

STAND. COM. REP. NO. 1495

Honolulu, Hawaii

March 23, 2007

RE: S.B. No. 1946
S.D. 2
H.D. 1

Honorable Calvin K.Y. Say
Speaker, House of Representatives
Twenty-Fourth State Legislature
Regular Session of 2007
State of Hawaii

Sir:

Your Committee on Water, Land, Ocean Resources & Hawaiian Affairs, to which was referred S.B. No. 1946, S.D. 2, entitled:

"A BILL FOR AN ACT RELATING TO DAM SAFETY,"

begs leave to report as follows:

The purpose of this bill is to increase the safety and effectiveness of dams and reservoirs and prevent future dam failures in the state. Specifically, this bill, among other things:

- (1) Requires the owner of each dam to hold a valid certificate of approval to impound water;
- (2) Allows authorized personnel of the Department of Land and Natural Resources (DLNR) to enter upon any property, public or private, at reasonable times, without notice, to investigate the condition or operation of any dam;
- (3) Makes it unlawful to refuse entry to any authorized personnel of DLNR to inspect a dam or reservoir;
- (4) Grants DLNR rights to injunctive relief to enforce the provisions of chapter 179D, Hawaii Revised Statutes (Dam Safety Act);



- (5) Allows DLNR, in cases of emergency, to employ immediate remedial measures, at the cost of the owner of a dam or reservoir, to protect life and property;
- (6) Establishes a Dam and Reservoir Safety Special Fund to implement the Dam Safety Act;
- (7) Allows liens to attach to the property of a dam or reservoir owner for the costs of any remedial measures taken by DLNR;
- (8) Requires dams and reservoirs completed prior to the effective date of this bill to apply for a certificate of approval to impound water;
- (9) Requires dams or reservoirs up to 90 percent completed on the effective date of this measure to submit, for approval by DLNR, plans and specifications for any dam or reservoir construction, enlargement, repair, or removal, prior to commencing the work contemplated;
- (10) Requires DLNR to submit annual reports to the Governor and Legislature relating to the Dam Safety Act;
- (11) Requires dam and reservoirs owners regulated by the Dam Safety Act to, among other things:
 - (A) Maintain an operation and maintenance plan, including an inspection and monitoring program;
 - (B) Establish an emergency action plan for high and significant hazard potential dams and reservoirs;
 - (C) Facilitate access by any necessary state agency or representative to the dam, reservoir, or appurtenances; and
 - (D) Furnish, upon request, plans, specifications, operating and maintenance data, and other pertinent information;
- (12) Establishes administrative penalties of up to \$25,000 per day for violations of the Dam Safety Act, or any rule, order, or condition adopted pursuant to the Act;



- (13) Allows the Board of Land and Natural Resources (BLNR) to catalog and maintain an inventory of all regulated dams and reservoirs under the Dam Safety Act;
- (14) Makes it a class C felony for any person to negligently or with notice, violate the Dam Safety Act, or any rule, order, or condition adopted pursuant to the Act;
- (15) Permits a dam or reservoir owner to continue to impound water while in the process of applying for a certificate of approval to impound water, unless BLNR determines that the dam or reservoir poses a danger to the health and safety of persons or property;
- (16) Appropriates into and out of the Dam Safety Special Fund an unspecified amount; and
- (17) Makes other amendments to existing sections of the Dam Safety Act, for purposes of consistency with new provisions to the Act.

The Office of Hawaiian Affairs supported the intent of this measure. DLNR supported this measure with amendments. Kamehameha Schools opposed this bill. The Department of the Attorney General, Hawaii Farm Bureau, Alexander & Baldwin, Inc., Hawaiian Commercial & Sugar Company, Kauai Coffee Company, Inc., Dole Food Company Hawaii, and Gay & Robinson, Inc., provided comments.

Upon careful consideration, your Committee has amended this bill by:

- (1) Changing the citation of the Hawaii Dam Safety Act of 2007 to the Hawaii Dam and Reservoir Safety Act of 2007;
- (2) Limiting the application of the Dam Safety Act to certain, instead of all, dams and reservoirs in the state;
- (3) Requiring either the operator or the owner of a dam or reservoir to hold a certificate of approval to impound water;
- (4) Inserting a definition for "physical clear access";



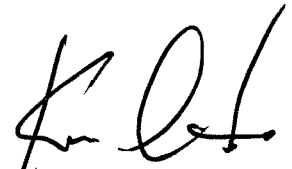
- (5) Inserting a provision that gives the State, BLNR, or DLNR, or any employee of the State, BLNR, or DLNR immunity from actions for damages sustained by the failure of private dams or reservoirs regulated by the Dam Safety Act;
- (6) Deleting the provision that authorizes BLNR to assess criminal penalties for violation of the Dam Safety Act;
- (7) Clarifying that the Dam Safety Act applies to both dams and reservoirs; and
- (8) Making technical, nonsubstantive amendments for style, clarity, and consistency.

Your Committee notes that by limiting the application of the Dam Safety Act to certain, instead of all dams and reservoirs in the state, DLNR will be able to exempt, by rule, low hazard dams and reservoirs and concentrate its efforts on the dams and reservoirs that pose the greatest threat to the public.

Your Committee further notes that while the appropriation amount has been left blank for the appropriate amount to be inserted by the Committee on Finance, the Special Deputy Attorney General Godbey recommended a \$2,000,000 initial appropriation into the Dam Safety Special Fund to allow DLNR to address emergency situations.

As affirmed by the record of votes of the members of your Committee on Water, Land, Ocean Resources & Hawaiian Affairs that is attached to this report, your Committee is in accord with the intent and purpose of S.B. No. 1946, S.D. 2, as amended herein, and recommends that it pass Second Reading in the form attached hereto as S.B. No. 1946, S.D. 2, H.D. 1, and be referred to the Committee on Finance.

Respectfully submitted on
behalf of the members of the
Committee on Water, Land, Ocean
Resources & Hawaiian Affairs,



KEN ITO, Chair



