
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 . DAM AND RESERVOIR SAFETY**

5 **§179D-A Certificate of approval to impound.** Each dam
6 owner or operator shall hold a valid certificate of approval to
7 impound to legally impound water under the laws of this State.

8 **§179D-B Entry upon property.** (a) The department shall
9 have the right to direct and conduct investigations as it may
10 reasonably deem necessary to carry out its duties as prescribed
11 in this part. For this purpose, the agents or employees of the
12 department or any authorized representatives may enter at
13 reasonable times, without prior notice, on any property, public
14 or private, for the purpose of investigating the condition,
15 construction, or operation of any dam, reservoir, or other
16 artificial barrier dealt with in this chapter; provided that if
17 an emergency situation arises as deemed by the department, the



1 agents or employees of the department, or any authorized
2 representatives shall have the right to enter without prior
3 notice, any property, public or private, for the purpose of
4 investigating the condition, construction, taking any necessary
5 remedial actions, or operation of any dam, reservoir, or other
6 artificial barrier subject to this chapter, without a search
7 warrant or liability for trespass.

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

14 (c) Notwithstanding any other provision of law to the
15 contrary, the board and its agents, engineers, and other
16 employees, for the purposes of enforcing this chapter, may enter
17 upon any land or water in the state that is the subject of an
18 inspection or investigation without a search warrant or
19 liability for trespass.

20 **§179D-C Injunctive relief.** Whenever in the judgment of
21 the department any person has engaged in or is about to engage
22 in any act or practice that constitutes or will constitute an



1 unlawful action under this chapter, the department may apply to
2 the circuit court of the county in which the unlawful act or
3 practice has been or is about to be engaged in, or in which
4 jurisdiction is appropriate, for an order enjoining the act or
5 practice, or for an order requiring compliance with this
6 chapter. Upon a showing by the department that a person has
7 engaged in or is about to engage in any act or practice, a
8 permanent or temporary injunction, restraining order, or other
9 order shall be granted without the necessity of showing lack of
10 an adequate remedy at law.

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

19 (b) The department shall provide coordination and
20 assistance to the proper state or county agency or agencies to
21 maintain control of any dam or reservoir that, pursuant to
22 subsection (a), has been determined to be dangerous to life or



1 property until the dam or reservoir is deemed safe, or until any
2 emergency conditions that precipitated taking control of the dam
3 or reservoir, pursuant to subsection (a), have been abated. The
4 department may determine the proper time at which to relinquish
5 control of the dam or reservoir.

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

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

17 (e) All moneys collected by the department pursuant to
18 subsection (c) shall be credited to the dam and reservoir safety
19 special fund created in section 179D-E.

20 (f) If a condition arises that in the opinion of the
21 department may pose a danger to the health and safety of persons
22 or property and sufficient time permits, the board may issue



1 orders reciting the existence of the condition and require any
2 actions the board deems necessary to be taken. Any person to
3 whom an order is directed, may challenge the order, but shall
4 immediately comply with the order, pending disposition of the
5 person's challenge. The board shall give precedence to a
6 hearing on the challenge over all other pending matters.

7 (g) The legislature finds and declares that emergency
8 actions under this section are in the public interest and for
9 the public health, safety, and general welfare of the state, and
10 authorizes the board to take any necessary actions.

11 **§179D-E Establishment of dam and reservoir safety special**
12 **fund.** (a) There is established in the department a special
13 fund, to be designated as the dam and reservoir safety special
14 fund. The fund shall be administered by the board. The
15 following shall be deposited into the dam and reservoir safety
16 special fund:

- 17 (1) Appropriations by the legislature;
- 18 (2) All fees and administrative charges collected under
19 this chapter or any rule adopted thereunder;
- 20 (3) Moneys collected as fines or penalties imposed under
21 this chapter or any rule adopted thereunder;



- 1 (4) Moneys derived from public or private sources to
- 2 benefit dam and reservoir safety;
- 3 (5) Moneys collected in full or partial satisfaction of
- 4 liens created under this chapter;
- 5 (6) Any moneys collected from the sale of retail items by
- 6 the department relating to dam and reservoir safety;
- 7 (7) Any other moneys collected pursuant to this chapter or
- 8 any rules adopted thereunder; and
- 9 (8) Moneys derived from interest, dividends, or other
- 10 income from other sources.
- 11 (b) The board may expend moneys from the dam and reservoir
- 12 safety special fund for the following purposes or subject to the
- 13 following provisions:
- 14 (1) Conducting investigations, research, and the
- 15 collection of data, including technological advances
- 16 made in dam and reservoir safety practices elsewhere;
- 17 (2) Conducting investigations, monitoring, and inspection
- 18 programs and activities, and enforcement;
- 19 (3) Preparation and dissemination of information to the
- 20 public concerning activities authorized under this
- 21 chapter;



- 1 (4) Staff and dam and reservoir owner training and
2 educational activities;
- 3 (5) Employ any necessary remedial measures to protect
4 persons and property in accordance with this chapter;
- 5 (6) Any other purposes to administer the dam and reservoir
6 safety program under this chapter or any rule adopted
7 thereunder, including but not limited to funding
8 permanent or temporary positions that may be appointed
9 without regard to chapter 76;
- 10 (7) The board shall provide coordination and assistance to
11 the proper state or county agency or agencies to
12 control any dam, reservoir, and appurtenances subject
13 to section 179D-D until they have been rendered safe
14 or the emergency has terminated; and
- 15 (8) The costs and expenses of the coordination,
16 assistance, control, regulation, abatement, and
17 inspection provided by this chapter.
- 18 (c) Moneys on balance in the dam and reservoir safety
19 special fund at the close of each fiscal year shall remain in
20 that fund and shall not be transferred or lapsed to the credit
21 of the general fund.

1 **§179D-F Liens.** (a) Costs of construction, enlargement,
2 repair, alteration, or removal work done to render the dam,
3 reservoir, or appurtenances safe shall constitute a statutory
4 lien against all property of the owner. Notwithstanding any
5 other law to the contrary, the lien shall be considered prior
6 and superior to all other mortgages, liens, or encumbrances of
7 record even if those other mortgages, liens, or encumbrances
8 were filed before the lien pursuant to this subsection becomes
9 due.

10 (b) Liens pursuant to subsection (a) may be perfected and
11 foreclosed in advance of construction, enlargement, repair,
12 alteration, or removal or after completion of the construction,
13 enlargement, repair, alteration, or removal. If perfected in
14 advance, the lien shall be perfected by the filing of an
15 affidavit of the board setting forth the estimate of the costs
16 of construction, enlargement, repair, alteration, or removal
17 within the county in which the dam or reservoir is located in
18 the same manner as prescribed for mechanic's liens. When the
19 affidavit is filed, the amount set forth in the affidavit shall
20 be a lien in that amount against all property of the owner. If
21 the actual cost of construction, enlargement, repair,
22 alteration, or removal exceeds the estimated cost, the board may



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

11 **§179D-G Dams and reservoirs completed prior to effective**
12 **date of this Act.** (a) Every owner or operator of a dam or
13 reservoir that falls within the definition of a dam or reservoir
14 in this chapter and completed prior to the effective date of
15 this Act shall file with the board a separate application for a
16 certificate of approval to impound and any other supporting
17 information as required by the board for each dam or reservoir.
18 Each application shall also be accompanied by applicable
19 application fees as required by the board. During the
20 application process for a certificate of approval to impound,
21 the owner or operator of a dam or reservoir may continue to
22 impound water, unless the board determines that the dam or



1 reservoir may pose a danger to the health and safety of persons
2 or property.

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

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

12 (d) The board shall make inspections of any 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 the dams and
18 reservoirs to perform at their expense any 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 or operator to
2 lower the water level of, or to drain, the dam or 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**
15 **date of this Act.** (a) Any dam or reservoir that falls within
16 the definitions of a dam or 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 more than
19 ninety per cent constructed, enlarged, repaired, altered, or
20 removed on the effective date of this Act, except as provided in
21 subsection (b); shall be subject to the same provisions in this
22 section as a dam or reservoir commenced after that date. Every



1 owner of a dam or reservoir subject to this section shall file
2 an application with the board for the board's written
3 application approval of the plans and specifications.

4 (b) Construction, enlargement, repair, alteration, or
5 removal work on the dam or reservoir may proceed; provided an
6 application for approval of the plans and specifications is
7 filed; until:

8 (1) An application approval is received by the owner
9 approving the dam or reservoir; or

10 (2) An order is received by the owner specifying how the
11 construction, enlargement, repair, alteration, or
12 removal must be performed to render the dam or
13 reservoir safe.

14 After receipt of an application approval or order specifying how
15 construction, enlargement, repair, alteration, or removal of the
16 dam or reservoir must be performed, work thereafter must be in
17 accordance with the application approval or order.

18 **§179D-I Annual report.** The department shall submit an
19 annual report to the governor and the legislature by January 5
20 of each year concerning the activities of the department
21 relating to this chapter for the preceding fiscal year. The



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

- 3 (1) Approvals of plans and specifications for the
4 construction of dams and reservoirs and for
5 alterations, modifications, repairs, removal, and
6 enlargements of any dams and reservoirs;
- 7 (2) A listing of dam and reservoir safety inspections
8 made;
- 9 (3) Use of appropriated funds;
- 10 (4) Rules adopted or amended;
- 11 (5) Enforcement orders and proceedings;
- 12 (6) Dam and reservoir failures and department evaluations
13 of the reasons for the failure, if known; and
- 14 (7) Any other available data regarding the effectiveness
15 of the State's dam and reservoir safety program.

16 **§179D-J Dam and reservoir owners; general requirements and**
17 **responsibilities.** Dam and reservoir owners subject to
18 regulation under this chapter shall, among other general
19 requirements and responsibilities:

- 20 (1) Maintain an operation and maintenance plan, including
21 an owner or operator, as the case may be, inspection
22 and monitoring program, with written, regularly



1 scheduled reports to the board, so as to maintain and
2 keep the structure, its appurtenant works, and access
3 in the state of repair and operating condition
4 required by the exercise of due care, with regard for
5 the safety of persons or property, sound and accepted
6 engineering principles, and the rules adopted by the
7 board;

8 (2) Establish an emergency action plan for high and
9 significant hazard potential dams and reservoirs and
10 provide this plan to the board, state and county civil
11 defense agencies, and other necessary parties, with
12 regard for the safety of persons or property, sound
13 and accepted engineering principles, and the rules
14 adopted by the board;

15 (3) Cooperate with the board's agents, engineers, and
16 employees in carrying out this chapter;

17 (4) Facilitate access by any necessary state agencies or
18 authorized representative, to the dam, reservoir, or
19 appurtenances. Access by a four-wheeled-drive vehicle
20 to the dam or reservoir site, and appurtenances if
21 required by the board, shall be maintained at all
22 times; provided that if vehicular access to the dam or



1 reservoir site cannot be maintained during periods of
2 inclement weather, the dam or reservoir owner for high
3 and significant hazard potential dams or reservoirs
4 shall have redundant early warning systems in place,
5 as approved by the board; and

6 (5) Furnish upon request the plans, specifications,
7 operating and maintenance data, or other information
8 that is pertinent to the dam and reservoir structure
9 and appurtenances as indicated in this chapter."

10 SECTION 2. Chapter 179D, Hawaii Revised Statutes, is
11 amended by designating section 179-1 to 179-9 as part I,
12 entitled:

13 **"PART I. GENERAL PROVISIONS"**

14 SECTION 3. Section 179D-1, Hawaii Revised Statutes, is
15 amended to read as follows:

16 "[+]§179D-1[+] **Short title.** This chapter shall be known
17 and may be cited as the "Hawaii Dam and Reservoir Safety Act of
18 [~~1987~~"] 2007."

19 SECTION 4. Section 179D-2, Hawaii Revised Statutes, is
20 amended to read as follows:

21 "[+]§179D-2[+] **Declaration of purpose.** The purpose of
22 this chapter is to provide for the inspection and regulation of



1 construction, enlargement, repair, alteration, maintenance,
2 operation, and removal of certain dams [~~in order~~] or reservoirs
3 to protect the health, safety, and welfare of the citizens of
4 the [~~State~~] state by reducing the risk of failure of [~~such~~] the
5 dams[~~+~~] or reservoirs. The legislature finds and declares that
6 the inspection and regulation of [~~construction, operation, and~~
7 ~~removal of~~] certain dams or reservoirs are properly a matter of
8 regulation under the police powers of the State[~~+~~], unless
9 specifically exempted."

10 SECTION 5. Section 179D-3, Hawaii Revised Statutes, is
11 amended to read as follows:

12 "[~~+~~]**\$179D-3**[~~+~~] **Definitions.** The following terms, whenever
13 used and referred to in this chapter, shall have the following
14 respective meanings, unless a different meaning clearly appears
15 in the context:

16 "Application approval" means authorization in writing
17 issued by the board to an owner who has applied to the board for
18 permission to construct, enlarge, repair, alter, remove,
19 maintain, or operate a dam or reservoir and that specifies the
20 condition or limitations under which work is to be performed by
21 the owner or under which approval is granted.



1 "Appurtenant works" or "appurtenance" means any structure,
2 such as spillways, either in the dam or separate therefrom, the
3 reservoir and its rim, low level outlet works, and water
4 conduits, such as tunnels, pipelines, or penstocks, either
5 through the dam or its abutment.

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

7 "Certificate of approval to impound" means authorization in
8 writing issued by the board to an owner or operator who has an
9 existing dam or reservoir or who has completed construction,
10 enlargement, repair, or alternation of a dam or reservoir and
11 that specifies the conditions or limitations under which the dam
12 or reservoir is to be maintained and operated.

13 "Dam" means any artificial barrier, including appurtenant
14 works [~~7~~, ~~which impounds or diverts~~] that impound or divert
15 water [~~7~~] and [~~which:~~] that:

16 (1) Is twenty-five feet or more in height from the natural
17 bed of the stream or watercourse measured at the
18 downstream toe of the barrier, or from the lowest
19 elevation of the outside limit of the barrier if it is
20 not across a stream channel or watercourse to a
21 maximum water storage elevation; [~~or~~]



- 1 (2) Has an impounding capacity at maximum water storage
2 elevation of fifty acre-feet or more. This chapter
3 ~~does~~ shall not apply to any artificial barrier
4 ~~which~~ that is less than six feet in height
5 regardless of storage capacity or ~~which~~ that has a
6 storage capacity at maximum water storage elevation
7 less than fifteen acre-feet regardless of height[-];
8 or
9 (3) Meets additional criteria or is specifically exempted
10 as determined by the board, pursuant to rules adopted.

11 "Department" means the department of land and natural
12 resources.

13 "Emergency" includes but is not limited to breaches and all
14 conditions leading to or causing a breach, overtopping, or any
15 other condition in a dam or reservoir and its appurtenant works
16 that may be construed as unsafe or threatening to life and
17 property.

18 "Enlargement" means any change in or addition to an
19 existing dam or reservoir that raises or may raise the water
20 storage elevation of the water impounded by the dam or
21 reservoir.



1 "Hazard potential" means the possible adverse incremental
2 consequences that result from the release of water or stored
3 contents due to the failure of the dam or reservoir or the
4 misoperation of the dam, reservoir, or appurtenances. The
5 hazard potential classification of a dam or reservoir shall not
6 reflect in any way on the current condition of the dam or
7 reservoir and its appurtenant works, including the dam's or
8 reservoir's safety, structural integrity, or flood routing
9 capacity.

10 "High hazard" means a dam's or reservoir's failure will
11 result in probable loss of human life.

12 "Low hazard" means a dam's or reservoir's failure will
13 result in no probable loss of human life and low economic loss
14 or environmental loss, or both. Economic losses are principally
15 limited to the owner's property.

16 "Owner" means any person who [~~owns, controls, operates,~~
17 ~~maintains, manages, or proposes to construct a dam or~~
18 ~~reservoir.~~] has a right, title, or interest in or to the dam or
19 reservoir or to the property upon which the dam, reservoir, or
20 appurtenant works is located or proposed to be located.

21 "Person" means [~~any individual, partnership, corporation,~~
22 ~~company, association, organization, the State and its~~



1 ~~departments and agencies, and the political subdivisions of the~~
2 ~~State.]~~ any natural person, partnership, firm, association,
3 organization, corporation, county, county authority, trust,
4 receiver or trustee, limited liability company, limited
5 liability partnership, or company, or any state department,
6 agency, or political subdivision, or any other commercial or
7 legal entity. Whenever used in a section prescribing and
8 imposing a penalty or sanction, the term "person" includes the
9 members of an association or organization, and the officers of a
10 corporation, company, county, or county authority.

11 "Physical clear access" means a roadway or path that allows
12 timely access for inspection to a dam, reservoir, and its
13 appurtenant works. If by a roadway, the roadway shall be
14 maintained in an accessible condition by a four-wheel drive
15 vehicle even during inclement weather conditions.

16 "Probable" means more likely than not to occur; reasonably
17 expected; realistic.

18 "Removal" means complete or partial elimination of the dam
19 or reservoir embankment or structure to restore the approximate
20 original topographic contours of the valley.



1 "Reservoir" means any basin [~~which~~] that contains or will
2 contain water impounded by a dam[~~-~~], including appurtenant
3 works.

4 "Significant hazard" means a dam's or reservoir's failure
5 will result in no probable loss of human life but can cause
6 major economic loss, environmental damage, disruption of
7 lifeline facilities, or impact other concerns. Significant
8 hazard potential classification dams or reservoirs are often
9 located in predominantly rural or agricultural areas but could
10 be located in areas with population and significant
11 infrastructure."

12 SECTION 6. Section 179D-4, Hawaii Revised Statutes, is
13 amended to read as follows:

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

21 (b) No action shall be brought against the State, the
22 board, or the department, or against any employee of the State,



1 the board, or the department for damages sustained through the
2 partial or total failure of any private dam or reservoir
3 addressed in this chapter, or its maintenance or operation by
4 reason of any supervision or other action taken or not taken
5 pursuant to this chapter.

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

17 (d) The State assumes no ownership obligations,
18 responsibilities, or liabilities for any action pursuant to
19 section 179D-D."

20 SECTION 7. Section 179D-6, Hawaii Revised Statutes, is
21 amended to read as follows:



1 " ~~[+]~~§179D-6~~[+]~~ **General powers and duties of the board of**
2 **land and natural resources.** (a) Certain dams or reservoirs in
3 the state shall be under the jurisdiction of the board until the
4 board declares which dams or reservoirs are to be removed from
5 its jurisdiction.

6 (b) The board [~~of land and natural resources~~] shall
7 administer the dam and reservoir safety program established by
8 this chapter. In carrying out this chapter, the board shall
9 cooperate, advise, consult, contract, and enter into cooperative
10 agreements with the United States government or any of its
11 agencies, other state agencies, and the county governments or
12 any of their agencies. In the performance of its duties, the
13 board shall:

- 14 (1) Establish by rules adopted under chapter 91, [~~such~~]
15 policies, requirements, or standards governing the
16 design, construction, operation, maintenance,
17 enlargement, alteration, repair, removal, and
18 inspection of dams, reservoirs, and appurtenant works
19 for the protection of life and property from
20 structural failure of dams and reservoirs;
- 21 (2) Conduct investigations and the collection of data,
22 including technological advances made in dam and



1 reservoir safety practices elsewhere, as may be needed
2 for the proper review and study of the various
3 features of the design, construction, repair, removal,
4 inspection, operation, maintenance, alteration, and
5 enlargement of dams, reservoirs, and appurtenant
6 works. The board may require submittal of reports of
7 investigations from all owners;

8 (3) Conduct investigations and require reports from all
9 owners to be made from time to time, [~~such as~~]
10 including watershed investigations and studies, as may
11 be necessary to keep abreast of developments affecting
12 stream runoff and as required to facilitate its
13 decisions;

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

21 (5) Require the owners to apply for, and obtain from the
22 board written approval of plans and specifications on



1 the construction of any new dam or reservoir or the
2 enlargement of any dam or reservoir prior to
3 commencement of any work;

4 (6) Require the owners to file an application and secure
5 the written approval of the board before commencing
6 the repair, alteration, or removal of a dam or
7 reservoir, including the alteration or removal of a
8 dam or reservoir so that it no longer constitutes a
9 dam or reservoir as defined in this chapter. Repairs
10 shall not be deemed to apply to routine maintenance
11 not affecting the safety of the structure;

12 [~~(7) Require filing fees by rules to accompany each
13 application as required under the provisions of this
14 chapter.~~]

15 (7) Require owners to secure the written approval of the
16 board to impound water;

17 (8) Require fees to cover the board's costs in carrying
18 out the administration of dam and reservoir safety;

19 (9) Cooperate with all public and private agencies created
20 for the purpose of enhancing dam and reservoir safety
21 activities and training, assist these organizations
22 and agencies in coordinating the use of their



1 facilities, and participate in the exchange of ideas,
2 knowledge, and data with these organizations and
3 agencies;

4 (10) Prepare, publish, and issue printed pamphlets,
5 bulletins, or advisories, or conduct training as the
6 board deems necessary for the dissemination of
7 information to the public;

8 (11) Appoint and remove agents and employees, including
9 hearing officers, specialists, and consultants, as
10 necessary to carry out the purposes of this chapter,
11 who may be engaged by the board without regard to the
12 requirements of chapter 76;

13 (12) Catalog and maintain an inventory of all regulated
14 dams and reservoirs in the state pursuant to this
15 chapter without regard to chapter 91;

16 (13) Establish similar or consistent hazard potential
17 classifications in conjunction with other applicable
18 states or federal guidelines for all regulated dams
19 and reservoirs in the state pursuant to this chapter
20 without regard to chapter 91;

21 (14) Examine and approve or disapprove applications for
22 approval of construction, enlargement, repair,



- 1 alteration, or removal of a dam or reservoir, and
2 applications for certificates of approval to impound;
- 3 (15) Order the suspension, revocation, or both, of any
4 application approval or certificate of approval to
5 impound for any act for failure to comply with this
6 chapter or with any rules or orders adopted pursuant
7 to this chapter, or with any of the conditions
8 contained in or attached to the application approval
9 or certificate of approval to impound;
- 10 (16) Issue orders requiring the adoption by an owner of
11 remedial measures necessary for the safety of life or
12 public or private property, or for carrying out this
13 chapter or rules issued under this chapter;
- 14 (17) Order the immediate cessation of any act that is
15 started or continued without an application approval
16 or certificate of approval to impound as required by
17 this chapter;
- 18 (18) Enter private property and immediately take actions
19 necessary to provide protection to life or property at
20 the owner's expense, including removal of the dam or
21 reservoir. The entry shall not constitute a cause of
22 action in favor of the owner of the land, except for



- 1 damages resulting from wilful acts or gross negligence
2 by the board or its agents;
- 3 (19) Recover from the owner, in the name of the State, the
4 expenses incurred in taking any action required by the
5 owner of the dam or reservoir in the same manner debts
6 are recoverable by law;
- 7 (20) Assess civil penalties for violation of this chapter
8 or any rule or standard adopted or order issued by the
9 board pursuant to this chapter;
- 10 (21) Place liens, as needed, on the owner's property, to be
11 collected as delinquent taxes against the lands and
12 property, if the owner neglects to pay any costs,
13 expenses or penalties chargeable to the owner under
14 this chapter or any rule, order, or condition adopted,
15 issued, or required under this chapter;
- 16 (22) With the assistance of the attorney general, institute
17 and prosecute all court actions that may be necessary
18 to obtain the enforcement of any order issued by the
19 board in carrying out this chapter; and
- 20 (23) Take any and all other actions as may be necessary to
21 carry out this chapter."



1 SECTION 8. Section 179D-7, Hawaii Revised Statutes, is
2 amended to read as follows:

3 "[+]§179D-7[+] **Administrative and judicial review.** (a)
4 The findings and order of the board, and the board's approval or
5 disapproval of an application issued by the State are final,
6 conclusive, and binding upon all owners, state agencies, and
7 other government agencies, regulatory or otherwise, as to the
8 safety of design, construction, enlargement, repair, alteration,
9 removal, maintenance, and operation of any dam or reservoir.
10 The board's approval of an application or a certificate of
11 approval to impound shall not be considered final if it can be
12 demonstrated to the board that the board's approval of the
13 relevant application or certificate of approval was based on one
14 or more misrepresentations.

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

20 SECTION 9. Section 179D-8, Hawaii Revised Statutes, is
21 amended to read as follows:



1 "~~[+]~~§179D-8~~[+]~~ **Violations; penalties.** [~~Any person~~
2 ~~violating any provision of this chapter or any permit condition~~
3 ~~or limitation established pursuant to this chapter or~~
4 ~~negligently or wilfully failing or refusing to comply with any~~
5 ~~final order of the board issued as provided herein, shall be~~
6 ~~liable for a civil penalty not to exceed \$500 for each day~~
7 ~~during which said violation continues.]~~ (a) Except as otherwise
8 provided by law, the board may set, charge, and collect
9 administrative penalties and recover administrative fees and
10 costs, including attorney's fees and costs, or bring legal
11 action to recover administrative penalties, fees, and costs,
12 including attorney's fees and costs, or payment for damages or
13 for the cost to correct damages resulting from a violation of
14 this chapter or any rule, order, or condition adopted, issued,
15 or required under this chapter. The administrative penalty
16 shall not exceed \$25,000 per day of a violation, and each day
17 during which the violation continues shall constitute an
18 additional, separate, and distinct offense.

19 (b) Any person who negligently or after written notice to
20 comply, violates this chapter or any rule, order, or condition
21 adopted, issued, or required under this chapter, or knowingly
22 obstructs, hinders, or prevents the department's agents or



1 employees from performing duties under this chapter, shall be
2 guilty of a class C felony, and upon conviction thereof, shall
3 be punished as follows:

4 (1) For a first conviction, by a mandatory fine of not
5 less than \$2,500 but not more than \$25,000 per day of
6 violation, imprisonment of not more than allowed by
7 law, or both; and

8 (2) For a second or subsequent conviction, by a mandatory
9 fine of not less than \$5,000 but not more than \$50,000
10 per day of violation, imprisonment of not more than
11 allowed by law, or both.

12 (c) Any criminal action against a person for any violation
13 of this chapter shall not preclude the State from pursuing civil
14 legal action to recover administrative penalties, fees, and
15 costs against that person. Any civil action against a person to
16 recover administrative penalties, fees, and costs for any
17 violation of this chapter or any rule, order, or condition
18 adopted, issued, or required under this chapter shall not
19 preclude the State from pursuing any criminal action against
20 that person.



1 (d) With the assistance of the attorney general, the board
2 may seek an injunction and damages in the enforcement of this
3 chapter.

4 (e) All penalties, fees, and costs collected pursuant to
5 this section or rules adopted by the board pursuant to this
6 chapter, shall be deposited in the dam and reservoir safety
7 special fund."

8 SECTION 10. Section 179D-9, Hawaii Revised Statutes, is
9 amended to read as follows:

10 "[~~+~~]**\$179D-9**[~~+~~] **Enactment of rules.** (a) The department
11 shall adopt the necessary rules not later than one and one-half
12 years after [~~June 6, 1987.~~] July 1, 2007.

13 (b) A declaration that certain parts of this Act are
14 unconstitutional shall not affect the constitutionality of other
15 parts of this Act."

16 SECTION 11. Section 179D-5, Hawaii Revised Statutes, is
17 repealed."

18 [~~["\$179D-5] Unlawful conduct.~~] (a) ~~It shall be unlawful~~
19 ~~for any person to construct, operate, or remove a dam or other~~
20 ~~artificial barrier covered by this chapter, except in such a~~
21 ~~manner as to conform to and comply with the provisions of this~~



1 ~~chapter and with all rules, orders, and permits established~~
2 ~~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 those rules and orders then shall be applicable to~~
9 ~~those dams, reservoirs and appurtenant works which were existing~~
10 ~~on June 6, 1987."]~~

11 SECTION 12. There is appropriated out of the general
12 revenues of the State of Hawaii the sum of \$ for fiscal
13 year 2007-2008, and the same sum for fiscal year 2008-2009, to
14 be deposited into the dam and reservoir safety special fund.

15 SECTION 13. There is appropriated out of the dam and
16 reservoir safety special fund the sum of \$, or so much
17 thereof as may be necessary for fiscal year 2007-2008, and the
18 same sum, or so much thereof as may be necessary for fiscal year
19 2008-2009, to carry out the purposes of the dam and reservoir
20 safety special fund.

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



1 SECTION 14. 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 15. In codifying the new sections added by section
8 1 of this Act, the revisor of statutes shall substitute
9 appropriate section numbers for the letters used in designating
10 the new sections in this Act.

11 SECTION 16. Statutory material to be repealed is bracketed
12 and stricken. New statutory material is underscored.

13 SECTION 17. This Act shall take effect upon its approval;
14 provided that sections 12 and 13 shall take effect on July 1,
15 2007.



Report Title:

Dam and Reservoir Safety; Appropriation

Description:

Adds extensive provisions to the dam safety law to improve safety to dams and reservoirs in the state. Makes an appropriation. (SB1946 HD1)

