

ACT 232

S.B. NO. 3153

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:

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

Act 134, Session Laws of Hawaii 2023 (Act 134), established and appropriated moneys for a dam and appurtenance improvement or removal grant program to financially assist owners of private dams and appurtenances to keep them properly maintained. Although Act 134 did appropriate \$10,000,000 out of general revenues as one-time seeding for the grant program, it did not establish a special fund dedicated to receive grant program funding. A special fund is a critical receptacle for grant funds to be deposited into and remain available for the purposes of Act 134. This is especially important during the department of land and natural resources' (department) inaugural creation of the grant program, where administrative rulemaking to develop procedures and criteria to determine eligibility and priority of awarding grants would be established. The department anticipates that the \$10,000,000 in seed funding appropriated for the grant program in Act 134 will lapse before the department can complete its rulemaking and establish its grant application criteria and processes. Thereafter, without the creation of the special fund, unused funds for the grant program will lapse and be returned to the general fund at the close of each fiscal year.

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

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

“~~§179D-31~~ Dam and appurtenance improvement or removal grant program~~]; special fund; established.~~ (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.

(e) Notwithstanding any provision to the contrary, there is established in the department a special fund to be designated as the dam and appurtenance

improvement or removal grant program special fund. The fund shall be administered by the department. The following shall be deposited into the dam and appurtenance improvement or removal grant program special fund:

- (1) Appropriations by the legislature;
- (2) Moneys derived from public or private sources to benefit dam and appurtenance improvement or removal;
- (3) Any other moneys collected pursuant to this section or any rules adopted pursuant to this section; and
- (4) Moneys derived from interest, dividends, or other income from other sources.

(f) The department may expend moneys from the dam and appurtenance improvement or removal grant program special fund in accordance with this section and other purposes for the administration of the dam and appurtenance improvement or removal grant program under this section or any rule adopted pursuant to this section, including but not limited to funding for permanent or temporary positions.”

SECTION 3. Act 134, Session Laws of Hawaii 2023, is amended by amending section 4 to read as follows:

“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.~~] Repealed.”

SECTION 4. There is appropriated out of the general revenues of the State of Hawaii the sum of ~~\$10,000,000~~ \$5,000,000¹ or so much thereof as may be necessary for fiscal year 2024-2025 to be deposited into the dam and appurtenance improvement or removal grant program special fund as seed funding for the purposes of the dam and appurtenance improvement or removal grant program established by section 179D-31, Hawaii Revised Statutes.

SECTION 5. There is appropriated out of the dam and appurtenance improvement or removal grant program special fund the sum of ~~\$10,000,000~~ \$5,000,000¹ or so much thereof as may be necessary for fiscal year 2024-2025 for the dam and appurtenance improvement or removal grant program established by section 179D-31, Hawaii Revised Statutes.

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

SECTION 6. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 7. This Act shall take effect on July 1, 2024.

(Approved July 9, 2024.)

Note

1. Item vetoed, replaced, and initialed “JG”.