
A BILL FOR AN ACT

RELATING TO DAM SAFETY.

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

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 II. 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 such 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:

17 (1) If the owner of the property refuses to allow the
18 inspection, the department may seek a search warrant



1 to allow the inspection. If the department has been
2 refused inspection of drawings, operational records,
3 or other information concerning a dam or reservoir,
4 the department may seek an administrative subpoena
5 compelling production of the drawings, operational
6 records, or other information; or

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

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



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

7 **§179D-C Injunctive relief.** Whenever in the judgment of
8 the department any person has engaged in or is about to engage
9 in any act or practice which constitutes or will constitute an
10 unlawful action under this part, the person may make application
11 to the circuit court of the county in which the unlawful act or
12 practice has been or is about to be engaged in, or in which
13 jurisdiction is appropriate, for an order enjoining such act or
14 practice, or for an order requiring compliance with this part.
15 Upon a showing by the department that such person has engaged in
16 or is about to engage in any such act or practice, a permanent
17 or temporary injunction, restraining order, or other order shall
18 be granted without the necessity of showing lack of an adequate
19 remedy at law.

20 **§179D-D Emergency actions.** (a) If, in the opinion of the
21 department, conditions of any dam or reservoir are so dangerous
22 to the health and safety of life or property as not to permit



1 time for issuance and enforcement of an order relative to
2 construction, modification, maintenance, or repair, or the dam
3 is threatened by any large flood or other natural disaster, the
4 department may immediately employ remedial measures necessary to
5 protect such life and property.

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

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

20 (d) Any owner failing or refusing, after written notice
21 has been given, to pay the reasonable costs and expenses
22 incurred by the department pursuant to subsection (c) shall be,



1 upon complaint by the department to the attorney general,
2 subject to reasonable attorney fees incurred in the recovery of
3 such costs and expenses.

4 (e) All moneys collected by the department pursuant to
5 subsection (c) shall be credited to the Dam Safety Fund created
6 in section 179D-E.

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

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

20 **§179D-E Establishment of dam safety special fund. (a)**
21 There is established in the state treasury a special fund, to be
22 designated as the dam safety special fund. The fund shall be



1 administered by the board. The following shall be deposited
2 into the dam safety special fund:

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

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



- 1 (1) Conducting investigations, research, and the
2 collection of data, including technological advances
3 made in dam safety practices elsewhere;
- 4 (2) Conducting investigations, monitoring, and inspection
5 programs and 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) Employ 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 but not limited to funding
16 permanent or temporary positions who may be appointed
17 without regard to chapter 76;
- 18 (7) The board shall provide coordination and assistance to
19 the proper state or county agency or agencies to
20 control any dam, reservoir, and appurtenances subject
21 to section 179D-D until they have been rendered safe
22 or the emergency has terminated;



- 1 (8) The costs and expenses of the coordination,
2 assistance, control, regulation, abatement, and
3 inspection provided by this section, including costs
4 of construction, enlargement, repair, alteration, or
5 removal work done to render the 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 (c) Moneys on balance in the special fund at the close of
19 each fiscal year shall remain in that fund and shall not be
20 transferred or lapsed to the credit of the general fund.

21 **§179D-F Dams and reservoirs completed prior to effective**
22 **date of this chapter.** (a) Every owner of a dam that falls



1 within the definition of a dam in this chapter and completed
2 prior to the effective date of this chapter shall file with the
3 board a separate application for a certificate of approval to
4 impound and any other supporting information as required by the
5 board for each of these dams. Each application shall also be
6 accompanied by applicable application fees as required by the
7 board. During the application process for a certificate of
8 approval to impound, the owner of a dam or reservoir may
9 continue to impound water, unless the board determines that the
10 dam or reservoir may pose a danger to the health and safety of
11 persons or property.

12 (b) The board shall give notice to file an application for
13 certificate of approval to impound to owners of such dams or
14 reservoirs who have failed to file such applications as required
15 by this chapter.

16 (c) The notice provided for in this section shall be
17 delivered by certified mail to the owner at his last address of
18 record in the office of the county tax assessor in which the dam
19 is located. Such mailing shall constitute service.

20 (d) The board shall make inspections of such dams and
21 reservoirs, unless the data, records, and inspection reports on
22 file with it are found adequate to enable a determination



1 whether or not the certificate of approval to impound should be
2 issued.

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

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

21 §179D-G Dams and reservoirs under construction,
22 enlargement, repair, alteration or removal before effective date



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

12 (b) Construction, enlargement, repair, alteration, or
13 removal work on such a dam and reservoir may proceed, provided
14 an application for approval of the plans and specifications is
15 filed, until 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-H 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 each of the following: the governor and
8 the senate president and speaker of the house of
9 representatives. The report shall include but not be limited to
10 information on the following:

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



1 §179D-I Dam owners; general requirements and
2 responsibilities. Dam owners subject to regulation under this
3 chapter shall assume but not be limited to the following general
4 requirements and responsibilities:

- 5 (1) Maintain an operation and maintenance plan, that
6 includes an owner/operator inspection and monitoring
7 program, with written, regularly scheduled reports to
8 the board, so as to maintain and keep the structure,
9 its appurtenant works, and access in the state of
10 repair and operating condition required by the
11 exercise of due care, with due 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 high and
15 significant hazard potential dams and provide this
16 plan to the board, state, and county civil defense
17 agencies, and other necessary parties, with due regard
18 for the safety of persons or property, sound and
19 accepted engineering principles, and the rules adopted
20 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. Physical clear access for a four-
4 wheeled drive vehicle to the dam or reservoir site,
5 and 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 physical clear access to the dam or reservoir site,
9 upstream or downstream features of a dam particularly
10 during periods of inclement weather conditions cannot
11 be sustained, the dam owner for high and significant
12 hazard potential dams shall have redundant early
13 warning systems in place, as approved by the board;
14 and

15 (6) Furnish upon request the plans, specifications,
16 operating and maintenance data, or other information
17 that is pertinent to the dam structure and
18 appurtenances as indicated in this chapter."

19 SECTION 2. Section 179D-1, Hawaii Revised Statutes, is
20 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 dams. The legislature finds and declares that the
12 inspection and regulation of construction, operation, and
13 removal of ~~[certain]~~ all dams or reservoirs are properly a
14 matter of regulation under the police powers of the State~~-~~,
15 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 and that specified the condition or
 5 limitations under which work is to be performed by the owner or
 6 under which approval is granted.

7 "Appurtenant works" means any structure, such as spillways,
 8 either in the dam or separate therefrom, the reservoir and its
 9 rim, low level outlet works, and water conduits, such as
 10 tunnels, pipelines, or penstocks, either through the dam or its
 11 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 and that specifies the conditions
 17 or limitations under which the dam and reservoir are to be
 18 maintained and operated.

19 "Dam" means any artificial barrier, including appurtenant
 20 works, which impounds or diverts water, and which:

- 21 (1) Is twenty-five feet or more in height from the natural
 22 bed of the stream or watercourse measured at the



1 downstream toe of the barrier, or from the lowest
2 elevation of the outside limit of the barrier if it is
3 not across a stream channel or watercourse to a
4 maximum water storage elevation; [~~or~~]

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

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

14 "Department" means the department of land and natural
15 resources.

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

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



1 "Hazard potential" means the possible adverse incremental
2 consequences that result from the release of water or stored
3 contents due to failure of the dam or misoperation of the dam or
4 appurtenances. The hazard potential classification of a dam
5 does not reflect in any way on the current condition of the dam
6 and its appurtenant structures (e.g., safety, structural
7 integrity, flood routing capacity).

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

10 "Low hazard" means a dam's failure will result in no
11 probable loss of human life and low economic and/or
12 environmental losses. Economic losses are principally limited
13 to the owner's property.

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

17 to the property upon which the dam or appurtenant works is
18 located or proposed to be located.

19 "Person" means [~~any individual, partnership, corporation,~~
20 ~~company, association, organization, the State and its~~
21 ~~departments and agencies, and the political subdivisions of the~~
22 ~~State.] any natural person, partnership, firm, association,~~



1 organization, corporation, county, county authority, trust,
2 receiver or trustee, limited liability company, limited
3 liability partnership, or company, or any state department,
4 agency, or political subdivision, or any other commercial or
5 legal entity. Whenever used in a section prescribing and
6 imposing a penalty or sanction, the term "person" includes the
7 members of an association or organization, and the officers or a
8 corporation, company, county, or county authority.

9 "Physical clear access" means a roadway or path which
10 allows timely access for inspection to a dam and its appurtenant
11 structures. If by roadway, the roadway shall be maintained in
12 an accessible condition by a four-wheeled drive vehicle even
13 during periods of inclement weather conditions.

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

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

19 "Reservoir" means any basin which contains or will contain
20 water impounded by a dam.

21 "Significant hazard" means a dam's failure will result in
22 no probable loss of human life but can cause major economic



1 loss, environmental damage, disruption of lifeline facilities,
2 or impact other concerns. Significant hazard potential
3 classification dams are often located in predominantly rural or
4 agricultural areas but could be located in areas with population
5 and significant infrastructure."

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

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

15 (b) Nothing in this chapter and no order, action, or
16 advice of the State, board, 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[7] 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 SECTION 6. Section 179D-5, Hawaii Revised Statutes, is
5 amended to read as follows:

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

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



1 (b) Any person who engages in any action made unlawful by
2 this chapter shall be guilty of a class C felony. Each day of
3 continued violation shall constitute a separate offense.

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

8 SECTION 7. Section 179D-6, Hawaii Revised Statutes, is
9 amended to read as follows:

10 "[~~+~~]**\$179D-6**[~~+~~] **General powers and duties of the board of**
11 **land and natural resources.** (a) All dams or reservoirs in the
12 State shall be under the jurisdiction of the board of land and
13 natural resources until the board declares which dams are to be
14 removed from its jurisdiction. The board [~~of land and natural~~
15 ~~resources~~] shall administer the dam safety program established
16 by this chapter. In carrying out this chapter, the board shall
17 cooperate, advise, consult, contract, and enter into cooperative
18 agreements with the United States government or any of its
19 agencies, other state agencies, and the county governments or
20 any of their agencies. In the performance of its duties, the
21 board shall:



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



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



1 ~~[-(7) Require filing fees by rules to accompany each~~
2 ~~application as required under the provisions of this~~
3 ~~chapter.]~~

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

6 (8) Require fees to cover the board's costs in carrying
7 out the administration of dam safety;

8 (9) Shall cooperate with all public and private agencies
9 created for the purpose of enhancing dam safety
10 activities and training, and assist these
11 organizations and agencies in coordinating the use of
12 their facilities and participate in the exchange of
13 ideas, knowledge, and data with these organizations
14 and agencies. For this purpose, the board shall
15 maintain an advisory staff;

16 (10) Shall prepare, publish, and issue such printed
17 pamphlets, bulletins, or advisories, or conduct
18 training as the board deems necessary for the
19 dissemination of information to the public;

20 (11) May appoint and remove agents and employees including
21 hearing officers, specialists, and consultants
22 necessary to carry out the purposes of this chapter,



1 who may be engaged by the board without regard to the
2 requirements of chapter 76;

3 (12) Shall catalog and maintain an inventory of all
4 regulated dams and reservoirs in the State pursuant to
5 this chapter;

6 (13) Shall establish similar or consistent hazard potential
7 classifications in conjunction with other applicable
8 states or federal guidelines for all regulated dams
9 and reservoirs in the State pursuant to this chapter
10 without regard to chapter 91;

11 (14) Examine and approve or disapprove applications for
12 approval of construction, enlargement, repair,
13 alteration, or removal of a dam or reservoir, and
14 applications for certificates of approval to impound;

15 (15) Order the suspension or revocation, or both, of any
16 application approval or certificate of approval to
17 impound for any act for failure to comply with this
18 chapter or with any rules or orders adopted pursuant
19 to this chapter, or with any of the conditions
20 contained in or attached to the application approval
21 or certificate of approval to impound;



- 1 (16) Issue orders requiring the adoption by an owner of
2 remedial measures necessary for the safety of life or
3 public or private property or for carrying out this
4 chapter or rules issued under this chapter;
- 5 (17) Order the immediate cessation of any act that is
6 started or continued without an application approval
7 or certificate of approval to impound as required by
8 this chapter;
- 9 (18) Enter private property and immediately take actions
10 necessary to provide protection to life or property at
11 the owner's expense, including removal of the dam.
12 The entry shall not constitute a cause of action in
13 favor of the owner of the land, except for damages
14 resulting from wilful acts or negligence by the board
15 or its agents;
- 16 (19) Recover from the owner, in the name of the State, the
17 expenses incurred in taking any action required by the
18 owner of the dam in the same manner debts are
19 recoverable by law;
- 20 (20) Assess civil and criminal penalties for violation of
21 this chapter or any rule or standard adopted or order
22 issued by the board pursuant to this chapter;



1 (21) Be authorized to place liens on the owner's property,
2 to be collected as delinquent taxes against the lands
3 and property are collected, if the owner neglects to
4 pay any costs, expenses or penalties chargeable to the
5 owner under this chapter or any rule, order, or
6 condition adopted, issued, or required under this
7 chapter;

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

12 (23) Take such other actions as may be necessary to carry
13 out this part."

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

16 "~~§~~179D-7~~§~~ **Administrative and judicial review.** (a)
17 The findings and order of the board, and the board's approval or
18 disapproval of an application issued by the State are final,
19 conclusive, and binding upon all owners, state agencies, and
20 other government agencies, regulatory or otherwise, as to the
21 safety of design, construction, enlargement, repair, alteration,
22 removal, maintenance, and operation of any dam or reservoir.



1 The board's approval of an application or a certificate of
2 approval to impound will not be considered final if it can be
3 demonstrated to the board that the board's approval of the
4 relevant application or certificate of approval was based on one
5 or more misrepresentations.

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

11 SECTION 9. Section 179D-8, Hawaii Revised Statutes, is
12 amended to read as follows:

13 "~~[+]§179D-8[+] Violations; penalties. [Any person~~
14 ~~violating any provision of this chapter or any permit condition~~
15 ~~or limitation established pursuant to this chapter or~~
16 ~~negligently or wilfully failing or refusing to comply with any~~
17 ~~final order of the board issued as provided herein, shall be~~
18 ~~liable for a civil penalty not to exceed \$500 for each day~~
19 ~~during which said violation continues.] (a) Except as~~
20 otherwise provided by law, the board may set, charge, and
21 collect administrative penalties and recover administrative fees
22 and costs, including attorney's fees and costs, or bring legal



1 action to recover administrative penalties, fees, and costs
2 including attorney's fees and costs, or payment for damages or
3 for the cost to correct damages resulting from a violation of
4 this chapter or any rule, order, or condition adopted, issued,
5 or required under this chapter. The administrative penalty
6 shall not exceed \$25,000 per day of such violation, and each day
7 during which the violation continues shall constitute an
8 additional, separate, and distinct offense.

9 (b) Any person who negligently or after written notice to
10 comply, violates this chapter or any rule, order, or condition
11 adopted, issued, or required under this chapter, or knowingly
12 obstructs, hinders, or prevents the department's agents or
13 employees from performing duties under this chapter, shall be
14 guilty of a class C felony, and upon conviction thereof, shall
15 be punished as follows:

16 (1) For a first conviction by a mandatory fine of not less
17 than \$2,500 nor more than \$25,000 per day of
18 violation, or by imprisonment of not more allowed by
19 law, or both; and

20 (2) For a second or subsequent conviction by a mandatory
21 fine of not less than \$5,000 nor more than \$50,000 per



1 day of violation, or by imprisonment of not more than
2 allowed by law, or both.

3 (c) Any criminal action against a person for any violation
4 of this chapter shall not be deemed to preclude the State from
5 pursuing civil legal action to recover administrative penalties,
6 fees and costs against that person. Any civil action against a
7 person to recover administrative penalties, fees, and costs for
8 any violation of this chapter or any rule, order, or condition
9 adopted, issued, or required under this chapter shall not be
10 deemed to preclude the State from pursuing any criminal action
11 against that person.

12 (d) With the assistance of the attorney general, the board
13 may seek an injunction and damages in the enforcement of this
14 chapter.

15 (e) All penalties, fees, and costs collected pursuant to
16 this section or rules adopted by the board pursuant to this
17 chapter, shall be deposited in the dam safety fund."

18 SECTION 10. Section 179D-9, Hawaii Revised Statutes, is
19 amended to read as follows:

20 "~~[+]§179D-9[+]~~ Enactment of rules[+]; constitutionality.

21 (a) The department shall adopt the necessary rules not later
22 than one and one-half years after [~~June 6, 1987.~~] July 1, 2007.



1 SECTION 15. If any provision of this Act, or the
2 application thereof to any person or circumstance is held
3 invalid, the invalidity does not affect other provisions or
4 applications of the Act, which can be given effect without the
5 invalid provision or application, and to this end the provisions
6 of this Act are severable.

7 SECTION 16. Statutory material to be repealed is bracketed
8 and stricken. New statutory material is underscored.

9 SECTION 17. This Act shall take effect upon its approval;
10 provided that sections 11 and 12 shall take effect on July 1,
11 2007.



Report Title:

Dam Safety; Appropriation

Description:

Adds extensive provisions to the dam safety chapter to improve safety to dams and reservoirs in the State. Creates dam safety special fund. (SD1)

