
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 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, any property, public or
14 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 determined by the department,



1 the 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, or operation of any
5 dam, reservoir, or other artificial barrier subject to this
6 chapter, and to take any remedial actions, 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, investigation, or remedial actions without a search
19 warrant or 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 unlawful act or
8 practice, a permanent or temporary injunction, restraining
9 order, or other order shall be granted without the necessity of
10 showing lack of 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 to not permit
14 time for issuance and enforcement of an order relative to
15 construction, modification, maintenance, or repair of the dam or
16 reservoir, or the dam or reservoir is threatened by any large
17 flood or other natural disaster, the department may immediately
18 employ remedial 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. Any person to whom an order
3 is directed, may challenge the order, but shall immediately
4 comply with the order, pending disposition of the person's
5 challenge. The board shall give precedence to a hearing on the
6 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 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:
- 13 (1) Conducting investigations, research, and the
14 collection of data, including technological advances
15 made in dam and reservoir safety practices elsewhere;
- 16 (2) Conducting investigations, monitoring, and inspection
17 programs and activities, and enforcement;
- 18 (3) Preparing and disseminating information to the public
19 concerning activities authorized under this chapter;
- 20 (4) Training and providing educational activities for
21 department staff and dam and reservoir owners;



1 (5) Employing any necessary remedial measures to protect
2 persons and property in accordance with this chapter;

3 (6) The costs and expenses of the coordination,
4 assistance, control, regulation, abatement, and
5 inspection provided by this chapter; and

6 (7) Other purposes for the administration of the dam and
7 reservoir safety program under this chapter or any
8 rule adopted thereunder, including but not limited to
9 funding permanent or temporary positions that may be
10 appointed without regard to chapter 76.

11 The board shall provide coordination and assistance to the
12 proper state or county agency or agencies to control any dam,
13 reservoir, and appurtenances subject to section 179D-D until
14 they have been rendered safe or the emergency has terminated.

15 (c) Moneys on balance in the dam and reservoir safety
16 special fund at the close of each fiscal year shall remain in
17 that fund and shall not be transferred or lapsed to the credit
18 of the general fund.

19 **§179D-F Liens.** (a) Costs of construction, enlargement,
20 repair, alteration, or removal work done to render a dam,
21 reservoir, or appurtenances safe shall constitute a statutory
22 lien against all property of the owner. Notwithstanding any



1 other law to the contrary, the lien shall be considered prior
2 and superior to all other mortgages, liens, or encumbrances of
3 record even if those other mortgages, liens, or encumbrances
4 were filed before the lien pursuant to this subsection becomes
5 due.

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



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

7 **§179D-G Dams and reservoirs completed prior to effective**
8 **date of this Act.** (a) Every owner or operator of a dam or
9 reservoir that falls within the definition of a dam or reservoir
10 in this chapter and was completed prior to the effective date of
11 this Act shall file with the board a separate application for a
12 certificate of approval to impound and any other supporting
13 information as required by the board for each dam or reservoir.
14 Each application shall also be accompanied by application fees
15 as required by the board. During the application process for a
16 certificate of approval to impound, the owner or operator of a
17 dam or reservoir may continue to impound water, unless the board
18 determines that the dam or reservoir may pose a danger to the
19 health and safety of persons or property.

20 (b) The board shall give notice to file an application for
21 certificate of approval to impound to owners of dams or



1 reservoirs who have failed to file such applications as required
2 by this chapter.

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

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

13 (e) The board shall require owners of the dams and
14 reservoirs to perform at their expense any work or tests as may
15 reasonably be required to disclose information sufficient to
16 enable the board to determine whether to issue certificates of
17 approval to impound, or to issue orders directing further work
18 at the owner's expense necessary to safeguard life and property.
19 For this purpose, the board may require an owner or operator to
20 lower the water level of, or to drain, the dam or reservoir.

21 (f) If, upon inspection or upon completion to the
22 satisfaction of the board of all work that may be ordered, the



1 board finds that the dam and reservoir are safe to impound
2 water, a certificate of approval to impound shall be issued.
3 The board may find that the dam or reservoir will not safely
4 impound water and may refuse to issue a certificate of approval
5 to impound. Upon finding that the dam or reservoir is unsafe to
6 impound water, the board shall issue a written notice to the
7 owner. After receipt of the notice, the owner shall no longer
8 cause or allow the dam and reservoir to impound water.

9 **§179D-H Dams and reservoirs under construction,**
10 **enlargement, repair, alteration, or removal before effective**
11 **date of this Act.** (a) Any dam or reservoir that falls within
12 the definitions of a dam or reservoir in this chapter and which
13 the board finds was under construction, enlargement, repair,
14 alteration, or removal, and based on its findings not more than
15 ninety per cent constructed, enlarged, repaired, altered, or
16 removed on the effective date of this Act, except as provided in
17 subsection (b), shall be subject to the same provisions in this
18 section as a dam or reservoir commenced after that date. Every
19 owner of a dam or reservoir subject to this section shall file
20 an application with the board for the board's written
21 application approval of the plans and specifications for the dam
22 or reservoir.



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

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

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

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

15 **§179D-I Annual report.** The department shall submit an
16 annual report to the governor and the legislature by January 5
17 of each year concerning the activities of the department
18 relating to this chapter for the preceding fiscal year. The
19 report shall include but not be limited to information on the
20 following:

21 (1) Approvals of plans and specifications for the
22 construction of dams and reservoirs and for



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

12 **§179D-J Dam and reservoir owners; general requirements and**
13 **responsibilities.** Dam and reservoir owners subject to
14 regulation under this chapter shall, among other general
15 requirements and responsibilities:

- 16 (1) Maintain an operation and maintenance plan, including
17 an owner or operator, as the case may be, inspection
18 and monitoring program, with written, regularly
19 scheduled reports to the board, to maintain and keep
20 the structure, its appurtenant works, and access in
21 the state of repair and operating condition required
22 by the exercise of due care, with regard for the



- 1 safety of persons or property, sound and accepted
2 engineering principles, and the rules adopted by the
3 board;
- 4 (2) Establish an emergency action plan for high and
5 significant hazard potential dams and reservoirs and
6 provide this plan to the board, state and county civil
7 defense agencies, and other necessary parties, with
8 regard for the safety of persons or property, sound
9 and accepted engineering principles, and the rules
10 adopted by the board;
- 11 (3) Cooperate with the board's agents, engineers, and
12 employees in carrying out this chapter;
- 13 (4) Facilitate access by any necessary state agencies or
14 authorized representative, to the dam, reservoir, or
15 appurtenances. Access by a four-wheeled-drive vehicle
16 to the dam or reservoir site, and appurtenances if
17 required by the board, shall be maintained at all
18 times; provided that if vehicular access to the dam or
19 reservoir site cannot be maintained during periods of
20 inclement weather, the dam or reservoir owner for high
21 and significant hazard potential dams or reservoirs



1 shall have redundant early warning systems in place,
2 as approved by the board; and

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

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

10 **"PART I. GENERAL PROVISIONS"**

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

13 "[+]§179D-1[+] **Short title.** This chapter shall be known
14 and may be cited as the "Hawaii Dam and Reservoir Safety Act of
15 [~~1987~~"] 2007."

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

18 "[+]§179D-2[+] **Declaration of purpose.** The purpose of
19 this chapter is to provide for the inspection and regulation of
20 construction, enlargement, repair, alteration, maintenance,
21 operation, and removal of certain dams [~~in order~~] or reservoirs
22 to protect the health, safety, and welfare of the citizens of



1 the [~~State~~] state by reducing the risk of failure of [~~such~~] the
2 dams [~~-~~] or reservoirs. The legislature finds and declares that
3 the inspection and regulation of [~~construction, operation, and~~
4 ~~removal of~~] certain dams or reservoirs are properly a matter of
5 regulation under the police powers of the State [~~-~~], unless
6 specifically exempted."

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

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

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

19 "Appurtenant works" or "appurtenance" means any structure,
20 such as spillways [~~, either~~] in the dam or separate therefrom,
21 the reservoir and its rim, low level outlet works, and water



1 conduits, such as tunnels, pipelines, or penstocks, [~~either~~]
2 through the dam or its abutment.

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

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

10 "Dam" means any artificial barrier, including appurtenant
11 works[~~, which~~] that impounds or diverts water[~~7~~] and [~~which~~]
12 that:

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

19 (2) Has an impounding capacity at maximum water storage
20 elevation of fifty acre-feet or more. This chapter
21 [~~does~~] shall not apply to any artificial barrier
22 [~~which~~] that is less than six feet in height



1 regardless of storage capacity or [~~which~~] that has a
2 storage capacity at maximum water storage elevation
3 less than fifteen acre-feet regardless of height[-];
4 or

5 (3) Meets additional criteria or is specifically exempt as
6 determined pursuant to rules adopted by the board.

7 "Department" means the department of land and natural
8 resources.

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

14 "Enlargement" means any change in or addition to an
15 existing dam or reservoir that raises or may raise the water
16 storage elevation of the water impounded by the dam or
17 reservoir.

18 "Hazard potential" means the possible adverse incremental
19 consequences that result from the release of water or stored
20 contents due to the failure of the dam or reservoir or the
21 misoperation of the dam, reservoir, or appurtenances. The
22 hazard potential classification of a dam or reservoir shall not



1 reflect in any way on the current condition of the dam or
2 reservoir and its appurtenant works, including the dam's or
3 reservoir's safety, structural integrity, or flood routing
4 capacity.

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

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

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

16 "Person" means [~~any individual, partnership, corporation,~~
17 ~~company, association, organization, the State and its~~
18 ~~departments and agencies, and the political subdivisions of the~~
19 ~~State.] any natural person, partnership, firm, association,~~
20 organization, corporation, county, county authority, trust,
21 receiver or trustee, limited liability company, limited
22 liability partnership, or company, or any state department,



1 agency, or political subdivision, or any other commercial or
2 legal entity. Whenever used in a section prescribing and
3 imposing a penalty or sanction, the term "person" includes the
4 members of an association or organization, and the officers of a
5 corporation, company, county, or county authority.

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

11 "Probable" means more likely than not to occur; reasonably
12 expected; realistic.

13 "Removal" means complete or partial elimination of the dam
14 or reservoir embankment or structure to restore the approximate
15 original topographic contours of the valley.

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

19 "Significant hazard" means a dam's or reservoir's failure
20 will result in no probable loss of human life but can cause
21 major economic loss, environmental damage, disruption of
22 lifeline facilities, or impact other concerns. Significant



1 hazard potential classification dams or reservoirs are often
2 located in predominantly rural or agricultural areas but could
3 be located in areas with population and significant
4 infrastructure."

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

7 "[+]§179D-4[+] **Liability for damages.** (a) Nothing
8 contained in this chapter shall be construed to constitute a
9 waiver of any immunity of the State and no action or failure to
10 act under this chapter shall be construed to create any
11 liability in the State, board, department, or its officers or
12 employees, for the recovery of damages caused by [~~such~~] the
13 action or failure to act.

14 (b) No action shall be brought against the State, the
15 board, or the department, or against any employee of the State,
16 the board, or the department for damages sustained through the
17 partial or total failure of any private dam or reservoir
18 addressed in this chapter, or its maintenance or operation by
19 reason of any supervision or other action taken or not taken
20 pursuant to this chapter.

21 [~~(b)~~] (c) Nothing in this chapter and no order, action, or
22 advice of the State, board, department, or any representative



1 thereof, shall be construed to relieve an owner or operator of a
2 dam or reservoir of the legal duties, obligations, or
3 liabilities incident to the ownership or operation of a dam or
4 reservoir; provided that an owner or operator of a dam or
5 reservoir shall not be liable for damages as a result of only
6 natural causes such as earthquakes^[7] of an average recurrence
7 interval of one thousand years, hurricanes, or extraordinary
8 rains of an average recurrence interval in excess of two hundred
9 fifty years.

10 (d) The State assumes no ownership obligations,
11 responsibilities, or liability for any action pursuant to
12 section 179D-D."

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

15 "[~~f~~]**\$179D-6**[~~}]~~ **General powers and duties of the board of**
16 **land and natural resources.** (a) Certain dams or reservoirs in
17 the state shall be under the jurisdiction of the board until the
18 board declares which dams or reservoirs are to be removed from
19 its jurisdiction.

20 (b) The board [~~of land and natural resources~~] shall
21 administer the dam and reservoir safety program established by
22 this chapter. In carrying out this chapter, the board shall



1 cooperate, advise, consult, contract, and enter into cooperative
2 agreements with the United States government or any of its
3 agencies, other state agencies, and the county governments or
4 any of their agencies. In the performance of its duties, the
5 board shall:

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



- 1 (3) Conduct investigations and require reports from all
2 owners to be made from time to time, [~~such as~~]
3 including watershed investigations and studies, as may
4 be necessary to keep abreast of developments affecting
5 stream runoff and as required to facilitate its
6 decisions;
- 7 (4) Be authorized to enter upon such private property of
8 the dam or reservoir as may be necessary in making, at
9 the owner's expense, any investigation or inspection
10 required or authorized by this chapter. The entry
11 shall not constitute a cause of action in favor of the
12 owner of the land, except for damages resulting from
13 wilful acts or negligence by the board or its agents;
- 14 (5) Require the owners to apply for, and obtain from the
15 board written approval of plans and specifications on
16 the construction of any new dam or reservoir or the
17 enlargement of any dam or reservoir prior to
18 commencement of any work;
- 19 (6) Require the owners to file an application and secure
20 the written approval of the board before commencing
21 the repair, alteration, or removal of a dam or
22 reservoir, including the alteration or removal of a



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

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

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

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

12 (9) Cooperate with all public and private agencies created
13 for the purpose of enhancing dam and reservoir safety
14 activities and training, assist these organizations
15 and agencies in coordinating the use of their
16 facilities, and participate in the exchange of ideas,
17 knowledge, and data with these organizations and
18 agencies;

19 (10) Prepare, publish, and issue printed pamphlets,
20 bulletins, or advisories, or conduct training as the
21 board deems necessary for the dissemination of
22 information to the public;



- 1 (11) Appoint and remove agents and employees, including
2 hearing officers, specialists, and consultants, as
3 necessary to carry out the purposes of this chapter,
4 who may be engaged by the board without regard to the
5 requirements of chapter 76;
- 6 (12) Catalog and maintain an inventory of all regulated
7 dams and reservoirs in the state pursuant to this
8 chapter without regard to chapter 91;
- 9 (13) Establish similar or consistent hazard potential
10 classifications in conjunction with other applicable
11 state or federal guidelines for all regulated dams and
12 reservoirs in the state pursuant to this chapter
13 without regard to chapter 91;
- 14 (14) Examine and approve or disapprove applications for
15 approval of construction, enlargement, repair,
16 alteration, or removal of a dam or reservoir and
17 applications for certificates of approval to impound;
- 18 (15) Order the suspension, revocation, or both, of any
19 application approval or certificate of approval to
20 impound for any act or failure to comply with this
21 chapter or with any rules or orders adopted pursuant
22 to this chapter, or with any of the conditions



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



- 1 (20) Assess civil penalties for violation of this chapter
2 or any rule or standard adopted or order issued by the
3 board pursuant to this chapter;
- 4 (21) Place liens, as needed, on the owner's property, to be
5 collected as delinquent taxes against the lands and
6 property, if the owner neglects to pay any costs,
7 expenses, or penalties chargeable to the owner under
8 this chapter or any rule, order, or condition adopted,
9 issued, or required under this chapter;
- 10 (22) 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 (23) Take any and all other actions as may be necessary to
15 carry out this chapter."

16 SECTION 8. 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 shall 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
 11 chapter 91[-]; provided that the order or action shall remain in
 12 force until modified or set aside on appeal."

13 SECTION 9. 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) Except as otherwise

22 provided by law, the board may set, charge, and collect



1 administrative penalties and recover administrative fees and
2 costs, including attorney's fees and costs, or bring legal
3 action to recover administrative penalties, fees, and costs,
4 including attorney's fees and costs, or payment for damages or
5 for the cost to correct damages resulting from a violation of
6 this chapter or any rule, order, or condition adopted, issued,
7 or required under this chapter. The administrative penalty
8 shall not exceed \$25,000 per day of a violation, and each day
9 during which the violation continues shall constitute an
10 additional, separate, and distinct violation.

11 (b) Any person who negligently or after written notice to
12 comply, violates this chapter or any rule, order, or condition
13 adopted, issued, or required under this chapter, or knowingly
14 obstructs, hinders, or prevents the department's agents or
15 employees from performing duties under this chapter, shall be
16 guilty of a class C felony, and upon conviction thereof, shall
17 be punished as follows:

18 (1) For a first conviction, by a mandatory fine of not
19 less than \$2,500 but not more than \$25,000 per day of
20 violation, imprisonment, or both; and



1 (2) For a second or subsequent conviction, by a mandatory
2 fine of not less than \$5,000 but not more than \$50,000
3 per day of violation, imprisonment, or both.

4 (c) Any criminal action against a person for any violation
5 of this chapter shall not preclude the State from pursuing civil
6 legal action to recover administrative penalties, fees, and
7 costs against that person. Any civil action against a person to
8 recover administrative penalties, fees, and costs for any
9 violation of this chapter or any rule, order, or condition
10 adopted, issued, or required under this chapter shall not
11 preclude the State from pursuing any criminal action against
12 that person.

13 (d) With the assistance of the attorney general, the board
14 may seek an injunction and damages in the enforcement of this
15 chapter.

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

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



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

4 SECTION 11. Section 179D-5, Hawaii Revised Statutes, is
5 repealed.

6 "~~["~~\$179D-5~~ **Unlawful conduct.** (a) It shall be unlawful~~
7 ~~for any person to construct, operate, or remove a dam or other~~
8 ~~artificial barrier covered by this chapter, except in such a~~
9 ~~manner as to conform to and comply with the provisions of this~~
10 ~~chapter and with all rules, orders, and permits established~~
11 ~~under this chapter.~~

12 ~~(b) The rules and orders adopted under this chapter shall~~
13 ~~not apply to the design and construction of dams, reservoirs,~~
14 ~~and appurtenant works existing on June 6, 1987, but the rules~~
15 ~~and orders shall establish standards consistent with such design~~
16 ~~and construction for the operation, maintenance, and repair~~
17 ~~thereof, and those rules and orders then shall be applicable to~~
18 ~~those dams, reservoirs and appurtenant works which were existing~~
19 ~~on June 6, 1987."]~~

20 SECTION 12. There is appropriated out of the general
21 revenues of the State of Hawaii the sum of \$ for fiscal



1 year 2007-2008, and the same sum for fiscal year 2008-2009, to
2 be deposited into the dam and reservoir safety special fund.

3 SECTION 13. There is appropriated out of the dam and
4 reservoir safety special fund the sum of \$, or so much
5 thereof as may be necessary for fiscal year 2007-2008, and the
6 same sum, or so much thereof as may be necessary for fiscal year
7 2008-2009, to carry out the purposes of the dam and reservoir
8 safety special fund.

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

11 SECTION 14. If any provision of this Act, or the
12 application thereof to any person or circumstance is held
13 invalid, the invalidity does not affect other provisions or
14 applications of the Act, which can be given effect without the
15 invalid provision or application, and to this end the provisions
16 of this Act are severable.

17 SECTION 15. In codifying the new sections added by section
18 1 of this Act, the revisor of statutes shall substitute
19 appropriate section numbers for the letters used in designating
20 the new sections in this Act.

21 SECTION 16. Statutory material to be repealed is bracketed
22 and stricken. New statutory material is underscored.



1 SECTION 17. This Act shall take effect on July 1, 2020;
2 provided that sections 12 and 13 shall take effect on July 1,
3 2020.



S.B. NO. 1946
S.D. 2
H.D. 2

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 HD2)

SB1946 HD2 HMS 2007-3570

