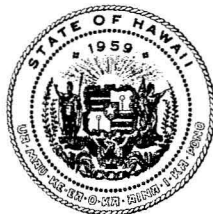
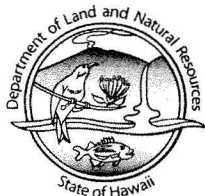


LINDA LINGLE
GOVERNOR OF HAWAII



**STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES**

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

LAURA H. THIELEN
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

RUSSELL Y. TSUJI
FIRST DEPUTY

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AQUATIC RESOURCES
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CONSERVATION AND RESOURCES ENFORCEMENT
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FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

**TESTIMONY OF THE CHAIRPERSON
OF THE BOARD OF LAND AND NATURAL RESOURCES**

on House Bill 2823—Relating To Dam Safety

**BEFORE THE HOUSE COMMITTEE
ON**

WATER, LAND, OCEAN RESOURCES & HAWAIIAN AFFAIRS

February 4, 2008

House Bill 2823 amends Chapter 179D, Hawaii Revised Statutes, by adding a new Part relating to Limitations on Liability which limits personal injury or property damage liability for any entity or person that owns, controls or operates a dam or reservoir and allows for immunity from liability for stockholders, directors and officers of a corporation that owns, operates or controls a dam or reservoir. The Department of Land and Natural Resources (Department) is strongly opposed to the limiting or waiving of liability for dams that are solely or corporately owned by an entity, stockholders or individuals that operate the dam for profit or other beneficial purposes as the Department believes that doing so will reduce the effectiveness of the Hawaii Dam Safety Program and decrease the importance and funding provided for improvements, repairs, and maintenance necessary for aging dams in the State.

This bill could affect 99 of the 136 state regulated dams that are operated by entities other than government or non-profit organizations. Of these 99 dams, 90 have a proposed high hazard classification and may affect over 21,000 persons and almost 120 critical facilities if they should fail.

The limiting liability of owners may lead to owners placing a lower priority on maintenance and improvements necessary for the safe and efficient operation of their dams and reservoirs. Owners may be willing to put up money for maintenance but not on capital improvements or substantial improvements for deferred maintenance expenses. Due to the age of the dams in the State, on-going maintenance, monitoring and repairs are needed to safeguard against typical embankment dam failures.

House Bill 2823 also provides for a limitation on liability if the owner holds a valid liability insurance policy or adequate substitution for insurance at a time that damage occurs. The Department is unclear what impact this will have on the recourse options available for downstream homeowners of a dam facility should there be an incident at the dam that causes flooding and damage to property.



2343 Rose Street, Honolulu, HI 96819
PH: (808)848-2074; Fax: (808) 848-1921

FEBRUARY 4, 2008

HEARING BEFORE THE
HOUSE COMMITTEE ON WATER, LAND, OCEAN RESOURCES AND HAWAIIAN
AFFAIRS

TESTIMONY
HB 2823 RELATING TO DAM SAFETY

Chair Ito and Committee Members:

My name is Alan Takemoto, Executive Director, of the Hawaii Farm Bureau Federation, which is the largest non-profit general agriculture organization representing approximately 1,600 farm and ranch family members statewide.

The Hawaii Farm Bureau Federation, on behalf of its member farmers, ranchers and agricultural organizations **strongly SUPPORTS HB 2823**, which establishes limitations on liability for damages for owners of dams and reservoirs.

Affordable water supplies for agricultural use is largely dependent upon rainfall. The sporadic pattern of Hawaii's rainfall requires that water during heavy rainfall periods be stored in reservoirs (dams) for use during drier times. There are many existing reservoirs and as there is conflict for existing uses, new sources of agricultural water will probably need to be reservoir (dam) dependent. The tragedy at Kaloko has highlighted the risks associated with dams raising issue of liability with landowners. There are threats of closing existing reservoirs or raising lease rents to address liability costs. Either measure will be detrimental to agriculture.

HFBF strongly believes agriculture exists for public benefit. Everyone consumes or uses agricultural products. Successful agriculture is critical to increasing Hawaii's self sufficiency to help us withstand crisis such as 9-11. When crisis hit, it is too late to plant a field or start raising livestock. We therefore believe that it is in the interest of the State to encourage landowners and farmers to install and maintain irrigation infrastructure necessary to grow crops and raise livestock. Indemnity from liability assuming good maintenance practices are carried out is a reasonable policy statement by the State to encourage this investment. This measure will limit the liability a landowner or farmer has if reasonable steps in securing their facilities.

We respectfully urge passage of HB 2823. Thank you.