A BILL FOR AN ACT

RELATING TO DAM SAFETY.

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

SECTION 1. On March 14, 2006, just before dawn, Ka Loko
dam on the island of Kaua‘i breached. Almost four hundred
million gallons of water crashed down from the Ka Loko reservoir
into Kilauea bay, taking trees, cars, buildings, and human lives
with it. Seven people tragically lost their lives that morning
in the flood. The legislature finds that this was a great human
tragedy and an ecological disaster that must never be repeated.

The purpose of this Act is to ensure the health, safety,
and welfare of the citizens of the State by creating a program
for monitoring and enforcing the safety of dams and reservoirs
throughout the State so that we are never again faced with the
tragedy like the Ka Loko dam break. The purpose of this Act is
to also create the dam rehabilitation loan program to provide
funds to dam owners to make repairs and alterations to dams and
reservoirs to increase their safety and effectiveness and
prevent future dam failures.
SECTION 2. Chapter 179D, Hawaii Revised Statutes, is amended by adding nine new sections to be appropriately designated and to read as follows:

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

§179D-B Entry upon property. (a) The department shall have the right to direct and conduct investigations as reasonably necessary to carry out its duties under this chapter. For this purpose, the agents or employees of the department or any authorized representatives shall have the right to 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 or other artificial barrier subject to this chapter. If the owner of the property refuses to allow the inspection, the department may seek a search warrant to allow the inspection. If the department has been refused inspection of drawings, operational records, or other information concerning a dam or reservoir, the department may seek an administrative subpoena compelling production of the drawings, operational records, or other information.
(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 the representative while in the process of carrying out official duties.

§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 act or practice under this chapter, the department may apply to the circuit court of the circuit 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 the person has engaged in or is about to engage in the 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 persons or property as not to permit
time for issuance and enforcement of an order relating to
construction, modification, maintenance, or repair, or if the
dam is threatened by any large flood, the department may
immediately employ remedial measures necessary to protect
persons and property.

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

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

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

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

§179D-E Dam safety special fund. (a) There is
established, in the state treasury, the dam safety special fund.
All moneys received by the board from:

(1) Fees, penalties, interest, fines, or charges collected
under this chapter;

(2) Appropriations by the legislature; and

(3) Moneys collected in full or partial satisfaction of
liens created by subsection (d)(2)
shall be deposited in the dam safety special fund.

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

(c) The board shall administer the dam safety special
fund. On notice from the board, the director of finance shall
invest and divest moneys in the special fund, and moneys earned
from investment shall be credited to the special fund. Moneys on balance in the special fund at the close of each fiscal year shall remain in that fund and shall not lapse to the credit of the general fund.

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

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

(2) The costs and expenses of the control, regulation, abatement, and inspection provided by this section, including costs of construction, enlargement, repair, alteration, or removal work done to render the 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 paragraph becomes due; and
(3) Liens pursuant to paragraph (2) 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 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

SB LRB 07-1076.doc
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-F Dams and reservoirs completed prior July 1, 2007.

(a) Every owner of a dam or reservoir completed prior to July 1, 2007, 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. Each application shall also be accompanied by applicable fees as required by the board.

(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 applications required in subsection (a).

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

(d) The board shall make inspections of dams and reservoirs subject to this section, unless the data, records, and inspection reports on file with the board are adequate for
the board to determine whether or not the certificate of
approval to impound should be issued.

(e) The board shall require owners of such dams and
reservoirs to perform, at their expense, any work or tests
necessary 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 persons and property.
For this purpose, the board may require an owner to lower the
water level in, or drain, the 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 the dam and reservoir are unsafe to
impound water, the board shall issue a written notice of refusal
to the owner. Upon receipt of the notice, the owner shall cause
the dam and reservoir to no longer impound water.

§179D-G Dams and reservoirs under construction,
enlargement, repair, alteration, or removal prior to July 1.
2007. (a) Any dam or reservoir that the board finds was under
collection, enlargement, repair, alteration, or removal and,
based on its findings, was not ninety per cent constructed,
enlarged, repaired, altered, or removed prior to July 1, 2007,
shall be subject to the same requirements under this chapter as
a dam or reservoir commenced after that date. Every owner of a
dam and reservoir subject to this section shall file an
application with the board for the board's application approval
of the plans and specifications.

(b) Construction, enlargement, repair, alteration, or
removal work on a dam and reservoir may proceed, provided an
application for approval of the plans and specifications is
filed, until an application approval is received by the owner
approving the dam and reservoir or 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, any further work shall be in accordance with the
application approval or order.
§179D-H Annual report. (a) The department shall submit an annual report concerning the activities of the department relating to this chapter to the governor and the legislature no less than twenty days prior to the convening of each regular session.

(b) The report shall include but not be limited to information on the following:

(1) Approvals of plans and specifications for construction of dams and reservoirs and for alterations, modifications, repairs, and enlargements;

(2) The number of safety inspections made and the results thereof;

(3) Use of appropriated funds;

(4) Receipts generated for inspections of dams and reservoirs;

(5) Rules adopted or amended;

(6) Enforcement orders and proceedings;

(7) Dam failures and department evaluations of the reasons for dam failure; and

(8) Any other available data regarding the effectiveness of the State's dam and reservoir safety program.
§179D-1 Limitations of liability. (a) This chapter does not create a liability for damages against the board, its officers, agents, and employees caused by or arising out of any of the following:

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

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

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

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

"PART . DAM REHABILITATION LOAN PROGRAM

§179D-J Dam rehabilitation loan program; establishment and funding. (a) The board shall create a dam rehabilitation loan program or may partner with other public or private agencies or organizations to create a dam rehabilitation loan program. The program shall initially be funded with $2,000,000 from moneys
appropriated by the legislature and deposited into the dam
safety special fund.

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

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

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

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

(f) Moneys collected for the dam rehabilitation loan
program and deposited into the dam safety special fund shall
remain in that fund and shall not lapse to the credit of the
general fund.
§179D-K Allowable loans. (a) The board may grant loans from the dam safety fund to dam owners to defray the costs of repairing dams that the board determines to be dangerous to the safety of persons and property but that are not in an emergency condition.

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

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

(2) If the balance of the dam safety special fund exceeds $1,000,000, no single loan shall be made for more than twenty per cent of the moneys available in the fund. No loan shall be made to any dam owner that, at the time of the loan application, has more than twenty per cent of the outstanding loans of the fund;

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

(4) Each loan shall be evidenced by a contract between the dam owner and the board, acting on behalf of the
State. The contract shall provide for the loan of a stated amount to defray partial or total costs of repairing the dam. The contract shall provide for equal annual payments of principal and interest for the term of the loan.

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

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

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

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

(e) Dam owners may use multiple programs or sources to fund the rehabilitation costs for a dam, up to one hundred per cent of rehabilitation costs.
(f) Rehabilitation costs for any dam in the State are eligible for loans under this part, subject to the provisions of this section, except for dams owned by the federal government.

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

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

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

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

(b) The attorney general or the board's legal counsel, with the consent of the board, may commence any actions
necessary to enforce the contract and achieve repayment of loans
provided by the board.

§179D-N Enforcement. 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
a dam rehabilitation loan program loan without a search warrant
or liability for trespass.

§179D-0 Dam owners; requirements for participation. Dam
owners participating in the dam rehabilitation loan program
shall:

(1) Maintain an operation and maintenance plan with
written, regularly scheduled reports to the board, so
as to maintain and keep the structure and its
appurtenant works in the state of repair and operating
condition required by the exercise of due care, due
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 and report this
plan to the board;
(3) Cooperate with the board's agents, engineers, and employees in carrying out the provisions of this chapter;

(4) Facilitate access by any necessary state agency to the dam, reservoir, or appurtenances; and

(5) Furnish upon request the plans, specifications, operating and maintenance data, or other information that is pertinent to the structure, appurtenance, and loan.

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

(1) Owners of dams without taxing authority may be allowed to participate in the dam rehabilitation loan program;

(2) Complete rehabilitations shall be encouraged, but phased projects may be funded;

(3) Removal of dams as a rehabilitation alternative may be allowed;

(4) As part of the application process, owners shall be required to demonstrate the ability to appropriately operate and maintain the dam after rehabilitation is complete.
Owners may partner with an individual, local agency, or organization, for purposes of the loan and for purposes of operation and maintenance; and

If a dam is exempt from state regulation, to obtain funding through the dam rehabilitation loan program, the project must adhere to state standards for design, construction, and the rules adopted by the board pursuant to this chapter."

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

"CHAPTER 179D
DAMS AND RESERVOIRS

PART I. GENERAL PROVISIONS

§179D-1 Short title. This chapter shall be known and may be cited as the "Hawaii Dam Safety Act of 2007".

§179D-2 Declaration of purpose. The purpose of this chapter is to provide for the inspection and regulation of construction, operation, and removal of [certain] all dams and reservoirs 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] all dams and reservoirs are properly a
matter of regulation under the police powers of the State.

§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:

"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.

"Application approval" means authorization in writing that
is 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 and that specifies the conditions or
limitations under which work is to be performed by the owner or
under which approval is granted.

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

"Certificate of approval to impound" means authorization in
writing that is issued by the board to an owner who has
completed construction, enlargement, repair, or alteration of a
dam or reservoir and 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 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[?], unless the barrier,
due to its location or other physical characteristics,
is a high hazard or moderate hazard potential dam.
"Dam rehabilitation loan program" means a low interest revolving dam rehabilitation loan program, created pursuant to this chapter.

"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 and its appurtenant structures that may be construed as unsafe or threatening to persons or 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.

"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 to the property upon which the dam 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.] includes any natural person, partnership, firm,
association, organization, corporation, authority, trust,
receiver or trustee, limited liability company, limited
liability partnership, company, or any state or county
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" shall include the members of an association or
organization, and the officers of a corporation, company,
county, or county authority.

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

"Removal" means complete elimination of the dam 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.

§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 such action or failure to act.

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

   [+] (c) Nothing in this chapter and no order, action, or advice of the State, board, or 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.

[+] §179D-5 Unlawful conduct. (a) It shall be unlawful for any person to construct, enlarge, repair, alter, 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 June 5, 1987, 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 June 5, 1987.] Any person who engages in any action made
unlawful by this chapter shall be guilty of a misdemeanor. Each
day of continued violation after conviction shall constitute a
separate offense.

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

[¶§179D-6[¶] General powers and duties of the board of
land and natural resources. (a) All dams and reservoirs in the
State shall be under the jurisdiction 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, 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, 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 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, agreement 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 the owners to secure the written approval of
the board to impound water;

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

9) 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;

10) Order the suspension or revocation, or both, of any
application approval or certificate of approval to
impound for any act for failure to comply with: any
of the provisions of this chapter; any rules or orders
adopted pursuant to this chapter; or any of the
conditions contained in or attached to the application
approval or certificate of approval to impound;
(11) 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 the provisions of this chapter or rules issued pursuant to this chapter;

(12) Order the immediate cessation of any act that is commenced or continued without an application approval or certificate of approval to impound as required by this chapter;

(13) 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. 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;

(14) Recover from the owner, in the name of the State, the expenses incurred in taking any action required of the owner of the dam in the same manner debts are recoverable by law;
(15) Assess civil and criminal penalties for violation of any provision of this chapter or any rule adopted or order issued by the board pursuant to this chapter;

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

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

and

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

[§179D-7] Administrative and judicial review. (a)

The findings and orders 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 to impound 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.

[f]§179D-8[f] 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) Any person who violates any rule, order, condition, or other provision of this chapter shall be subject, upon order of a court, to a civil penalty not to exceed $10,000 per day of such violation, and
each day during which the violation continues shall constitute
an additional, separate, and distinct offense.

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

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

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

[§179D-9] Enactment of rules. (a) The department
shall adopt [the necessary] rules pursuant to chapter 91 for the
purposes of this chapter, not later than one and one-half years
SECTION 5. Prior to the adoption of administrative rules consistent with this Act, the department shall adopt interim administrative rules that are consistent with the rules recommended in chapter 5 of the Report of the Independent Civil Investigation of the March 14, 2006, Breach of Ka Loko Dam. The interim rules shall be exempt from the public notice and public hearing requirements of chapter 91, Hawaii Revised Statutes.

Interim administrative rules adopted by the department shall be repealed upon the adoption of administrative rules pursuant to chapter 179D, Hawaii Revised Statutes.

SECTION 6. There is appropriated out of the general revenues of the State of Hawaii the sum of $, 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, for personnel and resources for the department of land and natural resources to implement this Act.

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

SECTION 7. In codifying the new sections added by section 2 and 3 of this Act, the revisor of statutes shall substitute appropriate section numbers for the letters used in designating the new sections in this Act.
SECTION 8. 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 9. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

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

INTRODUCED BY: [Signature]

[S.B. NO. 656]
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.