

JAN 24 2024

A BILL FOR AN ACT

RELATING TO DAM AND RESERVOIR SAFETY.

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

PART I

SECTION 1. Chapter 179D, Hawaii Revised Statutes, is amended by adding two new sections to part II to be appropriately designated and to read as follows:

"§179D- Inspections; risk assessment; risk mitigation; insurance coverage; burden of proof; high hazard. (a) In conducting investigations pursuant to this part, the department shall:

(1) Consider whether an owner has or is in the process of obtaining insurance coverage that:

(A) Subjects the dam, reservoir, or appurtenance to reclassification; and

(B) Mitigates the risks associated with the dam, reservoir, or spillway.

(b) The department shall have the burden of proof to establish that a dam, reservoir, or appurtenance is a high hazard dam, reservoir, or appurtenance.



1 (c) Any finding that a dam, reservoir, or appurtenance is
2 a high hazard shall be supported by:

3 (1) An engineering report from a licensed engineer of the
4 department that finds that the failure of the dam,
5 reservoir, or appurtenance will result in probable
6 loss of human life; and

7 (2) An engineering study or report from a certified
8 hydraulic engineer that considers:

9 (A) Distances, including the distance to potentially
10 threatened residences and properties;

11 (B) Natural water courses;

12 (C) Percolation rates of the soil; and

13 (D) A realistic assessment that the failure of the
14 dam, reservoir, or appurtenance will result in
15 probable loss of human life.

16 (d) The department shall assume any dam, reservoir, or
17 appurtenance to be safe absent the documents required under
18 subsection (c).

19 (e) The department shall relax any restrictions and
20 stringent standards on a dam, reservoir, or appurtenance;



1 provided that the owner verifies valid insurance coverage that
2 meets the conditions of subsection (a)."

3 PART II

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

6 **"§179D-31 Dam and appurtenance improvement or removal**

7 **grant program.** (a) There is established a dam and appurtenance
8 improvement or removal grant program, to be developed and
9 administered by the department for the improvement or removal of
10 deficient dams in the State.

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

16 (c) Each award shall be approved by the board before
17 disbursement and shall be subject to conditions imposed by the
18 board. The board shall consider any existing insurance policy
19 in its assessment of risks associated with a dam.

20 (d) The department [~~may~~] shall award grants based on
21 criteria that shall be developed by the department. The



1 criteria developed by the department under this section shall be
2 made publicly available.

3 (e) Each applicant shall meet the following requirements:

4 (1) The applicant shall be an owner of a high hazard or
5 significant hazard dam or appurtenance that is
6 regulated under this chapter;

7 (2) The applicant shall be the owner of a regulated dam or
8 appurtenance that has been determined to have one or
9 more deficiencies; provided that priority shall be
10 given to dams or appurtenances rated to be in poor or
11 unsatisfactory condition;

12 (3) The applicant shall indicate on the application that
13 the proposed plans, design, construction, and
14 equipment shall be intended for remediation or removal
15 of the dam or appurtenance;

16 (4) If the applicant is an entity other than an
17 individual, the applicant shall:

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

19 (B) Have bylaws or policies that describe the manner
20 in which business is conducted, prohibit



1 nepotism, and provide for the management of
2 potential conflicts of interest;

3 (5) The applicant shall agree to comply with all
4 applicable federal and state laws prohibiting
5 discrimination against any person on the basis of
6 race, color, national origin, religion, creed, sex,
7 age, sexual orientation, disability, or any other
8 characteristic protected under applicable federal or
9 state law;

10 (6) The applicant shall agree that grant moneys are not to
11 be used for purposes of entertainment or perquisites;

12 (7) The applicant shall agree that all activities and
13 improvements undertaken with funds received shall
14 comply with applicable federal, state, and county
15 laws, including statutes, ordinances, applicable
16 building codes, and rules;

17 (8) The applicant shall agree to make available to the
18 department all records that the applicant may have
19 relating to the grant and allow state agencies to
20 monitor the applicant's compliance with the purpose of
21 this chapter;



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

8 (10) The applicant shall comply with other requirements or
9 conditions as the department or board may
10 prescribe[-]; provided that:

11 (A) The board shall prescribe other requirements or
12 conditions in a manner that is consistent with
13 the principles of fairness and equal treatment;

14 (B) The additional requirements and conditions
15 prescribed by the department or board shall be:

16 (i) Based on reasonable and justifiable grounds
17 and relevant to the purpose for which the
18 grant is awarded;

19 (ii) Communicated to the applicant in a clear,
20 transparent, and reasonable manner; and



S.B. NO. 3258

Report Title:

DLNR; BLNR; Dam and Reservoir Safety; Inspections; Risk Assessment; Risk Mitigation; Dam Insurance; High Hazard; Burden of Proof; Dam and Appurtenance Improvement or Removal Grant Program; Oversight

Description:

Requires the Department of Land and Natural Resources (DLNR) to: (1) consider certain insurance coverage in conducting safety inspections relating to dam and reservoir safety; (2) to relax any restrictions and stringent standards on a dam or appurtenance upon verification of certain insurance coverage; and (3) assume that a dam, reservoir, or appurtenance is safe absent certain documents. Places the burden of proof on DLNR to find that a dam, reservoir, or appurtenance is high risk. Establishes additional requirements for DLNR and Board of Land and Natural Resources regarding 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.

