
A BILL FOR AN ACT

RELATING TO DAM SAFETY.

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

1 SECTION 1. On March 14, 2006, just before dawn, Ka Loko
2 dam on the island of Kaua'i breached. Almost four hundred
3 million gallons of water crashed down from the Ka Loko reservoir
4 into Kilauea bay, taking trees, cars, buildings, and human lives
5 with it. Seven people tragically lost their lives that morning
6 in the flood. The legislature finds that this was a great human
7 tragedy and an ecological disaster that must never be repeated.

8 The purpose of this Act is to ensure the health, safety,
9 and welfare of the citizens of the State by creating a program
10 for monitoring and enforcing the safety of dams and reservoirs
11 throughout the State so that we are never again faced with the
12 tragedy like the Ka Loko dam break.

13 SECTION 2. Chapter 179D, Hawaii Revised Statutes, is
14 amended by adding six new sections to be appropriately
15 designated and to read as follows:

16 "§179D-A Entry upon property. (a) The department shall
17 have the right to direct and conduct investigations as
18 reasonably necessary to carry out its duties under this chapter.



1 For this purpose, the agents or employees of the department or
2 any authorized representatives shall have the right to enter at
3 reasonable times, without prior notice, any property, public or
4 private, for the purpose of investigating the condition,
5 construction, or operation of any dam or other artificial
6 barrier subject to this chapter. If the owner of the property
7 refuses to allow the inspection, the department may seek a
8 search warrant to allow the inspection. If the department has
9 been refused inspection of drawings, operational records, or
10 other information concerning a dam or reservoir, the department
11 may seek an administrative subpoena compelling production of the
12 drawings, operational records, or other information.

13 (b) It shall be unlawful for any person to refuse entry or
14 access to any authorized representative of the department who
15 requests entry for purposes of inspection and who presents
16 appropriate credentials. It shall also be unlawful to obstruct,
17 hamper, or interfere with the representative while in the
18 process of carrying out official duties.

19 **§179D-B Injunctive relief.** Whenever, in the judgment of
20 the department, any person has engaged in or is about to engage
21 in any act or practice that constitutes or will constitute an
22 unlawful act or practice under this chapter, the department may



1 apply to the circuit court of the circuit in which the unlawful
 2 act or practice has been or is about to be engaged in, or in
 3 which jurisdiction is appropriate, for an order enjoining the
 4 act or practice or for an order requiring compliance with this
 5 chapter. Upon a showing by the department that the person has
 6 engaged in or is about to engage in the unlawful act or
 7 practice, a permanent or temporary injunction, restraining
 8 order, or other order shall be granted without the necessity of
 9 showing lack of an adequate remedy at law.

10 **§179D-C Dam and reservoir repair revolving fund.** (a)

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

- 13 (1) Appropriations by the legislature;
- 14 (2) Interest and fees collected by the department under
 15 this chapter;
- 16 (3) Any federal funds that are made available; and
- 17 (4) Payments made on loans from the fund.

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

- 19 (1) Implement emergency measures pursuant to section 179D-
 20 D; or
- 21 (2) Make dam repair loans to owners of dams or reservoirs
 22 with plans and specifications for the alteration,



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

3 **§179D-D Emergency measures.** (a) When the department
4 determines through its investigation or inspection of a dam or
5 reservoir that there is condition that may pose an imminent
6 danger to public safety and that repairs, breaching of the dam,
7 or other actions are immediately necessary, the board shall
8 direct the owner to immediately initiate the emergency measures
9 necessary or the board, in its discretion, may initiate the
10 emergency measures to ensure public safety.

11 (b) Emergency measures shall be made at the owner's
12 expense. When emergency measures are initiated by the board,
13 the board may use moneys from the fund, for which the owner
14 shall reimburse the fund in lump sum or through installment
15 payments agreed to by the board.

16 (c) The legislature finds and declares that emergency
17 measures under this section are in the public interest and for
18 the public health, safety, and general welfare of the State and
19 authorizes the board to take any necessary actions.

20 **§179D-E Annual report.** (a) The department shall submit
21 an annual report concerning the activities of the department
22 relating to this chapter to the governor and the legislature no



1 less than twenty days prior to the convening of each regular
2 session.

3 (b) The report shall include but not be limited to
4 information on the following:

5 (1) A listing of the safety inspections made;

6 (2) Use of appropriated funds;

7 (3) Receipts generated for inspections of dams and
8 reservoirs;

9 (4) Rules adopted, amended, or repealed;

10 (5) Enforcement orders and proceedings;

11 (6) Dam failures and department evaluations of the reasons
12 for the dam failures, if determined; and

13 (7) Any other available data regarding the effectiveness
14 of the State's dam and reservoir safety program.

15 **§179D-F Limitations of liability.** (a) This chapter does
16 not create any liability for damages against the board, its
17 officers, agents, or employees caused by or arising out of any
18 of the following:

19 (1) The construction, maintenance, operation, or failure
20 of a dam or appurtenant works; or



1 (2) The issuance and enforcement of an order or a rule
2 issued or adopted by the board to carry out the
3 board's duties.

4 (b) The State assumes no ownership obligations,
5 responsibilities, or liabilities for any actions taken pursuant
6 to section 179D-D."

7 SECTION 3. Section 179D-1, Hawaii Revised Statutes, is
8 amended to read as follows:

9 "[+]§179D-1[+] **Short title.** This chapter shall be known
10 and may be cited as the "Hawaii Dam Safety Act [~~of 1987~~]".

11 SECTION 4. Section 179D-2, Hawaii Revised Statutes, is
12 amended to read as follows:

13 "[+]§179D-2[+] **Declaration of purpose.** The purpose of this
14 chapter is to provide for the inspection and regulation of
15 construction, operation, and removal of certain dams and
16 reservoirs in order to protect the health, safety, and welfare
17 of the citizens of the State by reducing the risk of failure of
18 [~~such~~] the dams[-] and reservoirs. The legislature finds and
19 declares that the inspection and regulation of construction,
20 operation, and removal of certain dams and reservoirs are
21 properly a matter of regulation under the police powers of the
22 State."



1 SECTION 5. Section 179D-3, Hawaii Revised Statutes, is
2 amended:

3 1. By adding a new definition to be appropriately inserted
4 and to read as follows:

5 "Emergency" includes but is not limited to breaches and
6 all conditions leading to or causing a breach, overtopping, or
7 any other condition in a dam and its appurtenant structures that
8 may be construed as unsafe or threatening to persons or
9 property."

10 2. By amending the definition of "reservoir" to read as
11 follows:

12 "Reservoir" means any basin [~~which~~] that contains or will
13 contain water impounded by a dam[~~[-]~~]; provided that an
14 impoundment actively managed for agricultural purposes that is
15 not built into a stream channel or riverbed and for which the
16 inflow of water can be completely closed shall not be considered
17 a reservoir."

18 SECTION 6. Section 179D-4, Hawaii Revised Statutes, is
19 amended to read as follows:

20 "[+]§179D-4[+] **Liability for damages.** (a) Nothing
21 contained in this chapter shall be construed to constitute a
22 waiver of any immunity of the State and no action or failure to



1 act under this chapter shall be construed to create any
2 liability in the State, board, department, or its officers or
3 employees, for the recovery of damages caused by such action or
4 failure to act.

5 (b) No action shall be brought against the State, the
6 board, or the department, or against any officer or employee of
7 the State, the board, or the department for damages sustained
8 through the partial or total failure of any dam or reservoir
9 addressed in this chapter or its maintenance or operation by
10 reason of any supervision or other action taken or not taken
11 pursuant to this chapter.

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



1 SECTION 7. In codifying the new sections added by section
2 2 of this Act, the revisor of statutes shall substitute
3 appropriate section numbers for the letters used in designating
4 the new sections in this Act.

5 SECTION 8. If any provision of this Act, or the
6 application thereof to any person or circumstance is held
7 invalid, the invalidity does not affect other provisions or
8 applications of the Act, which can be given effect without the
9 invalid provision or application, and to this end the provisions
10 of this Act are severable.

11 SECTION 9. Statutory material to be repealed is bracketed
12 and stricken. New statutory material is underscored.

13 SECTION 10. This Act shall take effect on July 1, 2050.



Report Title:

Department of Land and Natural Resources; Dam Safety

Description:

Grants department of land and natural resources the right to enter property, public or private, to inspect dams. Allows board of land and natural resources to direct owner or, in its discretion, to take immediate action to initiate emergency measures to insure public safety. Establishes dam and reservoir repair revolving fund. (HD1)

