
A BILL FOR AN ACT

RELATING TO INDEMNITY.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. The purpose of this Act is to declare that the
2 State indemnifies, defends, and holds harmless the owner of an
3 irrigation system, dam, or reservoir under certain conditions.
4 The legislature finds this Act is necessary to encourage the
5 continued operation and maintenance of irrigation systems, dams,
6 and reservoirs that deliver water for agricultural use.

7 SECTION 2. Chapter 663, Hawaii Revised Statutes, is
8 amended by adding a new section to part I to be appropriately
9 designated and to read as follows:

10 "§663- State indemnification of owner of irrigation
11 system, dam, or reservoir. (a) For the purposes of this
12 section:

13 "Agricultural land" means land in the agricultural district
14 under chapter 205.

15 "Dam" means the same as defined under section 179D-3.

16 "Irrigation system" means a system of intakes, diversions,
17 wells, ditches, siphons, pipes, reservoirs, and accessory



1 facilities established to provide water for agricultural
2 production or other use.

3 "Reservoir" means the same as defined under section 179D-3.

4 (b) Except as otherwise provided under subsection (c) or
5 (d), the State shall indemnify, defend, and hold harmless an
6 owner of an irrigation system, dam, or reservoir for personal
7 injury or property damage caused by the owner's act or omission
8 if:

9 (1) The land use commission, after receipt of a petition
10 from the owner, designates all agricultural land owned
11 by the owner and irrigated by the irrigation system,
12 dam, or reservoir as "important agricultural land"
13 pursuant to chapter 205; and

14 (2) The attorney general, after consultation with the
15 chairperson of the board of agriculture, finds in
16 writing that the condition of paragraph (1) has been
17 met. The attorney general shall not unreasonably
18 delay making this finding after notification from the
19 owner or land use commission that the condition under
20 paragraph (1) has been met.

21 (c) Subsection (b) shall apply only as long as all of the
22 agricultural land designated as "important agricultural land"



1 pursuant to subsection (b)(1) remains in that designation,
2 whether or not the land or applicable irrigation system, dam, or
3 reservoir continues to be owned by the owner originally
4 indemnified.

5 The State shall not be responsible for indemnifying,
6 defending, or holding harmless any person when subsection (b) is
7 inapplicable. No express declaration to this effect from the
8 attorney general, any other state officer, or any court shall be
9 necessary to remove the State's responsibility as soon as the
10 "important agricultural land" designation is removed from any
11 parcel initially designated under subsection (b)(1).

12 (d) Subsection (b) shall not apply when personal injury or
13 property damage is determined by the attorney general to have
14 been caused by the gross negligence or wanton act or omission of
15 the owner of an irrigation system, dam, or reservoir. When the
16 attorney general makes such a finding, the State shall have no
17 duty to indemnify, defend, or hold harmless the owner for the
18 personal injury or property damage and the State shall have no
19 liability, jointly or severally, to any person or the owner for
20 the owner's act or omission or for the attorney general's
21 finding of inapplicability. The finding by the attorney general
22 shall be conclusive in any court action, except if a party shows



1 by the preponderance of the evidence that the finding resulted
2 from the attorney general's clear abuse of discretion or wilful
3 misconduct."

4 SECTION 3. New statutory material is underscored.

5 SECTION 4. This Act shall take effect upon its approval.

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INTRODUCED BY: _____

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Tom Bann
J. Phil. Huntington

JAN 15 2008



Report Title:

Important Agricultural Lands; State Indemnification; Irrigation Systems, Dams, and Reservoirs

Description:

Provides that the State indemnifies the owner of an irrigation system, dam, or reservoir for tort liability under certain conditions.

