
A BILL FOR AN ACT

RELATING TO DAM SAFETY.

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

PART I

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

4 "PART . DAM AND RESERVOIR SAFETY

5 §179D-A Certificate of approval to impound. Each dam
6 owner shall hold a valid certificate of approval to impound in
7 order to legally impound water under the laws of this State.

8 §179D-B Entry upon property. (a) The department shall
9 have the right to direct and conduct any investigations as it
10 may reasonably deem necessary to carry out its duties as
11 prescribed in this part. For this purpose, the agents or
12 employees of the department or any authorized representatives
13 may enter at reasonable times, without prior notice, on any
14 property, public or private, for the purpose of investigating
15 the condition, construction, or operation of any dam or other
16 artificial barrier dealt with in this part; provided that:



1 (1) If the owner of the property refuses to allow the
2 inspection, the department may seek a search warrant
3 to allow the inspection. If the department has been
4 refused inspection of drawings, operational records,
5 or other information concerning a dam or reservoir,
6 the department may seek an administrative subpoena
7 through the attorney general compelling production of
8 the drawings, operational records, or other
9 information; or

10 (2) If an emergency situation arises as deemed by the
11 department, the agents or employees of the department,
12 or any authorized representatives shall have the right
13 to enter without prior notice, any property, public or
14 private, for the purpose of investigating the
15 condition, construction, taking any necessary remedial
16 actions, or operation of any dam or other artificial
17 barrier subject to this chapter, without a search
18 warrant or liability for trespass.

19 (b) It shall be unlawful for any person to refuse entry or
20 access to any authorized representative of the department who
21 requests entry for purposes of inspection and who presents
22 appropriate credentials. It shall also be unlawful to obstruct,



1 hamper, or interfere with any representative while in the
2 process of carrying out the representative's official duties.

3 (c) Notwithstanding any other provision of law to the
4 contrary, the board and its agents, engineers, and other
5 employees, for the purposes of enforcing this chapter, may enter
6 upon any land or water in the State that is the subject of an
7 inspection or investigation without a search warrant or
8 liability for trespass.

9 §179D-C Injunctive relief. Whenever in the judgment of
10 the department any person has engaged in or is about to engage
11 in any act or practice that constitutes or will constitute an
12 unlawful action under this part, the department may make
13 application to the circuit court of the county in which the
14 unlawful act or practice has been or is about to be engaged in,
15 or in which jurisdiction is appropriate, for an order enjoining
16 the act or practice, or for an order requiring compliance with
17 this part. Upon a showing by the department that a person has
18 engaged in or is about to engage in any unlawful act or
19 practice, a permanent or temporary injunction, restraining
20 order, or other order shall be granted without the necessity of
21 showing lack of an adequate remedy at law.



1 **§179D-D Emergency actions.** (a) If, in the opinion of the
2 department, conditions of any dam or reservoir are so dangerous
3 to the health and safety of life or property as not to permit
4 time for issuance and enforcement of an order relative to its
5 construction, modification, maintenance, or repair, or the dam
6 or reservoir is threatened by any large flood or other natural
7 disaster, the department may immediately employ remedial
8 measures necessary to protect life and property.

9 (b) The department shall provide coordination and
10 assistance to the proper state or county agency or agencies to
11 maintain control of any dam or reservoir that, pursuant to
12 subsection (a), has been determined to be dangerous to life or
13 property until the dam or reservoir is deemed safe, or until any
14 emergency conditions that precipitated taking control of any dam
15 or reservoir, pursuant to subsection (a), have been abated. The
16 department may determine the proper time at which to relinquish
17 control of any dam or reservoir.

18 (c) Any necessary and reasonable costs and expenses
19 incurred by the department in fulfilling the duties mandated by
20 subsections (a) and (b) in connection with a remedial emergency
21 action shall be recoverable by the department from the owner of
22 any dangerous or threatened dam or reservoir.



1 (d) Any owner failing or refusing, after written notice
2 has been given, to pay the reasonable costs and expenses
3 incurred by the department pursuant to subsection (c) shall be,
4 upon complaint by the department to the attorney general,
5 subject to reasonable attorney fees incurred in the recovery of
6 any costs and expenses.

7 (e) All moneys collected by the department pursuant to
8 subsection (c) shall be credited to the dam safety special fund
9 created in section 179D-E.

10 (f) If a condition arises that in the opinion of the
11 department may pose a danger to the health and safety of persons
12 or property and sufficient time permits, the board may issue
13 orders reciting the existence of the condition and require any
14 actions the board deems necessary to be taken. Any person to
15 whom an order is directed may challenge the order, but shall
16 immediately comply with the order, pending disposition of the
17 person's challenge. The board shall give precedence to a
18 hearing on the challenge over all other pending matters.

19 (g) The legislature finds and declares that emergency
20 actions under this section are in the public interest and for
21 the public health, safety, and general welfare of the State and
22 authorizes the board to take any necessary actions.



1 **§179D-E Establishment of dam safety special fund. (a)**

2 There is established in the state treasury a special fund, to be
3 designated as the dam safety special fund. The fund shall be
4 administered by the board. The following shall be deposited
5 into the dam safety special fund:

- 6 (1) Appropriations by the legislature;
- 7 (2) All fees and administrative charges collected under
8 this chapter or any rule adopted thereunder;
- 9 (3) Moneys collected as fines or penalties imposed under
10 this chapter or any rule adopted thereunder;
- 11 (4) Moneys derived from public or private sources to
12 benefit dam safety;
- 13 (5) Moneys collected in full or partial satisfaction of
14 liens created by subsection (b);
- 15 (6) Any moneys collected from the sale of retail items by
16 the department relating to dam safety;
- 17 (7) Any other moneys collected pursuant to this chapter or
18 any rules adopted thereunder; and
- 19 (8) Moneys derived from interest, dividends, or other
20 income from other sources.



1 (b) The board may expend moneys from the dam safety
2 special fund for the following purposes or subject to the
3 following provisions:

- 4 (1) Conducting investigations, research, and the
5 collection of data, including technological advances
6 made in dam safety practices elsewhere;
- 7 (2) Conducting investigations, monitoring, inspection
8 programs and activities, or enforcement;
- 9 (3) Preparing and disseminating of information to the
10 public concerning activities authorized under this
11 chapter;
- 12 (4) Providing training and educational activities for
13 staff and dam and reservoir owners;
- 14 (5) Employing any necessary remedial measures to protect
15 persons and property in accordance with this chapter;
16 and
- 17 (6) Any other purposes to administer the dam safety
18 program under this chapter or any rule adopted
19 thereunder including but not limited to funding
20 permanent or temporary positions that may be filled
21 without regard to chapter 76.



1 (c) Moneys on balance in the special fund at the close of
2 each fiscal year shall remain in that fund and shall not be
3 transferred or lapsed to the credit of the general fund.

4 **§179D-F Liens; perfection of lien.** (a) The costs and
5 expenses of the coordination, assistance, control, regulation,
6 abatement, and inspection provided by this section, including
7 costs of construction, enlargement, repair, alteration, or
8 removal work done to render any dam, reservoir, or appurtenances
9 safe shall constitute a statutory lien against all real property
10 of the owner in the State. Notwithstanding any other law to the
11 contrary, the lien shall be considered prior and superior to all
12 other mortgages, liens, or encumbrances of record, even if those
13 other mortgages, liens, or encumbrances were filed before the
14 lien pursuant to this paragraph becomes due; and

15 (b) Liens pursuant to subsection (a) may be perfected in
16 advance of construction, enlargement, repair, alteration, or
17 removal or after completion of the construction, enlargement,
18 repair, alteration, or removal. If perfected in advance, the
19 lien shall be perfected by the filing of an affidavit of the
20 board setting forth the estimate of the costs of construction,
21 enlargement, repair, alteration, or removal within the county in
22 which the dam is located in the same manner as prescribed for



1 mechanic's liens. When the affidavit is filed, the amount set
2 forth in the affidavit shall be a lien in that amount against
3 all real property of the owner in the State. If the actual cost
4 of construction, enlargement, repair, alteration, or removal
5 exceeds the estimated cost, the board may amend the affidavit
6 setting forth the additional estimated cost. If the estimated
7 cost exceeds the actual costs of construction, enlargement,
8 repair, alteration, or removal at completion, the board shall
9 file an amended affidavit at completion. If a lien is perfected
10 in advance and the construction, enlargement, repair,
11 alteration, or removal is not commenced within two years from
12 the date of perfection, the lien shall be void. The board shall
13 file a satisfaction of lien upon payment of the costs of
14 construction, enlargement, repair, alteration, or removal by the
15 owner.

16 **§179D-G Dams and reservoirs completed prior to effective**
17 **date of this chapter.** (a) Every owner of a dam or reservoir
18 that falls within the definition of a dam or reservoir in this
19 chapter and was completed prior to the effective date of this
20 chapter shall file with the board a separate application for a
21 certificate of approval to impound and any other supporting
22 information as required by the board for each dam or reservoir



1 that is subject to this chapter. Each application shall also be
2 accompanied by applicable application fees as required by the
3 board. During the application process for a certificate of
4 approval to impound, the owner of a dam or reservoir may
5 continue to impound water, unless the board determines that the
6 dam or reservoir may pose a danger to the health and safety of
7 persons or property.

8 (b) The board shall give notice to file an application for
9 certificate of approval to impound to owners of any dams or
10 reservoirs who have failed to file any applications as required
11 by this chapter.

12 (c) The notice provided for in this section shall be
13 delivered by certified mail to the owner at the owner's last
14 address of record in the office of the county tax assessor in
15 which the dam or reservoir is located. The mailing shall
16 constitute service.

17 (d) The board shall make inspections of the dams and
18 reservoirs that are subject to this section, unless the data,
19 records, and inspection reports on file with it are found
20 adequate to enable a determination of whether or not the
21 certificate of approval to impound should be issued.



1 (e) The board shall require owners of the dams and
 2 reservoirs to perform at their expense any work or tests as may
 3 reasonably be required to disclose information sufficient to
 4 enable the board to determine whether to issue certificates of
 5 approval to impound, or to issue orders directing further work
 6 at the owner's expense necessary to safeguard life and property.
 7 For this purpose, the board may require an owner to lower the
 8 water level of, or to drain, the dam and reservoir.

9 (f) If, upon inspection or upon completion to the
 10 satisfaction of the board of all work that may be ordered, the
 11 board finds that the dam or reservoir are safe to impound water,
 12 a certificate of approval to impound shall be issued. The board
 13 may find that the dam or reservoir will not safely impound water
 14 and may refuse to issue a certificate of approval to impound.
 15 Upon finding that a dam or reservoir is unsafe to impound water,
 16 the board shall issue a written notice to the owner, whereupon
 17 the owner shall cause the dam and reservoir to no longer impound
 18 water after receipt of the notice.

19 §179D-H Dams and reservoirs under construction,
 20 enlargement, repair, alteration or removal before effective date
 21 of this chapter. (a) Any dam or reservoir that falls within
 22 the definition of a dam or reservoir in this chapter and that



1 the board finds was under construction, enlargement, repair,
2 alteration or removal and based on its findings not ninety per
3 cent constructed, enlarged, repaired, altered, or removed on the
4 effective date of this chapter, except as provided in subsection
5 (b), shall be subject to the same provisions in this chapter as
6 a dam or reservoir commenced after that date. Every owner of a
7 dam or reservoir that is subject to this section shall file an
8 application with the board for the board's written application
9 approval of the plans and specifications for the construction,
10 enlargement, repair, alteration, or removal of the dam or
11 reservoir.

12 (b) Construction, enlargement, repair, alteration, or
13 removal work on the a dam or reservoir may proceed; provided an
14 application for approval of the plans and specifications is
15 filed, when an application approval is received by the owner
16 approving the dam and reservoir, or an order is received by the
17 owner specifying how the construction, enlargement, repair,
18 alteration, or removal must be performed to render the dam or
19 reservoir safe. After receipt of an application approval or
20 order specifying how construction, enlargement, repair,
21 alteration, or removal of the dam or reservoir must be



1 performed, work thereafter must be in accordance with the
2 application approval or order.

3 §179D-I Annual report. The department shall submit an
4 annual report to the legislature by January 5 of each year
5 concerning the activities of the department relating to this
6 chapter for the preceding fiscal year. A copy of the report
7 shall be provided to the governor, the senate president, and the
8 speaker of the house of representatives. The report shall
9 include but not be limited to information on the following:

- 10 (1) Approvals of plans and specifications for construction
- 11 of dams and reservoirs and for alterations,
- 12 modifications, repairs, removal, and enlargements;
- 13 (2) A listing of dam or reservoir safety inspections made;
- 14 (3) Use of appropriated funds;
- 15 (4) Rules adopted or amended;
- 16 (5) Enforcement orders and proceedings;
- 17 (6) Dam or reservoir failures and department evaluations
- 18 of the reasons for the dam or reservoir failure, if
- 19 known; and
- 20 (7) Any other available data regarding the effectiveness
- 21 of the State's dam and reservoir safety program.



1 **§179D-J Dam owners; general requirements and**
2 **responsibilities.** Among other general requirements and
3 responsibilities dam or reservoir owners subject to regulation
4 under this chapter shall:

5 (1) Maintain an operation and maintenance plan, that
6 includes an owner or operator inspection and
7 monitoring program, with written, regularly scheduled
8 reports to the board, to maintain and keep the
9 structure, its appurtenant works, and access in the
10 state of repair and operating condition required by
11 the exercise of due care, with regard for the safety
12 of persons or property, sound and accepted engineering
13 principles, and the rules adopted by the board;

14 (2) Establish an emergency action plan for potentially
15 high and significant hazard dams and reservoirs and
16 provide this plan to the board, state, and county
17 civil defense agencies, and other necessary parties,
18 with regard for the safety of persons or property,
19 sound and accepted engineering principles, and the
20 rules adopted by the board;

21 (3) Cooperate with the board's agents, engineers, and
22 employees in carrying out this chapter;



- 1 (4) Facilitate access by any necessary state agencies or
2 authorized representative, to the dam, reservoir, or
3 appurtenances. Access for a four-wheeled drive
4 vehicle to the dam or reservoir site, and
5 appurtenances, if required by the board, shall be
6 maintained in an accessible condition even during
7 periods of inclement weather conditions;
- 8 (5) If access to the dam or reservoir site and upstream or
9 downstream features of a dam, particularly during
10 periods of inclement weather conditions cannot be
11 sustained, the dam owner for potentially high and
12 significant hazard potential dams shall have redundant
13 early warning systems in place, as approved by the
14 board; and
- 15 (6) Furnish upon request the plans, specifications,
16 operating and maintenance data, or other information
17 that is pertinent to the dam or reservoir structure
18 and appurtenances as indicated in this chapter."

PART II

20 SECTION 2. Section 179D-1, Hawaii Revised Statutes, is
21 amended to read as follows:



1 " ~~[+] §179D-1 []~~ **Short title.** This chapter shall be known
2 and may be cited as the "Hawaii Dam Safety Act of ~~[1987"-]~~
3 2007"."

4 SECTION 3. Section 179D-2, Hawaii Revised Statutes, is
5 amended to read as follows:

6 " ~~[+] §179D-2 []~~ **Declaration of purpose.** The purpose of
7 this chapter is to provide for the inspection and regulation of
8 construction, operation, and removal of ~~[certain]~~ all dams or
9 reservoirs in order to protect the health, safety, and welfare
10 of the citizens of the State by reducing the risk of failure of
11 ~~[such]~~ all dams ~~[]~~ and reservoirs. The legislature finds and
12 declares that the inspection and regulation of construction,
13 operation, and removal of ~~[certain]~~ all dams or reservoirs are
14 properly a matter of regulation under the police powers of the
15 State ~~[]~~, unless specifically exempted."

16 SECTION 4. Section 179D-3, Hawaii Revised Statutes, is
17 amended to read as follows:

18 " ~~[+] §179D-3 []~~ **Definitions.** The following terms, whenever
19 used and referred to in this chapter, shall have the following
20 respective meanings, unless a different meaning clearly appears
21 in the context:



1 "Application approval" means authorization in writing
2 issued by the board to an owner who has applied to the board for
3 permission to construct, enlarge, repair, alter, remove,
4 maintain, or operate a dam or reservoir and that specified the
5 condition or limitations under which work is to be performed by
6 the owner or under which approval is granted.

7 "Appurtenant works" means any structure, [~~such as~~]
8 including any spillways, either in the dam or separate
9 therefrom, the reservoir and its rim, low level outlet works,
10 and water conduits, [~~such as~~] including tunnels, pipelines, or
11 penstocks, either through the dam or its abutment.

12 "Board" means the board of land and natural resources.

13 "Certificate of approval to impound" means authorization in
14 writing issued by the board to an owner who has an existing dam
15 and reservoir or who has completed construction, enlargement,
16 repair, or alteration of a dam or reservoir and that specifies
17 the conditions or limitations under which the dam and reservoir
18 are to be maintained and operated.

19 "Dam" means any artificial barrier, including appurtenant
20 works, [which] that impounds or diverts water[~~r~~] and [which~~r~~]
21 that:



1 (1) Is twenty-five feet or more in height from the natural
2 bed of the stream or watercourse measured at the
3 downstream toe of the barrier, or from the lowest
4 elevation of the outside limit of the barrier if it is
5 not across a stream channel or watercourse to a
6 maximum water storage elevation; [or]

7 (2) Has an impounding capacity at maximum water storage
8 elevation of fifty acre-feet or more. This chapter
9 does not apply to any artificial barrier ~~[which]~~ that
10 is less than six feet in height regardless of storage
11 capacity or ~~[which]~~ that has a storage capacity at
12 maximum water storage elevation less than fifteen
13 acre-feet regardless of height [-]; or

14 (3) Meets additional criteria or is specifically exempted
15 as determined pursuant to rules adopted by the board.

16 "Department" means the department of land and natural
17 resources.

18 "Emergency" includes but is not limited to breaches and all
19 conditions leading to or causing a breach, overtopping, or any
20 other condition in a dam or reservoir and its appurtenant
21 structures that may be construed as unsafe or threatening to
22 life and property.



1 "Enlargement" means any change in or addition to an
2 existing dam or reservoir that raises or may raise the water
3 storage elevation of the water impounded by the dam.

4 "Hazard potential" means the possible adverse incremental
5 consequences that result from the release of water or stored
6 contents due to failure of the dam or reservoir or misoperation
7 of the dam or reservoir or appurtenances. The hazard potential
8 classification of a dam or reservoir does not reflect in any way
9 on the current condition of the dam or reservoir and its
10 appurtenant structures, including safety, structural integrity,
11 or flood routing capacity considerations.

12 "High hazard" means a dam or reservoir failure will result
13 in probable loss of human life.

14 "Low hazard" means a dam or reservoir failure will result
15 in no probable loss of human life and low economic or
16 environmental losses.

17 "Owner" means any person who [~~owns, controls, operates,~~
18 ~~maintains, manages, or proposes to construct a dam or~~
19 ~~reservoir.] has a right, title, or interest in or to the dam or~~
20 ~~reservoir or to the property upon which the dam or reservoir or~~
21 ~~appurtenant works is located or proposed to be located.~~



1 "Person" means [~~any individual, partnership, corporation,~~
2 ~~company, association, organization, the State and its~~
3 ~~departments and agencies, and the political subdivisions of the~~
4 ~~State.] any natural person, partnership, firm, association,
5 organization, corporation, county, county authority, trust,
6 receiver or trustee, limited liability company, limited
7 liability partnership, or company, or any state department,
8 agency, or political subdivision, or any other commercial or
9 legal entity. Whenever used in a section prescribing and
10 imposing a penalty or sanction, the term "person" includes the
11 members of an association or organization, and the officers of a
12 corporation, company, county, or county authority.~~

13 "Probable" means more than likely than not to occur;
14 reasonably expected; realistic.

15 "Removal" means complete or partial elimination of the dam
16 or reservoir embankment or structure to restore the approximate
17 original topographic contours of the valley.

18 "Reservoir" means any basin [~~which~~] that contains or will
19 contain water impounded by a dam.

20 "Significant hazard" means a dam or reservoir failure will
21 result in no probable loss of human life but can cause major



1 economic loss, environmental damage, disruption of lifeline
2 facilities, or impact other concerns."

3 SECTION 5. Section 179D-4, Hawaii Revised Statutes, is
4 amended to read as follows:

5 " ~~[+]~~ §179D-4 ~~[+]~~ **Liability for damages.** (a) Nothing
6 contained in this chapter shall be construed to constitute a
7 waiver of any immunity of the State and no action or failure to
8 act under this chapter shall be construed to create any
9 liability in the State, board, department, or its ~~[officers or]~~
10 employees, for the recovery of damages caused by ~~[such]~~ any
11 action or failure to act.

12 (b) Nothing in this chapter and no order, action, or
13 advice of the State, board, 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 ~~[r]~~ of an average recurrence
20 interval of one thousand years, hurricanes, or extraordinary
21 rains of an average recurrence interval in excess of two hundred
22 fifty years."



1 SECTION 6. Section 179D-6, Hawaii Revised Statutes, is
2 amended to read as follows:

3 " ~~[+]§179D-6[+]~~ General powers and duties of the board of
4 land and natural resources. (a) All dams or reservoirs in the
5 State shall be under the jurisdiction of the board of land and
6 natural resources until the board declares which dams or
7 reservoirs are to be removed from its jurisdiction.

8 (b) The board ~~[of land and natural resources]~~ shall
9 administer the dam safety program established by this chapter.
10 In carrying out this chapter, the board shall cooperate, advise,
11 consult, contract, and enter into cooperative agreements with
12 the United States government or any of its agencies, other state
13 agencies, and the county governments or any of their agencies.
14 In the performance of its duties, the board shall:

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



- 1 (2) Conduct investigations and the collection of data,
2 including technological advances made in dam safety
3 practices elsewhere, as may be needed for the proper
4 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, [~~such as~~]
12 including watershed investigations and studies, as may
13 be 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~~] any private
17 property [~~of the~~] containing a dam or reservoir as may
18 be necessary in making, at the owner's expense, any
19 investigation or inspection required or authorized by
20 this chapter. The entry shall not constitute a cause
21 of action in favor of the owner of the land, except



1 for damages resulting from wilful acts or negligence
2 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 so that it no longer constitutes a dam or
13 reservoir as defined in this chapter. Repairs shall
14 not be deemed to apply to routine maintenance not
15 affecting the safety of the structure;

16 [~~(7) Require filing fees by rules to accompany each
17 application as required under the provisions of this
18 chapter.]~~

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

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



- 1 (9) Cooperate with all public and private agencies created
2 for the purpose of enhancing dam and reservoir safety
3 activities and training, and assist these
4 organizations and agencies in coordinating the use of
5 their facilities and participate in the exchange of
6 ideas, knowledge, and data with these organizations
7 and agencies. For this purpose, the board shall
8 maintain an advisory staff;
- 9 (10) Prepare, publish, and issue printed pamphlets,
10 bulletins, or advisories, or conduct training as the
11 board deems necessary for the dissemination of
12 information to the public;
- 13 (11) Appoint and remove agents and employees, including
14 hearing officers, specialists, and consultants
15 necessary to carry out the purposes of this chapter,
16 who may be engaged by the board without regard to the
17 requirements of chapter 76;
- 18 (12) Catalog and maintain an inventory of all regulated
19 dams and reservoirs in the State pursuant to this
20 chapter;
- 21 (13) Establish similar or consistent hazard potential
22 classifications in conjunction with other applicable



1 states or federal guidelines for all regulated dams
2 and reservoirs in the State pursuant to this chapter
3 without regard to chapter 91;

4 (14) Examine and approve or disapprove applications for
5 approval of construction, enlargement, repair,
6 alteration, or removal of a dam or reservoir and
7 applications for certificates of approval to impound;

8 (15) Order the suspension or revocation, or both, of any
9 application approval or certificate of approval to
10 impound for any act or failure to comply with this
11 chapter or with any rules or orders adopted pursuant
12 to this chapter, or with any of the conditions
13 contained in or attached to the application approval
14 or certificate of approval to impound;

15 (16) Issue orders requiring the adoption by an owner of
16 remedial measures necessary for the safety of life or
17 public or private property or for carrying out this
18 chapter or rules issued under this chapter;

19 (17) Order the immediate cessation of any act that is
20 started or continued without an application approval
21 or certificate of approval to impound as required by
22 this chapter;



- 1 (18) Enter private property and immediately take actions
2 necessary to provide protection to life or property at
3 the owner's expense, including removal of any dam or
4 reservoir. The entry shall not constitute a cause of
5 action in favor of the owner of the land, except for
6 damages resulting from wilful acts or gross negligence
7 by the board or its agents;

- 8 (19) Recover from the owner, in the name of the State, the
9 expenses incurred in taking any action required by the
10 owner of the dam or reservoir in the same manner debts
11 are recoverable by law;

- 12 (20) Be authorized to place liens on the owner's property,
13 to be collected as delinquent taxes against the lands
14 and property are collected, if the owner neglects to
15 pay any costs, expenses, or penalties chargeable to
16 the owner under this chapter or any rule, order, or
17 condition adopted, issued, or required under this
18 chapter;

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



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

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

5 "~~[+]~~§179D-7~~[+]~~ Administrative and judicial review. (a)
6 The findings and order of the board, and the board's approval or
7 disapproval of an application issued by the State are final,
8 conclusive, and binding upon all owners, state agencies, and
9 other government agencies, regulatory or otherwise, as to the
10 safety of design, construction, enlargement, repair, alteration,
11 removal, maintenance, and operation of any dam or reservoir.
12 The board's approval of an application or a certificate of
13 approval to impound will not be considered final if it can be
14 demonstrated to the board that the board's approval of the
15 relevant application or certificate of approval was based on one
16 or more misrepresentations.

17 (b) Any person who is aggrieved or adversely affected by
18 an order or action of the board shall be entitled to
19 administrative and judicial review in accordance with
20 chapter 91[-]; provided that the order or action shall remain in
21 force until modified or set aside on appeal."



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

3 " ~~[+] §179D-8 [+] Violations, penalties. [Any person~~
4 ~~violating any provision of this chapter or any permit condition~~
5 ~~or limitation established pursuant to this chapter or~~
6 ~~negligently or wilfully failing or refusing to comply with any~~
7 ~~final order of the board issued as provided herein, shall be~~
8 ~~liable for a civil penalty not to exceed \$500 for each day~~
9 ~~during which said violation continues.]~~ (a) Except as
10 otherwise provided by law, the board may set, charge, and
11 collect administrative penalties and recover administrative fees
12 and costs, including attorney's fees and costs, or bring legal
13 action to recover administrative penalties, fees, and costs
14 including attorney's fees and costs, or payment for damages or
15 for the cost to correct damages resulting from a violation of
16 this chapter or any rule, order, or condition adopted, issued,
17 or required under this chapter. The administrative penalty
18 shall not exceed \$25,000 per day of the violation, and each day
19 during which the violation continues shall constitute an
20 additional, separate, and distinct violation.

21 (b) Any person who negligently or after written notice to
22 comply, violates this chapter or any rule, order, or condition



1 adopted, issued, or required under this chapter, or knowingly
2 obstructs, hinders, or prevents the department's agents or
3 employees from performing duties under this chapter, shall be
4 guilty of a class C felony, and upon conviction thereof, shall
5 be punished as follows:

6 (1) For a first conviction by a mandatory fine of not less
7 than \$2,500 but not more than \$25,000 per day of
8 violation, or by imprisonment of not more than allowed
9 by law, or both; and

10 (2) For a second or subsequent conviction by a mandatory
11 fine of not less than \$5,000 but not more than \$50,000
12 per day of violation, or by imprisonment of not more
13 than allowed by law, or both.

14 (c) Any criminal action against a person for any violation
15 of this chapter shall not preclude the State from pursuing civil
16 legal action to recover administrative penalties, fees and costs
17 against that person. Any civil or administrative action against
18 a person to recover administrative penalties, fees, and costs
19 for any violation of this chapter or any rule, order, or
20 condition adopted, issued, or required under this chapter shall
21 not preclude the State from pursuing any criminal action against
22 that person.



1 ~~chapter and with all rules, orders, and permits established~~
2 ~~under this chapter.~~

3 ~~(b) The rules and orders adopted under this chapter shall~~
4 ~~not apply to the design and construction of dams, reservoirs,~~
5 ~~and appurtenant works existing on June 6, 1987, but the rules~~
6 ~~and orders shall establish standards consistent with such design~~
7 ~~and construction for the operation, maintenance, and repair~~
8 ~~thereof, and those rules and orders then shall be applicable to~~
9 ~~these dams, reservoirs and appurtenant works which were existing~~
10 ~~on June 6, 1987."]~~

11 SECTION 12. There is appropriated out of the general
12 revenues of the State of Hawaii the sum of \$ or so much
13 thereof as may be necessary for fiscal year 2007-2008 to be
14 deposited into the dam safety special fund.

15 SECTION 13. There is appropriated out of the dam safety
16 special fund the sum of \$ or so much thereof as may be
17 necessary for fiscal year 2007-2008 to carry out the purposes of
18 the dam safety special fund.

19 The sum appropriated shall be expended by the department of
20 land and natural resources for the purposes of this Act.

21 PART III



1 SECTION 14. In codifying the new sections added by section
2 1 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 15. 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 16. Statutory material to be repealed is bracketed
12 and stricken. New statutory material is underscored.

13 SECTION 17. This Act shall take effect upon its approval;
14 provided that sections 12 and 13 shall take effect on July 1,
15 2007.



H.B. NO. 652
H.D. 2
S.D. 2

Report Title:

Dam Safety; Appropriation

Description:

Adds extensive provisions to the existing dam safety law to improve safety to dams and reservoirs in the State. Creates dam safety special fund. (SD2)

