

DAVID Y. IGE
GOVERNOR OF HAWAII



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

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**Testimony of
SUZANNE D. CASE
Chairperson**

**Before the Senate Committees on
WATER AND LAND
and
WAYS AND MEANS**

**Thursday, March 3, 2022
1:00 PM**

State Capitol, Conference Room 211 & Videoconference

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

Senate Bill 3225, Proposed 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) Require private dam and spillway owners to be licensed to conduct business in the State; 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 and provides the following comments.**

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 notes the intent of this measure is to provide financial assistance to “improve” the condition of deficient dams. Therefore, to incentivize private dam owners to maintain their dam’s beneficial use, the Department recommends that “removal” of a dam be excluded from qualifying for the financial benefits proposed in this measure. The Department also request that the committees consider that the financial benefits of this program be limited to “high hazard” and “significant hazard” classified dams as defined in Section 179D-3, Hawaii Revised Statutes, as those dams should be the top priority as they pose the most risk to life and property.

For a loan or grant program to be successful and provide the most opportunities to the widest pool of applicants, adequate initial funding and subsequent replenishment of the loan or grant funds are necessary. The Department recommends a one-time seed funding of \$15,000,000 into

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

ROBERT K. MASUDA
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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

the dam and spillway revolving fund for use as the initial source of funding for loans or 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.

The Department does not currently have a grant/loan program for this purpose and will require the following resources to establish and administer such a program: Three (3) new positions (Planner, Business Loan Officer, and Accountant) and annual operational expenses for a total budget of \$300,000 / 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 successfully implement this program.

In SECTION 2 of this measure, the Department suggests the following revisions (in **bold**):

SECTION 2. Chapter 179D, Hawaii Revised Statutes, is amended by adding three 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 dam and spillway owners participating in the dam and spillway improvement loan program shall be licensed to conduct business in the State of Hawaii.**

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

§179D- Dam and spillway improvement revolving fund.

(a) There is established within the state treasury a revolving fund to be known as the dam and spillway improvement revolving 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 of loans or grants under the dam and spillway improvement loan or grant programs for eligible private dam and spillway owners.

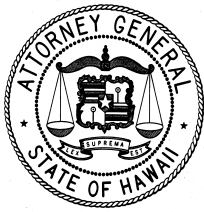
§179D- Dam and spillway improvement grant program.

(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. ~~[The department may award grants to private dam or spillway owners who are licensed to conduct business in the State of Hawaii.]~~

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

Thank you for the opportunity to testify on this measure.



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
THIRTY-FIRST LEGISLATURE, 2022**

ON THE FOLLOWING MEASURE:

S.B. NO. 3225, Proposed S.D. 1, RELATING TO DAM AND RESERVOIR SAFETY.

BEFORE THE:

SENATE COMMITTEES ON WATER AND LAND AND ON WAYS AND MEANS

DATE: Thursday, March 3, 2022 **TIME:** 1:00 p.m.

LOCATION: State Capitol, Room 211, Via Videoconference

TESTIFIER(S): Holly T. Shikada, Attorney General, or
Linda L.W. Chow, Deputy Attorney General

Chairs Inouye and Dela Cruz and Members of the Committees:

The Department of the Attorney General offers the following comments.

This bill authorizes the establishment of a dam and spillway improvement loan program, a dam and spillway improvement revolving fund, a dam and spillway improvement grant program, and a dam and spillway improvement tax credit to assist owners to improve deficient dams and spillways.

Regarding the proposed grant program, article VII, section 4, of the Hawaii Constitution provides that "[n]o grant of public money . . . shall be made except pursuant to standards provided by law." To comply with this constitutional requirement, we recommend that this bill be amended to statutorily include the standards and qualifications for making the grants, as have been enacted for other administrative grant programs, such as in part II of chapter 9 and sections 10-17, 210D-11, and 383-128, Hawaii Revised Statutes. Although the bill provides that the Department of Land and Natural Resources may award grants to private dam or spillway owners who are licensed to conduct business in the State of Hawaii (page 4, lines 10-12), the statute needs to set forth the specific standards and qualifications that need to be met in order to be eligible for a grant. An example of a set of specific standards and qualifications is as follows:

An applicant for a dam and spillway improvement grant shall meet the following standards:

1. The applicant must be an owner of a dam, reservoir, or spillway that is regulated under chapter 179D who is not a government entity;
2. The applicant must own a regulated dam or reservoir that has been determined to have one or more deficiencies. Priority shall be given to those dams that are rated to be in poor or unsatisfactory condition and those with a classification as a high hazard potential dam;
3. The applicant must indicate on the application that the applicant intends to remediate the dam or reservoir and not seek to remove the dam or reservoir.
4. The applicant shall comply with other requirements or conditions as the department may prescribe;
5. If the applicant is an organization it 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;
6. 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;
7. The grant shall not be used for purposes of entertainment or perquisites;
8. All activities and improvements undertaken with funds received shall comply with all applicable federal, state, and county statutes and ordinances, including applicable building codes and agency rules;
9. The applicant shall agree to make available to the department all records the applicant may have relating to the grant, to allow state agencies to

monitor the applicant's compliance with the purpose of this chapter; and

10. 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.

Thank you for the opportunity to present this testimony.

TAX FOUNDATION OF HAWAII

126 Queen Street, Suite 305

Honolulu, Hawaii 96813 Tel. 536-4587

SUBJECT: INCOME, Credit for Dam and Spillway Improvement

BILL NUMBER: SB 3225 Proposed SD 1

INTRODUCED BY: Senate Committees on Water & Land and Ways & Means

EXECUTIVE SUMMARY: 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. Requires private dam and spillway owners to be licensed to conduct business in the State. Establishes the dam and spillway improvement tax credit for expenditures for dam and spillway improvements that bring dams and spillways up to code.

SYNOPSIS: Adds three new sections to chapter 179D, HRS, to establish a dam and spillway improvement loan program, a dam and spillway improvement revolving fund, and a dam and spillway improvement grant program.

Adds a new section to chapter 235 to establish the dam and spillway improvement tax credit. Provides that taxpayers who are private dam owners will be eligible for the credit for expenditures for dam and spillway improvements that bring dams and spillways up to code. Provides that the total amount of tax credits allowed shall not exceed \$_____ in any calendar year. Defines “dam and spillway improvements: 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.

EFFECTIVE DATE: July 1, 2022.

STAFF COMMENTS: It appears that this measure is proposed to encourage taxpayers to spend money to bring dams and spillways up to code by offering a tax credit to do so.

Lawmakers need to remember two things. First, the tax system is the device that raises the money that they, lawmakers, like to spend. Using the tax system to shape social policy merely throws the revenue raising system out of whack, making the system less than reliable as there is no way to determine how many taxpayers will avail themselves of the credit and in what amount. The second point to remember about tax credits is that they are nothing more than the expenditure of public dollars, but out the back door. If, in fact, these dollars were subject to the appropriation process, would taxpayers be as kind about the expenditure of these funds when students are roasting in our schools, or when there isn't enough money for social service programs?

Utilizing tax credits other than to alleviate an excessive tax burden cannot be justified and is of a questionable benefit relative to the cost for all taxpayers. This is especially so if “bringing dams and spillways up to code” is already mandated by law. If lawmakers want to encourage the

proper repair of dams and spillways, then a direct appropriation to subsidize that cost would be more accountable and transparent. In other words, with a direct appropriation (1) you know how much you're spending, and (2) you know what you are paying for. With a tax credit you know neither.

Furthermore, the additional credit would require changes to tax forms and instructions, reprogramming, staff training, and other costs that could be massive in amount compared to the loss in revenue from the credit, especially since the credit proposed is a very modest amount. A direct appropriation, or even a program similar to the way we currently subsidize energy efficient appliances, may be a far less costly method to accomplish the same thing.

Digested: 3/2/2022