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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. Tragically, seven people 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; and  
13           (2) Making an appropriation for the dam safety special  
14                 fund.

15           SECTION 2. Chapter 179D, Hawaii Revised Statutes, is  
16 amended by adding a new section to read as follows:



1           "§179D-    Dam safety special fund.   (a) There is  
2 established, in the department, the dam safety special fund,  
3 which shall be administered by the board. The following shall  
4 be deposited into the dam safety special fund:

5           (1) Appropriations by the legislature;

6           (2) Fees and administrative charges collected under this  
7 chapter or any rule adopted thereunder;

8           (3) Moneys collected as fines or penalties imposed under  
9 this chapter or any rule adopted thereunder;

10          (4) Moneys derived from public or private sources to  
11 benefit dam safety;

12          (5) Moneys collected in full or partial satisfaction of  
13 liens created by subsection (b);

14          (6) Any moneys collected from the sale of retail items by  
15 the department relating to dam safety;

16          (7) Any other moneys collected pursuant to this chapter or  
17 any rules adopted thereunder; and

18          (8) Moneys derived from interest, dividends, or other  
19 income from other sources.

20          (b) The board may expend moneys from the dam safety  
21 special fund for the following purposes or subject to the  
22 following provisions:



- 1        (1) Conducting investigations, research, and collection of  
2        data, including technological advances made in dam  
3        safety practices elsewhere;
- 4        (2) Conducting monitoring and inspection programs and  
5        activities, or enforcement;
- 6        (3) Preparation and dissemination of information to the  
7        public concerning activities authorized under this  
8        chapter;
- 9        (4) Staff and dam owner training and educational  
10       activities;
- 11       (5) Employing any necessary remedial measures to protect  
12       persons and property in accordance with this chapter;
- 13       (6) Any other purposes to administer the dam safety  
14       program under this chapter or any rule adopted  
15       thereunder, including funding permanent or temporary  
16       positions who may be appointed without regard to  
17       chapter 76;
- 18       (7) Providing coordination assistance to the proper state  
19       or county agency(s) to control any dam, reservoir, and  
20       appurtenances during an emergency until they have been  
21       rendered safe or the emergency has been terminated;



1       (8) The costs and expenses of the coordination,  
2       assistance, control, regulation, abatement, and  
3       inspection provided by this chapter, including costs  
4       of construction, enlargement, repair, alteration, or  
5       removal work done to render a dam, reservoir, or  
6       appurtenances safe shall constitute a statutory lien  
7       against all property of the owner. Notwithstanding  
8       any other law to the contrary, the lien shall be  
9       considered prior and superior to all other mortgages,  
10       liens, or encumbrances of record even if those other  
11       mortgages, liens, or encumbrances were filed before  
12       the lien pursuant to this paragraph becomes due; and  
13       (9) Liens pursuant to paragraph (8) may be perfected and  
14       foreclosed in advance of construction, enlargement,  
15       repair, alteration, or removal or after completion of  
16       the construction, enlargement, repair, alteration, or  
17       removal. If perfected in advance, the lien shall be  
18       perfected by the filing of an affidavit of the board  
19       setting forth the estimate of the costs of  
20       construction, enlargement, repair, alteration, or  
21       removal within the county in which the dam is located  
22       in the same manner as prescribed for mechanic's liens.



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

18           SECTION 3. There is appropriated out of the general  
19 revenues of the State of Hawaii the sum of \$                    or so  
20 much thereof as may be necessary for fiscal year 2007-2008 and  
21 the same sum or so much thereof as may be necessary for fiscal  
22 year 2008-2009 to be deposited into the dam safety special fund.



1 SECTION 4. There is appropriated out of the dam safety  
2 special fund the sum of \$ or so much thereof as may be  
3 necessary for fiscal year 2007-2008 and the same sum or so much  
4 thereof as may be necessary for fiscal year 2008-2009 to carry  
5 out the purposes of the dam safety special fund.

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

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

14 SECTION 6. New statutory material is underscored.

15 SECTION 7. This Act shall take effect on July 1, 2050.



**Report Title:**

Dam Safety; Appropriation

**Description:**

Creates dam safety special fund; makes appropriations. (HB652  
HD2)

