

JAN 21 2011

A BILL FOR AN ACT

RELATING TO DAMS AND RESERVOIRS.

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

1 SECTION 1. Section 179D-2, Hawaii Revised Statutes, is
2 amended to read as follows:

3 "§179D-2 Declaration of purpose. The purpose of this
4 chapter is to provide for the inspection and regulation of
5 construction, enlargement, repair, alteration, maintenance,
6 operation, and removal of all dams or reservoirs to protect the
7 health, safety, and welfare of the citizens of the State by
8 reducing the risk of failure of the dams or reservoirs. The
9 legislature finds and declares that the inspection and
10 regulation of all dams or reservoirs are properly a matter of
11 regulation under the police powers of the State, unless
12 specifically exempted.

13 The legislature further finds that dams and reservoirs are
14 important water resources for the State that provide significant
15 benefits to the general public, such as potable drinking water
16 for the citizens of the State, hydropower for the generation of
17 renewable energy, flood control and drainage for public safety,
18 and irrigation water for Hawaii's agricultural industry.



1 Accordingly, dams and reservoirs should be consistently
2 maintained and operated in a feasible manner that sustains their
3 roles as important water resources.

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

10 SECTION 2. Section 179D-6, Hawaii Revised Statutes, is
11 amended by amending subsection (b) to read as follows:

12 "(b) The board shall administer the dam and reservoir
13 safety program established by this chapter. In carrying out
14 this chapter, the board shall cooperate, advise, consult,
15 contract, and enter into cooperative agreements with the United
16 States government or any of its agencies, other state agencies,
17 and the county governments or any of their agencies. In the
18 performance of its duties, the board shall[+] consider the need
19 to consistently maintain and operate dams and reservoirs in a
20 feasible manner that sustains their roles as important water
21 resources for the State.

22 The board shall:



1 (1) Establish by rules adopted under chapter 91, policies,
2 requirements, or standards governing the design,
3 construction, operation, maintenance, enlargement,
4 alteration, repair, removal, and inspection of dams,
5 reservoirs, and appurtenant works for the protection
6 of life and property from structural failure of dams
7 and reservoirs;

8 (2) Conduct investigations and [~~the collection of~~] collect
9 data, including technological advances made in dam and
10 reservoir safety practices elsewhere, as may be needed
11 for the proper review and study of the various
12 features of the design, construction, repair, removal,
13 inspection, operation, maintenance, alteration, and
14 enlargement of dams, reservoirs, and appurtenant
15 works. The board may require submittal of reports of
16 investigations from all owners;

17 (3) Conduct investigations and require reports from all
18 owners to be made from time to time, including
19 watershed investigations and studies, as may be
20 necessary to keep abreast of developments affecting
21 stream runoff and as required to facilitate its
22 decisions;



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



- 1 (8) Require fees to cover a portion of the board's costs
2 in carrying out the administration of dam and
3 reservoir safety;
- 4 (9) Cooperate with all public and private agencies created
5 for the purpose of enhancing dam and reservoir safety
6 activities and training, assist these organizations
7 and agencies in coordinating the use of their
8 facilities, and participate in the exchange of ideas,
9 knowledge, and data with these organizations and
10 agencies;
- 11 (10) Prepare, publish, and issue printed pamphlets,
12 bulletins, or advisories, or conduct training as the
13 board deems necessary for the dissemination of
14 information to the public;
- 15 (11) Appoint and remove agents and employees, including
16 hearing officers, specialists, and consultants, as
17 necessary to carry out the purposes of this chapter,
18 who may be engaged by the board without regard to the
19 requirements of chapter 76;
- 20 (12) Catalog and maintain an inventory of all regulated
21 dams and reservoirs in the State pursuant to this
22 chapter without regard to chapter 91;



1 (13) Establish similar or consistent hazard potential
2 classifications in conjunction with other applicable
3 state or federal guidelines for all regulated dams and
4 reservoirs in the State pursuant to this chapter
5 without regard to chapter 91; provided that the board
6 shall consider establishing or designating a lower
7 hazard potential classification for dams or reservoirs
8 with an operations system that enables the direct
9 control of water inflow to those dams or reservoirs;

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

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

21 (16) Issue orders requiring the adoption by an owner of
22 remedial measures necessary for the safety of life or

1 public or private property, or for carrying out this
2 chapter or rules issued under this chapter;

3 (17) Order the immediate cessation of any act that is
4 started or continued without an application approval
5 or certificate of approval to impound as required by
6 this chapter;

7 (18) Enter private property and immediately take actions
8 necessary to provide protection to life or property at
9 the owner's expense, including removal of the dam or
10 reservoir. The entry shall not constitute a cause of
11 action in favor of the owner of the land, except for
12 damages resulting from wilful acts or gross negligence
13 by the board or its agents;

14 (19) Recover from the owner, in the name of the State, the
15 expenses incurred in taking any action required by the
16 owner of the dam or reservoir in the same manner that
17 debts are recoverable by law;

18 (20) Assess civil penalties for violation of this chapter
19 or any rule or standard adopted or order issued by the
20 board pursuant to this chapter;

21 (21) Place liens, as needed, on the owner's property, to be
22 collected as delinquent taxes against the lands and



1 property, if the owner neglects to pay any costs,
2 expenses, or penalties chargeable to the owner under
3 this chapter or any rule, order, or condition adopted,
4 issued, or required under this chapter;

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

9 (23) Take any and all other actions as may be necessary to
10 carry out this chapter."

11 SECTION 3. Section 179D-29, Hawaii Revised Statutes, is
12 amended to read as follows:

13 "[+]§179D-29[+] **Annual report.** The department shall submit
14 an annual report to the governor and the legislature by January
15 5 of each year concerning the activities of the department
16 relating to this chapter for the preceding fiscal year. The
17 report shall include but not be limited to information on the
18 following:

19 (1) Approvals of plans and specifications for the
20 construction of dams and reservoirs and for
21 alterations, modifications, repairs, removal, and
22 enlargements of any dams and reservoirs;



- 1 (2) A listing of dam and reservoir safety inspections
- 2 made;
- 3 (3) Use of appropriated funds;
- 4 (4) Rules adopted or amended;
- 5 (5) Enforcement orders and proceedings;
- 6 (6) Dam and reservoir failures and department evaluations
- 7 of the reasons for the failure, if known; [and]
- 8 (7) Initiatives implemented to ensure that dams and
- 9 reservoirs protect the public health, safety, and
- 10 welfare by consistently maintaining and operating them
- 11 in a feasible manner that sustains their roles as
- 12 important water resources; and
- 13 [~~7~~] (8) Any other available data regarding the
- 14 effectiveness of the State's dam and reservoir safety
- 15 program."

16 SECTION 4. Statutory material to be repealed is bracketed
17 and stricken. New statutory material is underscored.

18 SECTION 5. This Act shall take effect upon its approval.

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Report Title:

Dams and Reservoirs

Description:

Declares dams and reservoirs as important water resources that provide certain benefits to the public; requires board of land and natural resources to consider the need to consistently maintain and operate dams and reservoirs in a feasible manner; requires fees to cover a portion of the board's costs; requires board to consider a lower hazard potential classification for operating systems that enable direct control of water inflow; requires DLNR to include in its annual report initiatives implemented to ensure dams and reservoirs continue to be retained and operated in a feasible manner to sustain their role as important water resource.

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