

JAN 22 2008

A BILL FOR AN ACT

RELATING TO WATER SAFETY.

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

1 SECTION 1. The legislature finds that Hawaii has the
2 highest rate of drowning in the country. An average of thirty
3 Hawaii residents, or 2.4 victims for every one hundred thousand
4 people, drown each year in the State's oceans, lakes, dams and
5 reservoirs, rainwater retention and detention ponds, flood
6 waters, swimming pools, spas, and in private homes. The rate
7 more than doubles when including visitor statistics, making it
8 the nation's riskiest destination in terms of water safety.

9 Hawaii's keiki are the most vulnerable to drowning, which
10 in this State and nine others, is the leading cause of death
11 among children aged fourteen and younger. Among children under
12 age five, drowning accidents in swimming pools are the leading
13 cause of injury and death. Hawaii's older keiki are more
14 vulnerable to drowning in the ocean, lakes, ponds, dams and
15 reservoirs, rainwater catchments, as well as detention and
16 retention ponds.



1 Detention and retention ponds are meant to hold storm
2 water. Similarly, rainwater catchments are used to harvest
3 runoff rainwater. While many catchment systems collect runoff
4 in enclosed tanks, some systems utilize artificial ponds to
5 catch the water.

6 Unregulated and poorly maintained rainwater detention and
7 retention ponds pose a serious health and safety risk,
8 particularly to Hawaii's children. Since rainwater retention
9 and detention ponds are often mistaken for recreational bodies
10 of water, they should be clearly marked with hazard and warning
11 signs that prohibit swimming and water sports.

12 The legislature further finds that the department of health
13 has recommended action to reduce Hawaii's drowning rate and has
14 set a goal more than a year ago to reduce that rate by more than
15 half to less than one resident per one hundred thousand by 2010.
16 A high drowning rate detracts from the State's image as a safe
17 as well as pleasurable visitor destination.

18 The American Academy of Pediatrics and the Consumer Product
19 Safety Commission have recommended fencing to protect children
20 from circumventing adult supervision. The State's injury
21 prevention panel has recommended four-sided isolation fencing
22 for residential pools to isolate them from the house or yard.



1 Just like pools, rainwater detention and retention ponds should
2 be similarly enclosed with chain-link or see-through fencing at
3 least four feet high and accessed by a single locked gate. An
4 alarm should also be required to sound if the fence is breached
5 or someone enters the water.

6 The purpose of this Act is to ensure the health, safety,
7 and welfare of the citizens of the State by creating a program
8 for monitoring and enforcing the safety of Hawaii's rainwater
9 retention and detention ponds to prevent drowning by enacting
10 the Charlotte "Sharkey" Schaefer's law in memory of the five-
11 year-old girl who drowned at a Pearl City naval housing complex
12 while trying to save the life of her childhood friend.

13 SECTION 2. Chapter 321, Hawaii Revised Statutes, is
14 amended by adding a new part to be appropriately designated and
15 to read as follows:

16 **"PART . RAINWATER DETENTION AND RETENTION POND SAFETY:**

17 **CHARLOTTE "SHARKEY" SCHAEFER'S LAW**

18 **§321-A Definitions.** For the purposes of this part, unless
19 the context clearly requires otherwise:

20 "Catchment area pond" means an area used to harvest
21 rainwater runoff consisting of an artificial pond.



1 "Detention pond" means a permanent or semi-permanent
2 aquatic system that dries out only under drought conditions.
3 Storm water entering a detention area displaces an equivalent
4 amount of water. The detention pond acts as a trap where
5 pollutants picked up by the initial surge of storm water settle
6 out before leaving the detention pond. A detention pond is
7 alternatively termed a "wet-detention system".

8 "Retention pond" means an area that is designed to hold
9 storm water until the effects of percolation,
10 evapotranspiration, or controlled release, return the area to
11 its normally dry state. The area is designed so storm water
12 inflow is dissipated within seventy-two hours so that a new
13 volume of water can be accommodated. Since these storm water
14 areas are designed to be dry, they are alternatively termed
15 "dry-retention systems".

16 **§321-B Retention pond, detention pond, and catchment area**
17 **pond; safety measures required; inspection; fines.** (a) The
18 department shall perform an annual safety inspection of each
19 retention pond, detention pond, and catchment area in the State
20 to ensure that the operation of each retention pond, detention
21 pond, and catchment area pond complies with the maintenance plan
22 adopted pursuant to section 321-C and the rules of the



1 department. Each retention pond, detention pond, and catchment
2 area pond shall:

3 (1) Be supplied with:

4 (A) An emergency flotation device; and

5 (B) A reaching pole or similar device to pull ashore
6 individuals who may be stranded in the pond;

7 (2) Be enclosed with chain-link or see-through fencing at
8 least four feet high, with access controlled by a
9 single locked gate;

10 (3) Have adequate drainage; and

11 (4) Have an adequate number of hazard signs posted warning
12 of the danger of drowning and prohibiting entry.

13 (b) As part of the annual inspection, the department shall
14 inspect and verify that the developer or person responsible for
15 the retention pond, detention pond, or catchment area pond:

16 (1) Has on file an ongoing maintenance plan, including
17 design drawings and operational records, adopted
18 pursuant to section 321-C; and

19 (2) Is complying with the maintenance plan and standard
20 best practice guidelines.

21 **§321-C Maintenance plan.** (a) Each developer or person
22 responsible for constructing or maintaining a retention pond,



1 detention pond, or catchment area pond in the State shall adopt
 2 a maintenance plan to ensure continued safety that includes
 3 design drawings, safety features such as warning signs and
 4 safety devices, a method to maintain operational records,
 5 adequate drainage, and enclosing the area with fencing.
 6 Maintenance plans shall comply with standard best practice
 7 design and maintenance guidelines and shall include tiered
 8 levels for ease of exit.

9 (b) Existing retention ponds, detention ponds, and
 10 catchment area ponds that do not already have a maintenance plan
 11 shall adopt such a plan prior to December 31, 2009.

12 **§321-D Rules; fines.** The department shall adopt rules in
 13 accordance with chapter 91 to carry out the purposes of this
 14 part. Violations of this part shall be subject to
 15 administrative fines in amounts as determined by the department
 16 in accordance with rules."

17 SECTION 3. Chapter 46, Hawaii Revised Statutes, is amended
 18 by adding a new section to be appropriately designated and to
 19 read as follows:

20 **"§46- Retention pond, detention pond, and catchment**
 21 **area pond; requirements; maintenance plan.** (a) Beginning
 22 **January 1, 2009, no retention pond, detention pond, or catchment**



1 area pond, as those terms are defined in section 321-A, shall be
2 permitted to be constructed within a county unless the developer
3 or person responsible proposing its construction and
4 maintenance:

5 (1) Certifies that a retention pond, detention pond, or
6 catchment area pond is necessary for rainwater or
7 storm water mitigation and that there is no other
8 alternative;

9 (2) Includes a -foot wide buffer in the design
10 surrounding the pond to separate it from homes, parks,
11 or housing projects; and

12 (3) Creates and adopts a maintenance plan pursuant to
13 section 321-C.

14 The department of health, under part of chapter 321, shall
15 be responsible for inspecting the plan under paragraph (3).

16 (b) Prior to December 31, 2009, a developer or person
17 responsible for the construction or maintenance of any retention
18 pond, detention pond, or catchment area pond that was
19 constructed prior to January 1, 2009, shall submit to the:

20 (1) Appropriate county permitting agency a certification
21 that the retention pond, detention pond, or catchment



1 area pond is necessary for rainwater or storm water
 2 mitigation and that there is no other alternative; and
 3 (2) Department of health a maintenance plan pursuant to
 4 section 321-C."

5 SECTION 4. Chapter 302A, Hawaii Revised Statutes, is
 6 amended by adding a new section to be appropriately designated
 7 and to read as follows:

8 "§302A- Water safety education; retention pond,
 9 detention pond, and catchment area pond. The department shall
 10 incorporate retention pond, detention pond, and catchment area
 11 pond safety into the department's water safety curriculum."

12 SECTION 5. In codifying the new sections added by section
 13 4 of this Act, the revisor of statutes shall substitute
 14 appropriate section numbers for the letters used in designating
 15 the new sections in this Act.

16 SECTION 6. New statutory material is underscored.

17 SECTION 7. This Act shall take effect upon its approval.

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Report Title:

Retention, Detention, and Catchment Pond Safety

Description:

Establishes requirements for rainwater and storm water retention, detention, and catchment area pond inspection and safety. Allows fines.

