
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 breach.

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

16 "§179D-A Certificate of approval to impound. No dam owner
17 or operator may impound water unless the owner or operator holds
18 a valid certificate of approval to impound water at the dam.



1 §179D-B Entry upon property. (a) The department shall
2 have the right to direct and conduct investigations as
3 reasonably necessary to carry out its duties under this chapter.
4 For this purpose, the agents or employees of the department or
5 any authorized representatives shall have the right to enter at
6 reasonable times, without prior notice, any property, public or
7 private, for the purpose of investigating the condition,
8 construction, or operation of any dam or other artificial
9 barrier subject to this chapter.

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

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



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

3 (d) Notwithstanding any other provision of law to the
4 contrary, the board and its agents, engineers, and other
5 employees, for the purpose 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 act or practice under this chapter, the department may
13 apply to the circuit court of the circuit in which the unlawful
14 act or practice has been or is about to be engaged in, or in
15 which jurisdiction is appropriate, for an order enjoining the
16 act or practice or for an order requiring compliance with this
17 chapter. Upon a showing by the department that the person has
18 engaged in or is about to engage in the 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 persons or property as not to permit
4 time for issuance and enforcement of an order relating to
5 construction, modification, maintenance, or repair, or if the
6 dam is threatened by any large flood or other disaster, the
7 department may immediately employ remedial measures necessary to
8 protect persons and property.

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

18 (c) Any necessary and reasonable costs and expenses
19 incurred by the department in fulfilling its duties pursuant to
20 this section in connection with a remedial or emergency action
21 shall be recoverable by the department from the owner of the dam
22 or reservoir.



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

7 (e) Moneys collected by the department pursuant to
8 subsections (c) and (d) shall be deposited into the dam safety
9 special fund.

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

20 (g) The legislature finds and declares that emergency
21 actions under this section are in the public interest and for
22 the public health, safety, and general welfare of the state, and



1 authorizes the board to take such actions as are necessary to
2 effectuate the purpose of this section.

3 **§179D-E Dams and reservoirs completed prior July 1, 2007.**

4 (a) Every owner or operator of a dam or reservoir completed
5 prior to July 1, 2007, shall file with the board a separate
6 application for a certificate of approval to impound and any
7 other supporting information as required by the board. Each
8 application shall also be accompanied by applicable fees as
9 required by the board.

10 (b) The board shall give notice to file an application for
11 certificate of approval to impound to owners or operators of
12 dams or reservoirs who have failed to file applications required
13 in subsection (a).

14 (c) The notice in subsection (b) shall be served upon the
15 dam owner or operator by certified mail to the owner's last
16 address of record in the office of the county tax assessor in
17 which the dam is located.

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



1 (e) The board shall require owners of such dams and
2 reservoirs to perform, at their expense, any work or tests
3 necessary to disclose information sufficient to enable the board
4 to determine whether to issue certificates of approval to
5 impound, or to issue orders directing further work at the
6 owner's expense necessary to safeguard persons and property.
7 For this purpose, the board may require an owner to lower the
8 water level in, or drain, the 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 and reservoir are safe to impound
12 water, a certificate of approval to impound shall be issued.
13 The board may find that the dam or reservoir will not safely
14 impound water and may refuse to issue a certificate of approval
15 to impound. Upon finding the dam and reservoir are unsafe to
16 impound water, the board shall issue a written notice of refusal
17 to the owner. Upon receipt of the notice, the owner shall cause
18 the dam and reservoir to no longer impound water.

19 §179D-F Dams and reservoirs under construction,
20 enlargement, repair, alteration, or removal prior to July 1,
21 2007. (a) Any dam or reservoir that the board finds was under
22 construction, enlargement, repair, alteration, or removal and,



1 based on its findings, was not ninety per cent constructed,
2 enlarged, repaired, altered, or removed prior to July 1, 2007,
3 shall be subject to the same requirements under this chapter as
4 a dam or reservoir commenced after that date. Every owner of a
5 dam and reservoir subject to this section shall file an
6 application with the board for the board's application approval
7 of the plans and specifications.

8 (b) Construction, enlargement, repair, alteration, or
9 removal work on a dam and reservoir may proceed; provided an
10 application for approval of the plans and specifications is
11 filed, until an application approval is received by the owner
12 approving the dam and reservoir or an order is received by the
13 owner specifying how the construction, enlargement, repair,
14 alteration, or removal must be performed to render the dam or
15 reservoir safe. After receipt of an application approval or
16 order specifying how construction, enlargement, repair,
17 alteration, or removal of the dam or reservoir must be
18 performed, any further work shall be in accordance with the
19 application approval or order.

20 §179D-G 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) Approvals of plans and specifications for construction
6 of dams and reservoirs and for alterations,
7 modifications, repairs, removal, and enlargements;

8 (2) A listing of dam safety inspections made;

9 (3) Rules adopted or amended;

10 (4) Enforcement orders and proceedings;

11 (5) Dam failures and department evaluations of the reasons
12 for dam failure if known; and

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

15 **§179D-H Dam owners; general requirements and**

16 **responsibilities.** Owners of dams and reservoirs subject to
17 regulation under this chapter shall assume but not be limited to
18 the following general requirements and responsibilities:

19 (1) Maintain an operation and maintenance plan, including
20 an owner/operator inspection and monitoring program,
21 with written, regularly scheduled reports to the
22 board, so as to maintain and keep the structure, its



1 appurtenant works, and access in the state of repair
2 and operating condition required by the exercise of
3 due care, with regard for the safety of persons or
4 property, sound and accepted engineering principles,
5 and the rules adopted by the board;

6 (2) Establish an emergency action plan for high and
7 significant hazard potential dams and provide this
8 plan to the board, state and county civil defense
9 agencies, and other necessary parties, with due regard
10 for the safety of persons or property, sound and
11 accepted engineering principles, and the rules adopted
12 by the board;

13 (3) Cooperate with the board's agents, engineers, and
14 employees in carrying out the provisions of this
15 chapter;

16 (4) Facilitate access by any necessary state agencies or
17 authorized representative to the dam, reservoir, or
18 appurtenances. Physical clear access for a four-
19 wheeled drive vehicle to the dam or reservoir site,
20 and appurtenances if required by the board, shall be
21 maintained in an accessible condition even during
22 periods of inclement weather conditions;



1 reservoirs in order to protect the health, safety, and welfare
2 of the citizens of the State by reducing the risk of failure of
3 such dams. The legislature finds and declares that the
4 inspection and regulation of construction, operation, and
5 removal of certain dams or reservoirs are properly a matter of
6 regulation under the police powers of the State, unless
7 specifically exempted.

8 [†]§179D-3[†] **Definitions.** The following terms, whenever
9 used and referred to in this chapter, shall have the following
10 respective meanings, unless a different meaning clearly appears
11 in the context:

12 "Application approval" means authorization in writing that
13 is issued by the board to an owner who has applied to the board
14 for permission to construct, enlarge, repair, alter, remove,
15 maintain, or operate a dam and that specifies the conditions or
16 limitations under which work is to be performed by the owner or
17 under which approval is granted.

18 "Appurtenant works" means any structure, such as spillways,
19 either in the dam or separate therefrom, the reservoir and its
20 rim, low level outlet works, and water conduits, such as
21 tunnels, pipelines, or penstocks, either through the dam or its
22 abutment.



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

2 "Certificate of approval to impound" means authorization in
3 writing pursuant to 179D-A that is issued by the board to an
4 owner or operator who has an existing dam or reservoir, or who
5 has completed construction, enlargement, repair, or alteration
6 of a dam or reservoir and that specifies the conditions or
7 limitations under which the dam or reservoir is to be maintained
8 and operated.

9 "Dam" means any artificial barrier, including appurtenant
10 works, [~~which~~] that impounds or diverts water[~~r~~] and [~~which~~]
11 that:

12 (1) Is twenty-five feet or more in height from the natural
13 bed of the stream or watercourse measured at the
14 downstream toe of the barrier, or from the lowest
15 elevation of the outside limit of the barrier if it is
16 not across a stream channel or watercourse to a
17 maximum water storage elevation; [~~or~~]

18 (2) Has an impounding capacity at maximum water storage
19 elevation of fifty acre-feet or more. This chapter
20 does not apply to any artificial barrier [~~which~~] that
21 is less than six feet in height regardless of storage
22 capacity or [~~which~~] that has a storage capacity at



1 maximum water storage elevation less than fifteen
2 acre-feet regardless of height; or[-]

3 (3) Meets addition criteria or is specifically exempted as
4 determined by the board, pursuant to rules adopted.

5 "Department" means the department of land and natural
6 resources.

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

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

14 "Hazard potential" means the possible adverse incremental
15 consequences that result from the release of water or stored
16 contents due to failure or misoperation of the dam or its
17 appurtenances. The hazard potential classification of a dam does
18 not reflect in any way on the current condition of the dam and
19 its appurtenant structures, such as its safety, structural
20 integrity, or flood routing capacity.

21 "High hazard" means a dam's failure will probably cause
22 loss of human life.



1 "Low hazard" means a dam's failure will result in no
2 probable loss of human life and in low economic or environmental
3 losses. Economic losses are principally limited to the dam
4 owner's property.

5 "Owner" means any person who [~~owns, controls, operates,~~
6 ~~maintains, manages, or proposes to construct a dam or~~
7 ~~reservoir.] has a right, title, or interest in or to the dam or~~

8 to the property upon which the dam or appurtenant works is
9 located or proposed to be located.

10 "Person" [~~means any individual, partnership, corporation,~~
11 ~~company, association, organization, the State and its~~
12 ~~departments and agencies, and the political subdivisions of the~~
13 ~~State.] includes any natural person, partnership, firm,~~

14 association, organization, corporation, authority, trust,
15 receiver or trustee, limited liability company, limited
16 liability partnership, company, or any state or county
17 department, agency, or political subdivision, or any other
18 commercial or legal entity. Whenever used in a section
19 prescribing and imposing a penalty or sanction, the term
20 "person" shall include the members of an association or
21 organization, and the officers of a corporation, company,
22 county, or county authority.



1 "Physical clear access" means a roadway or path that allows
2 timely access for inspection to a dam and its appurtenant
3 structures. If by a roadway, the roadway shall be maintained in
4 an accessible condition by a four-wheel drive vehicle even
5 during inclement weather conditions.

6 "Probable" means more likely than not to occur; reasonably
7 expected; or realistic.

8 "Removal" means complete or partial elimination of the dam
9 embankment or structure to restore the approximate original
10 topographic contours of the valley.

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

13 "Significant hazard" means a dam's failure will result in
14 no probable loss of human life but may cause major economic
15 loss, environmental damage, disruption of lifeline facilities,
16 or impact on other concerns. Significant hazard potential
17 classification dams may be located in populated areas with
18 significant infrastructure.

19 [+]§179D-4[+] **Liability for damages.** (a) Nothing
20 contained in this chapter shall be construed to constitute a
21 waiver of any immunity of the State and no action or failure to
22 act under this chapter shall be construed to create any



1 liability in the State, board, department, or its officers or
2 employees, for the recovery of damages caused by such action or
3 failure to act.

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

11 [~~(b)~~] (c) Nothing in this chapter and no order, action, or
12 advice of the State, board, or department, or any representative
13 thereof, shall be construed to relieve an owner or operator of a
14 dam or reservoir of the legal duties, obligations, or
15 liabilities incident to the ownership or operation of a dam or
16 reservoir; provided that an owner or operator of a dam or
17 reservoir shall not be liable for damages as a result of only
18 natural causes, such as earthquakes~~[7]~~ of an average recurrence
19 interval of one thousand years, hurricanes, or extraordinary
20 rains of an average recurrence interval in excess of two hundred
21 fifty years.



1 (d) The State assumes no ownership obligations or
2 responsibilities arising from any actions taken pursuant to
3 section 179D-D.

4 ~~[+]~~ **\$179D-5** ~~[+]~~ **Unlawful conduct.** (a) It shall be unlawful
5 for any person to construct, enlarge, repair, alter, operate, or
6 remove a dam or other artificial barrier covered by this
7 chapter, except in such a manner as to conform to and comply
8 with the provisions of this chapter and with all rules, orders,
9 and application approvals ~~[permits]~~ established under this
10 chapter.

11 (b) ~~[The rules and orders adopted under this chapter shall~~
12 ~~not apply to the design and construction of dams, reservoirs,~~
13 ~~and appurtenant works existing on June 6, 1987, but the rules~~
14 ~~and orders shall establish standards consistent with such design~~
15 ~~and construction for the operation, maintenance, and repair~~
16 ~~thereof, and those rules and orders then shall be applicable to~~
17 ~~those dams, reservoirs and appurtenant works which were existing~~
18 ~~on June 6, 1987.] Any person who engages in any action made~~
19 unlawful by this chapter shall be guilty of a class C felony.
20 Each day of continued violation after conviction shall
21 constitute a separate offense.



1 (c) The owner of a dam or reservoir that was constructed
2 before July 1, 2007, shall file an application with the board,
3 under rules adopted by the board, for the approval of the dam or
4 reservoir.

5 [†]§179D-6[†] **General powers and duties of the board of**
6 **land and natural resources.** Certain dams or reservoirs in the
7 state shall be under the jurisdiction of the board of land and
8 natural resources. The board of land and natural resources
9 shall administer the dam safety program established by this
10 chapter. In carrying out this chapter, the board shall
11 cooperate, advise, consult, contract, and enter into cooperative
12 agreements with the United States government or any of its
13 agencies, other state agencies, and the county governments or
14 any of their agencies. In the performance of its duties the
15 board shall:

16 (1) Establish by rules adopted under chapter 91, such
17 policies, requirements, or standards governing the
18 design, construction, operation, maintenance,
19 enlargement, alteration, repair, removal, and
20 inspection of dams, reservoirs, and appurtenant works
21 for the protection of life and property from
22 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 watershed
12 investigations and studies, as may be necessary to
13 keep abreast of developments affecting stream runoff
14 and as required to facilitate its decisions;
- 15 (4) Be authorized to enter upon such private property of
16 the dam or reservoir as may be necessary in making, at
17 the owner's expense, any investigation or inspection
18 required or authorized by this chapter. The entry
19 shall not constitute a cause of action in favor of the
20 owner of the land, except for damages resulting from
21 wilful acts or negligence by the board or its agents;



- 1 (5) Require the owners to apply for, and obtain from the
2 board, written approval of plans and specifications on
3 the construction of any new dam or reservoir or the
4 enlargement of any dam or reservoir prior to
5 commencement of any work;
- 6 (6) Require the owners to file an application and secure
7 the written approval of the board before commencing
8 the repair, alteration, or removal of a dam or
9 reservoir, including the alteration or removal of a
10 dam so that it no longer constitutes a dam or
11 reservoir as defined in this chapter. Repairs shall
12 not be deemed to apply to routine maintenance not
13 affecting the safety of the structure;
- 14 (7) Require the owners to secure the written approval of
15 the board to impound water;
- 16 [~~(7)~~] (8) Require [filing] fees [by rules to accompany each
17 application as required under the provisions of this
18 chapter.] to cover the board's costs in carrying out
19 the administration of dam safety;
- 20 (9) Shall cooperate with all public and private agencies
21 created for the purpose of enhancing dam safety
22 activities and training, and assist these



- 1 organizations and agencies in coordinating the use of
2 their facilities and participate in the exchange of
3 ideas, knowledge, and data with these organizations
4 and agencies. The board shall maintain an advisory
5 staff for the purposes of this subsection.
- 6 (10) Shall prepare, publish, and issue such printed
7 pamphlets, bulletins or advisories or conduct training
8 as the board deems necessary for the dissemination of
9 information to the public;
- 10 (11) May appoint and remove agents and employees including
11 hearing officers, specialists, and consultants
12 necessary to carry out the purposes of this chapter,
13 who may be engaged by the board without regard to the
14 requirements of chapter 76;
- 15 (12) Shall catalog and maintain an inventory of all
16 regulated dams and reservoirs in the state pursuant to
17 this chapter without regard to chapter 91;
- 18 (13) Shall establish similar or consistent hazard potential
19 classifications in conjunction with other applicable
20 states or federal guidelines for all regulated dams
21 and reservoirs in the state pursuant to this chapter
22 without regard to chapter 91;



- 1
- 2 (14) Examine and approve or disapprove applications for
- 3 approval of construction, enlargement, repair,
- 4 alteration, or removal of a dam or reservoir and
- 5 applications for certificates of approval to impound;
- 6 (15) Order the suspension or revocation, or both, of any
- 7 application approval or certificate of approval to
- 8 impound for any act for failure to comply with:
- 9 (A) Any of the provisions of this chapter;
- 10 (B) Any rules or orders adopted pursuant to this
- 11 chapter; or
- 12 (C) Any of the conditions contained in or attached to
- 13 the application approval or certificate of
- 14 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 the
- 18 provisions of this chapter or rules issued pursuant to
- 19 this chapter;
- 20 (17) Order the immediate cessation of any act that is
- 21 commenced or continued without an application approval



1 or certificate of approval to impound as required by
2 this chapter;

3 (18) Enter private property and immediately take actions
4 necessary to provide protection to life or property at
5 the owner's expense, including removal of the dam.

6 The entry shall not constitute a cause of action in
7 favor of the owner of the land, except for damages
8 resulting from wilful acts or negligence by the board
9 or its agents;

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

14 (20) Assess civil and criminal penalties for violation of
15 any provision of this chapter or any rule adopted or
16 order issued by the board pursuant to this chapter;

17 (21) Be authorized to place liens on the owner's property,
18 to be collected as delinquent taxes against the lands
19 and property are collected, if the owner neglects to
20 pay any costs, expenses, or penalties chargeable to
21 the owner under any rule, order, condition, or other
22 provision of this chapter;



- 1 (22) With the assistance of the attorney general, institute
- 2 and prosecute all court actions as may be necessary to
- 3 obtain the enforcement of any order issued by the
- 4 board in carrying out the provisions of this chapter;
- 5 and
- 6 (23) Take any other actions necessary to carry out the
- 7 purposes of this chapter.

8 **[+]~~§179D-7~~[+]** **Administrative and judicial review.** (a)

9 The findings and orders of the board, and the board's approval

10 or disapproval of an application issued by the State, are final,

11 conclusive, and binding upon all owners, state agencies, and

12 other government agencies, regulatory or otherwise, as to the

13 safety of design, construction, enlargement, repair, alteration,

14 removal, maintenance, and operation of any dam or reservoir.

15 The board's approval of an application or a certificate of

16 approval to impound shall not be considered final if it can be

17 demonstrated to the board that the board's approval of the

18 relevant application or certificate of approval to impound was

19 based on one or more misrepresentations.

20 (b) Any person who is aggrieved or adversely affected by

21 an order or action of the board shall be entitled to

22 administrative and judicial review in accordance with chapter



1 91[-]; provided that the order or action shall remain in force
2 until modified or set aside on appeal.

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 otherwise

10 provided by law, the board is authorized to set, charge, and
11 collect administrative penalties and to recover administrative
12 fees and costs, including attorney's fees and costs, or bring
13 legal action to recover administrative penalties, fees, and
14 costs including attorney's fees and costs, or payment for
15 damages or for the cost to correct damages resulting from a
16 violation of any rule, order, condition, or provision of this
17 chapter. The administrative penalty shall not exceed \$25,000
18 per day of such violation, and each day during which the
19 violation continues shall constitute an additional, separate,
20 and distinct offense.

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



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

5 (1) For a first conviction by a mandatory fine of not less
6 than \$2,500 nor more than \$25,000 per day of
7 violation, or by imprisonment of not more than one
8 year, or both; and

9 (2) For a second or subsequent conviction by a mandatory
10 fine of not less than \$5,000 nor more than \$50,000 per
11 day of violation, or by imprisonment of not more than
12 one year, or both.

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



1 (d) With the assistance of the attorney general, the board
2 may seek an injunction and damages in the enforcement of this
3 chapter.

4 (e) All penalties, fees and costs collected pursuant to
5 this section or rules adopted by the board pursuant to this
6 chapter shall be deposited in the dam safety special fund.

7 ~~[+]§179D-9[+]~~ **Enactment of rules.** (a) The department
8 shall adopt ~~[the necessary]~~ rules pursuant to chapter 91 for the
9 purposes of this chapter, not later than one and one-half years
10 after ~~[June 6, 1987.] July 1, 2007.~~"

11 SECTION 4. Prior to the adoption of administrative rules
12 consistent with this Act, the department shall adopt interim
13 administrative rules that are similar or consistent with the
14 rules recommended in chapter 5 of the Report of the Independent
15 Civil Investigation of the March 14, 2006, Breach of Ka Loko
16 Dam. The interim rules shall be exempt from the public notice
17 and public hearing requirements of chapter 91, Hawaii Revised
18 Statutes. Interim administrative rules adopted by the
19 department shall be repealed upon the adoption of administrative
20 rules pursuant to chapter 179D, Hawaii Revised Statutes.

21 SECTION 5. In codifying the new sections added by section
22 2 of this Act, the revisor of statutes shall substitute



1 appropriate section numbers for the letters used in designating
2 the new sections in this Act.

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

9 SECTION 7. Statutory material to be repealed is bracketed
10 and stricken. New statutory material is underscored.

11 SECTION 8. 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. (HB1905 HD3)

