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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. 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 II. DAM AND RESERVOIR SAFETY**

5           **§179D-A Certificate of approval to impound.** Each dam  
6 owner shall hold a valid certificate of approval to impound in  
7 order 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 or other artificial  
16 barrier dealt with in this part; provided that if an emergency  
17 situation arises as deemed by the department, the agents or



1 employees of the department, or any authorized representatives  
2 shall have the right to enter without prior notice, any  
3 property, public or private, for the purpose of investigating  
4 the condition, construction, taking any necessary remedial  
5 actions, or operation of any dam or other artificial barrier  
6 subject to this chapter, without a search warrant or liability  
7 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 part, the person may apply to the  
2 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 part.  
6 Upon a showing by the department that a person has engaged in or  
7 is about to engage in any act or practice, a permanent or  
8 temporary injunction, restraining order, or other order shall be  
9 granted without the necessity of showing lack of an adequate  
10 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 is threatened by any large flood or other natural disaster, the  
17 department may immediately employ remedial measures necessary to  
18 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 safety special fund  
19 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 safety special fund.** (a)  
12 There is established in the department a special fund, to be  
13 designated as the dam safety special fund. The fund shall be  
14 administered by the board. The following shall be deposited  
15 into the dam safety special fund:

- 16 (1) Appropriations by the legislature;
- 17 (2) All fees and administrative charges collected under  
18 this chapter or any rule adopted thereunder;
- 19 (3) Moneys collected as fines or penalties imposed under  
20 this chapter or any rule adopted thereunder;
- 21 (4) Moneys derived from public or private sources to  
22 benefit dam safety;



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



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



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

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





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

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

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

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

20 (f) If, upon inspection or upon completion to the  
21 satisfaction of the board of all work that may be ordered, the  
22 board finds that the dam and reservoir are safe to impound



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

8       **§179D-H Dams and reservoirs under construction,**  
9 **enlargement, repair, alteration, or removal before effective**  
10 **date of this section.** (a) Any dam or reservoir that falls  
11 within the definition of a dam and reservoir in this chapter and  
12 which the board finds was under construction, enlargement,  
13 repair, alteration, or removal, and based on its findings not  
14 ninety per cent constructed, enlarged, repaired, altered, or  
15 removed on the effective date of this section, except as  
16 provided in subsection (b), shall be subject to the same  
17 provisions in this section as a dam or reservoir commenced after  
18 that date. Every owner of a dam and reservoir subject to this  
19 section shall file an application with the board for the board's  
20 written application approval of the plans and specifications.

21       (b) Construction, enlargement, repair, alteration, or  
22 removal work on the dam and reservoir may proceed, provided an



1 application for approval of the plans and specifications is  
2 filed, until an application approval is received by the owner  
3 approving the dam and reservoir or an order is received by the  
4 owner specifying how the construction, enlargement, repair,  
5 alteration, or removal must be performed to render the dam or  
6 reservoir safe. After receipt of an application approval or  
7 order specifying how construction, enlargement, repair,  
8 alteration, or removal of the dam or reservoir must be  
9 performed, work thereafter must be in accordance with the  
10 application approval or order.

11 **§179D-I Annual report.** The department shall submit an  
12 annual report to the governor and the legislature by January 5  
13 of each year concerning the activities of the department  
14 relating to this chapter for the preceding fiscal year. The  
15 report shall include but not be limited to information on the  
16 following:

- 17 (1) Approvals of plans and specifications for the  
18 construction of dams and reservoirs and for  
19 alterations, modifications, repairs, removal, and  
20 enlargements of any dams and reservoirs;
- 21 (2) A listing of dam safety inspections made;
- 22 (3) Use of appropriated funds;



- 1 (4) Rules adopted or amended;
- 2 (5) Enforcement orders and proceedings;
- 3 (6) Dam failures and department evaluations of the reasons
- 4 for dam failure if known; and
- 5 (7) Any other available data regarding the effectiveness
- 6 of the State's dam safety program.

7 **§179D-J Dam owners; general requirements and**  
 8 **responsibilities.** Dam owners subject to regulation under this  
 9 chapter shall assume but not be limited to the following general  
 10 requirements and responsibilities:

- 11 (1) Maintain an operation and maintenance plan, including
- 12 an owner/operator inspection and monitoring program,
- 13 with written, regularly scheduled reports to the
- 14 board, so as to maintain and keep the structure, its
- 15 appurtenant works, and access in the state of repair
- 16 and operating condition required by the exercise of
- 17 due care, with regard for the safety of persons or
- 18 property, sound and accepted engineering principles,
- 19 and the rules adopted by the board;
- 20 (2) Establish an emergency action plan for high and
- 21 significant hazard potential dams and provide this
- 22 plan to the board, state and county civil defense



1 agencies, and other necessary parties, with regard for  
2 the safety of persons or property, sound and accepted  
3 engineering principles, and the rules adopted by the  
4 board;

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

7 (4) Facilitate access by any necessary state agencies or  
8 authorized representative, to the dam, reservoir, or  
9 appurtenances. Access for a four-wheeled drive  
10 vehicle to the dam or reservoir site, and  
11 appurtenances if required by the board, shall be  
12 maintained at all times; provided that if vehicular  
13 access to the dam or reservoir site cannot be  
14 maintained during periods of inclement weather, the  
15 dam owner for high and significant hazard potential  
16 dams shall have redundant early warning systems in  
17 place, as approved by the board; and

18 (5) Furnish upon request the plans, specifications,  
19 operating and maintenance data, or other information  
20 that is pertinent to the dam structure and  
21 appurtenances as indicated in this chapter."



1 SECTION 2. 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~~]  
5 2007."

6 SECTION 3. Section 179D-2, Hawaii Revised Statutes, is  
7 amended to read as follows:

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

18 SECTION 4. Section 179D-3, Hawaii Revised Statutes, is  
19 amended to read as follows:

20 "[+]§179D-3[+] **Definitions.** The following terms, whenever  
21 used and referred to in this chapter, shall have the following



1 respective meanings, unless a different meaning clearly appears  
2 in the context:

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

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

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

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





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

- 4 (1) Is twenty-five feet or more in height from the natural  
5 bed of the stream or watercourse measured at the  
6 downstream toe of the barrier, or from the lowest  
7 elevation of the outside limit of the barrier if it is  
8 not across a stream channel or watercourse to a  
9 maximum water storage elevation; [~~or~~]
- 10 (2) Has an impounding capacity at maximum water storage  
11 elevation of fifty acre-feet or more. This chapter  
12 does not apply to any artificial barrier [~~which~~] that  
13 is less than six feet in height regardless of storage  
14 capacity or [~~which~~] that has a storage capacity at  
15 maximum water storage elevation less than fifteen  
16 acre-feet regardless of height [~~or~~]; or
- 17 (3) Meets additional criteria or is specifically exempted  
18 as determined by the board, pursuant to rules adopted.

19 "Department" means the department of land and natural  
20 resources.

21 "Emergency" includes but is not limited to breaches and all  
22 conditions leading to or causing a breach, overtopping, or any



1 other condition in a dam and its appurtenant structures that may  
2 be construed as unsafe or threatening to life and property.

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

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

13 "High hazard" means a dam's failure is likely to cause loss  
14 of human life.

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

19 "Owner" means any person who [~~owns, controls, operates,~~  
20 ~~maintains, manages, or proposes to construct a dam or~~  
21 ~~reservoir.] has a right, title, or interest in or to the dam or~~



1 to the property upon which the dam or appurtenant works is  
2 located or proposed to be located.

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

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

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

20 "Reservoir" means any basin [~~which~~] that contains or will  
21 contain water impounded by a dam.



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

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

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

17       (b) Nothing in this chapter and no order, action, or  
18 advice of the State, board, department, or any representative  
19 thereof, shall be construed to relieve an owner or operator of a  
20 dam or reservoir of the legal duties, obligations, or  
21 liabilities incident to the ownership or operation of a dam or  
22 reservoir; provided that an owner or operator of a dam or



1 reservoir shall not be liable for damages as a result of only  
2 natural causes such as earthquakes[~~r~~] of an average recurrence  
3 interval of one thousand years, hurricanes, or extraordinary  
4 rains of an average recurrence interval in excess of two hundred  
5 fifty years.

6 (c) The State assumes no ownership obligations,  
7 responsibilities, or liabilities for any action pursuant to  
8 section 179D-D."

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

11 "[~~§~~179D-6[~~§~~] **General powers and duties of the board of**  
12 **land and natural resources.** (a) All dams or reservoirs in the  
13 State shall be under the jurisdiction of the board until the  
14 board declares which dams are to be removed from its  
15 jurisdiction.

16 (b) The board [~~of land and natural resources~~] shall  
17 administer the dam safety program established by this chapter.  
18 In carrying out this chapter, the board shall cooperate, advise,  
19 consult, contract, and enter into cooperative agreements with  
20 the United States government or any of its agencies, other state  
21 agencies, and the county governments or any of their agencies.  
22 In the performance of its duties, the board shall:



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



- 1           (4) Be authorized to enter upon such private property of  
2           the dam or reservoir as may be necessary in making, at  
3           the owner's expense, any investigation or inspection  
4           required or authorized by this chapter. The entry  
5           shall not constitute a cause of action in favor of the  
6           owner of the land, except for damages resulting from  
7           wilful acts or negligence by the board or its agents;
- 8           (5) Require the owners to apply for, and obtain from the  
9           board written approval of plans and specifications on  
10          the construction of any new dam or reservoir or the  
11          enlargement of any dam or reservoir prior to  
12          commencement of any work;
- 13          (6) Require the owners to file an application and secure  
14          the written approval of the board before commencing  
15          the repair, alteration, or removal of a dam or  
16          reservoir, including the alteration or removal of a  
17          dam so that it no longer constitutes a dam or  
18          reservoir as defined in this chapter. Repairs shall  
19          not be deemed to apply to routine maintenance not  
20          affecting the safety of the structure;



- 1       ~~[(7) Require filing fees by rules to accompany each~~  
2       ~~application as required under the provisions of this~~  
3       ~~chapter.]~~
- 4       (7) Require owners to secure the written approval of the  
5       board to impound water;
- 6       (8) Require fees to cover the board's costs in carrying  
7       out the administration of dam safety;
- 8       (9) Cooperate with all public and private agencies created  
9       for the purpose of enhancing dam safety activities and  
10       training, and assist these organizations and agencies  
11       in coordinating the use of their facilities and  
12       participate in the exchange of ideas, knowledge, and  
13       data with these organizations and agencies;
- 14       (10) Prepare, publish, and issue printed pamphlets,  
15       bulletins, or advisories, or conduct training as the  
16       board deems necessary for the dissemination of  
17       information to the public;
- 18       (11) Appoint and remove agents and employees including  
19       hearing officers, specialists, and consultants, as  
20       necessary to carry out the purposes of this chapter,  
21       who may be engaged by the board without regard to the  
22       requirements of chapter 76;





- 1        (12) Catalog and maintain an inventory of all regulated  
2                    dams and reservoirs in the State pursuant to this  
3                    chapter without regard to chapter 91;
- 4        (13) Establish similar or consistent hazard potential  
5                    classifications in conjunction with other applicable  
6                    states or federal guidelines for all regulated dams  
7                    and reservoirs in the State pursuant to this chapter  
8                    without regard to chapter 91;
- 9        (14) Examine and approve or disapprove applications for  
10                   approval of construction, enlargement, repair,  
11                   alteration, or removal of a dam or reservoir, and  
12                   applications for certificates of approval to impound;
- 13       (15) Order the suspension or revocation, or both, of any  
14                   application approval or certificate of approval to  
15                   impound for any act for failure to comply with this  
16                   chapter or with any rules or orders adopted pursuant  
17                   to this chapter, or with any of the conditions  
18                   contained in or attached to the application approval  
19                   or certificate of approval to impound;
- 20       (16) Issue orders requiring the adoption by an owner of  
21                   remedial measures necessary for the safety of life or



1           public or private property or for carrying out this  
2           chapter or rules issued under this chapter;

3           (17) Order the immediate cessation of any act that is  
4           started or continued without an application approval  
5           or certificate of approval to impound as required by  
6           this chapter;

7           (18) Enter private property and immediately take actions  
8           necessary to provide protection to life or property at  
9           the owner's expense, including removal of the dam.  
10          The entry shall not constitute a cause of action in  
11          favor of the owner of the land, except for damages  
12          resulting from wilful acts or negligence by the board  
13          or its agents;

14          (19) Recover from the owner, in the name of the State, the  
15          expenses incurred in taking any action required by the  
16          owner of the dam in the same manner debts are  
17          recoverable by law;

18          (20) Assess civil and criminal penalties for violation of  
19          this chapter or any rule or standard adopted or order  
20          issued by the board pursuant to this chapter;

21          (21) Place liens, as needed, on the owner's property, to be  
22          collected as delinquent taxes against the lands and



1 property are collected, if the owner neglects to pay  
2 any costs, expenses or penalties chargeable to the  
3 owner under this chapter or any rule, order, or  
4 condition adopted, issued, or required under this  
5 chapter;

6 (22) With the assistance of the attorney general, institute  
7 and prosecute all court actions that may be necessary  
8 to obtain the enforcement of any order issued by the  
9 board in carrying out this chapter; and

10 (23) Take any and all other actions as may be necessary to  
11 carry out this chapter."

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

14 "[+]§179D-7[+] **Administrative and judicial review.** (a)  
15 The findings and order of the board, and the board's approval or  
16 disapproval of an application issued by the State are final,  
17 conclusive, and binding upon all owners, state agencies, and  
18 other government agencies, regulatory or otherwise, as to the  
19 safety of design, construction, enlargement, repair, alteration,  
20 removal, maintenance, and operation of any dam or reservoir.  
21 The board's approval of an application or a certificate of  
22 approval to impound shall not be considered final if it can be



1 demonstrated to the board that the board's approval of the  
2 relevant application or certificate of approval was based on one  
3 or more misrepresentations.

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

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

11 "[~~§~~§179D-8[~~§~~] **Violations; penalties.** [~~Any person~~  
12 ~~violating any provision of this chapter or any permit condition~~  
13 ~~or limitation established pursuant to this chapter or~~  
14 ~~negligently or wilfully failing or refusing to comply with any~~  
15 ~~final order of the board issued as provided herein, shall be~~  
16 ~~liable for a civil penalty not to exceed \$500 for each day~~  
17 ~~during which said violation continues.] (a) Except as otherwise  
18 provided by law, the board may set, charge, and collect  
19 administrative penalties and recover administrative fees and  
20 costs, including attorney's fees and costs, or bring legal  
21 action to recover administrative penalties, fees, and costs  
22 including attorney's fees and costs, or payment for damages or~~



1 for the cost to correct damages resulting from a violation of  
2 this chapter or any rule, order, or condition adopted, issued,  
3 or required under this chapter. The administrative penalty  
4 shall not exceed \$25,000 per day of a violation, and each day  
5 during which the violation continues shall constitute an  
6 additional, separate, and distinct offense.

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

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

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



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

10       (d) With the assistance of the attorney general, the board  
 11 may seek an injunction and damages in the enforcement of this  
 12 chapter.

13       (e) All penalties, fees, and costs collected pursuant to  
 14 this section or rules adopted by the board pursuant to this  
 15 chapter, shall be deposited in the dam safety special fund."

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

18       "~~§179D-9~~ **Enactment of rules.** (a) The department  
 19 shall adopt the necessary rules not later than one and one-half  
 20 years after [~~June 6, 1987.~~] July 1, 2007.



1 (b) A declaration that certain parts of this Act are

2 unconstitutional shall not affect the constitutionality of other  
3 parts of this Act."

4 SECTION 10. 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 11. 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 safety special fund.

3 SECTION 12. There is appropriated out of the dam safety  
4 special fund the sum of \$ , or so much thereof as may be  
5 necessary for fiscal year 2007-2008, and the same sum, or so  
6 much thereof as may be necessary for fiscal year 2008-2009, to  
7 carry out the purposes of the dam safety special fund.

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

10 SECTION 13. 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 14. In codifying the new sections added by section  
15 1 of this Act, the revisor of statutes shall substitute  
16 appropriate section numbers for the letters used in designating  
17 the new sections in this Act.

18 SECTION 15. If any provision of this Act, or the  
19 application thereof to any person or circumstance is held  
20 invalid, the invalidity does not affect other provisions or  
21 applications of the Act, which can be given effect without the





1 invalid provision or application, and to this end the provisions  
2 of this Act are severable.

3 SECTION 16. Statutory material to be repealed is bracketed  
4 and stricken. New statutory material is underscored.

5 SECTION 17. This Act shall take effect upon its approval;  
6 provided that sections 11 and 12 shall take effect on July 1,  
7 2007.



**Report Title:**

Dam Safety; Appropriation

**Description:**

Adds extensive provisions to the dam safety chapter to improve safety to dams and reservoirs in the State. Makes an appropriation. (SD2)

