

A Bill for an Act Relating to Dams and Reservoirs.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The Hawaii Revised Statutes is amended by adding a new chapter to be appropriately designated and to read as follows:

“CHAPTER DAMS AND RESERVOIRS

§ -1 **Short title.** This chapter shall be known and may be cited as the “Hawaii Dam Safety Act of 1987”.

§ -2 **Declaration of purpose.** The purpose of this chapter is to provide for the inspection and regulation of construction, operation, and removal of certain dams in order to protect the health, safety, and welfare of the citizens of the State by reducing the risk of failure of such dams. The legislature finds and declares that the inspection and regulation of construction, operation, and removal of certain dams are properly a matter of regulation under the the police powers of the State.

§ -3 **Definitions.** The following terms, whenever used and referred to in this chapter, shall have the following respective meanings, unless a different meaning clearly appears in the context:

“Appurtenant works” means any structure, such as spillways, either in the dam or separate therefrom, the reservoir and its rim, low level outlet works, and water conduits, such as tunnels, pipelines, or penstocks, either through the dam or its abutment.

“Board” means the board of land and natural resources.

“Dam” means any artificial barrier, including appurtenant works, which impounds or diverts water, and which:

- (1) Is twenty-five feet or more in height from the natural bed of the stream or watercourse measured at the downstream toe of the barrier, or from the lowest elevation of the outside limit of the barrier if it is not across a stream channel or watercourse to a maximum water storage elevation; or
- (2) Has an impounding capacity at maximum water storage elevation of fifty acre-feet or more. This chapter does not apply to any artificial barrier which is less than six feet in height regardless of storage capacity or which has a storage capacity at maximum water storage elevation less than fifteen acre-feet regardless of height.

“Department” means the department of land and natural resources.

“Owner” means any person who owns, controls, operates, maintains, manages, or proposes to construct a dam or reservoir.

“Person” means any individual, partnership, corporation, company, association, organization, the State and its departments and agencies, and the political subdivisions of the State.

“Reservoir” means any basin which contains or will contain water impounded by a dam.

§ -4 **Liability for damages.** (a) Nothing contained in this chapter shall be construed to constitute a waiver of any immunity of the State and no action or failure to act under this chapter shall be construed to create any

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

(b) Nothing in this chapter and no order, action, or advice of the State, board, department, or any representative thereof, shall be construed to relieve an owner or operator of a dam or reservoir of the legal duties, obligations, or liabilities incident to the ownership or operation of a dam or reservoir; provided that an owner or operator of a dam or reservoir shall not be liable for damages as a result of only natural causes such as earthquakes, hurricanes or extraordinary rains of an average recurrence interval in excess of two hundred fifty years.

§ -5 Unlawful conduct. (a) It shall be unlawful for any person to construct, operate, or remove a dam or other artificial barrier covered by this chapter, except in such a manner as to conform to and comply with the provisions of this chapter and with all rules, orders, and permits established under this chapter.

(b) The rules and orders adopted under this chapter shall not apply to the design and construction of dams, reservoirs, and appurtenant works existing on the effective date of this chapter, but the rules and orders shall establish standards consistent with such design and construction for the operation, maintenance, and repair thereof, and those rules and orders then shall be applicable to those dams, reservoirs and appurtenant works which were existing on the effective date of this chapter.

§ -6 General powers and duties of the board of land and natural resources. The board of land and natural resources shall administer the dam safety program established by this chapter. In carrying out this chapter, the board shall cooperate with the United States government or any of its agencies, other state agencies, and the county governments or any of their agencies. In the performance of its duties the board shall:

- (1) Establish by rules adopted under chapter 91, such policies, requirements, or standards governing the design, construction, operation, maintenance, enlargement, alteration, repair, removal, and inspection of dams, reservoirs, and appurtenant works for the protection of life and property from structural failure of dams and reservoirs;
- (2) Conduct investigations and the collection of data, including technological advances made in safety practices elsewhere, as may be needed for the proper review and study of the various features of the design, construction, repair, removal, and enlargement of dams, reservoirs, and appurtenant works. The board may require submittal of reports of investigations from all owners;
- (3) Conduct investigations and require reports from all owners to be made from time to time, such as watershed investigations and studies, as may be necessary to keep abreast of developments affecting stream run-off and as required to facilitate its decisions;
- (4) Be authorized to enter upon such private property of the dam or reservoir as may be necessary in making any investigation or inspection required or authorized by this chapter. The entry shall not constitute a cause of action in favor of the owner of the land, except for damages resulting from wilful acts or negligence by the board or its agents;
- (5) Require the owners to apply for, and obtain from the board written approval of plans and specifications on the construction

- of any new dam or reservoir or the enlargement of any dam or reservoir prior to commencement of any work;
- (6) Require the owners to file an application and secure the written approval of the board before commencing the repair, alteration or removal of a dam or reservoir, including the alteration or removal of a dam so that it no longer constitutes a dam or reservoir as defined in this chapter. Repairs shall not be deemed to apply to routine maintenance not affecting the safety of the structure;
 - (7) Require filing fees by rules to accompany each application as required under the provisions of this chapter.

§ -7 **Administrative and judicial review.** Any person who is aggrieved or adversely affected by an order or action of the board shall be entitled to administrative and judicial review in accordance with chapter 91.

§ -8 **Violations; penalties.** Any person violating any provision of this chapter or any permit condition or limitation established pursuant to this chapter or negligently or wilfully failing or refusing to comply with any final order of the board issued as provided herein, shall be liable for a civil penalty not to exceed \$500 for each day during which said violation continues.

§ -9 **Enactment of rules.** The department shall adopt the necessary rules not later than one and one-half years after the effective date of this chapter."

SECTION 2. This Act shall take effect upon its approval.

(Approved June 6, 1987.)