

JAN 20 2023

A BILL FOR AN ACT

RELATING TO DAM AND APPURTENANCE SAFETY.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. The legislature finds that some plantation era
2 reservoirs across the State, including locations on Maui county,
3 are on lands sold by plantation landowners to developers.
4 Following the sale, developers constructed subdivisions, often
5 including dams and appurtenances, including reservoirs and
6 spillways, within deeds to the homeowners or a homeowner's
7 association.

8 However, the dams and appurtenances located on the
9 subdivision are not properly maintained. During periods of
10 extreme weather, the surrounding neighborhoods face significant
11 risks from flooding. Despite potential hazards posed by the
12 dams and appurtenances, the department of land and natural
13 resources consider the dams and appurtenances to be privately
14 owned and the responsibility of homeowners or homeowner's
15 associations to maintain proper safety standards. Costly
16 permits are required to conduct repairs or removal, which
17 results in dams and appurtenances remaining in an unsafe state.



1 Therefore, the purpose of this Act is to:

2 (1) Establish a dam and appurtenance improvement loan
3 program for eligible expenses relating to plans,
4 design, construction, and equipment used to improve
5 deficient dams and appurtenances as determined by the
6 department of land and natural resources;

7 (2) Establish a dam and appurtenance improvement revolving
8 fund to deposit proceeds from the dam and appurtenance
9 improvement loan program;

10 (3) Establish a dam and appurtenance improvement grant
11 program to provide private dam or appurtenance owners
12 with funds for plans, design, construction, and
13 equipment used to improve deficient dams and
14 appurtenances as determined by the department of land
15 and natural resources; and

16 (4) Establish a dam and appurtenance improvement tax
17 credit for qualifying expenditures for the improvement
18 of deficient dams and appurtenances.

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



1 "§179D- Dam and appurtenance improvement loan program.

2 (a) There is established a dam and appurtenance improvement
3 loan program, which shall be a loan program as defined under
4 section 39-51. The program shall be administered by the
5 department in a manner consistent with chapter 39, part III.

6 (b) Loans shall be used for plans, design, construction,
7 and equipment that is utilized to improve deficient high hazard
8 and significant hazard dams and appurtenances as determined by
9 the department. Loans shall not exceed \$ for a term
10 not to exceed forty years.

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

14 §179D- Dam and appurtenance improvement grant program.

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

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



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

5 (d) The department may award grants based on criteria that
6 shall be developed by the department. Applicants shall meet the
7 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 of the dam
19 or appurtenance and not seek to remove the dam or
20 appurtenance;

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



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- 1 (A) Be licensed to conduct business in the State of
2 Hawaii; and
- 3 (B) Have bylaws or policies that describe the manner
4 in which business is conducted, prohibit
5 nepotism, and provide for the management of
6 potential conflict of interest situations;
- 7 (5) The applicant shall comply with all applicable federal
8 and state laws prohibiting discrimination against any
9 person on the basis of race, color, national origin,
10 religion, creed, sex, age, sexual orientation,
11 disability, or any other characteristic protected
12 under applicable federal or state law;
- 13 (6) The grant shall not be used for purposes of
14 entertainment or perquisites;
- 15 (7) All activities and improvements undertaken with funds
16 received shall comply with applicable federal, state,
17 and county statutes and ordinances, including
18 applicable building codes and agency rules;
- 19 (8) The applicant shall agree to make available to the
20 department all records the applicant may have relating
21 to the grant and allow state agencies to monitor the



1 applicant's compliance with the purpose of this
2 chapter;

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

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

10 §179D- Dam and appurtenance improvement revolving fund.

11 (a) There is established within the state treasury a revolving
12 fund to be known as the dam and appurtenance improvement
13 revolving fund, which shall be administered by the department
14 and into which shall be deposited all revenues from the dam and
15 appurtenance improvement loan program and appropriations made by
16 the legislature to the fund.

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



1 SECTION 3. Chapter 235, Hawaii Revised Statutes, is
2 amended by adding a new section to be appropriately designated
3 and to read as follows:

4 "§235- Dam and appurtenance improvement tax credit. (a)
5 There shall be allowed to each taxpayer subject to the taxes
6 imposed by this chapter, an income tax credit that shall be
7 deductible from the taxpayer's net income liability, if any,
8 imposed by this chapter for the taxable year in which the credit
9 is properly claimed.

10 (b) The tax credit shall be in an amount equal to per
11 cent of the qualified dam and appurtenance improvement costs
12 incurred during the taxable year for which the credit is
13 claimed.

14 (c) The cost upon which the tax credit is computed shall
15 be determined at the entity level. In the case of a
16 partnership, S corporation, estate, trust, or other pass through
17 entity, distribution and share of the credit shall be determined
18 pursuant to section 235-110.7(a).

19 If a deduction is taken under section 179 (with respect to
20 election to expense depreciable business assets) of the Internal
21 Revenue Code, no tax credit shall be allowed for that portion of



1 the qualified dam and appurtenance improvement costs for which a
2 deduction was taken.

3 The basis of eligible property for depreciation or
4 accelerated cost recovery system purposes for state income taxes
5 shall be reduced by the amount of credit allowable and claimed.
6 No deduction shall be allowed for that portion of otherwise
7 deductible qualified dam and appurtenance improvement costs on
8 which a credit is claimed under this section.

9 (d) If the credit under this section exceeds the
10 taxpayer's net income tax liability for the taxable year, the
11 excess of the credit over liability shall be refunded to the
12 taxpayer; provided that no refunds or payments on account of the
13 credits allowed by this section shall be made for amounts less
14 than \$1.

15 All claims for a tax credit under this section, including
16 amended claims, shall be filed on or before the end of the
17 twelfth month following the close of the taxable year for which
18 the credit is claimed. Failure to comply with the foregoing
19 provision shall constitute a waiver of the right to claim the
20 credit.

21 (e) The director of taxation:



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- 1 (1) Shall prepare any forms that may be necessary to claim
2 a credit under this section;
- 3 (2) May require the taxpayer to furnish information to
4 ascertain the validity of the claim for credit made
5 under this section; and
- 6 (3) May adopt rules pursuant to chapter 91 to effectuate
7 this section.
- 8 (f) The department of land and natural resources shall:
- 9 (1) Maintain records of the total amount of qualified dam
10 and appurtenance improvement costs for each taxpayer
11 claiming a credit;
- 12 (2) Verify the amount of the qualified dam and
13 appurtenance improvement costs claimed;
- 14 (3) Total all qualified dam and appurtenance improvement
15 costs claimed; and
- 16 (4) Certify the total amount of the tax credit for each
17 taxable year.

18 Upon each determination, the department of land and natural
19 resources shall issue a certificate to the taxpayer verifying
20 the qualifying dam and appurtenance improvement costs and the
21 credit amount certified for each taxable year. For a taxable



1 year, the department of land and natural resources may certify a
2 credit for a taxpayer who could have claimed the credit in a
3 previous taxable year, but chose not to because the maximum
4 annual credit amount under subsection (g) was reached in that
5 taxable year.

6 The taxpayer shall file the certificate with the taxpayer's
7 tax return with the department of taxation. Notwithstanding the
8 department of land and natural resources' certification
9 authority under this section, the director of taxation may audit
10 and adjust certification to conform to the facts.

11 Notwithstanding any other law to the contrary, the
12 information required by this subsection shall be available for
13 public inspection and dissemination under chapter 92F.

14 (g) The department of land and natural resources may
15 certify tax credits allowed under this section in a total amount
16 not to exceed \$ _____ in any calendar year.

17 (h) For purposes of this section, "qualified dam and
18 appurtenance improvement costs" means plans, design,
19 construction, and equipment that is used to improve deficient
20 dams and appurtenances necessary to bring such structures up to



1 code, as determined by the department of land and natural
2 resources."

3 SECTION 4. There is appropriated out of the general
4 revenues of the State of Hawaii the sum of \$ or so
5 much thereof as may be necessary for fiscal year 2023-2024 and
6 the same sum or so much thereof as may be necessary for fiscal
7 year 2024-2025 to be deposited into the dam and appurtenance
8 improvement revolving fund.

9 SECTION 5. There is appropriated out of the general
10 revenues of the State of Hawaii the sum of \$ or so
11 much thereof as may be necessary for fiscal year 2023-2024 and
12 the same sum or so much thereof as may be necessary for fiscal
13 year 2024-2025 for the establishment of three full-time
14 equivalent (3.0 FTE) positions in the department of land and
15 natural resources, to include the following:

- 16 (1) One planner position;
- 17 (2) One business loan officer position; and
- 18 (3) One accountant position.

19 The sums appropriated shall be expended by the department
20 of land and natural resources for the purposes of this Act.

21 SECTION 6. New statutory material is underscored.



1 SECTION 7. This Act shall take effect on July 1, 2023.

2

INTRODUCED BY: *Don A.C. [Signature]*



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Report Title:

Dam and Reservoirs; Revolving Fund; Grant Program; Loan Program; Tax Credit; Appropriation

Description:

Establishes the dam and appurtenance loan and grant programs for plans, design, construction, and equipment that is used to improve deficient dams and appurtenances as determined by the Department of Land and Natural Resources and approved by the Board of Land and Natural Resources. Specifies eligibility requirements for dam and appurtenance improvement grants. Establishes the dam and appurtenance improvement tax credit for expenditures for dam and appurtenance improvements that bring dams and appurtenances up to code. Appropriates funds.

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

