
A BILL FOR AN ACT

RELATING TO DAMS.

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

1 SECTION 1. Chapter 179D, Hawaii Revised Statutes, is
2 amended by adding two new sections to be appropriately
3 designated and to read as follows:

4 "§179D-A Dam and reservoir repair revolving fund. (a)

5 There is established a dam and reservoir repair revolving fund
6 into which shall be deposited:

7 (1) Appropriations by the legislature;

8 (2) Funds from the issuing of revenue bonds authorized by
9 the legislature to finance the establishment and
10 administration of the loan program;

11 (3) Interest derived from monies in the fund; and

12 (4) Payments made on loans from the fund.

13 (b) Moneys in the fund shall be used by the board to:

14 (1) Implement emergency actions pursuant to section 179D-
15 24;

16 (2) Make dam repair loans to owners of dams or reservoirs
17 with plans and specifications for the alteration,



1 repair, or removal of dams and reservoirs approved by
2 the board; and

3 (3) Pay the debt service on revenue bonds issued by the
4 department, and the establishment of debt service and
5 other reserves deemed necessary by the board.

6 **§179D-B Dam and reservoir repair loans.** (a) The board
7 may make loans from the dam and reservoir repair revolving fund
8 to owners of dams or reservoirs with plans and specifications
9 and an application for the alteration, repair, or removal of
10 dams and reservoirs approved by the board. Loans granted by the
11 board shall be for a term of not more than twenty years.

12 (b) Loans under this section shall bear interest at the
13 following rates:

14 (1) For loans with a term of not more than five years, the
15 interest rate shall be two per cent per year;

16 (2) For loans with a term of more than five years but less
17 than ten years, the interest rate shall be four per
18 cent per year; and

19 (3) For loans with a term of more than ten years, the
20 interest rate shall be six per cent per year;

21 provided that loans funded by revenue bonds shall be made at
22 cost.



1 (c) An owner securing the written approval of the board
 2 for the alteration, repair, or removal of a dam or reservoir may
 3 submit an application to the board for a loan from the dam and
 4 reservoir repair revolving fund. The board shall make loans
 5 from the dam and reservoir repair revolving fund based upon the
 6 availability of funds."

7 SECTION 2. Section 179D-3, Hawaii Revised Statutes, is
 8 amended by adding a new definition to be appropriately inserted
 9 and to read as follows:

10 "Fund" means the dam and reservoir repair revolving fund."

11 SECTION 3. Section 179D-4, Hawaii Revised Statutes, is
 12 amended by amending subsection (b) to read as follows:

13 "(b) Nothing in this chapter and no order, action, or
 14 advice of the State, board, department, or any representative
 15 thereof, shall be construed to relieve an owner or operator of a
 16 dam or reservoir of the legal duties, obligations, or
 17 liabilities incident to the ownership or operation of a dam or
 18 reservoir; provided that an owner or operator of a dam or
 19 reservoir shall not be liable for damages as a result of only
 20 natural causes [~~such as earthquakes of an average recurrence~~
 21 ~~interval of one thousand years, hurricanes, or extraordinary~~



1 ~~rains of an average recurrence interval in excess of two hundred~~
2 ~~fifty years.]~~ except on a finding of negligence."

3 SECTION 4. Section 179D-6, Hawaii Revised Statutes, is
4 amended by amending subsection (b) to read as follows:

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

12 (1) Establish by rules adopted under chapter 91, policies,
13 requirements, or standards governing the design,
14 construction, operation, maintenance, enlargement,
15 alteration, repair, removal, and inspection of dams,
16 reservoirs, and appurtenant works for the protection
17 of life and property from structural failure of dams
18 and reservoirs;

19 (2) Conduct investigations and the collection of data,
20 including technological advances made in dam and
21 reservoir safety practices elsewhere, as may be needed
22 for the proper review and study of the various



1 features of the design, construction, repair, removal,
2 inspection, operation, maintenance, alteration, and
3 enlargement of dams, reservoirs, and appurtenant
4 works. The board may require submittal of reports of
5 investigations from all owners;

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

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

19 (5) Require the owners to apply for, and obtain from the
20 board written approval of plans and specifications on
21 the construction of any new dam or reservoir or the



1 enlargement of any dam or reservoir prior to
2 commencement of any work;

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

11 (7) Require owners to secure the written approval of the
12 board to impound water;

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

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



- 1 (10) Prepare, publish, and issue printed pamphlets,
2 bulletins, or advisories, or conduct training as the
3 board deems necessary for the dissemination of
4 information to the public;
- 5 (11) Appoint and remove agents and employees, including
6 hearing officers, specialists, and consultants, as
7 necessary to carry out the purposes of this chapter,
8 who may be engaged by the board without regard to the
9 requirements of chapter 76;
- 10 (12) Catalog and maintain an inventory of all regulated
11 dams and reservoirs in the State pursuant to this
12 chapter without regard to chapter 91;
- 13 (13) Establish similar or consistent hazard potential
14 classifications in conjunction with other applicable
15 state or federal guidelines for all regulated dams and
16 reservoirs in the State pursuant to this chapter
17 without regard to chapter 91;
- 18 [~~14~~] ~~Examine and approve or disapprove applications for~~
19 ~~approval of construction, enlargement, repair,~~
20 ~~alteration, or removal of a dam or reservoir and~~
21 ~~applications for certificates of approval to impound;~~



1 ~~(15)~~] (14) Order the suspension, revocation, or both, of
2 any application approval or certificate of approval to
3 impound for any act or failure to comply with this
4 chapter or with any rules or orders adopted pursuant
5 to this chapter, or with any of the conditions
6 contained in or attached to the application approval
7 or certificate of approval to impound;

8 ~~(16)~~] (15) Issue orders requiring the adoption by an owner
9 of remedial measures necessary for the safety of life
10 or public or private property, or for carrying out
11 this chapter or rules issued under this chapter;

12 ~~(17)~~] (16) Order the immediate cessation of any act that is
13 started or continued without an application approval
14 or certificate of approval to impound as required by
15 this chapter;

16 ~~(18)~~] (17) Enter private property and immediately take
17 actions necessary to provide protection to life or
18 property at the owner's expense, including removal of
19 the dam or reservoir. The entry shall not constitute
20 a cause of action in favor of the owner of the land,
21 except for damages resulting from wilful acts or gross
22 negligence by the board or its agents;



1 [~~(19)~~] (18) Recover from the owner, in the name of the
2 State, the expenses incurred in taking any action
3 required by the owner of the dam or reservoir in the
4 same manner debts are recoverable by law;

5 [~~(20)~~] (19) Assess civil penalties for violation of this
6 chapter or any rule or standard adopted or order
7 issued by the board pursuant to this chapter;

8 [~~(21)~~] (20) Place liens, as needed, on the owner's property,
9 to be collected as delinquent taxes against the lands
10 and property, if the owner neglects to pay any costs,
11 expenses, or penalties chargeable to the owner under
12 this chapter or any rule, order, or condition adopted,
13 issued, or required under this chapter;

14 [~~(22)~~] (21) With the assistance of the attorney general,
15 institute and prosecute all court actions that may be
16 necessary to obtain the enforcement of any order
17 issued by the board in carrying out this chapter;

18 [~~and~~]

19 (22) Make loans for the alteration, repair, or removal of
20 dams and reservoirs;



1 (23) Make expenditures for emergency actions initiated by
2 the board from the dam and reservoir repair revolving
3 fund pursuant to section 179D-24; and

4 [~~23~~] (24) Take any and all other actions as may be
5 necessary to carry out this chapter."

6 SECTION 5. Section 179D-24, Hawaii Revised Statutes, is
7 amended to read as follows:

8 "[~~f~~]**\$179D-24**[~~]~~ **Emergency actions.** (a) If, [~~in the~~
9 ~~opinion of~~] through its investigation or inspection, the
10 department[~~r~~] determines that the conditions of any dam or
11 reservoir are so dangerous to the health and safety of life or
12 property as to not permit time for issuance and enforcement of
13 an order relative to construction, modification, maintenance, or
14 repair of the dam or reservoir, or the dam or reservoir is
15 threatened by any large flood or other natural disaster, the
16 department may immediately employ remedial measures necessary to
17 protect life and property.

18 (b) The department shall [~~provide coordination and~~
19 ~~assistance to~~] develop with the proper state or county agency or
20 agencies remedial measures to be executed to maintain control of
21 any dam or reservoir that, pursuant to subsection (a), has been
22 determined to be dangerous to life or property until the dam or



1 reservoir is deemed safe, or until any emergency conditions that
2 precipitated taking control of the dam or reservoir, pursuant to
3 subsection (a), have been abated. The department may determine
4 the proper time at which to relinquish control of the dam or
5 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-25.

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) When the board determines through its investigation or
8 inspection of a dam that a danger to public safety exists that
9 can be remedied by making repairs, breaching of the dam, or
10 other actions that are necessary, the board shall direct the
11 owner to immediately initiate the emergency actions necessary or
12 the board may initiate the emergency actions to insure public
13 safety.

14 (h) The emergency actions executed pursuant to (g) shall
15 be made at the owner's expense. When emergency actions are
16 initiated by the board, the board may use moneys from the dam
17 and reservoir repair revolving fund, for which the owner shall
18 reimburse that fund in lump sum or through installment payments
19 agreed to by the board.

20 ~~[(g)]~~ (i) The legislature finds and declares that
21 emergency actions under this section are in the public interest



1 and for the public health, safety, and general welfare of the
2 State, and authorizes the board to take any necessary actions."

3 SECTION 6. The director of finance is authorized to issue
4 revenue bonds in the sum of \$ or so much thereof as
5 may be necessary and the same sum or so much thereof as may be
6 necessary is appropriated for fiscal year 2009-2010 to be paid
7 into the dam and reservoir repair revolving fund created in
8 section 179D-A, Hawaii Revised Statutes.

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

12 SECTION 7. In codifying the new sections added by section
13 1 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 8. Statutory material to be repealed is bracketed
17 and stricken. New statutory material is underscored.

18 SECTION 9. This Act shall take effect on July 1, 2009.

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INTRODUCED BY: *[Signature]*
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Report Title:

Dams and Reservoirs

Description:

Establishes the dam and reservoir repair revolving fund. Authorizes the board of land and natural resources to make loans from the fund for the alteration, repair, or removal of dams and reservoirs. Makes owner of dam or reservoir liable for damages resulting from natural causes when there is a finding of negligence. Authorizes the issuance of revenue bonds and makes an appropriation to the revolving fund.

