

JAN 18 2019

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;



- 1 (2) Conduct investigations and collect data, including
2 technological advances made in dam and reservoir
3 safety practices elsewhere, as may be needed for the
4 proper review and study of the various features of the
5 design, construction, repair, removal, inspection,
6 operation, maintenance, alteration, and enlargement of
7 dams, reservoirs, and appurtenant works. The board
8 may require submittal of reports of investigations
9 from all owners;
- 10 (3) Conduct investigations and require reports from all
11 owners to be made from time to time, including
12 watershed investigations and studies, as may be
13 necessary to keep abreast of developments affecting
14 stream runoff and as required to facilitate its
15 decisions;
- 16 (4) Be authorized to enter upon such private property of
17 the dam or reservoir as may be necessary in making, at
18 the owner's expense, any investigation or inspection
19 required or authorized by this chapter. The entry
20 shall not constitute a cause of action in favor of the



1 owner of the land, except for damages resulting from
2 wilful acts or negligence by the board or its agents;

3 (5) Require the owners to apply for, and obtain from the
4 board written approval of plans and specifications on
5 the construction of any new dam or reservoir or the
6 enlargement of any dam or reservoir prior to
7 commencement of any work;

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



- 1 Repairs shall not be deemed to apply to routine
2 maintenance not affecting the safety of the structure;
- 3 (7) Require owners to secure the written approval of the
4 board to impound water;
- 5 (8) Require fees to cover a portion of the board's costs
6 in carrying out the administration of dam and
7 reservoir safety;
- 8 (9) Cooperate with all public and private agencies created
9 for the purpose of enhancing dam and reservoir safety
10 activities and training, assist these organizations
11 and agencies in coordinating the use of their
12 facilities, and participate in the exchange of ideas,
13 knowledge, and data with these organizations and
14 agencies;
- 15 (10) Consider dams and reservoirs as important water
16 resources for the State that provide significant
17 benefits to the general public, including irrigation
18 for agriculture and other important uses, and
19 acknowledge the need for dams and reservoirs to be
20 consistently maintained and operated in a safe and
21 feasible manner that sustains their roles as important



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



1 alteration, or removal of a dam or reservoir and
2 applications for certificates of approval to impound;

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

10 (17) Issue orders requiring the adoption by an owner of
11 remedial measures necessary for the safety of life or
12 public or private property, or for carrying out this
13 chapter or rules issued under this chapter;

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

18 (19) Enter private property and immediately take actions
19 necessary to provide protection to life or property at
20 the owner's expense, including removal of the dam or
21 reservoir. The entry shall not constitute a cause of



1 action in favor of the owner of the land, except for
2 damages resulting from wilful acts or gross negligence
3 by the board or its agents;

4 (20) Recover from the owner, in the name of the State, the
5 expenses incurred in taking any action required by the
6 owner of the dam or reservoir in the same manner that
7 debts are recoverable by law;

8 (21) Assess civil penalties for violation of this chapter
9 or any rule or standard adopted or order issued by the
10 board pursuant to this chapter;

11 (22) Place liens, as needed, on the owner's property, to be
12 collected as delinquent taxes against the lands and
13 property, if the owner neglects to pay any costs,
14 expenses, or penalties chargeable to the owner under
15 this chapter or any rule, order, or condition adopted,
16 issued, or required under this chapter;

17 (23) With the assistance of the attorney general, institute
18 and prosecute all court actions that may be necessary
19 to obtain the enforcement of any order issued by the
20 board in carrying out this chapter; and



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1 (24) Take any and all other actions as may be necessary to
2 carry out this chapter."

3 SECTION 2. This Act does not affect rights and duties that
4 matured, penalties that were incurred, and proceedings that were
5 begun before its effective date.

6 SECTION 3. Statutory material to be repealed is bracketed
7 and stricken. New statutory material is underscored.

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

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INTRODUCED BY: ~~SC Rich~~ *Rich*

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S.B. NO. 833

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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