

ACT 154

S.B. NO. 142

A Bill for an Act Relating to Dams and Reservoirs.

Be It Enacted by the Legislature of the State of Hawaii:

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

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

- (1) Establish by rules adopted under chapter 91, policies, requirements, or standards governing the design, construction, operation, maintenance, enlargement, alteration, repair, removal, and inspection of dams, reservoirs, and appurtenant works for the protection of life and property from structural failure of dams and reservoirs;
- (2) Conduct investigations and ~~[the collection of]~~ collect data, including technological advances made in dam and reservoir safety practices elsewhere, as may be needed for the proper review and study of the various features of the design, construction, repair, removal, inspection, operation, maintenance, alteration, and enlargement of dams, reservoirs, and appurtenant works. The board may require submittal of reports of investigations from all owners;
- (3) Conduct investigations and require reports from all owners to be made from time to time, including watershed investigations and

- studies, as may be necessary to keep abreast of developments affecting stream runoff and as required to facilitate its decisions;
- (4) Be authorized to enter upon such private property of the dam or reservoir as may be necessary in making, at the owner's expense, any investigation or inspection required or authorized by this chapter. The entry shall not constitute a cause of action in favor of the owner of the land, except for damages resulting from wilful acts or negligence by the board or its agents;
 - (5) Require the owners to apply for, and obtain from the board written approval of plans and specifications on the construction of any new dam or reservoir or the enlargement of any dam or reservoir prior to commencement of any work;
 - (6) Require the owners to file an application and secure the written approval of the board before commencing the repair, alteration, or removal of a dam or reservoir, including the alteration or removal of a dam or reservoir so that it no longer constitutes a dam or reservoir as defined in this chapter. Repairs shall not be deemed to apply to routine maintenance not affecting the safety of the structure;
 - (7) Require owners to secure the written approval of the board to impound water;
 - (8) Require fees to cover a portion of the board's costs in carrying out the administration of dam and reservoir safety;
 - (9) Cooperate with all public and private agencies created for the purpose of enhancing dam and reservoir safety activities and training, assist these organizations and agencies in coordinating the use of their facilities, and participate in the exchange of ideas, knowledge, and data with these organizations and agencies;
 - (10) Consider dams and reservoirs as important water resources for the State that provide significant benefits to the general public, including irrigation for agriculture and other important uses, and acknowledge the need for dams and reservoirs to be consistently maintained and operated in a safe and feasible manner that sustains their roles as important water resources; provided that public safety concerns are addressed;
 - [(10)] (11) Prepare, publish, and issue printed pamphlets, bulletins, or advisories, or conduct training as the board deems necessary for the dissemination of information to the public;
 - [(11)] (12) Appoint and remove agents and employees, including hearing officers, specialists, and consultants, as necessary to carry out the purposes of this chapter, who may be engaged by the board without regard to the requirements of chapter 76;
 - [(12)] (13) Catalog and maintain an inventory of all regulated dams and reservoirs in the State pursuant to this chapter without regard to chapter 91;
 - [(13)] (14) Establish similar or consistent hazard potential classifications in conjunction with other applicable state or federal guidelines for all regulated dams and reservoirs in the State pursuant to this chapter without regard to chapter 91;
 - [(14)] (15) Examine and approve or disapprove applications for approval of the construction, enlargement, repair, alteration, or removal of a dam or reservoir and applications for certificates of approval to impound;
 - [(15)] (16) Order the suspension, revocation, or both, of any application approval or certificate of approval to impound for any act or failure

to comply with this chapter or with any rules or orders adopted pursuant to this chapter, or with any of the conditions contained in or attached to the application approval or certificate of approval to impound;

- [(16)] (17) Issue orders requiring the adoption by an owner of remedial measures necessary for the safety of life or public or private property, or for carrying out this chapter or rules issued under this chapter;
- [(17)] (18) Order the immediate cessation of any act that is started or continued without an application approval or certificate of approval to impound as required by this chapter;
- [(18)] (19) Enter private property and immediately take actions necessary to provide protection to life or property at the owner's expense, including removal of the dam or reservoir. The entry shall not constitute a cause of action in favor of the owner of the land, except for damages resulting from wilful acts or gross negligence by the board or its agents;
- [(19)] (20) Recover from the owner, in the name of the State, the expenses incurred in taking any action required by the owner of the dam or reservoir in the same manner that debts are recoverable by law;
- [(20)] (21) Assess civil penalties for violation of this chapter or any rule or standard adopted or order issued by the board pursuant to this chapter;
- [(21)] (22) Place liens, as needed, on the owner's property, to be collected as delinquent taxes against the lands and property, if the owner neglects to pay any costs, expenses, or penalties chargeable to the owner under this chapter or any rule, order, or condition adopted, issued, or required under this chapter;
- [(22)] (23) With the assistance of the attorney general, institute and prosecute all court actions that may be necessary to obtain the enforcement of any order issued by the board in carrying out this chapter; and
- [(23)] (24) Take any and all other actions as may be necessary to carry out this chapter."

SECTION 2. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved June 23, 2011.)