

JAN 19 2007

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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 creating a program  
10 for monitoring and enforcing the safety of dams and reservoirs  
11 throughout the State so that we are never again faced with the  
12 tragedy like the Ka Loko dam break. The purpose of this Act is  
13 to also create the dam rehabilitation loan program to provide  
14 funds to dam owners to make repairs and alterations to dams and  
15 reservoirs to increase their safety and effectiveness and  
16 prevent future dam failures.



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

4 "§179D-A Certificate of approval. No dam owner may  
5 impound water unless the owner holds a valid certificate of  
6 approval to impound.

7 §179D-B Entry upon property. (a) The department shall  
8 have the right to direct and conduct investigations as  
9 reasonably necessary to carry out its duties under this chapter.  
10 For this purpose, the agents or employees of the department or  
11 any authorized representatives shall have the right to enter at  
12 reasonable times, without prior notice, any property, public or  
13 private, for the purpose of investigating the condition,  
14 construction, or operation of any dam or other artificial  
15 barrier subject to this chapter. If the owner of the property  
16 refuses to allow the inspection, the department may seek a  
17 search warrant to allow the inspection. If the department has  
18 been refused inspection of drawings, operational records, or  
19 other information concerning a dam or reservoir, the department  
20 may seek an administrative subpoena compelling production of the  
21 drawings, operational records, or other information.



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

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 that constitutes or will constitute an  
10 unlawful act or practice under this chapter, the department may  
11 apply to the circuit court of the circuit in which the unlawful  
12 act or practice has been or is about to be engaged in, or in  
13 which jurisdiction is appropriate, for an order enjoining the  
14 act or practice or for an order requiring compliance with this  
15 chapter. Upon a showing by the department that the person has  
16 engaged in or is about to engage in the unlawful act or  
17 practice, a permanent or temporary injunction, restraining  
18 order, or other order shall be granted without the necessity of  
19 showing lack of an adequate 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 persons or property as not to permit



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

6 (b) The department shall maintain complete control of any  
7 dam or reservoir that has been determined to be dangerous to  
8 persons or property under subsection (a) until the dam or  
9 reservoir is deemed safe or until any emergency conditions that  
10 precipitated the department taking control of the dam or  
11 reservoir under subsection (a) have abated. The department may  
12 determine the proper time at which to relinquish control of any  
13 dam or reservoir subject to this section.

14 (c) Any necessary and reasonable costs and expenses  
15 incurred by the department in fulfilling its duties pursuant to  
16 this section in connection with a remedial or emergency action  
17 shall be recoverable by the department from the owner of the dam  
18 or reservoir.

19 (d) In addition, any owner failing or refusing, after  
20 written notice has been given, to pay the reasonable costs and  
21 expenses incurred by the department as specified in subsection  
22 (c) shall be subject, upon complaint by the department to the



1 attorney general, to reasonable attorney fees incurred in the  
2 recovery of costs and expenses.

3 (e) Moneys collected by the department pursuant to  
4 subsections (c) and (d) shall be deposited to the dam safety  
5 special fund established pursuant to section 179D-E.

6 **§179D-E 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) Moneys collected in full or partial satisfaction of  
13 liens created by subsection (d) (2)  
14 shall be deposited in the dam safety special fund.

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

20 (c) The board shall administer the dam safety special  
21 fund. On notice from the board, the director of finance shall  
22 invest and divest moneys in the special fund, and moneys earned



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

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

7 (1) The board shall remain in full charge and control of  
8 any dam, reservoir, and appurtenances subject to  
9 section 179D-D until they have been rendered safe or  
10 the emergency has terminated;

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



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



1 commenced within two years from the date of  
2 perfection, the lien shall be void. The board shall  
3 file a satisfaction of lien upon payment of the costs  
4 of construction, enlargement, repair, alteration or  
5 removal by the owner.

6 **§179D-F Dams and reservoirs completed prior July 1, 2007.**

7 (a) Every owner of a dam or reservoir completed prior to July  
8 1, 2007, shall file with the board a separate application for a  
9 certificate of approval to impound and any other supporting  
10 information as required by the board. Each application shall  
11 also be accompanied by applicable fees as required by the board.

12 (b) The board shall give notice to file an application for  
13 certificate of approval to impound to owners of dams or  
14 reservoirs who have failed to file applications required in  
15 subsection (a).

16 (c) The notice in subsection (b) shall be served upon the  
17 dam owner by certified mail to the owner's last address of  
18 record in the office of the county tax assessor in which the dam  
19 is located.

20 (d) The board shall make inspections of dams and  
21 reservoirs subject to this section, unless the data, records,  
22 and inspection reports on file with the board are adequate for



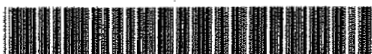


1 the board to determine whether or not the certificate of  
2 approval to impound should be issued.

3 (e) The board shall require owners of such dams and  
4 reservoirs to perform, at their expense, any work or tests  
5 necessary to disclose information sufficient to enable the board  
6 to determine whether to issue certificates of approval to  
7 impound, or to issue orders directing further work at the  
8 owner's expense necessary to safeguard persons and property.  
9 For this purpose, the board may require an owner to lower the  
10 water level in, or 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 of refusal  
19 to the owner. Upon receipt of the notice, the owner shall cause  
20 the dam and reservoir to no longer impound water.

21 §179D-G Dams and reservoirs under construction,  
22 enlargement, repair, alteration, or removal prior to July 1,



1 2007. (a) Any dam or reservoir that the board finds was under  
2 construction, enlargement, repair, alteration, or removal and,  
3 based on its findings, was not ninety per cent constructed,  
4 enlarged, repaired, altered, or removed prior to July 1, 2007,  
5 shall be subject to the same requirements under this chapter as  
6 a dam or reservoir commenced after that date. Every owner of a  
7 dam and reservoir subject to this section shall file an  
8 application with the board for the board's application approval  
9 of the plans and specifications.

10 (b) Construction, enlargement, repair, alteration, or  
11 removal work on a dam and reservoir may proceed, provided an  
12 application for approval of the plans and specifications is  
13 filed, until an application approval is received by the owner  
14 approving the dam and reservoir or an order is received by the  
15 owner specifying how the construction, enlargement, repair,  
16 alteration, or removal must be performed to render the dam or  
17 reservoir safe. After receipt of an application approval or  
18 order specifying how construction, enlargement, repair,  
19 alteration, or removal of the dam or reservoir must be  
20 performed, any further work shall be in accordance with the  
21 application approval or order.



- 1        §179D-H Annual report. (a) The department shall submit  
2 an annual report concerning the activities of the department  
3 relating to this chapter to the governor and the legislature no  
4 less than twenty days prior to the convening of each regular  
5 session.
- 6        (b) The report shall include but not be limited to  
7 information on the following:
- 8        (1) Approvals of plans and specifications for construction  
9        of dams and reservoirs and for alterations,  
10        modifications, repairs, and enlargements;
- 11        (2) The number of safety inspections made and the results  
12        thereof;
- 13        (3) Use of appropriated funds;
- 14        (4) Receipts generated for inspections of dams and  
15        reservoirs;
- 16        (5) Rules adopted or amended;
- 17        (6) Enforcement orders and proceedings;
- 18        (7) Dam failures and department evaluations of the reasons  
19        for dam failure; and
- 20        (8) Any other available data regarding the effectiveness  
21        of the State's dam and reservoir safety program.



1        §179D-I Limitations of liability. (a) This chapter does  
2 not create a liability for damages against the board, its  
3 officers, agents, and employees caused by or arising out of any  
4 of the following:

5        (1) The construction, maintenance, operation, or failure  
6 of a dam or appurtenant works; or

7        (2) The issuance and enforcement of an order or a rule  
8 issued or adopted by the board to carry out the  
9 board's duties.

10        (b) The State assumes no ownership obligations,  
11 responsibilities, or liabilities if the recipient of a loan  
12 under part II defaults."

13        SECTION 3. Chapter 179D, Hawaii Revised Statutes, is  
14 amended by adding a new part to be appropriately designated and  
15 to read as follows:

16                    "PART        .    DAM REHABILITATION LOAN PROGRAM

17        **§179D-J Dam rehabilitation loan program; establishment and**  
18 **funding.** (a) The board shall create a dam rehabilitation loan  
19 program or may partner with other public or private agencies or  
20 organizations to create a dam rehabilitation loan program. The  
21 program shall initially be funded with \$2,000,000 from moneys



1 appropriated by the legislature and deposited into the dam  
2 safety special fund.

3 (b) The legislature may appropriate additional funding to  
4 expand the financial size of the dam rehabilitation loan  
5 program.

6 (c) The dam rehabilitation loan program shall be  
7 subsequently funded with additional moneys appropriated by the  
8 legislature and deposits of fees, penalties, interest, fines, or  
9 charges collected by the board under this chapter, and any  
10 interest earned on the investment of moneys in the dam safety  
11 special fund by the director of finance.

12 (d) The dam rehabilitation loan program may obtain funds  
13 through partnerships with any, private or public, bonding or  
14 loaning agency or organization.

15 (e) State funding to the dam rehabilitation loan program  
16 shall not be reduced because of federal funds provided for a  
17 rehabilitation loan program.

18 (f) Moneys collected for the dam rehabilitation loan  
19 program and deposited into the dam safety special fund shall  
20 remain in that fund and shall not lapse to the credit of the  
21 general fund.



1           **§179D-K Allowable loans.** (a) The board may grant loans  
2 from the dam safety fund to dam owners to defray the costs of  
3 repairing dams that the board determines to be dangerous to the  
4 safety of persons and property but that are not in an emergency  
5 condition.

6           (b) Loans shall be granted on the terms and conditions as  
7 may be imposed by the board. The following provisions shall  
8 apply:

9           (1) The board may take any administrative or legal action  
10 necessary for the administration of the dam  
11 rehabilitation loan program;

12           (2) If the balance of the dam safety special fund exceeds  
13 \$1,000,000, no single loan shall be made for more than  
14 twenty per cent of the moneys available in the fund.

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

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

21           (4) Each loan shall be evidenced by a contract between the  
22 dam owner and the board, acting on behalf of the



1 State. The contract shall provide for the loan of a  
2 stated amount to defray partial or total costs of  
3 repairing the dam. The contract shall provide for  
4 equal annual payments of principal and interest for  
5 the term of the loan.

6 **§179D-L Eligibility.** (a) Rehabilitation projects that  
7 are in compliance with applicable laws and rules and are  
8 permitted, accepted, and approved by the board shall be eligible  
9 to be funded through the dam rehabilitation loan program.

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

13 (c) Fees for analysis, feasibility work, alternative  
14 evaluation, and engineering design shall only be eligible  
15 retroactively, after construction has been initiated or at the  
16 point that analysis has shown a dam to be in compliance.

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

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



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

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

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

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

15           **§179D-M Security interests.** (a) The board may take a  
16 security interest, if necessary, in any property owned by the  
17 dam owner in exchange for the loan. If the board chooses to  
18 take a security interest, the board shall take the necessary  
19 actions to perfect the security interest.

20           (b) The attorney general or the board's legal counsel,  
21 with the consent of the board, may commence any actions





1 necessary to enforce the contract and achieve repayment of loans  
2 provided by the board.

3       **§179D-N Enforcement.** Notwithstanding any other provision  
4 of law to the contrary, the board and its agents, engineers, and  
5 other employees, for the purposes of enforcing this chapter, may  
6 enter upon any land or water in the State that is the subject of  
7 a dam rehabilitation loan program loan without a search warrant  
8 or liability for trespass.

9       **§179D-O Dam owners; requirements for participation.** Dam  
10 owners participating in the dam rehabilitation loan program  
11 shall:

- 12       (1) Maintain an operation and maintenance plan with  
13               written, regularly scheduled reports to the board, so  
14               as to maintain and keep the structure and its  
15               appurtenant works in the state of repair and operating  
16               condition required by the exercise of due care, due  
17               regard for the safety of persons or property, sound  
18               and accepted engineering principles, and the rules  
19               adopted by the board;
- 20       (2) Establish an emergency action plan and report this  
21               plan to the board;



- 1           (3) Cooperate with the board's agents, engineers, and  
2           employees in carrying out the provisions of this  
3           chapter;
- 4           (4) Facilitate access by any necessary state agency to the  
5           dam, reservoir, or appurtenances; and
- 6           (5) Furnish upon request the plans, specifications,  
7           operating and maintenance data, or other information  
8           that is pertinent to the structure, appurtenance, and  
9           loan.

10           **§179D-P Administration.** The board shall adopt the  
11 following guidelines for administering the dam rehabilitation  
12 loan program:

- 13           (1) Owners of dams without taxing authority may be allowed  
14           to participate in the dam rehabilitation loan program;
- 15           (2) Complete rehabilitations shall be encouraged, but  
16           phased projects may be funded;
- 17           (3) Removal of dams as a rehabilitation alternative may be  
18           allowed;
- 19           (4) As part of the application process, owners shall be  
20           required to demonstrate the ability to appropriately  
21           operate and maintain the dam after rehabilitation is  
22           complete;



- 1 (5) Owners may partner with an individual, local agency,  
 2 or organization, for purposes of the loan and for  
 3 purposes of operation and maintenance; and
- 4 (6) If a dam is exempt from state regulation, to obtain  
 5 funding through the dam rehabilitation loan program,  
 6 the project must adhere to state standards for design,  
 7 construction, and the rules adopted by the board  
 8 pursuant to this chapter."

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

11 " [†] CHAPTER 179D [†]

12 DAMS AND RESERVOIRS

13 PART I. GENERAL PROVISIONS

14 [†]§179D-1[†] **Short title.** This chapter shall be known  
 15 and may be cited as the "Hawaii Dam Safety Act of [~~1987~~].  
 16 2007".

17 [†]§179D-2[†] **Declaration of purpose.** The purpose of this  
 18 chapter is to provide for the inspection and regulation of  
 19 construction, operation, and removal of [~~certain~~] all dams and  
 20 reservoirs in order to protect the health, safety, and welfare  
 21 of the citizens of the State by reducing the risk of failure of  
 22 such dams. The legislature finds and declares that the



1 inspection and regulation of construction, operation, and  
2 removal of [~~certain~~] all dams and reservoirs are properly a  
3 matter of regulation under the police powers of the State.

4       [+]§179D-3[+] **Definitions.** The following terms, whenever  
5 used and referred to in this chapter, shall have the following  
6 respective meanings, unless a different meaning clearly appears  
7 in the context:

8       "Appurtenant works" means any structure, such as spillways,  
9 either in the dam or separate therefrom, the reservoir and its  
10 rim, low level outlet works, and water conduits, such as  
11 tunnels, pipelines, or penstocks, either through the dam or its  
12 abutment.

13       "Application approval" means authorization in writing that  
14 is issued by the board to an owner who has applied to the board  
15 for permission to construct, enlarge, repair, alter, remove,  
16 maintain, or operate a dam and that specifies the conditions or  
17 limitations under which work is to be performed by the owner or  
18 under which approval is granted.

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

20       "Certificate of approval to impound" means authorization in  
21 writing that is issued by the board to an owner who has  
22 completed construction, enlargement, repair, or alteration of a



1 dam or reservoir and that specifies the conditions or  
2 limitations under which the dam or reservoir is to be maintained  
3 and operated.

4 "Dam" means any artificial barrier, including appurtenant  
5 works, [~~which~~] that impounds or diverts water[~~7~~] and [~~which~~]  
6 that:

- 7 (1) Is twenty-five feet or more in height from the natural  
8 bed of the stream or watercourse measured at the  
9 downstream toe of the barrier, or from the lowest  
10 elevation of the outside limit of the barrier if it is  
11 not across a stream channel or watercourse to a  
12 maximum water storage elevation; or
- 13 (2) Has an impounding capacity at maximum water storage  
14 elevation of fifty acre-feet or more. This chapter  
15 does not apply to any artificial barrier [~~which~~] that  
16 is less than six feet in height regardless of storage  
17 capacity or [~~which~~] that has a storage capacity at  
18 maximum water storage elevation less than fifteen  
19 acre-feet regardless of height[~~-~~], unless the barrier,  
20 due to its location or other physical characteristics,  
21 is a high hazard or moderate hazard potential dam.



1        "Dam rehabilitation loan program" means a low interest  
2 revolving dam rehabilitation loan program, created pursuant to  
3 this chapter.

4        "Department" means the department of land and natural  
5 resources.

6        "Emergency" includes, but is not limited to, breaches and  
7 all conditions leading to or causing a breach, overtopping, or  
8 any other condition in a dam and its appurtenant structures that  
9 may be construed as unsafe or threatening to persons or  
10 property.

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

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.~~] includes any natural person, partnership, firm,



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

10 "Probable" means more likely than not to occur; reasonably  
11 expected; or realistic.

12 "Removal" means complete elimination of the dam embankment  
13 or structure to restore the approximate original topographic  
14 contours of the valley.

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

17 ~~[†]~~§179D-4~~[‡]~~ **Liability for damages.** (a) Nothing  
18 contained in this chapter shall be construed to constitute a  
19 waiver of any immunity of the State and no action or failure to  
20 act under this chapter shall be construed to create any  
21 liability in the State, board, department, or its officers or



1 employees, for the recovery of damages caused by such action or  
2 failure to act.

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

10 [~~b~~] (c) Nothing in this chapter and no order, action, or  
11 advice of the State, board, or department, or any representative  
12 thereof, shall be construed to relieve an owner or operator of a  
13 dam or reservoir of the legal duties, obligations, or  
14 liabilities incident to the ownership or operation of a dam or  
15 reservoir; provided that an owner or operator of a dam or  
16 reservoir shall not be liable for damages as a result of only  
17 natural causes, such as earthquakes[~~r~~] of an average recurrence  
18 interval of one thousand years, hurricanes or extraordinary  
19 rains of an average recurrence interval in excess of two hundred  
20 fifty years.

21 [~~f~~]**S179D-5**[~~f~~] **Unlawful conduct.** (a) It shall be unlawful  
22 for any person to construct, enlarge, repair, alter, operate, or





1 remove a dam or other artificial barrier covered by this  
2 chapter, except in such a manner as to conform to and comply  
3 with the provisions of this chapter and with all rules, orders,  
4 and permits established under this chapter.

5 (b) ~~[The rules and orders adopted under this chapter shall~~  
6 ~~not apply to the design and construction of dams, reservoirs,~~  
7 ~~and appurtenant works existing on June 6, 1987, but the rules~~  
8 ~~and orders shall establish standards consistent with such design~~  
9 ~~and construction for the operation, maintenance, and repair~~  
10 ~~thereof, and these rules and orders then shall be applicable to~~  
11 ~~these dams, reservoirs and appurtenant works which were existing~~  
12 ~~on June 6, 1987.] Any person who engages in any action made~~  
13 ~~unlawful by this chapter shall be guilty of a misdemeanor. Each~~  
14 ~~day of continued violation after conviction shall constitute a~~  
15 ~~separate offense.~~

16 (c) The owner of a dam or reservoir that was constructed  
17 before February 1, 2007, shall file an application with the  
18 board, under rules adopted by the board, for the approval of the  
19 dam or reservoir.

20 **[+]§179D-6[+] General powers and duties of the board of**  
21 **land and natural resources. (a) All dams and reservoirs in the**  
22 **State shall be under the jurisdiction of the board of land and**



1 natural resources. The board of land and natural resources  
2 shall administer the dam safety program established by this  
3 chapter. In carrying out this chapter, the board shall  
4 cooperate, advise, consult, contract, and enter into cooperative  
5 agreements with the United States government or any of its  
6 agencies, other state agencies, and the county governments or  
7 any of their agencies. In the performance of its duties the  
8 board shall:

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



- 1           may require submittal of reports of investigations  
2           from all owners;
- 3           (3) Conduct investigations and require reports from all  
4           owners to be made from time to time, such as watershed  
5           investigations and studies, as may be necessary to  
6           keep abreast of developments affecting stream runoff  
7           and as required to facilitate its decisions;
- 8           (4) Be authorized to enter upon such private property of  
9           the dam or reservoir as may be necessary in making, at  
10           the owner's expense, any investigation or inspection  
11           required or authorized by this chapter. The entry  
12           shall not constitute a cause of action in favor of the  
13           owner of the land, except for damages resulting from  
14           wilful acts or negligence by the board or its agents;
- 15           (5) Require the owners to apply for, and obtain from the  
16           board written, approval of plans and specifications on  
17           the construction of any new dam or reservoir or the  
18           enlargement of any dam or reservoir prior to  
19           commencement of any work;
- 20           (6) Require the owners to file an application and secure  
21           the written approval of the board before commencing  
22           the repair, alteration, or removal of a dam or



1 reservoir, including the alteration or removal of a  
2 dam so that it no longer constitutes a dam or  
3 reservoir as defined in this chapter. Repairs shall  
4 not be deemed to apply to routine maintenance not  
5 affecting the safety of the structure;

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

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

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

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



- 1        (11) 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 the  
4        provisions of this chapter or rules issued pursuant to  
5        this chapter;
  
- 6        (12) Order the immediate cessation of any act that is  
7        commenced or continued without an application approval  
8        or certificate of approval to impound as required by  
9        this chapter;
  
- 10       (13) Enter private property and immediately take actions  
11       necessary to provide protection to life or property at  
12       the owner's expense, including removal of the dam.  
13       The entry shall not constitute a cause of action in  
14       favor of the owner of the land, except for damages  
15       resulting from wilful acts or negligence by the board  
16       or its agents;
  
- 17       (14) Recover from the owner, in the name of the State, the  
18       expenses incurred in taking any action required of the  
19       owner of the dam in the same manner debts are  
20       recoverable by law;



1       (15) Assess civil and criminal penalties for violation of  
2       any provision of this chapter or any rule adopted or  
3       order issued by the board pursuant to this chapter;

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

10       (17) With the assistance of the attorney general, institute  
11       and prosecute all court actions as may be necessary to  
12       obtain the enforcement of any order issued by the  
13       board in carrying out the provisions of this chapter;  
14       and

15       (18) Take any other actions necessary to carry out the  
16       purpose of this chapter.

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



1 removal, maintenance, and operation of any dam or reservoir.  
2 The board's approval of an application or a certificate of  
3 approval to impound shall not be considered final if it can be  
4 demonstrated to the board that the board's approval of the  
5 relevant application or certificate of approval to impound was  
6 based on one or more misrepresentations.

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

12 ~~[+]§179D-8[+]~~ **Violations; penalties.** ~~[Any person~~  
13 ~~violating any provision of this chapter or any permit condition~~  
14 ~~or limitation established pursuant to this chapter or~~  
15 ~~negligently or wilfully failing or refusing to comply with any~~  
16 ~~final order of the board issued as provided herein, shall be~~  
17 ~~liable for a civil penalty not to exceed \$500 for each day~~  
18 ~~during which said violation continues.] (a) Any person who~~  
19 violates any rule, order, condition, or other provision of this  
20 chapter shall be subject, upon order of a court, to a civil  
21 penalty not to exceed \$10,000 per day of such violation, and



1 each day during which the violation continues shall constitute  
2 an additional, separate, and distinct offense.

3 (b) Any person who intentionally, knowingly, or after  
4 written notice to comply, violates any rule, order, condition,  
5 or provision of this chapter, or knowingly obstructs, hinders,  
6 or prevents the department's agents or employees from performing  
7 duties under this chapter, shall be guilty, upon conviction, of  
8 a misdemeanor and shall be subject to a fine of not less than  
9 \$2,500 nor more than \$25,000 per day of violation. A second or  
10 subsequent offense under this subsection shall subject the  
11 violation to a fine to the contrary, of not less than \$5,000 nor  
12 more than \$50,000 per day of violation.

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

16 (d) All penalties collected pursuant to this section or  
17 rules adopted by the board pursuant to this chapter shall be  
18 deposited in the dam safety special fund.

19 **[+]§179D-9[+] Enactment of rules.** (a) The department  
20 shall adopt [the necessary] rules pursuant to chapter 91 for the  
21 purposes of this chapter, not later than one and one-half years  
22 after [June 6, 1987.] February 1, 2007."





1 SECTION 5. Prior to the adoption of administrative rules  
2 consistent with this Act, the department shall adopt interim  
3 administrative rules that are consistent with the rules  
4 recommended in chapter 5 of the Report of the Independent Civil  
5 Investigation of the March 14, 2006, Breach of Ka Loko Dam. The  
6 interim rules shall be exempt from the public notice and public  
7 hearing requirements of chapter 91, Hawaii Revised Statutes.  
8 Interim administrative rules adopted by the department shall be  
9 repealed upon the adoption of administrative rules pursuant to  
10 chapter 179D, Hawaii Revised Statutes.

11 SECTION 6. There is appropriated out of the general  
12 revenues of the State of Hawaii the sum of \$ , or so much  
13 thereof as may be necessary for fiscal year 2007-2008, and the  
14 same sum, or so much thereof as may be necessary for fiscal year  
15 2008-2009, for personnel and resources for the department of  
16 land and natural resources to implement this Act.

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

19 SECTION 7. In codifying the new sections added by section  
20 2 and 3 of this Act, the revisor of statutes shall substitute  
21 appropriate section numbers for the letters used in designating  
22 the new sections in this Act.



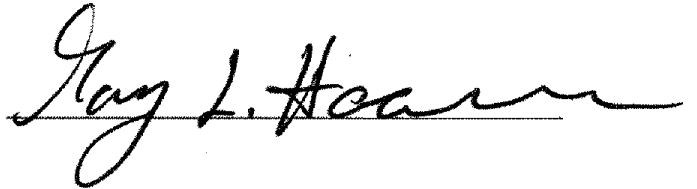
1 SECTION 8. If any provision of this Act, or the  
2 application thereof to any person or circumstance is held  
3 invalid, the invalidity does not affect other provisions or  
4 applications of the Act, which can be given effect without the  
5 invalid provision or application, and to this end the provisions  
6 of this Act are severable.

7 SECTION 9. Statutory material to be repealed is bracketed  
8 and stricken. New statutory material is underscored.

9 SECTION 10. This Act shall take effect on July 1, 2007.

10

INTRODUCED BY:

A handwritten signature in cursive script, reading "Ray L. Hoar", written over a horizontal line.

**Report Title:**

Dam Safety

**Description:**

Establishes requirements for dam inspection and safety.  
Establishes penalties for failure to comply. Creates dam safety  
fund. Creates dam rehabilitation loan program.

