
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 is an owner or operator of 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 is an owner or operator of 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;

7 provided that the escaped water or the failure or partial
8 failure of the structure was not proximately caused by the
9 negligence of the owner or operator. No entity or person shall
10 be subject to punitive or exemplary damages for negligence, as
11 provided in this section, in excess of that provided by law.

12 (b) No entity or person that is an owner or operator of 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; provided that the
18 injury or damage was not proximately caused by the negligence of
19 the owner or operator.

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



1 **§179D-C Insurance.** (a) No stockholder, officer, or
2 member of a board of directors of an owner or operator of a dam
3 or reservoir shall be liable for any personal injury or property
4 damages:

5 (1) Resulting from water escaping from the dam or
6 reservoir, including the transmission system or
7 irrigation system associated with the dam or
8 reservoir; or

9 (2) Resulting from a failure or partial failure of the
10 structure or structures forming the dam or reservoir,
11 including the transmission system or irrigation system
12 associated with the dam or reservoir,

13 for which the owner or operator has been found liable by a court
14 of competent jurisdiction if the owner or operator is insured by
15 a valid liability insurance policy meeting the requirements set
16 forth in subsection (b) and in effect at the time the damage
17 occurs or has an adequate substitute under subsection (c) at the
18 time the damage occurs.

19 (b) An insurance policy meeting the qualifications of
20 subsection (a) shall insure against damages and provide coverage
21 in an amount of not less than \$ per claim and an aggregate
22 amount of not less than \$ for all claims that arise out of



1 any one incident. The policy may provide that it does not apply
2 to any act or omission of a stockholder, officer, or member of a
3 board of directors of an owner or operator if the act or
4 omission is dishonest, fraudulent, malicious, or criminal. The
5 policy may also contain other reasonable provisions with respect
6 to policy periods, territory, claims, conditions, and other
7 matters common to those policies of insurance.

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

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

18 (2) An escrow of acceptable securities or an annual
19 irrevocable letter or annual letters of credit issued
20 by any national or state bank and deposited with an
21 escrow agent pursuant to an escrow contract or
22 agreement requiring the escrow agent to pay from the

1 escrow account amounts necessary to discharge a final
2 judgment for damages within the coverage limitations
3 set forth in subsection (b); provided that the escrow
4 contract or agreement cannot be revoked or amended
5 until after any claims for damages against the entity
6 or person have been discharged or until applicable
7 statutes of limitations have expired; or

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

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

16 **§179D-D Exempt acts or omissions.** The limitations on
17 liability set forth in this part shall not apply to:

18 (1) Criminal, fraudulent, or malicious acts or omissions;
19 gross negligence; intentional, willful, or wanton
20 acts; or conduct in reckless disregard of public
21 safety; or

22 (2) Ultra vires acts or omissions,



1 by an owner or operator, or a member of the board of directors,
2 officer, or stockholder of an owner or operator."

3 SECTION 2. This Act does not affect rights and duties that
4 matured, penalties that were incurred, and proceedings that were
5 begun, before its effective date.

6 SECTION 3. In codifying the new sections added by section
7 1 of this Act, the revisor of statutes shall substitute
8 appropriate section numbers for the letters used in designating
9 the new sections in this Act.

10 SECTION 4. This Act shall take effect on January 1, 2112.



Report Title:

Dams and Reservoirs; Liability

Description:

Establishes limitations on liability for damages for owners and operators of dams and reservoirs. (HB2823 HD2)

