriculture—no longer generate enough revenue to be economically sustainable. But they are needed in ways few people have yet imagined. The issue of how to pay for the upgrading and maintenance of this critical infrastructure is now gaining more attention as the state's budget comes into focus.

Dams and reservoirs are key not just to a future of a sustainable agricultural system in Hawai'i, but to the entire water and environmental health of the State. In addition to the conventional benefits of storing and delivering reliable water for agriculture in dry times,

flood control during large storms, erosion control, and the reduction of sediment loading on our nearshore ocean reefs, reservoirs also ensure a supply of potable drinking water (after treatment).

Reservoirs also help recharge our groundwater aquifers by capturing stormwater for later release that would otherwise rush to the ocean. There is growing evidence that there will be a pattern of fewer, but larger storms separated by longer intervals of drought. If the large rainfall flows are not captured, overall groundwater recharge may be significantly reduced. Groundwater is our primary source of drinking water and demand is relentlessly rising. We already face declining groundwater recharge every time we place hard impermeable surfaces (e.g. concrete) over previously open ground (agriculture).

Recent Dam and Reservoir Safety rules have levied an additional burden on reservoir owners and Hawai'i farmers. Fuel, labor, equipment, transportation, and other expenses are already higher in Hawai'i than on the mainland, placing locally grown products at a competitive disadvantage. Inevitably, increased costs will be passed on to consumers and are counterproductive to efforts to grow more food in Hawai'i. Some landowners will simply decommission their dams, abandon their reservoir systems and decide what to do with their now fallow lands when agriculture is no longer viable.

We request your support of SB 3225, SD1, which recognizes existing dams and reservoirs as important water resources for Hawaii.

Thank you for this opportunity to testify on this important subject.



March 14, 2022

Representative David A. Tarnas, Chair
Representative Patrick Pihana Branco, Vice Chair
House Committee on Water & Land

Support of SB 3225, SD1 RELATING TO DAM AND RESERVOIR SAFETY (Establishes the dam and spillway loan and grant programs for plans, design, construction, and equipment that is used to improve deficient dams and spillways as determined by the Department of Land and Natural Resources [DLNR] and approved by the Board of Land and Natural Resources [BLNR]. Specifies eligibility requirements for dam and spillway improvement grants. Establishes the dam and spillway improvement tax credit for expenditures for dam and spillway improvements that bring dams and spillways up to code. Appropriates funds. Takes effect 7/1/2050. [SD1])

Tuesday, March 15, 2022, 8:30 a.m.; Conference Room 430, Via Videoconference

The Land Use Research Foundation of Hawaii (LURF) is a private, non-profit research and trade association whose members include major Hawaii landowners, developers, and utility companies. LURF's mission is to advocate for reasonable, rational, and equitable land use planning, legislation and regulations that encourage well-planned economic growth and development, while safeguarding Hawaii's significant natural and cultural resources, and public health and safety.

LURF appreciates the opportunity to present comments regarding SB 3225m SD1 in support of the various agricultural stakeholder groups who defend the goals of viable agricultural operations and the conservation and protection of agriculture in Hawaii.

SB 3225, SD1. This measure establishes the dam and spillway loan and grant programs for plans, design, construction, and equipment that is used to improve deficient dams and spillways as determined by DLNR and approved by BLNR; specifies eligibility requirements for dam and spillway improvement grants; establishes the dam and spillway improvement tax credit for expenditures for dam and spillway improvements that bring dams and spillways up to code; and appropriates funds.

LURF's Position. LURF members include private property owners, farmers and ranchers who own, maintain, and utilize dams and reservoirs, and who consider such resources critical to conduct their agricultural operations and to sustain their businesses. These landowners and agricultural stakeholders believe SB 3225, SD1 will greatly assist with costs which must be incurred to bring their facilities to current safety standards, including requirements of the dam and reservoir safety program administered by the DLNR, particularly safety requirements for dams and reservoirs imposed by the program, as well as costs which must be incurred for maintenance and upgrade of structures which are presently considered untenable.

As this Committee may already be aware, the unsustainable costs cast upon land owners and agricultural stakeholders by the safety program are a serious concern, as the enactment of costly regulations relating to maintenance and operation of dams and reservoirs are forcing landowners to consider decommissioning or shutting down their dams and reservoirs, thus proving to be potentially counterproductive to the long-term objective of preserving these facilities as valuable water sources for agricultural production.

As other potential issues relating to public health, and food safety and security continue to be a significant concern of agricultural stakeholders, LURF and its members appreciate this measure being taken to assist dam and reservoir owners, the acknowledgement of dams and reservoirs being vital water resources for the State, and the need for consistent maintenance and operation of the systems in a safe and feasible manner

For the reasons stated above, LURF is in **support of SB 3225, SD1**, and respectfully urges your favorable consideration of this bill.

Thank you for the opportunity to present testimony regarding this matter.