

JAN 23 2008

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 . LIMITATIONS ON LIABILITY**

5 **§179D-A Liability of stockholders, directors, and**
6 **officers.** Stockholders, directors, and officers of any
7 corporation that owns, operates, or controls a dam or reservoir
8 in this State shall have the same measure of immunity from
9 liability for corporate acts or omissions as stockholders,
10 directors, and officers under chapter 414 or 414D, as
11 appropriate.

12 **§179D-B Liability for personal injury or property damage.**

13 (a) Notwithstanding any law to the contrary, no entity or
14 person that owns, controls, or operates a dam or reservoir shall
15 be liable for any personal injury or property damage:

16 (1) Resulting from water escaping from the dam or
17 reservoir by overflow; or



1 (2) Resulting from a failure or partial failure of the
2 structure or structures forming that dam or reservoir;
3 provided that the failure or partial failure was not
4 proximately caused by the negligence of the entity or
5 person.

6 No entity or person shall be subject to punitive or exemplary
7 damages for negligence, as provided in this section, in excess
8 of that provided by law.

9 (b) No entity or person that owns, controls, or operates a
10 dam or reservoir shall be liable for any personal injury or
11 property damage that results from allowing the inflow to the dam
12 or reservoir to pass through it and into a natural stream below
13 the reservoir.

14 (c) In the event of any conflict between this part and any
15 other law or judicial interpretation, this part shall control.

16 **§179D-C Insurance.** (a) No stockholder, officer, or
17 member of a board of directors of an owner of a dam or reservoir
18 shall be liable for any personal injury or property damages:

19 (1) Resulting from water escaping from the dam or
20 reservoir; or

21 (2) Resulting from a failure or partial failure of the
22 structure or structures forming the dam or reservoir;



1 for which the owner has been found liable by a court of
2 competent jurisdiction if the owner is insured by a valid
3 liability insurance policy in effect at the time the damage
4 occurs or has an adequate substitute under subsection (c) at the
5 time the damage occurs.

6 (b) An insurance policy meeting the qualifications of
7 subsection (a) shall insure against damages and provide coverage
8 in an amount of not less than \$50,000 per claim and an aggregate
9 amount of not less than \$500,000 for all claims that arise out
10 of any one incident. The policy may provide that it does not
11 apply to any act or omission of a stockholder, officer, or
12 member of a board of directors of an owner if the act or
13 omission is dishonest, fraudulent, malicious, or criminal. The
14 policy may also contain other reasonable provisions with respect
15 to policy periods, territory, claims, conditions, and other
16 matters common to those policies of insurance.

17 (c) An adequate substitute for insurance pursuant to
18 subsection (a) is limited to any one or more of the following:

19 (1) A bond in an amount equal to the coverage limitations
20 set forth in subsection (b) and duly issued by a
21 qualified corporate surety approved by the insurance
22 commissioner; provided that the bond is conditioned



1 upon the payment by the entity or person that owns,
2 controls, or operates a dam or reservoir of any valid
3 final judgment for damages imposed pursuant to this
4 part;

5 (2) An escrow of acceptable securities or an annual
6 irrevocable letter or annual letters of credit issued
7 by any national or state bank and deposited with an
8 escrow agent pursuant to an escrow contract or
9 agreement requiring the escrow agent to pay from the
10 escrow account amounts necessary to discharge a final
11 judgment for damages within the coverage limitations
12 set forth in subsection (b); provided that the escrow
13 contract or agreement cannot be revoked or amended
14 until after any claims for damages against the entity
15 or person have been discharged or until applicable
16 statutes of limitations have expired; or

17 (3) A combination of insurance and any of the substitutes
18 described in this section, so long as the aggregate
19 value satisfies the coverage limitations set forth in
20 subsection (b).

21 (d) The provisions of this section shall not be deemed to
22 impose any liability upon a member of the board of directors, an



1 officer, or a stockholder of the owner of a dam or reservoir
2 greater than that provided in section 179D-A.

3 **§179D-D Exempt acts or omissions.** The limitations on
4 liability set forth in this part shall not apply to:

5 (1) Criminal, fraudulent, or malicious acts or omissions;
6 or

7 (2) Ultra vires acts or omissions,

8 by an owner or a member of the board of directors, officer, or
9 stockholder of an owner."

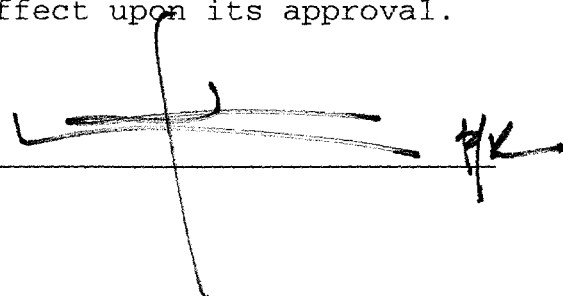
10 SECTION 2. This Act does not affect rights and duties that
11 matured, penalties that were incurred, and proceedings that were
12 begun, before its effective date.

13 SECTION 3. In codifying the new sections added by section
14 1 of this Act, the revisor of statutes shall substitute
15 appropriate section numbers for the letters used in designating
16 the new sections in this Act.

17 SECTION 4. This Act shall take effect upon its approval.

18

INTRODUCED BY: _____



Report Title:

Dams and Reservoirs; Liability

Description:

Establishes limitations on liability for damages for owners of dams and reservoirs.

