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# A BILL FOR AN ACT

RELATING TO DAM SAFETY.

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

1 SECTION 1. Section 179D-1, Hawaii Revised Statutes, is  
2 amended to read as follows:

3 "[+]§179D-1[+] **Short title.** This chapter shall be known  
4 and may be cited as the "Hawaii Dam Safety Act of [~~1987~~] 2007"."

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

7 "[+]§179D-2[+] **Declaration of purpose.** The purpose of  
8 this chapter is to provide for the inspection and regulation of  
9 construction, operation, and removal of [~~certain~~] all dams and  
10 reservoirs in order to protect the health, safety, and welfare  
11 of the citizens of the State by reducing the risk of failure of  
12 such dams. The legislature finds and declares that the  
13 inspection and regulation of construction, operation, and  
14 removal of [~~certain~~] all dams and reservoirs are properly a  
15 matter of regulation under the police powers of the State."

16 SECTION 3. Section 179D-3, Hawaii Revised Statutes, is  
17 amended to read as follows:



1           "~~f~~§179D-3~~+~~ Definitions. The following terms, whenever  
2 used and referred to in this chapter, shall have the following  
3 respective meanings, unless a different meaning clearly appears  
4 in the context:

5           "Application approval" means authorization in writing  
6 issued by the board to an owner who has applied to the board for  
7 permission to construct, enlarge, repair, alter, remove,  
8 maintain, or operate a dam and which specified the condition or  
9 limitations under which work is to be performed by the owner or  
10 under which approval is granted.

11           "Appurtenant works" means any structure, such as spillways,  
12 either in the dam or separate therefrom, the reservoir and its  
13 rim, low level outlet works, and water conduits, such as  
14 tunnels, pipelines, or penstocks, either through the dam or its  
15 abutment.

16           "Board" means the board of land and natural resources.

17           "Certificate of approval to impound" means authorization in  
18 writing issued by the board to an owner who has completed  
19 construction, enlargement, repair, or alternation of a dam and  
20 which specifies the conditions or limitations under which the  
21 dam and reservoir are to be maintained and operated.



1 "Dam" means any artificial barrier, including appurtenant  
2 works, which impounds or diverts water, and which:

3 (1) Is twenty-five feet or more in height from the natural  
4 bed of the stream or watercourse measured at the  
5 downstream toe of the barrier, or from the lowest  
6 elevation of the outside limit of the barrier if it is  
7 not across a stream channel or watercourse to a  
8 maximum water storage elevation; or

9 (2) Has an impounding capacity at maximum water storage  
10 elevation of fifty acre-feet or more. This chapter  
11 does not apply to any artificial barrier which is less  
12 than six feet in height regardless of storage capacity  
13 or which has a storage capacity at maximum water  
14 storage elevation less than fifteen acre-feet  
15 regardless of height[-], unless such a barrier, due to  
16 its location or other physical characteristics, is a  
17 high hazard or moderate hazard potential dam.

18 "Dam rehabilitation loan program" means a low interest  
19 revolving dam rehabilitation loan program, created through this  
20 chapter.

21 "Department" means the department of land and natural  
22 resources.



1       "Emergency" includes, but is not limited to, breaches and  
2 all conditions leading to or causing a breach, overtopping, or  
3 any other condition in a dam and its appurtenant structures that  
4 may be construed as unsafe or threatening to life and property.

5       "Enlargement" means any change in or addition to an  
6 existing dam or reservoir that raises or may raise the water  
7 storage elevation of the water impounded by the dam.

8       "Owner" means any person who [~~owns, controls, operates,~~  
9 ~~maintains, manages, or proposes to construct a dam or~~  
10 ~~reservoir.~~] has a right, title, or interest in or to the dam or  
11 to the property upon which the dam or appurtenant works is  
12 located or proposed to be located.

13       "Person" [~~means any individual, partnership, corporation,~~  
14 ~~company, association, organization, the State and its~~  
15 ~~departments and agencies, and the political subdivisions of the~~  
16 ~~State.~~] included any natural person, partnership, firm,  
17 association, organization, corporation, county, county  
18 authority, trust, receiver or trustee, limited liability  
19 company, limited liability partnership, or company, or any state  
20 department, agency, or political subdivision, or any other  
21 commercial or legal entity. Whenever used in a section  
22 prescribing and imposing a penalty or sanction, the term



1 "person" includes the members of an association or organization,  
2 and the officers or a corporation, company, county, or county  
3 authority.

4 "Probable" means more than likely than not to occur;  
5 reasonably expected; realistic.

6 "Removal" means complete elimination of the dam embankment  
7 or structure to restore the approximate original topographic  
8 contours of the valley.

9 "Reservoir" means any basin which contains or will contain  
10 water impounded by a dam."

11 SECTION 4. Section 179D-4, Hawaii Revised Statutes, is  
12 amended to read as follows:

13 **"[+]§179D-4[+] Liability for damages.** (a) Nothing  
14 contained in this chapter shall be construed to constitute a  
15 waiver of any immunity of the State and no action or failure to  
16 act under this chapter shall be construed to create any  
17 liability in the State, board, department, or its officers or  
18 employees, for the recovery of damages caused by such action or  
19 failure to act.

20 (b) No action shall be brought against the State, the  
21 board or the department, or any employees of the State, the  
22 board or the department for damages sustained through the



1 partial or total failure of any dam or reservoir dealt with in  
2 this chapter or its maintenance or operation by reason of any  
3 supervision or any action taken or not taken pursuant to this  
4 chapter.

5       ~~[(b)]~~ (c) Nothing in this chapter and no order, action, or  
6 advice of the State, board, department, or any representative  
7 thereof, shall be construed to relieve an owner or operator of a  
8 dam or reservoir of the legal duties, obligations, or  
9 liabilities incident to the ownership or operation of a dam or  
10 reservoir; provided that an owner or operator of a dam or  
11 reservoir shall not be liable for damages as a result of only  
12 natural causes such as earthquakes~~[-]~~ of an average recurrence  
13 interval of one thousand years, hurricanes or extraordinary  
14 rains of an average recurrence interval in excess of two hundred  
15 fifty years."

16       SECTION 5. Section 179D-5, Hawaii Revised Statutes, is  
17 amended to read as follows:

18       "~~{}~~§179D-5~~{}~~ **Unlawful conduct.** (a) It shall be  
19 unlawful for any person to construct, enlarge, repair, alter,  
20 operate, or remove a dam or other artificial barrier covered by  
21 this chapter, except in such a manner as to conform to and



1 comply with [~~the provisions of~~] this chapter and with all rules,  
2 orders, and permits established under this chapter.

3 ~~[(b) The rules and orders adopted under this chapter shall  
4 not apply to the design and construction of dams, reservoirs,  
5 and appurtenant works existing on June 6, 1987, but the rules  
6 and orders shall establish standards consistent with such design  
7 and construction for the operation, maintenance, and repair  
8 thereof, and these rules and orders then shall be applicable to  
9 those dams, reservoirs and appurtenant works which were existing  
10 on June 6, 1987.]~~

11 (b) Any person who engages in any action made unlawful by  
12 this chapter shall be guilty of a misdemeanor. Each day of  
13 continued violation after conviction shall constitute a separate  
14 offense.

15 (c) The owner of a dam or reservoir that was constructed  
16 before February 1, 2007, under rules adopted by the board, shall  
17 file an application with the board for the approval of the dam  
18 or reservoir."

19 SECTION 6. Section 179D-6, Hawaii Revised Statutes, is  
20 amended to read as follows:

21 **"[~~§~~179D-6~~]~~ General powers and duties of the board of**  
22 **land and natural resources. (a) All dams and reservoirs in the**



1 State shall be under the jurisdiction of the board of land and  
2 natural resources. The board [~~of land and natural resources~~]  
3 shall administer the dam safety program established by this  
4 chapter. In carrying out this chapter, the board shall  
5 cooperate, advise, consult, contract, and enter into cooperative  
6 agreements with the United States government or any of its  
7 agencies, other state agencies, and the county governments or  
8 any of their agencies. In the performance of its duties the  
9 board shall:

- 10 (1) Establish by rules adopted under chapter 91, such  
11 policies, requirements, or standards governing the  
12 design, construction, operation, maintenance,  
13 enlargement, alteration, repair, removal, and  
14 inspection of dams, reservoirs, and appurtenant works  
15 for the protection of life and property from  
16 structural failure of dams and reservoirs;
- 17 (2) Conduct investigations and the collection of data,  
18 including technological advances made in safety  
19 practices elsewhere, as may be needed for the proper  
20 review and study of the various features of the  
21 design, construction, repair, removal, and enlargement  
22 of dams, reservoirs, and appurtenant works. The board





1           may require submittal of reports of investigations  
2           from all owners;

3       (3) Conduct investigations and require reports from all  
4           owners to be made from time to time, such as watershed  
5           investigations and studies, as may be necessary to  
6           keep abreast of developments affecting stream runoff  
7           and as required to facilitate its decisions;

8       (4) Be authorized to enter upon such private property of  
9           the dam or reservoir as may be necessary in making, at  
10          the owner's expense, any investigation or inspection  
11          required or authorized by this chapter. The entry  
12          shall not constitute a cause of action in favor of the  
13          owner of the land, except for damages resulting from  
14          wilful acts or negligence by the board or its agents;

15       (5) Require the owners to apply for, and obtain from the  
16          board written approval of plans and specifications on  
17          the construction of any new dam or reservoir or the  
18          enlargement of any dam or reservoir prior to  
19          commencement of any work;

20       (6) Require the owners to file an application and secure  
21          the written approval of the board before commencing  
22          the repair, alteration or removal of a dam or



1 reservoir, including the alteration or removal of a  
2 dam so that it no longer constitutes a dam or  
3 reservoir as defined in this chapter. Repairs shall  
4 not be deemed to apply to routine maintenance not  
5 affecting the safety of the structure;

6 ~~(7) Require filing fees by rules to accompany each~~  
7 ~~application as required under the provisions of this~~  
8 ~~chapter.]~~

9 (7) Require owners to secure the written approval of the  
10 board to impound water;

11 (8) Require fees to cover the board's costs in carrying  
12 out the supervision of dam safety;

13 (9) Examine and approve or disapprove applications for  
14 approval of construction, enlargement, repair,  
15 alteration, or removal of a dam or reservoir, and  
16 applications for certificates of approval to impound.

17 (10) Order the suspension or revocation, or both, of any  
18 application approval or certificate of approval to  
19 impound for any act for failure to comply with this  
20 chapter or with any rules, regulations, or orders  
21 adopted pursuant to this chapter, or with any of the



- 1           conditions contained in or attached to the application  
2           approval or certificate of approval to impound;
- 3       (11) Issue orders requiring the adoption by an owner of  
4           remedial measures necessary for the safety of life or  
5           public or private property or for carrying out this  
6           chapter or rules and regulations issued under this  
7           chapter;
- 8       (12) Order the immediate cessation of any act that is  
9           started or continued without an application approval  
10          or certificate of approval to impound as required by  
11          this chapter;
- 12       (13) Enter private property and immediately take actions  
13          necessary to provide protection to life or property at  
14          the owner's expense, including removal of the dam.  
15          The entry shall not constitute a cause of action in  
16          favor of the owner of the land, except for damages  
17          resulting from wilful acts or negligence by the board  
18          or its agents.
- 19       (14) Recover from the owner, in the name of the State, the  
20          expenses incurred in taking any action required by the  
21          owner of the dam in the same manner debts are  
22          recoverable by law;



- 1       (15) Assess civil and criminal penalties for violation of  
2       this chapter or any rule, regulation, standard adopted  
3       or order issued by the board pursuant to this chapter;
- 4       (16) Be authorized to place liens on the owner's property,  
5       to be collected as delinquent taxes against the lands  
6       and property are collected, if the owner neglects to  
7       pay any costs, expenses or penalties chargeable to the  
8       owner under any rule, regulation, order, condition, or  
9       other provision of this chapter;
- 10       (17) With the assistance of the attorney general, institute  
11       and prosecute all court actions that may be necessary  
12       to obtain the enforcement of any order issued by the  
13       board in carrying out this chapter; and
- 14       (18) Take such other actions as may be necessary to carry  
15       out this part."

16       SECTION 7. Section 179D-7, Hawaii Revised Statutes, is  
17 amended to read as follows:

18       "~~{}~~**§179D-7**~~{}~~ **Administrative and judicial review.** (a)  
19 The findings and order of the board, and the board's approval or  
20 disapproval of an application issued by the State are final,  
21 conclusive, and binding upon all owners, state agencies, and  
22 other government agencies, regulatory or otherwise, as to the



1 safety of design, construction, enlargement, repair, alteration,  
2 removal, maintenance, and operation of any dam or reservoir.  
3 The board's approval of an application or a certificate of  
4 approval to impound will not be considered final if it can be  
5 demonstrated to the board that the board's approval of the  
6 relevant application or certificate of approval was based on one  
7 or more misrepresentations.

8 (b) Any person who is aggrieved or adversely affected by  
9 an order or action of the board shall be entitled to  
10 administrative and judicial review in accordance with chapter  
11 91[-]; provided that the order or action shall remain in force  
12 until modified or set aside on appeal."

13 SECTION 8. Section 179D-8, Hawaii Revised Statutes, is  
14 amended to read as follows:

15 "~~{ }§179D-8{ }~~ **Violations; penalties.** ~~[Any person~~  
16 ~~violating any provision of this chapter or any permit condition~~  
17 ~~or limitation established pursuant to this chapter or~~  
18 ~~negligently or wilfully failing or refusing to comply with any~~  
19 ~~final order of the board issued as provided herein, shall be~~  
20 ~~liable for a civil penalty not to exceed \$500 for each day~~  
21 ~~during which said violation continues.]~~ (a) Any person who  
22 violates any rule, regulation, order, condition, or other



1 provision of this chapter shall be subject, upon order of a  
2 court, to a civil penalty not to exceed \$10,000 per day of such  
3 violation, and each day during which the violation continues  
4 shall constitute an additional, separate, and distinct offense.

5 (b) Any person who intentionally, knowingly, or after  
6 written notice to comply, violates any rule, regulation, order,  
7 condition or provision of this chapter, or knowingly obstructs,  
8 hinders, or prevents the department's agents or employees from  
9 performing duties under this chapter, shall be guilty, upon  
10 conviction, of a misdemeanor and shall be subject to a fine of  
11 not less than \$2,500 nor more than \$25,000 per day of violation.  
12 A second or subsequent offense under this subsection shall  
13 subject the violator to a fine to the contrary, of not less than  
14 \$5,000 nor more than \$50,000 per day of violation.

15 (c) With the assistance of the attorney general, the board  
16 may seek an injunction and damages in the enforcement of this  
17 chapter.

18 (d) All penalties collected pursuant to this section or  
19 sums collected pursuant to this Act shall be deposited in the  
20 "Dam Safety Fund," established pursuant to this Act.

21 SECTION 9. Section 179D-9, Hawaii Revised Statutes, is  
22 amended to read as follows:





1 property, public or private, for the purpose of investigating  
2 the condition, construction, or operation of any dam or other  
3 artificial barrier dealt with in this part. If the owner of the  
4 property refuses to allow the inspection, the department may  
5 seek a search warrant to allow the inspection. If the  
6 department has been refused inspection of drawings, operational  
7 records, or other information concerning a dam or reservoir, the  
8 department may seek an administrative subpoena compelling  
9 production of the drawings, operational records, or other  
10 information.

11 (b) It shall be unlawful for any person to refuse entry or  
12 access to any authorized representative of the department who  
13 requests entry for purposes of inspection and who presents  
14 appropriate credentials. It shall also be unlawful to obstruct,  
15 hamper, or interfere with any such representative while in the  
16 process of carrying out his official duties.

17 **§179D-C Injunctive relief.** Whenever in the judgment of  
18 the department any person has engaged in or is about to engage  
19 in any act or practice which constitutes or will constitute an  
20 unlawful action under this part, the person may make application  
21 to the circuit court of the county in which the unlawful act or  
22 practice has been or is about to be engaged in, or in which





1 jurisdiction is appropriate, for an order enjoining such act or  
2 practice, or for an order requiring compliance with this part.  
3 Upon a showing by the department that such person has engaged in  
4 or is about to engage in any such act or practice, a permanent  
5 or temporary injunction, restraining order, or other order shall  
6 be granted without the necessity of showing lack of an adequate  
7 remedy at law.

8       **§179D-D Emergency actions.** (a) If, in the opinion of the  
9 department, conditions of any dam or reservoir are so dangerous  
10 to the health and safety of life or property as not to permit  
11 time for issuance and enforcement of an order relative to  
12 construction, modification, maintenance, or repair, or the dam  
13 is threatened by any large flood, the department may immediately  
14 employ remedial measures necessary to protect such life and  
15 property.

16       (b) The department shall maintain complete control of any  
17 such dam or reservoir which, pursuant to subsection (a), has  
18 been determined to be dangerous to life or property until such  
19 dam or reservoir is deemed safe, or until any emergency  
20 conditions which precipitated the department taking control of  
21 any such dam or reservoir, pursuant to subsection (a) of this  
22 section, have abated. The department may determine the proper



1 time at which to relinquish control of any such dam or  
2 reservoir.

3 (c) Any necessary and reasonable costs and expenses  
4 incurred by the department in fulfilling the duties mandated by  
5 subsections (a) and (b) in connection with a remedial or  
6 emergency action shall be recoverable by the department from the  
7 owner of any such dangerous or threatened dam or reservoir.

8 (d) Any owner failing or refusing, after written notice  
9 has been given, to pay the reasonable costs and expenses  
10 incurred by the department pursuant to subsection (c) shall be,  
11 upon complaint by the department to the attorney general,  
12 subject to reasonable attorney fees incurred in the recovery of  
13 such costs and expenses.

14 (e) All moneys collected by the department pursuant to  
15 subsection (c) shall be credited to the Dam Safety Fund created  
16 in section 179D-E.

17 **§179D-E Establishment of dam safety fund.** (a) All fees,  
18 penalties, interest, fines, or charges collected by the board  
19 under this chapter shall be deposited in the dam safety fund,  
20 which is established in the state treasury. The money in that  
21 fund shall be available to the board, upon appropriation by the  
22 legislature, for the administration of the dam safety program.



1           (b) The dam safety fund shall also be funded through  
2 monies appropriated by the legislature and monies collected by  
3 the board in full or partial satisfaction of liens created by  
4 subsection (c)(2). Moneys in the fund may be used to employ  
5 remedial measures necessary to protect life and property in  
6 accordance with this section and section 179D-C. The board  
7 shall administer the fund. On notice from the board, the state  
8 treasurer shall invest and divest moneys in the fund and moneys  
9 earned from investment shall be credited to the fund. Moneys in  
10 the dam safety fund are exempt from lapsing.

11           (c) The board may spend moneys from the dam safety fund  
12 established by this section with the following provisions:

13           (1) The board shall remain in full charge and control of  
14 the dam, reservoir, and appurtenances until they have  
15 been rendered safe or the emergency has terminated;

16           (2) The costs and expenses of the control, regulation,  
17 abatement, and inspection provided by this section,  
18 including costs of construction, enlargement, repair,  
19 alteration or removal work done to render the dam,  
20 reservoir, or appurtenances safe, shall constitute a  
21 statutory lien against all property of the owner. The  
22 lien shall be considered prior and superior to all



1 other mortgages, liens or encumbrances of record even  
2 if those other mortgages, liens, or encumbrances were  
3 filed before the lien becomes due.

- 4 (3) The lien referred to in subsection (c)(2) may be  
5 perfected and foreclosed in advance of construction,  
6 enlargement, repair, alteration, or removal or after  
7 completion of the construction, enlargement, repair,  
8 alteration, or removal. If perfected in advance, the  
9 lien shall be perfected by the filing of an affidavit  
10 of the board setting forth the estimate of the costs  
11 of construction, enlargement, repair, alteration, or  
12 removal within the county in which the dam is located  
13 in the same manner as prescribed for mechanic's liens.  
14 When the affidavit is filed, the amount set forth in  
15 the affidavit shall be a lien in such amount against  
16 all property of the owner. If the actual cost of  
17 construction, enlargement, repair, alteration, or  
18 removal exceeds the estimated cost, the board may  
19 amend the affidavit setting forth the additional  
20 estimated cost. If the estimated cost exceeds the  
21 actual costs of construction, enlargement, repair,  
22 alteration, or removal at completion, the board shall



1 file an amended affidavit at completion. If a lien is  
2 perfected in advance and the construction,  
3 enlargement, repair, alteration, or removal is not  
4 commenced within two years from the date of  
5 perfection, the lien shall be void. The board shall  
6 file a satisfaction of lien upon payment of the costs  
7 of construction, enlargement, repair, alteration, or  
8 removal by the owner;

9 (4) Moneys collected in full or partial satisfaction of a  
10 lien created pursuant to subsection (c)(2) shall be  
11 deposited in the dam safety fund established by  
12 subsection (a).

13 **§179D-F Dam rehabilitation loan program.** (a) The board  
14 shall create a dam rehabilitation loan program, or may partner  
15 with other public or private agencies or organizations to create  
16 a dam rehabilitation loan program. The program shall initially  
17 be funded with \$2,000,000 through moneys appropriated by the  
18 legislature and deposited into the dam safety fund.

19 (b) The state legislature may authorize required funding  
20 to expand the financial size of the dam rehabilitation loan  
21 program.



1           (c) The program shall be subsequently funded through  
2 additional moneys appropriated by the legislature and through  
3 fees, penalties, interest, fines, or charges collected by the  
4 board under this chapter, and all interest earned on the  
5 investment of moneys in the dam safety fund by the state  
6 treasurer.

7           (d) The dam rehabilitation loan program may obtain funds  
8 through partnerships with any private or public, bonding or  
9 loaning, agency or organization.

10          (e) State funding to the dam rehabilitation loan program  
11 cannot be reduced because of federal funds provided for a  
12 rehabilitation loan program.

13          (f) Moneys in the dam safety fund and collected for the  
14 dam rehabilitation loan program do not revert to the state  
15 general fund. Moneys in the fund are exempt from lapsing.

16          (g) The board may grant loans from the dam safety fund to  
17 dam owners to defray the costs of repairing dams which the board  
18 determines to be dangerous to the safety of life and property  
19 but which are not in an emergency condition. Loans shall be  
20 granted on such terms and conditions as may be imposed by the  
21 board. The following provisions apply:



- 1           (1) The board shall adopt administrative rules that are  
2                   required to administer this statute.
- 3           (2) The board may take any administrative or legal action  
4                   necessary for the administration of this statute.
- 5           (3) If the balance of the dam safety fund exceeds  
6                   \$1,000,000, no single loan shall be made for more than  
7                   twenty per cent of the moneys available in the fund.  
8                   No loan shall be made to any dam owner that, at the  
9                   time of the loan application, has more than twenty per  
10                  cent of the outstanding loans of the fund;
- 11          (4) The loans granted by the board shall be for a term of  
12                  not more than twenty years; and the loans shall bear  
13                  interest at rates set by the board in the rules;
- 14          (5) Each loan shall be evidenced by a contract between the  
15                  dam owner and the board, acting on behalf of this  
16                  State. The contract shall provide for the loan by  
17                  this state of a stated amount to defray some or all of  
18                  the costs of repairing the dam. The contract shall  
19                  provide for equal annual payments of principal and  
20                  interest for the term of the loan. Eligible cost  
21                  provisions include:



- 1           (i) Any costs directly related to rehabilitating  
2           safety deficiencies of a dam shall be eligible to  
3           be funded through the dam rehabilitation loan  
4           program.
- 5           (ii) Fees for analysis, feasibility work, alternative  
6           evaluation, and engineering design, are only  
7           eligible retroactively after construction has  
8           been initiated, or at the point that analysis has  
9           shown a dam to be in compliance.
- 10          (iii) Up to one hundred per cent of rehabilitation  
11          costs for a dam may be loaned.
- 12          (iv) Dam owners may use multiple programs or sources  
13          to fund the rehabilitation costs for a dam, up to  
14          one hundred per cent of rehabilitation costs.
- 15          (v) Rehabilitation cost for any dam is eligible,  
16          except for dams owned by the federal government.
- 17          (vi) Any costs directly related to compliance with  
18          other laws and regulations, above the State's  
19          minimum dam safety requirements are eligible as  
20          part of an overall rehabilitation project.
- 21          (vii) Any costs for a state agency required fish  
22          passage is eligible if it is part of an overall





1           rehabilitation project; but such costs are not  
2           eligible if they are not part of an overall  
3           rehabilitation project.

4       (6) The board may take whatever security interest it deems  
5       necessary in the dam owner's property in exchange for  
6       the loan. If the board chooses to take a security  
7       interest in the dam owner's property, the board shall  
8       perfect that security interest by filing appropriate  
9       documentation with the proper authorities.

10      (7) The attorney general or the board's legal counsel,  
11      with the consent of the board, may commence whatever  
12      actions are necessary to enforce the contract and  
13      achieve repayment of loans provided by the board  
14      pursuant to this section.

15      (h) Owners' responsibilities include:

16      (1) Once a loan has been granted under this chapter, the  
17      owner of a dam must have an operation and maintenance  
18      plan with written, regularly scheduled reports, so as  
19      to maintain and keep the structure and its appurtenant  
20      works in the state of repair and operating condition  
21      required by the exercise of prudence; due regard for  
22      life or property; the application of sound and



1           accepted engineering principles; the provisions of  
2           rules, guidelines, or policies.

3           (2) As part of any rehabilitation project utilizing funds  
4           from this program the owner must have an emergency  
5           action plan developed (if one doesn't currently  
6           exist).

7           (3) Cooperate with the agency's agents, engineers, and  
8           other employees in the conduct of the chapter.

9           (4) Facilitate access to the structure or appurtenance.

10          (5) Furnish upon request the plans, specifications,  
11          operating, and maintenance data, or other information  
12          that is pertinent to the structure, appurtenance, and  
13          loan.

14          (i) The following general loan guidelines shall apply:

15          (1) Owners of dams without taxing authority should be  
16          allowed to participate in the dam rehabilitation loan  
17          program.

18          (2) Complete rehabilitations are to be encouraged, but  
19          phased projects can be funded.

20          (3) Removal of dams as a rehabilitation alternative should  
21          be allowed.



- 1           (4) As part of the application process, owners should  
2           demonstrate the ability to appropriately operate and  
3           maintain the dam after rehabilitation is complete.
- 4           (5) Owners are allowed to partner with an individual,  
5           local agency, or organization, for purposes of the  
6           loan, and for purposes of operation and maintenance.
- 7           (6) Rehabilitation projects that are in compliance with  
8           state statute and rules, and are permitted, accepted,  
9           and approved by the board are eligible to be funded  
10          through the dam rehabilitation loan program.
- 11          (7) If a dam is exempt from state regulation, to obtain  
12          funding through the dam rehabilitation loan program,  
13          the project must adhere to state standards that relate  
14          to design, construction, and this chapter.
- 15          (8) Costs for lake enhancement projects such as, lake  
16          dredging, sediment removal projects, or boat ramps,  
17          which do not enhance the safety of the dam, are not  
18          eligible to be funded through the dam rehabilitation  
19          loan program.
- 20          (9) The board and its agents, engineers, and other  
21          employees may, for the purposes of this chapter, enter



1           upon any land or water in the State without a search  
2           warrant or liability for trespass.

3       (10) The state legislature authorizes staff positions,  
4           required funding, and organizational structure, to  
5           administer the dam rehabilitation loan program.

6       (11) This chapter does not create a liability for damages  
7           against the board, its officers, agents, and employees  
8           caused by or arising out of any of the following:

9           (i) The construction, maintenance, operation, or  
10           failure of a dam, or appurtenant works.

11          (ii) The issuance and enforcement of an order or a  
12           rule issued by the board to carry out the board's  
13           duties.

14       (12) The State does not assume ownership obligations,  
15           responsibilities, or liabilities if an owner defaults  
16           on a loan.

17       **§179D-G Dams and reservoirs completed prior to effective**  
18 **date of this chapter.** (a) Every owner of a dam that falls  
19 within the definition of a dam in this chapter and completed  
20 prior to the effective date of this chapter shall file with the  
21 board a separate application for a certificate of approval to  
22 impound and any other supporting information as required by the



1 board for each of these dams. Each application shall also be  
2 accompanied by applicable application fees as required by the  
3 board.

4 (b) The board shall give notice to file an application for  
5 certificate of approval to impound to owners of such dams or  
6 reservoirs who have failed to file such applications as required  
7 by this chapter.

8 (c) The notice provided for in this section shall be  
9 delivered by certified mail to the owner at his last address of  
10 record in the office of the county tax assessor in which the dam  
11 is located. Such mailing shall constitute service.

12 (d) The board shall make inspections of such dams and  
13 reservoirs, unless the data, records, and inspection reports on  
14 file with it are found adequate to enable a determination  
15 whether or not the certificate of approval to impound should be  
16 issued.

17 (e) The board shall require owners of such dams and  
18 reservoirs to perform at their expense such work or tests as may  
19 reasonably be required to disclose information sufficient to  
20 enable the board to determine whether to issue certificates of  
21 approval to impound, or to issue orders directing further work  
22 at the owner's expense necessary to safeguard life and property.



1 For this purpose, the board may require an owner to lower the  
2 water level of, or to drain, the reservoir.

3 (f) If, upon inspection or upon completion to the  
4 satisfaction of the board of all work that may be ordered, the  
5 board finds that the dam and reservoir are safe to impound  
6 water, a certificate of approval to impound shall be issued.  
7 The board may find that the dam or reservoir will not safely  
8 impound water and may refuse to issue a certificate of approval  
9 to impound. Upon finding the dam and reservoir are unsafe to  
10 impound water, the board shall issue a written notice to the  
11 owner, whereupon the owner shall cause the dam and reservoir to  
12 no longer impound water after receipt of the notice.

13 **§179D-H Dams and reservoirs under construction,**  
14 **enlargement, repair, alteration or removal before effective date**  
15 **of this chapter.** (a) Any dam or reservoir that falls within  
16 the definition of a dam and reservoir in this chapter and which  
17 the board finds was under construction, enlargement, repair,  
18 alteration or removal and based on its findings not ninety per  
19 cent constructed, enlarged, repaired, altered, or removed on the  
20 effective date of this chapter, except as provided in subsection  
21 (b), shall be subject to the same provisions in this chapter as  
22 a dam or reservoir commenced after that date. Every owner of



1 such a dam and reservoir shall file an application with the  
2 board for the board's written application approval of the plans  
3 and specifications.

4 (b) Construction, enlargement, repair, alteration, or  
5 removal work on such a dam and reservoir may proceed, provided  
6 an application for approval of the plans and specifications is  
7 filed, until an application approval is received by the owner  
8 approving the dam and reservoir or an order is received by the  
9 owner specifying how the construction, enlargement, repair,  
10 alteration, or removal must be performed to render the dam or  
11 reservoir safe. After receipt of an application approval or  
12 order specifying how construction, enlargement, repair,  
13 alteration, or removal of the dam or reservoir must be  
14 performed, work thereafter must be in accordance with the  
15 application approval or order.

16 **§179D-I Annual report.** The department shall submit an  
17 annual report to the legislature by January 5 of each year  
18 concerning the activities of the department relating to this  
19 chapter for the preceding fiscal year. A copy of such report  
20 shall be provided to each of the following: The governor and  
21 the senate president and speaker of the house of



1 representatives. The report shall include but not be limited to  
2 information on the following:

- 3 (1) Approvals of plans and specifications for construction  
4 of dams and reservoirs and for alterations,  
5 modifications, repairs, and enlargements;
- 6 (2) Number of safety inspections made and the results  
7 thereof;
- 8 (3) Use of appropriated funds;
- 9 (4) Receipts generated for inspections of dams and  
10 reservoirs;
- 11 (5) Rules adopted or amended;
- 12 (6) Enforcement orders and proceedings;
- 13 (7) Dam failures and reasons therefor; and
- 14 (8) Other available data regarding the effectiveness of  
15 the State's dam and reservoir safety program."

16 SECTION 11. Chapter 179D, Hawaii Revised Statutes, is  
17 amended by designating section 179-1 to 179-9 as part I,  
18 entitled "General Provisions".

19 SECTION 12. In codifying the new sections added by section  
20 10 of this Act, the revisor of statutes shall substitute  
21 appropriate section numbers for the letters used in designating  
22 the new sections in this Act.





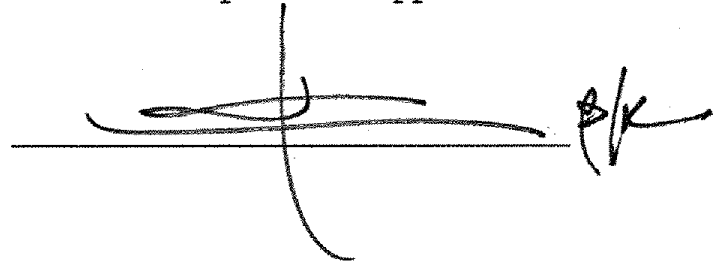
1 SECTION 13. If any provision of this Act, or the  
2 application thereof to any person or circumstance is held  
3 invalid, the invalidity does not affect other provisions or  
4 applications of the Act, which can be given effect without the  
5 invalid provision or application, and to this end the provisions  
6 of this Act are severable.

7 SECTION 14. Statutory material to be repealed is bracketed  
8 and stricken. New statutory material is underscored.

9 SECTION 15. This Act shall take effect upon its approval.

10

INTRODUCED BY: \_\_\_\_\_

A handwritten signature is written over a horizontal line. To the right of the signature, the initials "B/K" are written.

**Report Title:**

Dam Safety; Additional Provisions

**Description:**

Adds extensive provisions to the dam safety chapter to improve safety to dams and reservoirs in the State.

