

Honolulu, Hawaii

April 27, 2007

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

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

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

Madam and Sir:

Your Committee on Conference on the disagreeing vote of the Senate to the amendments proposed by the House of Representatives in S.B. No. 1946, S.D. 2, H.D. 2, entitled:

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

having met, and after full and free discussion, has agreed to recommend and does recommend to the respective Houses the final passage of this bill in an amended form.

The purpose of this measure is to increase the safety and effectiveness of dams and reservoirs and prevent future dam failures in the State.

Specifically, this measure:

- (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));
- (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 measure to apply for a certificate of approval to impound water;
- (9) Requires dams or reservoirs up to ninety per cent 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 the Board of Land and Natural Resources (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, BLNR, or DLNR immunity from actions for damages sustained by the failure of private dams or reservoirs regulated by the 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.

Your Conference on Committee finds that in light of the Kaloko Reservoir Dam tragedy on March 14, 2006, amending chapter 179D, Hawaii Revised Statutes, will enable the State to increase the effectiveness of its dam safety program, by strengthening the monitoring and enforcement measures that provide dam and reservoir safety throughout the State and creating a Dam and Reservoir Safety Special Fund to carry out the purposes of the program.

Your Conference on Committee has amended this measure by:



- (1) Clarifying that the BLNR will have jurisdiction of all dams and reservoirs until the DLNR has completed its statewide inspections, the DLNR has established and implemented rules and criteria for a five year dams and reservoirs inspection and classification processes, and the BLNR declares which dams or reservoirs are to be removed from its jurisdiction;
- (2) Adding a definition for "Operator";
- (3) Deleting new language from section 179D-4, Hawaii Revised Statutes, that would provide that no action can be brought against the State, the Board, or the Department, or its employees for damages sustained through the partial or total failure of any private dam or reservoir addressed under chapter 179D, Hawaii Revised Statutes, or its maintenance or operation by reason of any supervision or other action taken or not taken pursuant to chapter 179D;
- (4) Inserting into the blank appropriation an amount of \$1,000,000, to be deposited into the Dam and Reservoir Safety Special Fund and expended by the DLNR to carry out the purposes of the special fund;
- (5) Changing the effective date of this measure from July 1, 2020 to effective upon approval and changing the effective dates for the appropriation deposited into and expended by the DLNR from the Dam and Reservoir Safety Special Fund from July 1, 2020 to July 1, 2007;
- (6) Making technical, nonsubstantive amendments for the purposes of clarity and consistency.

As affirmed by the record of votes of the managers of your Committee on Conference that is attached to this report, your Committee on Conference is in accord with the intent and purpose of S.B. No. 1946, S.D. 2, H.D. 2, as amended herein, and recommends that it pass Final Reading in the form attached hereto as S.B. No. 1946, S.D. 2, H.D. 2, C.D. 1.



Respectfully submitted on behalf  
of the managers:

ON THE PART OF THE HOUSE

ON THE PART OF THE SENATE



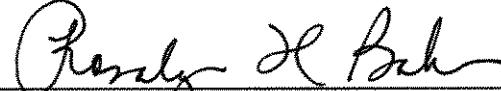
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