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# 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:

- 10           (1) Establishing a dam safety special fund for monitoring  
11                 and enforcing the safety of dams and reservoirs  
12                 throughout the State;
- 13           (2) Establishing the dam rehabilitation loan program to  
14                 provide funds to dam owners to make repairs and  
15                 alterations to dams and reservoirs to increase their  
16                 safety and effectiveness and prevent future dam  
17                 failures; and



1 (3) Making an appropriation for the dam safety special  
2 fund and the dam rehabilitation loan program.

3 SECTION 2. Chapter 179D, Hawaii Revised Statutes, is  
4 amended by adding two new sections to be appropriately  
5 designated and to read as follows:

6 "§179D-A Dam safety special fund. (a) There is  
7 established, in the state treasury, the dam safety special fund.  
8 All moneys received by the board from:

9 (1) Fees, penalties, interest, fines, or charges collected  
10 under this chapter;  
11 (2) Appropriations by the legislature; and  
12 (3) Payments made on loans pursuant to part \_\_\_\_\_ ;  
13 (4) Moneys collected in full or partial satisfaction of  
14 liens created by subsection (d) (2)  
15 shall be deposited in the dam safety special fund.

16 (b) Moneys in the special fund shall be used by the board,  
17 upon appropriation by the legislature, to administer the dam  
18 safety program and may be used to employ remedial measures  
19 necessary to protect persons and property in accordance with  
20 this chapter.

21 (c) The board shall administer the dam safety special  
22 fund. On notice from the board, the director of finance shall



1 invest and divest moneys in the special fund, and moneys earned  
2 from investment shall be credited to the special fund. Moneys  
3 on balance in the special fund at the close of each fiscal year  
4 shall remain in that fund and shall not lapse to the credit of  
5 the general fund.

6 (d) The board may expend moneys from the dam safety  
7 special fund subject to the following provisions:

8 (1) The costs and expenses of the control, regulation,  
9 abatement, and inspection provided by this section,  
10 including costs of construction, enlargement, repair,  
11 alteration, or removal work done to render the dam,  
12 reservoir, or appurtenances safe shall constitute a  
13 statutory lien against all property of the owner.  
14 Notwithstanding any other law to the contrary, the  
15 lien shall be considered prior and superior to all  
16 other mortgages, liens, or encumbrances of record even  
17 if those other mortgages, liens, or encumbrances were  
18 filed before the lien pursuant to this paragraph  
19 becomes due; and

20 (2) Liens pursuant to paragraph (1) may be perfected and  
21 foreclosed in advance of construction, enlargement,  
22 repair, alteration, or removal or after completion of



1       the construction, enlargement, repair, alteration, or  
2       removal. If perfected in advance, the lien shall be  
3       perfected by the filing of an affidavit of the board  
4       setting forth the estimate of the costs of  
5       construction, enlargement, repair, alteration, or  
6       removal within the county in which the dam is located  
7       in the same manner as prescribed for mechanic's liens.  
8       When the affidavit is filed, the amount set forth in  
9       the affidavit shall be a lien in that amount against  
10       all property of the owner. If the actual cost of  
11       construction, enlargement, repair, alteration, or  
12       removal exceeds the estimated cost, the board may  
13       amend the affidavit setting forth the additional  
14       estimated cost. If the estimated cost exceeds the  
15       actual costs of construction, enlargement, repair,  
16       alteration, or removal at completion, the board shall  
17       file an amended affidavit at completion. If a lien is  
18       perfected in advance and the construction,  
19       enlargement, repair, alteration, or removal is not  
20       commenced within two years from the date of  
21       perfection, the lien shall be void. The board shall  
22       file a satisfaction of lien upon payment of the costs



1 of construction, enlargement, repair, alteration or  
2 removal by the owner.

3 **§179D-B Annual report.** (a) The department shall submit  
4 an annual report concerning the activities of the department  
5 relating to this chapter to the governor and the legislature no  
6 less than twenty days prior to the convening of each regular  
7 session.

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

10 (1) The number of safety inspections made and the results  
11 thereof;

12 (2) Use of appropriated funds;

13 (3) Receipts generated for inspections of dams and  
14 reservoirs;

15 (4) Rules adopted or amended;

16 (5) Enforcement orders and proceedings;

17 (6) Dam failures and department evaluations of the reasons  
18 for dam failure; and

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



1 SECTION 3. 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 REHABILITATION LOAN PROGRAM

5 §179D-C Dam rehabilitation loan program; establishment and  
6 **funding.** (a) The board shall create a dam rehabilitation loan  
7 program or may partner with other public or private agencies or  
8 organizations to create a dam rehabilitation loan program. The  
9 program shall initially be funded with \$2,000,000 from moneys  
10 appropriated by the legislature and deposited into the dam  
11 safety special fund.

12 (b) The legislature may appropriate additional funding to  
13 expand the financial size of the dam rehabilitation loan  
14 program.

15 (c) The dam rehabilitation loan program shall be  
16 subsequently funded with additional moneys appropriated by the  
17 legislature and deposits of fees, penalties, interest, fines, or  
18 charges collected by the board under this chapter, and any  
19 interest earned on the investment of moneys in the dam safety  
20 special fund by the director of finance.



1 (d) The dam rehabilitation loan program may obtain funds  
2 through partnerships with any bonding or loaning agency or  
3 organization, whether private or public.

4 (e) State funding to the dam rehabilitation loan program  
5 shall not be reduced because of federal funds provided for a  
6 rehabilitation loan program.

7 (f) Moneys collected for the dam rehabilitation loan  
8 program and deposited into the dam safety special fund.

9 **§179D-D Allowable loans.** (a) The board may grant loans  
10 from the dam safety fund to dam owners to defray the costs of  
11 repairing dams that the board determines to be dangerous to the  
12 safety of persons and property but that are not in an emergency  
13 condition.

14 (b) Loans shall be granted on the terms and conditions as  
15 may be imposed by the board. The following provisions shall  
16 apply:

17 (1) The board may take any administrative or legal action  
18 necessary for the administration of the dam  
19 rehabilitation loan program;

20 (2) If the balance of the dam safety special fund exceeds  
21 \$1,000,000, no single loan shall be made for more than  
22 twenty per cent of the moneys available in the fund.



1 No loan shall be made to any dam owner that, at the  
2 time of the loan application, has more than twenty per  
3 cent of the outstanding loans of the fund;

4 (3) The loans granted by the board shall be for a term of  
5 not more than twenty years; and the loans shall bear  
6 interest at rates established by the board by rule;

7 (4) Each loan shall be evidenced by a contract between the  
8 dam owner and the board, acting on behalf of the  
9 State. The contract shall provide for the loan of a  
10 stated amount to defray partial or total costs of  
11 repairing the dam. The contract shall provide for  
12 equal annual payments of principal and interest for  
13 the term of the loan.

14 **§179D-E Eligibility.** (a) Rehabilitation projects that  
15 are in compliance with applicable laws and rules and are  
16 permitted, accepted, and approved by the board shall be eligible  
17 to be funded through the dam rehabilitation loan program.

18 (b) Any costs directly related to rehabilitating safety  
19 deficiencies of a dam shall be eligible to be funded through the  
20 dam rehabilitation loan program.

21 (c) Fees for analysis, feasibility work, alternative  
22 evaluation, and engineering design shall only be eligible



1 retroactively, after construction has been initiated or at the  
2 point that analysis has shown a dam to be in compliance.

3 (d) Up to one hundred per cent of rehabilitation costs for  
4 a dam may be loaned.

5 (e) Dam owners may use multiple programs or sources to  
6 fund the rehabilitation costs for a dam, up to one hundred per  
7 cent of rehabilitation costs.

8 (f) Rehabilitation costs for any dam in the State are  
9 eligible for loans under this part, subject to the provisions of  
10 this section, except for dams owned by the federal government.

11 (g) Any costs directly related to compliance with other  
12 laws and rules, above the State's minimum dam safety  
13 requirements, shall be eligible for loans under this part as  
14 part of an overall rehabilitation project.

15 (h) Any costs for a fish passage, if required by the  
16 State, shall be eligible only if the fish passage is part of an  
17 overall rehabilitation project.

18 (i) Costs for lake enhancement projects, including but not  
19 limited to lake dredging, sediment removal, or boat ramps, that  
20 do not enhance the safety of the dam shall not be eligible to be  
21 funded through the dam rehabilitation loan program.



1           **§179D-F Security interests.** (a) The board may take a  
2 security interest, if necessary, in any property owned by the  
3 dam owner in exchange for the loan. If the board chooses to  
4 take a security interest, the board shall take the necessary  
5 actions to perfect the security interest.

6           (b) The attorney general or the board's legal counsel,  
7 with the consent of the board, may commence any actions  
8 necessary to enforce the contract and achieve repayment of loans  
9 provided by the board.

10           **§179D-G Enforcement.** Notwithstanding any other provision  
11 of law to the contrary, the board and its agents, engineers, and  
12 other employees, for the purposes of enforcing this chapter, may  
13 enter upon any land or water in the State that is the subject of  
14 a dam rehabilitation loan program loan without a search warrant  
15 or liability for trespass.

16           **§179D-H Dam owners; requirements for participation.** Dam  
17 owners participating in the dam rehabilitation loan program  
18 shall:

19           (1) Maintain an operation and maintenance plan with  
20 written, regularly scheduled reports to the board, so  
21 as to maintain and keep the structure and its  
22 appurtenant works in the state of repair and operating



1 condition required by the exercise of due care, due  
2 regard for the safety of persons or property, sound  
3 and accepted engineering principles, and the rules  
4 adopted by the board;

5 (2) Establish an emergency action plan and report this  
6 plan to the board;

7 (3) Cooperate with the board's agents, engineers, and  
8 employees in carrying out the provisions of this  
9 chapter;

10 (4) Facilitate access by any necessary state agency to the  
11 dam, reservoir, or appurtenances; and

12 (5) Furnish upon request the plans, specifications,  
13 operating and maintenance data, or other information  
14 that is pertinent to the structure, appurtenance, and  
15 loan.

16 **§179D-I Administration.** The board shall adopt the  
17 following guidelines for administering the dam rehabilitation  
18 loan program:

19 (1) Owners of dams without taxing authority may be allowed  
20 to participate in the dam rehabilitation loan program;

21 (2) Complete rehabilitations shall be encouraged, but  
22 phased projects may be funded;



1 (3) Removal of dams as a rehabilitation alternative may be  
2 allowed;

3 (4) As part of the application process, owners shall be  
4 required to demonstrate the ability to appropriately  
5 operate and maintain the dam after rehabilitation is  
6 complete;

7 (5) Owners may partner with an individual, local agency,  
8 or organization, for purposes of the loan and for  
9 purposes of operation and maintenance; and

10 (6) If a dam is exempt from state regulation, to obtain  
11 funding through the dam rehabilitation loan program,  
12 the project must adhere to state standards for design,  
13 construction, and the rules adopted by the board  
14 pursuant to this chapter."

15 SECTION 4. Chapter 179D, Hawaii Revised Statutes, is  
16 amended to read as follows:

17 " [†] CHAPTER 179D [†]

18 DAMS AND RESERVOIRS

19 PART I. GENERAL PROVISIONS

20 [†]§179D-1[†] Short title. This chapter shall be known  
21 and may be cited as the "Hawaii Dam Safety Act of [~~1987~~].  
22 2007".



1           ~~[†]~~§179D-2~~[‡]~~   **Declaration of purpose.**   The purpose of this  
2 chapter is to provide for the inspection and regulation of  
3 construction, operation, and removal of ~~[certain]~~ all dams and  
4 reservoirs in order to protect the health, safety, and welfare  
5 of the citizens of the State by reducing the risk of failure of  
6 such dams.   The legislature finds and declares that the  
7 inspection and regulation of construction, operation, and  
8 removal of ~~[certain]~~ all dams and reservoirs are properly a  
9 matter of regulation under the police powers of the State.

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

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

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

20           "Dam" means any artificial barrier, including appurtenant  
21 works, ~~[which]~~ that impounds or diverts water~~[7]~~ and ~~[which]~~  
22 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[~~-~~], unless the barrier,  
14 due to its location or other physical characteristics,  
15 is a high hazard or moderate hazard potential dam.

16 "Dam rehabilitation loan program" means a low interest  
17 revolving dam rehabilitation loan program, created pursuant to  
18 this chapter.

19 "Department" means the department of land and natural  
20 resources.

21 "Owner" means any person who [~~owns, controls, operates,~~  
22 ~~maintains, manages, or proposes to construct a dam or~~



1 ~~reservoir.]~~ has a right, title, or interest in or to the dam or  
2 to the property upon which the dam or appurtenant works is  
3 located or proposed to be located.

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

17 "Removal" or "remove" means complete elimination of the dam  
18 embankment or structure to restore the approximate original  
19 topographic contours of the valley.

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



1           ~~[†]~~§179D-4~~[‡]~~   **Liability for damages.** (a) Nothing  
2 contained in this chapter shall be construed to constitute a  
3 waiver of any immunity of the State and no action or failure to  
4 act under this chapter shall be construed to create any  
5 liability in the State, board, department, or its officers or  
6 employees, for the recovery of damages caused by such action or  
7 failure to act.

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

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



1 interval of one thousand years, hurricanes, or extraordinary  
2 rains of an average recurrence interval in excess of two hundred  
3 fifty years.

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

10 (b) The rules and orders adopted under this chapter shall  
11 not apply to the design and construction of dams, reservoirs,  
12 and appurtenant works existing on June 6, 1987, but the rules  
13 and orders shall establish standards consistent with such design  
14 and construction for the operation, maintenance, and repair  
15 thereof, and those rules and orders then shall be applicable to  
16 those dams, reservoirs, and appurtenant works [which], that were  
17 existing on June 6, 1987.

18 **[+]§179D-6[+]** **General powers and duties of the board of**  
19 **land and natural resources.** (a) All dams and reservoirs in the  
20 State shall be under the jurisdiction of the board of land and  
21 natural resources. The board of land and natural resources  
22 shall administer the dam safety program established by this



1 chapter. In carrying out this chapter, the board shall  
2 cooperate, advise, consult, contract, and enter into cooperative  
3 agreements with the United States government or any of its  
4 agencies, other state agencies, and the county governments or  
5 any of their agencies. In the performance of its duties the  
6 board shall:

- 7 (1) Establish by rules adopted under chapter 91, such  
8 policies, requirements, or standards governing the  
9 design, construction, operation, maintenance,  
10 enlargement, alteration, repair, removal, and  
11 inspection of dams, reservoirs, and appurtenant works  
12 for the protection of life and property from  
13 structural failure of dams and reservoirs;
- 14 (2) Conduct investigations and the collection of data,  
15 including technological advances made in safety  
16 practices elsewhere, as may be needed for the proper  
17 review and study of the various features of the  
18 design, construction, repair, removal, and enlargement  
19 of dams, reservoirs, and appurtenant works. The board  
20 may require submittal of reports of investigations  
21 from all owners;



- 1 (3) Conduct investigations and require reports from all  
2 owners to be made from time to time, such as watershed  
3 investigations and studies, as may be necessary to  
4 keep abreast of developments affecting stream runoff  
5 and as required to facilitate its decisions;
- 6 (4) Be authorized to enter upon such private property of  
7 the dam or reservoir as may be necessary in making, at  
8 the owner's expense, any investigation or inspection  
9 required or authorized by this chapter. The entry  
10 shall not constitute a cause of action in favor of the  
11 owner of the land, except for damages resulting from  
12 wilful acts or negligence by the board or its agents;
- 13 (5) Require the owners to apply for, and obtain from the  
14 board written, approval of plans and specifications on  
15 the construction of any new dam or reservoir or the  
16 enlargement of any dam or reservoir prior to  
17 commencement of any work;
- 18 (6) Require the owners to file an application and secure  
19 the written approval of the board before commencing  
20 the repair, alteration, or removal of a dam or  
21 reservoir, including the alteration or removal of a  
22 dam so that it no longer constitutes a dam or



1 reservoir as defined in this chapter. Repairs shall  
2 not be deemed to apply to routine maintenance not  
3 affecting the safety of the structure;

4 (7) Require the owners to secure the written approval of  
5 the board to impound water;

6 ~~[(7)]~~ (8) Require [filing] fees [by rules to accompany each  
7 ~~application as required under the provisions of this~~  
8 ~~chapter.] to cover the board's costs in carrying out~~  
9 the supervision of dam safety;

10 (9) 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 (10) Be authorized to place liens on the owner's property,  
15 to be collected as delinquent taxes against the lands  
16 and property are collected, if the owner neglects to  
17 pay any costs, expenses, or penalties chargeable to  
18 the owner under any rule, order, condition, or other  
19 provision of this chapter;

20 (11) With the assistance of the attorney general, institute  
21 and prosecute all court actions as may be necessary to  
22 obtain the enforcement of any order issued by the



1           board in carrying out the provisions of this chapter;  
2           and  
3           (12) Take any other actions necessary to carry out the  
4           purpose of this chapter.

5           [+]§179D-7[+] **Administrative and judicial review.** Any  
6 person who is aggrieved or adversely affected by an order or  
7 action of the board shall be entitled to administrative and  
8 judicial review in accordance with chapter 91[-]; provided that  
9 the order or action shall remain in force until modified or set  
10 aside on appeal.

11           [+]§179D-8[+] **Violations; penalties.** (a) Any person  
12 violating any provision of this chapter or any permit condition  
13 or limitation established pursuant to this chapter or  
14 negligently or wilfully failing or refusing to comply with any  
15 final order of the board issued as provided herein, shall be  
16 liable for a civil penalty not to exceed \$500 for each day  
17 during which ~~said~~ the violation continues.

18           (b) With the assistance of the attorney general, the board  
19 may seek an injunction and damages in the enforcement of this  
20 chapter.



1        (c) All penalties collected pursuant to this section or  
2 rules adopted by the board pursuant to this chapter shall be  
3 deposited in the dam safety special fund.

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

8        SECTION 5. There is appropriated out of the general  
9 revenues of the State of Hawaii the sum of \$            , or so much  
10 thereof as may be necessary for fiscal year 2007-2008, and the  
11 same sum, or so much thereof as may be necessary for fiscal year  
12 2008-2009, for personnel and resources for the department of  
13 land and natural resources to implement this Act.

14        The sums appropriated shall be expended by the department  
15 of land and natural resources for the purposes of this Act.

16        SECTION 6. In codifying the new sections added by section  
17 2 and 3 of this Act, the revisor of statutes shall substitute  
18 appropriate section numbers for the letters used in designating  
19 the new sections in this Act.

20        SECTION 7. If any provision of this Act, or the  
21 application thereof to any person or circumstance is held  
22 invalid, the invalidity does not affect other provisions or



1 applications of the Act, which can be given effect without the  
2 invalid provision or application, and to this end the provisions  
3 of this Act are severable.

4 SECTION 8. Statutory material to be repealed is bracketed  
5 and stricken. New statutory material is underscored.

6 SECTION 9. This Act shall take effect on July 1, 2050.



**Report Title:**

Dam Safety; Appropriation

**Description:**

Creates dam safety special fund; creates dam rehabilitation loan program; makes an appropriation.

