

Honolulu, Hawaii

FEB 16 2007

RE: S.B. No. 1946
S.D. 1

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

Madam:

Your Committee on Water, Land, Agriculture, and Hawaiian Affairs, to which was referred S.B. No. 1946 entitled:

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

begs leave to report as follows:

The purpose of this measure is to ensure the safety and maintenance of dams and reservoirs by enhancing a program for monitoring the safety and enforcing the safety provisions of dams and reservoirs throughout the State.

Specifically, this measure adopts the statutory amendments proposed in the *Report of the Independent Civil Investigation of the March 14, 2006, Breach of Ka Loko Dam* submitted by the Special Deputy Attorney General appointed to investigate the dam breach, by:

- (1) Amending chapter 179D, Hawaii Revised Statutes, to enhance, broaden, balance, and clarify the provision under chapter 179D; and
- (2) Adding a new part to chapter 179D, Hawaii Revised Statutes, which establishes a dam and reservoir safety program, including a dam safety special fund to carry out the purposes of the program.

Testimony in support of this measure was submitted by the Department of Land and Natural Resources, the Department of the



Attorney General, and the Office of Hawaiian Affairs. Testimony in opposition to this measure was submitted by Kamehameha Schools.

The Kaloko Reservoir Dam collapsed on March 14, 2006, on the island of Kauai, resulting in the loss of seven lives, massive flooding, and extensive property damage. This tragic incident led to and generated concerns about the safety of Hawaii's dams and reservoirs, and questions regarding liability and the cause of this massive disaster.

The Special Deputy Attorney General Selection Committee was created under House Concurrent Resolution No. 192 (2006) to select a Special Deputy Attorney General to independently and impartially investigate the Kaloko Dam breach. The scope of the Special Deputy Attorney General's duties was limited to a civil investigation of the role and possible culpability of the State, the County of Kauai, the private landowners, and other parties. The Special Deputy was requested to submit a written report of his findings and recommendations, including any proposed legislation that could help prevent another similar tragedy from occurring, to the Legislature prior to the convening of the 2007 Regular Session.

A report was submitted to the Legislature in January 2007, which addressed the problems of the lack of maintenance and the absence of an emergency overflow at the Kaloko Dam. The report indicated that the lack of a spillway, which was filled in 1997, as well as other circumstantial evidence, was the likely cause of the dam overflowing. The report also indicated that the failure may have also been caused by internal erosion as a consequence of persistent seepage within the dam wall. Lastly, the report offered proposed amendments to chapter 179D, Hawaii Revised Statutes, and title 13, chapter 190, Hawaii Administrative Rules.

Your Committee finds that adopting the proposed legislation relating to dam and reservoir safety will enable the State to increase the effectiveness of its dam safety program under chapter 179D, Hawaii Revised Statutes, by strengthening the monitoring and enforcement measures that provide dam and reservoir safety throughout the State and creating a dam safety special fund to carry out the purposes of the program.

Your Committee has amended this measure to affect accountability by adopting several amendments suggested by the Department of Land and Natural Resources by:



- (1) Adding several definitions and deleting the definition for "dam rehabilitation loan program" under section 179-3, Hawaii Revised Statutes;
- (2) Providing a stiffer penalty for unlawful conduct under section 179D-5, Hawaii Revised Statutes, by replacing misdemeanor with a class C felony;
- (3) Expanding the powers and duties of the Board of Land and Natural Resources under section 179D-6, Hawaii Revised Statutes;
- (4) Deleting the provisions under section 179D-8, Hawaii Revised Statutes, and adding new language relating to violations, penalties, and fees under chapter 179D, Hawaii Revised Statutes;
- (5) Extending the start date in which the Department of Land and Natural Resources has to adopt the necessary rules to effectuate the purposes of chapter 179D, Hawaii Revised Statutes from February 1, 2007, to July 1, 2007;
- (6) Making amendments to the new part added to chapter 179D, Hawaii Revised Statutes, titled "Dam and Reservoir Safety" by:
 - (A) Clarifying that the State and its agents will be allowed entry upon property for the purposes of taking emergency remedial actions;
 - (B) Clarifying that the Department of Land and Natural Resources will provide coordination and assistance to the proper state or county agencies to maintain control of a dam or reservoir that has been determined to be dangerous to life or property until the danger is mitigated or abated;
 - (C) Strengthening and broadening the scope of provisions relating to the establishment and purposes of a Dam Safety Special Fund;
 - (D) Deleting the provisions that establish a dam rehabilitation loan program due to the Department of Land and Natural Resources' beliefs that the



loan program will draw necessary resources and focus away from the immediate priorities of the dam safety program;

- (E) Clarifying the types of information that are required to be included in the annual report submitted to the Legislature; and
 - (F) Adding a new section to the new part relating to the requirements and responsibilities of dam owners; and
- (7) Adding an appropriation amount of \$2,000,000 from the general fund to be deposited into the Dam Safety Special Fund;
 - (8) Adding an appropriation amount of \$2,000,000 to be expended by the Department of Land and Natural Resources from the dam safety special fund to carry out the purposes of the dam and reservoir safety program; and
 - (9) Making technical, nonsubstantive amendments for the purposes of style and consistency.

Your Committee believes that this measure, as amended, further ensures and emphasizes the safety and maintenance of dams and reservoirs, which fulfills the intent of this measure.

As affirmed by the record of votes of the members of your Committee on Water, Land, Agriculture, and Hawaiian Affairs that is attached to this report, your Committee is in accord with the intent and purpose of S.B. No. 1946, as amended herein, and recommends that it pass Second Reading in the form attached hereto as S.B. No. 1946, S.D. 1, and be referred to the Committee on Ways and Means.



Respectfully submitted on
behalf of the members of the
Committee on Water, Land,
Agriculture, and Hawaiian
Affairs,



RUSSELL S. KOKUBUN, Chair



The Senate
 Twenty-Fourth Legislature
 State of Hawaii

Record of Votes
Committee on Water, Land, Agriculture and Hawaiian Affairs
WAH

Bill / Resolution No.:* <i>S.B. 1946</i>	Committee Referral: <i>WAH, WAM</i>	Date: <i>2/12/07</i>		
<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
KOKUBUN, Russell S. (C)	/			/
TOKUDA, Jill N. (VC)				/
FUKUNAGA, Carol	/			
HEE, Clayton	/			
SLOM, Sam	/			
TOTAL	<i>4</i>			<i>1</i>
Recommendation: <input checked="" type="checkbox"/> Adopted <input type="checkbox"/> Not Adopted				
Chair's or Designee's Signature: <i>[Signature]</i>				
Distribution: Original Yellow Pink File with Committee Report Clerk's Office Drafting Agency				

*Only one measure per Record of Votes