

JAN 17 2014

A BILL FOR AN ACT

RELATING TO DAM AND RESERVOIR SAFETY.

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

1 SECTION 1. Section 179D-6, Hawaii Revised Statutes, is
2 amended by amending subsection (b) to read as follows:

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

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

17 (2) Conduct investigations and collect data, including
18 technological advances made in dam and reservoir



1 safety practices elsewhere, as may be needed for the
2 proper review and study of the various features of the
3 design, construction, repair, removal, inspection,
4 operation, maintenance, alteration, and enlargement of
5 dams, reservoirs, and appurtenant works. The board
6 may require submittal of reports of investigations
7 from all owners;

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

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

21 (5) Require the owners to apply for, and obtain from the
22 board written approval of plans and specifications on



1 the construction of any new dam or reservoir or the
2 enlargement of any dam or reservoir prior to
3 commencement of any work;

4 (6) Require the owners to file an application and secure
5 the written approval of the board before commencing
6 the repair, alteration, or removal of a dam or
7 reservoir, including the alteration or removal of a
8 dam or reservoir so that it no longer constitutes a
9 dam or reservoir as defined in this chapter[-];
10 provided that for a homeowner association or owner of
11 a single-family home on whose property a dam or
12 reservoir was situated at the time the association was
13 established or at the time of conveyance to the
14 homeowner, respectively upon request to the board by
15 the homeowner association or the homeowner, the board
16 shall prepare all studies required to determine the
17 safe removal or retirement of the dam or reservoir.

18 Repairs shall not be deemed to apply to routine
19 maintenance not affecting the safety of the structure;

20 (7) Require owners to secure the written approval of the
21 board to impound water;



- 1 (8) Require fees to cover a portion of the board's costs
2 in carrying out the administration of dam and
3 reservoir safety;
- 4 (9) Cooperate with all public and private agencies created
5 for the purpose of enhancing dam and reservoir safety
6 activities and training, assist these organizations
7 and agencies in coordinating the use of their
8 facilities, and participate in the exchange of ideas,
9 knowledge, and data with these organizations and
10 agencies;
- 11 (10) Consider dams and reservoirs as important water
12 resources for the State that provide significant
13 benefits to the general public, including irrigation
14 for agriculture and other important uses, and
15 acknowledge the need for dams and reservoirs to be
16 consistently maintained and operated in a safe and
17 feasible manner that sustains their roles as important
18 water resources; provided that public safety concerns
19 are addressed;
- 20 (11) Prepare, publish, and issue printed pamphlets,
21 bulletins, or advisories, or conduct training as the



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



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



- 1 owner of the dam or reservoir in the same manner that
2 debts are recoverable by law;
- 3 (21) Assess civil penalties for violation of this chapter
4 or any rule or standard adopted or order issued by the
5 board pursuant to this chapter;
- 6 (22) Place liens, as needed, on the owner's property, to be
7 collected as delinquent taxes against the lands and
8 property, if the owner neglects to pay any costs,
9 expenses, or penalties chargeable to the owner under
10 this chapter or any rule, order, or condition adopted,
11 issued, or required under this chapter;
- 12 (23) With the assistance of the attorney general, institute
13 and prosecute all court actions that may be necessary
14 to obtain the enforcement of any order issued by the
15 board in carrying out this chapter; and
- 16 (24) Take any and all other actions as may be necessary to
17 carry out this chapter."

18 SECTION 2. This Act does not affect rights and duties that
19 matured, penalties that were incurred, and proceedings that were
20 begun before its effective date.

21 SECTION 3. Statutory material to be repealed is bracketed
22 and stricken. New statutory material is underscored.



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

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INTRODUCED BY: ~~Sen. D.C. Fisher~~
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S.B. NO. 2332

Report Title:

Dam and Reservoir Removal; Studies; Board of Land and Natural Resources

Description:

Requires the board of land and natural resources to prepare all studies to determine the safe removal or retirement of a dam or reservoir upon the request of a homeowner association or homeowner of property where a dam or reservoir is situated.

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