

Honolulu, Hawaii

MAR 02 2007

RE: S.B. No. 1946  
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 S.B. No. 1946, 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 amend chapter 179D, Hawaii Revised Statutes, to ensure the safety of dams and reservoirs in the State.

Specifically, this measure:

- (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 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 the Department of Land and Natural Resources to inspect a dam;
- (4) Grants the Department of Land and Natural Resources right to injunctive relief to enforce the provisions of chapter 179D, Hawaii Revised Statutes (dam safety law);



- (5) Allows the Department of Land and Natural Resources, in cases of emergency, to employ immediate remedial measures, at the cost of the owner of a dam, to protect persons and property;
- (6) Establishes the dam safety special fund to implement the dam safety program pursuant to chapter 179D, Hawaii Revised Statutes;
- (7) Allows liens to attach to property of the owner of a dam for the costs of any remedial measures undertaken by the Department of Land and Natural Resources;
- (8) Requires dams and reservoirs completed prior to the effective date of this measure to apply for certificate of approval to impound water;
- (9) Requires any dams or reservoirs under construction after the effective date of this measure to submit, for approval by the Department of Land and Natural Resources, plans and specifications for any dam construction, enlargement, repair, or removal, prior to commencing the work contemplated;
- (10) Requires the Department of Land and Natural Resources to submit annual reports to the Governor and Legislature relating to the dam safety program;
- (11) Establishes administrative penalties for the violation of chapter 179D, Hawaii Revised Statutes, or any rule, order, or condition adopted or issued pursuant to the chapter;
- (12) Makes it a class C felony for any person to negligently or knowingly violate chapter 179D, Hawaii Revised Statutes, or any rule, order, or condition adopted or issued pursuant to the chapter;
- (13) Makes other amendments to existing sections of chapter 179D, Hawaii Revised Statutes, for purposes of consistency with new provisions to the chapter; and
- (14) Makes an appropriation into and out of the dam safety special fund.



Your Committee received comments on this measure from the Attorney General, Department of Land and Natural Resources, Hawaii Farm Bureau Federation, and Alexander & Baldwin, Inc.

Most of the contents of this measure are the result of and are the recommendations contained in the *Report of the Independent Civil Investigation of the March 14, 2006, Breach of the Ka Loko Dam*, submitted by the Special Deputy Attorney General appointed to investigate the dam breach.

Your Committee shares the concerns relating to dam and reservoir safety that have arisen following the Ka Loko disaster, and the main purpose of this measure is to ensure that there are no further incidents of a dam or reservoir failure resulting in loss of life and property. Your Committee believes that many of the requirements of dam and reservoir owners contained in the measure, while adding additional burdens to those dam and reservoir owners, are necessary for that stated purpose.

Your Committee has amended this measure by:

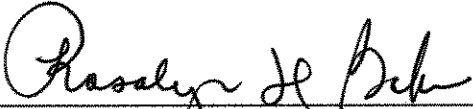
- (1) Permitting a dam or reservoir owner to continue to impound water while in the process of applying for a certificate of approval to impound water, unless the Board of Land and Natural Resources determines that the dam or reservoir poses a danger to the health and safety of persons or property;
- (2) Allowing the Department of Land and Natural Resources to catalogue and maintain an inventory of all dams and reservoirs in the State without regard to chapter 91, Hawaii Revised Statutes (Administrative Procedure Act);
- (3) Repealing section 179D-5, Hawaii Revised Statutes, relating to unlawful conduct;
- (4) Extending the appropriation into and out of the dam safety special fund to fiscal year 2008-2009; and
- (5) Making the appropriation in this measure for an unspecified amount.

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 S.B.



No. 1946, S.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.

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



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ROSALYN H. BAKER, Chair



