

JAN 24 2024

A BILL FOR AN ACT

RELATING TO THE DAM AND APPURTENANCE IMPROVEMENT OR REMOVAL
GRANT PROGRAM.

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

1 SECTION 1. The legislature finds that many private dam
2 owners do not have the resources to conduct the necessary
3 repairs or removal of their dams, resulting in dams remaining
4 unsafe and continuing to pose a risk to the downstream public in
5 the event of a dam failure. The legislature further finds that
6 although the total cost to bring all private dams into
7 compliance will be in the hundreds of millions of dollars, dams
8 in Hawaii provide many public benefits such as potable water,
9 water for agriculture and livestock, fire protection, ground
10 water recharge, flood control, energy generation, sediment
11 control, and recreation. Therefore, it is in the public's best
12 interest for the legislature to provide financial assistance to
13 these private dam owners.

14 Act 134, Session Laws of Hawaii 2023 (Act 134), established
15 and appropriated moneys for a dam and appurtenance improvement
16 or removal grant program to financially assist owners of private

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1 dams and appurtenances to keep them properly maintained.
2 Although Act 134 did appropriate out of the general revenues
3 \$10,000,000 as one time seeding for the grant program, it
4 however did not establish a special fund dedicated to receive
5 grant program funding. A special fund is a critical receptacle
6 for grant funds to be deposited into and remain available for
7 the purposes of Act 134. This is especially important during
8 the department of land and natural resources' (department)
9 inaugural creation of the grant program, where administrative
10 rulemaking to develop procedures and criteria to determine
11 eligibility and priority of awarding grants would be
12 established. The department anticipates that the \$10,000,000
13 seed funding appropriated for the grant program in Act 134 will
14 lapse before the department can complete its rulemaking and
15 establish its grant application criteria and processes.
16 Thereafter, without the creation of the special fund, unused
17 funds for the grant program will lapse and be returned to the
18 general fund at the close of each fiscal year.

19 The purpose of this Act is to establish a special fund to
20 receive funds for the the dam and appurtenance improvement or
21 removal grant program and to reappropriate funds for the dam and
22 appurtenance improvement or removal grant program.

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1 SECTION 2. Section 179D-31, Hawaii Revised Statutes, is
2 amended to read as follows:

3 " ~~[+]~~ §179D-31 ~~[+]~~ Dam and appurtenance improvement or
4 removal grant program ~~[-]~~; establishment of dam and appurtenance
5 improvement or removal grant program special fund. (a) There
6 is established a dam and appurtenance improvement or removal
7 grant program, to be developed and administered by the
8 department for the improvement or removal of deficient dams in
9 the State.

10 (b) The dam and appurtenance improvement or removal grant
11 program shall provide funding to owners of private dams for
12 plans, design, construction, and equipment to improve or remove
13 deficient dams and appurtenances, as determined by the
14 department.

15 (c) Each award shall be approved by the board before
16 disbursement and shall be subject to conditions imposed by the
17 board.

18 (d) The department may award grants based on criteria that
19 shall be developed by the department. Each applicant shall meet
20 the following requirements:

21 (1) The applicant shall be an owner of a high hazard or
22 significant hazard dam or appurtenance that is

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- 1 regulated under this chapter;
- 2 (2) The applicant shall be the owner of a regulated dam or
3 appurtenance that has been determined to have one or
4 more deficiencies; provided that priority shall be
5 given to dams or appurtenances rated to be in poor or
6 unsatisfactory condition;
- 7 (3) The applicant shall indicate on the application that
8 the proposed plans, design, construction, and
9 equipment shall be intended for remediation or removal
10 of the dam or appurtenance;
- 11 (4) If the applicant is an entity other than an
12 individual, the applicant shall:
- 13 (A) Be licensed to conduct business in the State; and
14 (B) Have bylaws or policies that describe the manner
15 in which business is conducted, prohibit
16 nepotism, and provide for the management of
17 potential conflicts of interest;
- 18 (5) The applicant shall agree to comply with all
19 applicable federal and state laws prohibiting
20 discrimination against any person on the basis of
21 race, color, national origin, religion, creed, sex,
22 age, sexual orientation, disability, or any other

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- 1 characteristic protected under applicable federal or
2 state law;
- 3 (6) The applicant shall agree that grant moneys are not to
4 be used for purposes of entertainment or perquisites;
- 5 (7) The applicant shall agree that all activities and
6 improvements undertaken with funds received shall
7 comply with applicable federal, state, and county
8 laws, including statutes, ordinances, applicable
9 building codes, and rules;
- 10 (8) The applicant shall agree to make available to the
11 department all records that the applicant may have
12 relating to the grant and allow state agencies to
13 monitor the applicant's compliance with the purpose of
14 this chapter;
- 15 (9) The applicant shall establish, to the satisfaction of
16 the department, that sufficient funds are available
17 for the completion of plans, design, and construction,
18 or equipment needed for the purpose for which the
19 grant is awarded; provided that the grant amount shall
20 be included among the calculation of sufficient funds;
21 and
- 22 (10) The applicant shall comply with other requirements or

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1 conditions as the department or board may prescribe.

2 (e) Notwithstanding any provision to the contrary, there
3 is established in the department a special fund to be designated
4 the dam and appurtenance improvement or removal grant program
5 special fund. The fund shall be administered by the department.
6 The following shall be deposited into the dam and appurtenance
7 improvement or removal grant program special 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 thereunder; and
13 (4) Moneys derived from interest, dividends, or other
14 income from other sources.

15 (f) The department may expend moneys from the dam and
16 appurtenance improvement or removal grant program special fund
17 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 thereunder, including but not limited to funding permanent or
21 temporary positions."

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1 SECTION 3. There is appropriated out of the general
2 revenues of the State of Hawaii the sum of \$10,000,000 or so
3 much thereof as may be necessary for fiscal year 2024–2025 to be
4 deposited into the dam and appurtenance improvement or removal
5 grant program special fund as seed funding for the purposes of
6 the dam and appurtenance improvement or removal grant program
7 established by section 179D-31, Hawaii Revised Statutes.

8 SECTION 4. There is appropriated out of the dam and
9 appurtenance improvement or removal grant program special fund
10 the sum of \$10,000,000 or so much thereof as may be necessary
11 for fiscal year 2024-2025 for the dam and appurtenance
12 improvement or removal grant program established by section
13 179D-31, Hawaii Revised Statutes, as seed funding.

14 The sum appropriated shall be expended by the department of
15 land and natural resources for the purposes of this Act.

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

18 SECTION 6. This Act, upon its approval, shall take effect
19 on July 1, 2024.

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INTRODUCED BY: 

22

BY REQUEST

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Report Title:

Dam and Appurtenances; Special Fund; Appropriation

Description:

Establishes the Dam and Appurtenance Improvement or Removal Grant Program Special Fund to receive moneys for the Dam and Appurtenance Improvement or Removal Grant Program. Appropriates funds for the Dam and Appurtenance Improvement or Removal Grant Program.

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

JUSTIFICATION SHEET

DEPARTMENT: Land and Natural Resources

TITLE: A BILL FOR AN ACT RELATING TO THE DAM AND APPURTENANCE IMPROVEMENT OR REMOVAL GRANT PROGRAM.

PURPOSE: To establish the Dam and Appurtenance Improvement or Removal Grant Program Special Fund to receive funds for the Dam and Appurtenance Improvement or Removal Grant Program; and to appropriate funds for the Dam and Appurtenance Improvement or Removal Grant Program.

MEANS: Amend section 179D-31, Hawaii Revised Statutes (HRS).

JUSTIFICATION: Act 134, Session Laws of Hawaii 2023 (Act), established and appropriated money for a Dam and Appurtenance Improvement or Removal Grant Program to financially assist owners of private dams and appurtenances to keep them properly maintained. The Act however did not establish a special fund to receive grant program appropriations and funds.

The Department desires a transparent and dedicated receptacle for grant program funds in order to carry out the purposes of the Act. A Dam and Appurtenance Improvement or Removal Grant Program special fund is a critical receptacle for grant funds to remain available for the purposes of the Act, especially during the Department's inaugural creation of the program and associated staffing and rulemaking.

The Department anticipates that the \$10,000,000 in general funds appropriated for the grant program by the Act will likely lapse before the Department can establish its grant application rules and processes. Similarly, unused funds for the grant program will lapse and be returned to the

general fund at the close of each fiscal year thereafter.

The amendment to section 179D-31, HRS, resolves this issue by creating a special fund dedicated to the Dam and Appurtenance Improvement or Removal Grant Program.

Impact on the public: Funds appropriated to the proposed special fund would provide the funding necessary to improve or remove deficient dams and appurtenances, thus mitigating or eliminating significant risks to the downstream community from flooding. The Department notes that dams also provide many beneficial uses, such as potable water, water for agriculture and livestock, fire protection, ground water recharge, flood control, energy generation, sediment control, and recreation.

Impact on the department and other agencies: This bill would provide the Department with more flexibility and options in disbursing grant funds over a timeline that is unrestricted by traditional fiscal year policies and procedures.

GENERAL FUND: \$10,000,000 deposited into the Dam and Appurtenance Improvement or Removal Grant Program Special Fund.

OTHER FUNDS: \$10,000,000 expended from the Dam and Appurtenance Improvement or Removal Grant Program Special Fund.

PPBS PROGRAM DESIGNATION: LNR 810.

OTHER AFFECTED AGENCIES: None.

EFFECTIVE DATE: July 1, 2024.