

STAND. COM. REP. NO.

1695

Honolulu, Hawaii

APR 05 2007

RE: H.B. No. 652
H.D. 2
S.D. 2

Honorable Colleen Hanabusa
President of the Senate
Twenty-Fourth State Legislature
Regular Session of 2007
State of Hawaii

Madam:

Your Committee on Ways and Means, to which was referred H.B. No. 652, H.D. 2, S.D. 1, entitled:

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

begs leave to report as follows:

The purpose of this measure is to enhance dam and reservoir safety.

Specifically, this measure:

- (1) Adds a new part to chapter 179D, Hawaii Revised Statutes, that:
 - (A) Requires each dam owner to hold a valid certificate of approval to impound water;
 - (B) Allows authorized representatives of the Department of Land and Natural Resources to enter upon any property, public or private, at reasonable times, without prior notice, to inspect dams and reservoirs;
 - (C) Allows the Department of Land and Natural Resources to seek and obtain injunctive relief in the circuit court to enforce the provisions of chapter 179D, Hawaii Revised Statutes;



- (D) Allows the Department of Land and Natural Resources to take emergency actions relating to any dam or reservoir to remedy any dangerous conditions threatening life and property;
 - (E) Establishes the dam safety special fund;
 - (F) Allows the Department of Land and Natural Resources to attach liens on all property of a dam owner to ensure reimbursement of costs and expenses incurred by the State in enforcing the provisions of this chapter;
 - (G) Requires all dams built prior to and after the effective date of this measure to be registered and certified;
 - (H) Expands the specific responsibilities of dam and reservoir owners to maintain and operate their dams and reservoirs; and
 - (I) Requires the Department of Land and Natural Resources to submit annual reports to the Governor, the President of the Senate, and the Speaker of the House of Representatives, relating to the dam and reservoir safety program; and
- (2) Makes amendments to existing provisions contained in chapter 179D, Hawaii Revised Statutes, that:
- (A) Add ten new definitions to section 179D-3, Hawaii Revised Statutes, to conform with the new sections included in the new part added to the chapter by part I of this measure;
 - (B) Amend the definition of "dam" to allow the Board of Land and Natural Resources to specifically, by rule, exempt certain artificial barriers from the definition of a dam;
 - (C) Expand the enumerated duties of the Board of Land and Natural Resources contained in section 179D-6(b), Hawaii Revised Statutes, to conform to the provisions of the new part added to the chapter by part I of this measure;



- (D) Provide that the findings, actions, and order of the Board of Land and Natural Resources are final, binding, and conclusive on dam owners and operators, subject to judicial review; and
 - (E) Increase the administrative penalties and allow imposition of criminal penalties for any violations of the chapter, rules adopted to effectuate the chapter, or orders of the Board of Land and Natural Resources issued pursuant to the chapter; and
- (3) Makes an appropriation into and out of the newly established dam safety special fund to carry out the purposes of the dam safety special fund.

Your Committee received comments in support of this measure from the American Society of Civil Engineers. Comments were also received from the Attorney General, the Department of Land and Natural Resources, and Alexander & Baldwin, Inc.

In the aftermath of the tragic Kaloko Dam collapse on Kauai that took seven lives and caused tremendous property and crop loss, dam and reservoir safety remains utmost in the minds of the residents of this State. Dams and reservoirs of even more potentially high hazard remain perched above large urban areas, such as the Nuuanu Reservoir and the Wahiawa Dam, holding back Lake Wilson in Wahiawa. The failure of either of these dams and reservoirs could result in extreme loss of life and massive damage to urban and agricultural properties. Accordingly, dam and reservoir safety remains a high priority to your Committee.

Your Committee has amended this measure by:

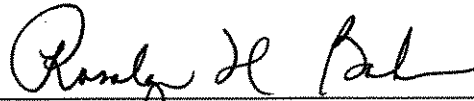
- (1) Clarifying that the Department of Land and Natural Resources may seek an administrative subpoena to secure relevant documents through the Office of the Attorney General;
- (2) Setting forth in a separate section and clarifying the right of the Department of Land and Natural Resources to attach and perfect liens on all real property owned by a dam owner in the State to ensure the reimbursement of costs and expenses of the Department in enforcing this chapter;



- (3) Repealing section 179D-5, Hawaii Revised Statutes, as its provisions are redundant with section 179D-8, Hawaii Revised Statutes, as amended;
- (4) Changing the amount of the appropriations in sections 12 and 13 to unspecified amounts to allow further discussion on this matter; and
- (5) Making technical nonsubstantive changes for purposes of style, clarity, and consistency.

As affirmed by the record of votes of the members of your Committee on Ways and Means that is attached to this report, your Committee is in accord with the intent and purpose of H.B. No. 652, H.D. 2, S.D. 1, as amended herein, and recommends that it pass Third Reading in the form attached hereto as H.B. No. 652, H.D. 2, S.D. 2.

Respectfully submitted on
behalf of the members of the
Committee on Ways and Means,




ROSALYN H. BAKER, Chair



The Senate
 Twenty-Fourth Legislature
 State of Hawaii

Record of Votes
Committee on Ways and Means
WAM

Bill / Resolution No.:* HB 652 HD2, SD1	Committee Referral: WAM, WAM	Date: 3/30/07		
<input type="checkbox"/> The committee is reconsidering its previous decision on this measure. If so, then the previous decision was to: _____				
The Recommendation is: <input type="checkbox"/> Pass, unamended 2312 <input checked="" type="checkbox"/> Pass, with amendments 2311 <input type="checkbox"/> Hold 2310 <input type="checkbox"/> Recommit 2313				
Members	Aye	Aye (WR)	Nay	Excused
BAKER, Rosalyn H. (C)	/			
TSUTSUI, Shan S. (VC)	/			
CHUN OAKLAND, Suzanne				/
ENGLISH, J. Kalani				/
FUKUNAGA, Carol	/			
HOOSER, Gary L.	/			
KIM, Donna Mercado	/			
MENOR, Ron	/			
TOKUDA, Jill N.				/
HEMMINGS, Fred	/			
WHALEN, Paul				/
TOTAL	7	0	0	4
Recommendation: <input checked="" type="checkbox"/> Adopted <input type="checkbox"/> Not Adopted				
Chair's or Designee's Signature: 				
Distribution: Original Yellow Pink File with Committee Report Clerk's Office Drafting Agency				

*Only one measure per Record of Votes