
A BILL FOR AN ACT

RELATING TO DAM SAFETY.

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

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

4 **"PART . LIMITATIONS ON LIABILITY**

5 **§179D-A Liability of stockholders, directors, and**
6 **officers.** Stockholders, directors, and officers of any
7 corporation that owns, operates, or controls a dam or reservoir
8 in this state shall have the same measure of immunity from
9 liability for corporate acts or omissions as stockholders,
10 directors, and officers under chapter 414 or 414D, as
11 appropriate.

12 **§179D-B Liability for personal injury or property damage.**

13 (a) Notwithstanding any law to the contrary, no entity or
14 person that owns, controls, or operates a dam or reservoir shall
15 be liable for any personal injury or property damage:

16 (1) Resulting from water escaping from the dam or
17 reservoir, including the transmission system or



1 irrigation system associated with the dam or
2 reservoir, by overflow; or
3 (2) Resulting from a failure or partial failure of the
4 structure or structures forming that dam or reservoir,
5 including the transmission system or irrigation system
6 associated with the dam or reservoir; provided that
7 the failure or partial failure was not proximately
8 caused by the negligence of the entity or person.

9 No entity or person shall be subject to punitive or exemplary
10 damages for negligence, as provided in this section, in excess
11 of that provided by law.

12 (b) No entity or person that owns, controls, or operates a
13 dam or reservoir shall be liable for any personal injury or
14 property damage that results from allowing the inflow to the dam
15 or reservoir, including the transmission system or irrigation
16 system associated with the dam or reservoir, to pass through it
17 and into a natural stream below the reservoir.

18 (c) In the event of any conflict between this part and any
19 other law or judicial interpretation, this part shall control.

20 **§179D-C Insurance.** (a) No stockholder, officer, or
21 member of a board of directors of an owner of a dam or reservoir
22 shall be liable for any personal injury or property damages:



- 1 (1) Resulting from water escaping from the dam or
2 reservoir, including the transmission system or
3 irrigation system associated with the dam or
4 reservoir; or
- 5 (2) Resulting from a failure or partial failure of the
6 structure or structures forming the dam or reservoir,
7 including the transmission system or irrigation system
8 associated with the dam or reservoir;

9 for which the owner has been found liable by a court of
10 competent jurisdiction if the owner is insured by a valid
11 liability insurance policy in effect at the time the damage
12 occurs or has an adequate substitute under subsection (c) at the
13 time the damage occurs.

14 (b) An insurance policy meeting the qualifications of
15 subsection (a) shall insure against damages and provide coverage
16 in an amount of not less than \$50,000 per claim and an aggregate
17 amount of not less than \$500,000 for all claims that arise out
18 of any one incident. The policy may provide that it does not
19 apply to any act or omission of a stockholder, officer, or
20 member of a board of directors of an owner if the act or
21 omission is dishonest, fraudulent, malicious, or criminal. The
22 policy may also contain other reasonable provisions with respect



1 to policy periods, territory, claims, conditions, and other
2 matters common to those policies of insurance.

3 (c) An adequate substitute for insurance pursuant to
4 subsection (a) is limited to any one or more of the following:

5 (1) A bond in an amount equal to the coverage limitations
6 set forth in subsection (b) and duly issued by a
7 qualified corporate surety approved by the insurance
8 commissioner; provided that the bond is conditioned
9 upon the payment by the entity or person that owns,
10 controls, or operates a dam or reservoir of any valid
11 final judgment for damages imposed pursuant to this
12 part;

13 (2) An escrow of acceptable securities or an annual
14 irrevocable letter or annual letters of credit issued
15 by any national or state bank and deposited with an
16 escrow agent pursuant to an escrow contract or
17 agreement requiring the escrow agent to pay from the
18 escrow account amounts necessary to discharge a final
19 judgment for damages within the coverage limitations
20 set forth in subsection (b); provided that the escrow
21 contract or agreement cannot be revoked or amended
22 until after any claims for damages against the entity



1 or person have been discharged or until applicable
2 statutes of limitations have expired; or

3 (3) A combination of insurance and any of the substitutes
4 described in this section, so long as the aggregate
5 value satisfies the coverage limitations set forth in
6 subsection (b).

7 (d) The provisions of this section shall not be deemed to
8 impose any liability upon a member of the board of directors, an
9 officer, or a stockholder of the owner of a dam or reservoir
10 greater than that provided in section 179D-A.

11 **§179D-D Exempt acts or omissions.** The limitations on
12 liability set forth in this part shall not apply to:

13 (1) Criminal, fraudulent, or malicious acts or omissions;
14 or

15 (2) Ultra vires acts or omissions,
16 by an owner or a member of the board of directors, officer, or
17 stockholder of an owner."

18 SECTION 2. This Act does not affect rights and duties that
19 matured, penalties that were incurred, and proceedings that were
20 begun, before its effective date.

21 SECTION 3. In codifying the new sections added by section
22 1 of this Act, the revisor of statutes shall substitute



- 1 appropriate section numbers for the letters used in designating
- 2 the new sections in this Act.
- 3 SECTION 4. This Act shall take effect upon its approval.



Report Title:

Dams and Reservoirs; Liability

Description:

Establishes limitations on liability for damages for owners of dams and reservoirs. (HB2823 HD1)

