

ACT 134

S.B. NO. 1064

A Bill for an Act Relating to Dam and Appurtenance Safety.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. In accordance with section 9 of article VII of the Hawaii State Constitution and sections 37-91 and 37-93, Hawaii Revised Statutes, the

legislature has determined that the appropriations contained in H.B. No. 300, H.D. 1, S.D. 1, C.D. 1,¹ and this Act will cause the state general fund expenditure ceiling for fiscal year 2023-2024 to be exceeded by \$1,073,987,367 or 11.0 per cent. This current declaration takes into account general fund appropriations authorized for fiscal year 2023-2024 in H.B. No. 300, H.D. 1, S.D. 1, C.D. 1,¹ and this Act only. The reasons for exceeding the general fund expenditure ceiling are that:

- (1) The appropriation made in this Act is necessary to serve the public interest; and
- (2) The appropriation made in this Act meets the needs addressed by this Act.

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

However, many dams and appurtenances located on subdivisions are not properly maintained. During periods of extreme weather, the surrounding neighborhoods face significant risks from flooding. Despite potential hazards posed by the dams and appurtenances, the department of land and natural resources considers these dams and appurtenances to be privately owned and the responsibility of homeowners or homeowners' associations to maintain proper safety standards. Costly permits are required to conduct repairs or removal, which results in dams and appurtenances remaining in an unsafe state.

Therefore, the purpose of this Act is to:

- (1) Establish and appropriate moneys for a dam and appurtenance improvement or removal grant program to provide the owners of private dams and appurtenances with funds for plans, design, construction, and equipment that are used to improve or remove deficient dams and appurtenances, as determined by the department of land and natural resources; and
- (2) Appropriate moneys for certain operating expenses and the establishment of positions in the department of land and natural resources.

SECTION 3. Chapter 179D, Hawaii Revised Statutes, is amended by adding a new section to part II to be appropriately designated and to read as follows:

“§179D- Dam and appurtenance improvement or removal grant program. (a) There is established a dam and appurtenance improvement or removal grant program, to be developed and administered by the department for the improvement or removal of deficient dams in the State.

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

(c) Each award shall be approved by the board before 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. Each applicant shall meet the following requirements:

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

- (2) The applicant shall be the owner of a regulated dam or appurtenance that has been determined to have one or more deficiencies; provided that priority shall be given to dams or appurtenances 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 or removal of the dam or appurtenance;
- (4) If the applicant is an entity other than an individual, the applicant shall:
 - (A) Be licensed to conduct business in the State; and
 - (B) Have bylaws or policies that describe the manner in which business is conducted, prohibit nepotism, and provide for the management of potential conflicts of interest;
- (5) The applicant shall agree to 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 applicant shall agree that grant moneys are not to be used for purposes of entertainment or perquisites;
- (7) The applicant shall agree that all activities and improvements undertaken with funds received shall comply with applicable federal, state, and county laws, including statutes, ordinances, applicable building codes, and rules;
- (8) The applicant shall agree to make available to the department all records that 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; provided that the grant amount shall be included among the calculation of sufficient funds; and
- (10) The applicant shall comply with other requirements or conditions as the department or board may prescribe.”

SECTION 4. There is appropriated out of the general revenues of the State of Hawaii the sum of \$10,000,000 or so much thereof as may be necessary for fiscal year 2023-2024 as one-time seed funding for the purposes of the dam and appurtenance improvement or removal grant program.

SECTION 5. There is appropriated out of the general revenues of the State of Hawaii the sum of \$220,000 or so much thereof as may be necessary for fiscal year 2023-2024 and the same sum or so much thereof as may be necessary for fiscal year 2024-2025 to be expended under program ID Department of Land and Natural Resources – Prevention of Natural Disasters (LNR810), for operating expenses and the establishment of the following two full-time equivalent (2.0 FTE) permanent positions in the department of land and natural resources:

- (1) One planner position; and
- (2) One accountant position.

The sums appropriated in section 4 and this section of this Act shall be expended by the department of land and natural resources for the purposes of this Act.

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SECTION 6. New statutory material is underscored.²

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

(Approved June 29, 2023.)

Notes

1. Act 164.
2. Edited pursuant to HRS §23G-16.5.