

## ACT 262

S.B. NO. 1946

A Bill for an Act Relating to Dam Safety.

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

SECTION 1. Chapter 179D, Hawaii Revised Statutes, is amended by adding a new part to be appropriately designated and to read as follows:

**“PART . DAM AND RESERVOIR SAFETY**

**§179D-A Certificate of approval to impound.** No owner of a dam or reservoir shall impound water without a valid certificate of approval to impound water at the dam or reservoir.

**§179D-B Entry upon property.** (a) The department shall have the right to direct and conduct investigations as it may reasonably deem necessary to carry out its duties as prescribed in this part. For this purpose, the agents or employees of the department or any authorized representatives may enter at reasonable times, without prior notice, any property, public or private, for the purpose of investigating the condition, construction, or operation of any dam, reservoir, or other artificial barrier dealt with in this chapter; provided that if an emergency situation arises as determined by the department, the agents or employees of the department, or any authorized representatives shall have the right to enter without prior notice, any property, public or private, for the purpose of investigating the condition, construction, or operation of any dam, reservoir, or other artificial barrier subject to this chapter, and to take any remedial actions, without a search warrant or liability for trespass.

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

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

**§179D-C Injunctive relief.** Whenever in the judgment of the department any person has engaged in or is about to engage in any act or practice that constitutes or will constitute an unlawful action under this chapter, the department may apply to

the circuit court of the county in which the unlawful act or practice has been or is about to be engaged in, or in which jurisdiction is appropriate, for an order enjoining the act or practice, or for an order requiring compliance with this chapter. Upon a showing by the department that a person has engaged in or is about to engage in any unlawful act or practice, a permanent or temporary injunction, restraining order, or other order shall be granted without the necessity of showing lack of an adequate remedy at law.

**§179D-D Emergency actions.** (a) If, in the opinion of the department, conditions of any dam or reservoir are so dangerous to the health and safety of life or property as to not permit time for issuance and enforcement of an order relative to construction, modification, maintenance, or repair of the dam or reservoir, or the dam or reservoir is threatened by any large flood or other natural disaster, the department may immediately employ remedial measures necessary to protect life and property.

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

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

(d) Any owner failing or refusing, after written notice has been given, to pay the reasonable costs and expenses incurred by the department pursuant to subsection (c) shall be, upon complaint by the department to the attorney general, subject to reasonable attorney fees incurred in the recovery of the costs and expenses.

(e) All moneys collected by the department pursuant to subsection (c) shall be credited to the dam and reservoir safety special fund created in section 179D-E.

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

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

**§179D-E Establishment of dam and reservoir safety special fund.** (a) There is established in the department a special fund, to be designated the dam and reservoir safety special fund. The fund shall be administered by the board. The following shall be deposited into the dam and reservoir safety special fund:

- (1) Appropriations by the legislature;
- (2) All fees and administrative charges collected under this chapter or any rule adopted thereunder;
- (3) Moneys collected as fines or penalties imposed under this chapter or any rule adopted thereunder;
- (4) Moneys derived from public or private sources to benefit dam and reservoir safety;

- (5) Moneys collected in full or partial satisfaction of liens created under this chapter;
- (6) Any moneys collected from the sale of retail items by the department relating to dam and reservoir safety;
- (7) Any other moneys collected pursuant to this chapter or any rules adopted thereunder; and
- (8) Moneys derived from interest, dividends, or other income from other sources.

(b) The board may expend moneys from the dam and reservoir safety special fund for:

- (1) Conducting investigations, research, and the collection of data, including technological advances made in dam and reservoir safety practices elsewhere;
- (2) Conducting investigations, monitoring, and inspection programs and activities, and enforcement;
- (3) Preparing and disseminating information to the public concerning activities authorized under this chapter;
- (4) Training and providing educational activities for department staff and dam and reservoir owners;
- (5) Employing any necessary remedial measures to protect persons and property in accordance with this chapter;
- (6) The costs and expenses of the coordination, assistance, control, regulation, abatement, and inspection provided by this chapter; and
- (7) Other purposes for the administration of the dam and reservoir safety program under this chapter or any rule adopted thereunder, including but not limited to funding permanent or temporary positions that may be appointed without regard to chapter 76.

The board shall provide coordination and assistance to the proper state or county agency or agencies to control any dam, reservoir, and appurtenances subject to section 179D-D until they have been rendered safe or the emergency has terminated.

(c) Moneys on balance in the dam and reservoir safety special fund at the close of each fiscal year shall remain in that fund and shall not be transferred or lapsed to the credit of the general fund.

**§179D-F Liens.** (a) Costs of construction, enlargement, repair, alteration, or removal work done to render a dam, reservoir, or appurtenances safe shall constitute a statutory lien against all property of the owner. Notwithstanding any other law to the contrary, the lien shall be considered prior and superior to all other mortgages, liens, or encumbrances of record even if those other mortgages, liens, or encumbrances were filed before the lien pursuant to this subsection becomes due.

(b) Liens pursuant to subsection (a) may be perfected and foreclosed in advance of construction, enlargement, repair, alteration, or removal or after completion of the construction, enlargement, repair, alteration, or removal. If perfected in advance, the lien shall be perfected by the filing of an affidavit of the board setting forth the estimate of the costs of construction, enlargement, repair, alteration, or removal within the county in which the dam or reservoir is located in the same manner as prescribed for mechanic's liens. When the affidavit is filed, the amount set forth in the affidavit shall be a lien in that amount against all property of the owner. If the actual cost of construction, enlargement, repair, alteration, or removal exceeds the estimated cost, the board may amend the affidavit setting forth the additional estimated cost. If the estimated cost exceeds the actual costs of construction, enlargement, repair, alteration, or removal at completion, the board shall file an amended affidavit at completion. If a lien is perfected in advance and the construction, enlargement, repair, alteration, or removal is not commenced within two years

from the date of perfection, the lien shall be void. The board shall file a satisfaction of lien upon payment of the costs of construction, enlargement, repair, alteration, or removal by the owner.

**§179D-G Dams and reservoirs completed prior to effective date of this**

**Act.** (a) Every owner of a dam or reservoir that falls within the definition of a dam or reservoir in this chapter and was completed prior to the effective date of this Act shall file with the board a separate application for a certificate of approval to impound and any other supporting information as required by the board for each dam or reservoir. Each application shall also be accompanied by application fees as required by the board. During the application process for a certificate of approval to impound, the owner or operator of a dam or reservoir may continue to impound water, unless the board determines that the dam or reservoir may pose a danger to the health and safety of persons or property.

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

(c) The notice provided for in this section shall be delivered by certified mail to the owner at the owner's last address of record in the office of the county tax assessor in which the dam or reservoir is located. The mailing shall constitute service.

(d) The board shall make inspections of any dams and reservoirs, unless the data, records, and inspection reports on file with it are found adequate to enable a determination of whether or not the certificate of approval to impound should be issued.

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

(f) If, upon inspection or upon completion to the satisfaction of the board of all work that may be ordered, the board finds that the dam and reservoir are safe to impound water, a certificate of approval to impound shall be issued. The board may find that the dam or reservoir will not safely impound water and may refuse to issue a certificate of approval to impound. Upon finding that the dam or reservoir is unsafe to impound water, the board shall issue a written notice to the owner. After receipt of the notice, the owner shall no longer cause or allow the dam and reservoir to impound water.

**§179D-H Dams and reservoirs under construction, enlargement, repair, alteration, or removal before effective date of this Act.**

(a) Any dam or reservoir that falls within the definitions of a dam or reservoir in this chapter and which the board finds was under construction, enlargement, repair, alteration, or removal, and based on its findings not more than ninety per cent constructed, enlarged, repaired, altered, or removed on the effective date of this Act, except as provided in subsection (b), shall be subject to the same provisions in this section as a dam or reservoir commenced after that date. Every owner of a dam or reservoir subject to this section shall file an application with the board for the board's written application approval of the plans and specifications for the dam or reservoir.

(b) Construction, enlargement, repair, alteration, or removal work on the dam or reservoir may proceed; provided an application for approval of the plans and specifications is filed; until:

- (1) An application approval is received by the owner approving the dam or reservoir; or
- (2) An order is received by the owner specifying how the construction, enlargement, repair, alteration, or removal must be performed to render the dam or reservoir safe.

After receipt of an application approval or order specifying how construction, enlargement, repair, alteration, or removal of the dam or reservoir must be performed, work thereafter must be in accordance with the application approval or order.

**§179D-I Annual report.** The department shall submit an annual report to the governor and the legislature by January 5 of each year concerning the activities of the department relating to this chapter for the preceding fiscal year. The report shall include but not be limited to information on the following:

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

**§179D-J Dam and reservoir owners; general requirements and responsibilities.** Dam and reservoir owners subject to regulation under this chapter shall, among other general requirements and responsibilities:

- (1) Maintain an operation and maintenance plan, including an owner or operator, as the case may be, inspection and monitoring program, with written, regularly scheduled reports to the board, to maintain and keep the structure, its appurtenant works, and access in the state of repair and operating condition required by the exercise of due care, with regard for the safety of persons or property, sound and accepted engineering principles, and the rules adopted by the board;
- (2) Establish an emergency action plan for high and significant hazard potential dams and reservoirs and provide this plan to the board, state and county civil defense agencies, and other necessary parties, with regard for the safety of persons or property, sound and accepted engineering principles, and the rules adopted by the board;
- (3) Cooperate with the board's agents, engineers, and employees in carrying out this chapter;
- (4) Facilitate access by any necessary state agencies or authorized representative, to the dam, reservoir, or appurtenances. Access by a four-wheeled-drive vehicle to the dam or reservoir site, and appurtenances if required by the board, shall be maintained at all times; provided that if vehicular access to the dam or reservoir site cannot be maintained during periods of inclement weather, the dam or reservoir owner for high and significant hazard potential dams or reservoirs shall have redundant early warning systems in place, as approved by the board; and
- (5) Furnish upon request the plans, specifications, operating and maintenance data, or other information that is pertinent to the dam and reservoir structure and appurtenances as indicated in this chapter."

SECTION 2. Chapter 179D, Hawaii Revised Statutes, is amended by designating section 179-1 to 179-9 as part I, entitled:

**“PART I. GENERAL PROVISIONS”**

SECTION 3. Section 179D-1, Hawaii Revised Statutes, is amended to read as follows:

**“[H]§179D-1[ ] Short title.** This chapter shall be known and may be cited as the “Hawaii Dam and Reservoir Safety Act of [1987’’.] 2007’’.”

SECTION 4. Section 179D-2, Hawaii Revised Statutes, is amended to read as follows:

**“[H]§179D-2[ ] Declaration of purpose.** The purpose of this chapter is to provide for the inspection and regulation of construction, enlargement, repair, alteration, maintenance, operation, and removal of ~~[certain]~~ all<sup>1</sup> dams ~~[in order]~~ or reservoirs to protect the health, safety, and welfare of the citizens of the ~~[State]~~ state by reducing the risk of failure of ~~[such]~~ the dams~~[-]~~ or reservoirs. The legislature finds and declares that the inspection and regulation of ~~[construction, operation, and removal of certain]~~ all dams or reservoirs are properly a matter of regulation under the police powers of the State~~[-]~~, unless specifically exempted.

The board shall have jurisdiction of all dams and reservoirs until the department has completed its statewide inspections and has established and implemented rules and criteria for a five year dams and reservoirs inspection and classification processes and the board declares which dams or reservoirs are to be removed from its jurisdiction.”

SECTION 5. Section 179D-3, Hawaii Revised Statutes, is amended to read as follows:

**“[H]§179D-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:

“Application approval” means authorization in writing issued by the board to an owner who has applied to the board for permission to construct, enlarge, repair, alter, remove, maintain, or operate a dam or reservoir and that specifies the condition or limitations under which work is to be performed by the owner or under which approval is granted.

“Appurtenant works” or “appurtenance” 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.

“Certificate of approval to impound” means authorization in writing issued by the board to an owner of an existing dam or reservoir, or an owner who has completed construction, enlargement, repair, or alteration of a dam or reservoir, that specifies the conditions or limitations under which the dam or reservoir is to be maintained and operated.

“Dam” means any artificial barrier, including appurtenant works~~[- which]~~ that impounds or diverts water~~[-]~~ and ~~[which:]~~ that:

- (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] shall not apply to any artificial barrier [which] that is less than six feet in height regardless of storage capacity or [which] that has a storage capacity at maximum water storage elevation less than fifteen acre-feet regardless of height[-]; or
- (3) Meets additional criteria or is specifically exempt as determined pursuant to rules adopted by the board.

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

“Emergency” includes but is not limited to breaches and all conditions leading to or causing a breach, overtopping, or any other condition in a dam or reservoir and its appurtenant works that may be construed as unsafe or threatening to life and property.

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

“Hazard potential” means the possible adverse incremental consequences that result from the release of water or stored contents due to the failure of the dam or reservoir or the misoperation of the dam, reservoir, or appurtenances. The hazard potential classification of a dam or reservoir shall not reflect in any way on the current condition of the dam or reservoir and its appurtenant works, including the dam’s or reservoir’s safety, structural integrity, or flood routing capacity.

“High hazard” means a dam’s or reservoir’s failure will result in probable loss of human life.

“Low hazard” means a dam’s or reservoir’s failure will result in no probable loss of human life and low economic loss or environmental loss, or both. Economic losses are principally limited to the owner’s property.

“Operator” means any person who controls, manages, maintains, or supervises the condition and functions of a dam or reservoir.

“Owner” means any person who [owns, controls, operates, maintains, manages, or proposes to construct a dam or reservoir:] has a right, title, or interest in or to the dam or reservoir or to the property upon which the dam, reservoir, or appurtenant works is located or proposed to be located.

“Person” means ~~[any individual, partnership, corporation, company, association, organization, the State and its departments and agencies, and the political subdivisions of the State.]~~ any natural person, partnership, firm, association, organization, corporation, county, county authority, trust, receiver or trustee, limited liability company, limited liability partnership, or company, or any state department, agency, or political subdivision, or any other commercial or legal entity. Whenever used in a section prescribing and imposing a penalty or sanction, the term “person” includes the members of an association or organization, and the officers of a corporation, company, county, or county authority.

“Physical clear access” means a roadway or path that allows timely access for inspection to a dam, reservoir, and its appurtenant works. If by a roadway, the roadway shall be maintained in an accessible condition by a four-wheel drive vehicle even during inclement weather conditions.

“Probable” means more likely than not to occur; reasonably expected; realistic.

“Removal” means complete or partial elimination of the dam or reservoir embankment or structure to restore the approximate original topographic contours of the valley.

“Reservoir” means any basin [which] that contains or will contain water impounded by a dam[-], including appurtenant works.

“Significant hazard” means a dam’s or reservoir’s failure will result in no probable loss of human life but can cause major economic loss, environmental damage, disruption of lifeline facilities, or impact other concerns. Significant hazard potential classification dams or reservoirs are often located in predominantly rural or agricultural areas but could be located in areas with population and significant infrastructure.”

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

**“[§179D-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 [sueh] the 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[,] of an average recurrence interval of one thousand years, hurricanes, or extraordinary rains of an average recurrence interval in excess of two hundred fifty years.

(c) The State assumes no ownership obligations, responsibilities, or liability for any action pursuant to section 179D-D.”

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

**“[§179D-6] General powers and duties of the board of land and natural resources.** (a) All dams or reservoirs in the State shall be under the jurisdiction of the board until the board declares which dams or reservoirs are to be removed from its jurisdiction.

(b) ~~The board [of land and natural resources]~~ shall administer the dam and reservoir safety program established by this chapter. In carrying out this chapter, the board shall cooperate, advise, consult, contract, and enter into cooperative agreements 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, [sueh] 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 dam and reservoir safety practices elsewhere, as may be needed for the proper review and study of the various features of the design, construction, repair, removal, inspection, operation, maintenance, alteration, 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, [sueh-as] including watershed investigations and



- studies, as may be necessary to keep abreast of developments affecting stream runoff 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, at the owner's expense, 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 or reservoir 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) Require owners to secure the written approval of the board to impound water;
  - (8) Require fees to cover the board's costs in carrying out the administration of dam and reservoir safety;
  - (9) Cooperate with all public and private agencies created for the purpose of enhancing dam and reservoir safety activities and training, assist these organizations and agencies in coordinating the use of their facilities, and participate in the exchange of ideas, knowledge, and data with these organizations and agencies;
  - (10) Prepare, publish, and issue printed pamphlets, bulletins, or advisories, or conduct training as the board deems necessary for the dissemination of information to the public;
  - (11) Appoint and remove agents and employees, including hearing officers, specialists, and consultants, as necessary to carry out the purposes of this chapter, who may be engaged by the board without regard to the requirements of chapter 76;
  - (12) Catalog and maintain an inventory of all regulated dams and reservoirs in the State pursuant to this chapter without regard to chapter 91;
  - (13) Establish similar or consistent hazard potential classifications in conjunction with other applicable state or federal guidelines for all regulated dams and reservoirs in the State pursuant to this chapter without regard to chapter 91;
  - (14) Examine and approve or disapprove applications for approval of construction, enlargement, repair, alteration, or removal of a dam or reservoir and applications for certificates of approval to impound;
  - (15) Order the suspension, revocation, or both, of any application approval or certificate of approval to impound for any act or failure to comply with this chapter or with any rules or orders adopted pursuant to this chapter, or with any of the conditions contained in or attached to the application approval or certificate of approval to impound;
  - (16) Issue orders requiring the adoption by an owner of remedial measures necessary for the safety of life or public or private property, or for carrying out this chapter or rules issued under this chapter;

- (17) Order the immediate cessation of any act that is started or continued without an application approval or certificate of approval to impound as required by this chapter;
- (18) Enter private property and immediately take actions necessary to provide protection to life or property at the owner's expense, including removal of the dam or reservoir. 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 gross negligence by the board or its agents;
- (19) Recover from the owner, in the name of the State, the expenses incurred in taking any action required by the owner of the dam or reservoir in the same manner debts are recoverable by law;
- (20) Assess civil penalties for violation of this chapter or any rule or standard adopted or order issued by the board pursuant to this chapter;
- (21) Place liens, as needed, on the owner's property, to be collected as delinquent taxes against the lands and property, if the owner neglects to pay any costs, expenses, or penalties chargeable to the owner under this chapter or any rule, order, or condition adopted, issued, or required under this chapter;
- (22) With the assistance of the attorney general, institute and prosecute all court actions that may be necessary to obtain the enforcement of any order issued by the board in carrying out this chapter; and
- (23) Take any and all other actions as may be necessary to carry out this chapter."

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

"[~~§~~179D-7(~~h~~) **Administrative and judicial review.** (a) The findings and order of the board, and the board's approval or disapproval of an application issued by the State are final, conclusive, and binding upon all owners, state agencies, and other government agencies, regulatory or otherwise, as to the safety of design, construction, enlargement, repair, alteration, removal, maintenance, and operation of any dam or reservoir. The board's approval of an application or a certificate of approval to impound shall not be considered final if it can be demonstrated to the board that the board's approval of the relevant application or certificate of approval was based on one or more misrepresentations.

(b) 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[-]; provided that the order or action shall remain in force until modified or set aside on appeal."

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

"[~~§~~179D-8(~~h~~) **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.~~] (a) Except as otherwise provided by law, the board may set, charge, and collect administrative penalties and recover administrative fees and costs, including attorney's fees and costs, or bring legal action to recover administrative penalties, fees, and costs, including attorney's fees and costs, or payment for damages or for the cost to correct damages resulting from a violation of this chapter or any rule, order, or condition adopted, issued, or

required under this chapter. The administrative penalty shall not exceed \$25,000 per day of a violation, and each day during which the violation continues shall constitute an additional, separate, and distinct violation. The board shall effectuate rules, procedures, and fee schedules to carry out the purposes of this section.

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

- (1) For a first conviction, by a mandatory fine of not less than \$2,500 but not more than \$25,000 per day of violation, imprisonment, or both; and
- (2) For a second or subsequent conviction, by a mandatory fine of not less than \$5,000 but not more than \$50,000 per day of violation, imprisonment, or both.

(c) Any criminal action against a person for any violation of this chapter shall not preclude the State from pursuing civil legal action to recover administrative penalties, fees, and costs against that person. Any civil action against a person to recover administrative penalties, fees, and costs for any violation of this chapter or any rule, order, or condition adopted, issued, or required under this chapter shall not preclude the State from pursuing any criminal action against that person.

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

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

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

**“[~~§179D-9~~] Enactment of rules.** The department shall adopt the necessary rules not later than one and one-half years after [~~June 6, 1987~~] **July 1, 2007.**”

SECTION 11. Section 179D-5, Hawaii Revised Statutes, is repealed.

SECTION 12. There is appropriated out of the general revenues of the State of Hawaii the sum of \$1,000,000 for fiscal year 2007-2008 and the same sum for fiscal year 2008-2009 to be deposited into the dam and reservoir safety special fund.

SECTION 13. There is appropriated out of the dam and reservoir safety special fund the sum of \$1,000,000 or so much thereof as may be necessary for fiscal year 2007-2008 and the same sum or so much thereof as may be necessary for fiscal year 2008-2009 to carry out the purposes of the dam and reservoir safety special fund.

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

SECTION 14. If any provision of this Act, or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the Act, which can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

SECTION 15. In codifying the new sections added by section 1 of this Act, the revisor of statutes shall substitute appropriate section numbers for the letters used in designating the new sections in this Act.

## ACT 262

SECTION 16. Statutory material to be repealed is bracketed and stricken.<sup>2</sup>  
New statutory material is underscored.

SECTION 17. This Act shall take effect upon its approval; provided that sections 12 and 13 shall take effect on July 1, 2007.

(Approved July 6, 2007.)

### Notes

1. “All” should be underscored.
2. Edited pursuant to HRS §23G-16.5.