

STAND. COM. REP. NO. 1926

Honolulu, Hawaii

Aj 5, 2007

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

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

Sir:

Your Committee on Finance, to which was referred S.B. No. 1946, S.D. 2, H.D. 1, 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 or operator 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 and Reservoir Safety Act (Act));

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- (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 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) 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;
- (11) Requires DLNR to submit annual reports to the Governor and Legislature relating to the Act;
- (12) Requires dam and reservoirs owners regulated by the 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;



- (13) Gives the State, Board of Land and Natural Resources (BLNR), or DLNR immunity from actions for damages sustained by the failure of private dams or reservoirs regulated by the Dam and Reservoir Safety Act;
- (14) Allows BLNR to catalog and maintain an inventory of all regulated dams and reservoirs under the Act;
- (15) Establishes administrative penalties of up to \$25,000 per day for a first violation of the Act, or any rule, order, or condition adopted pursuant to the Act;
- (16) Makes it a class C felony and establishes monetary criminal fines of up to \$25,000 per day for a first violation, and up to \$50,000 per day for subsequent violations for any person who negligently or with notice, violates the Act, or any rule, order, or condition adopted pursuant to the Act;
- (17) Appropriates into and out of the Dam and Reservoir Safety Special Fund an unspecified amount; and
- (18) Makes other amendments to existing sections of the Act, for purposes of consistency with the new provisions of the Act.

The Department of Land and Natural Resources, Department of the Attorney General, and American Society of Civil Engineers testified in support of this bill. The Office of Hawaiian Affairs and Dole Food Company Hawaii supported the intent of this measure. Kamehameha Schools opposed this bill. The Land Use Research Foundation of Hawaii, Hawaii Farm Bureau Federation, Alexander & Baldwin, Inc., Hawaiian Commercial & Sugar Company, and Kauai Coffee Company, Inc., provided comments.

Your Committee has amended this bill by:


- (1) Changing the effective date to July 1, 2020, to encourage further discussion; and
- (2) Making technical, nonsubstantive amendments for style, clarity, and consistency.

As affirmed by the record of votes of the members of your Committee on Finance that is attached to this report, your



Committee is in accord with the intent and purpose of S.B. No. 1946, S.D. 2, H.D. 1, as amended herein, and recommends that it pass Third Reading in the form attached hereto as S.B. No. 1946, S.D. 2, H.D. 2.

Respectfully submitted on
behalf of the members of the
Committee on Finance,


MARCUS R. OSHIRO, Chair



