



KAMEHAMEHA SCHOOLS

February 4, 2008

The Honorable Ken Ito Chair and Members
Committee on Water, Land, Ocean Resources and Hawaiian Affairs
The House of Representatives
Hawaii State Capitol
415 South Beretania Street, Room 312
Honolulu, Hawaii 96813

Dear Chair Ito and Members:

Testimony in Support of House Bill No 2823 Relating to Dam Safety

I am Kapu C. Smith, Senior Land Asset Manager for Kamehameha Schools' Kawaihoa Plantation in Waialua, Oahu. I am here to testify in support of HB2823 because it recognizes that continued operation and maintenance of irrigation systems, dams and reservoirs that deliver water for agricultural use are essential to "important agricultural land" (IAL). In fact, you can't have one without the other. As such, landowners statewide need to be provided incentives which encourage the retention and expansion of these systems. This bill is a start in the right direction. However, we would like to suggest a fresh look at some of the other changes proposed to assist landowners during last session in regard to HB1905.

Thank you for the opportunity to express our views on this matter.

HAWAII FARM BUREAU FEDERATION
2343 ROSE STREET
HONOLULU, HI 96819

JANUARY 30, 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.

Hawaii Farm Bureau Federation, on behalf of its member farmers, ranchers and agricultural organizations **strongly SUPPORT HB2823 with amendments**, providing indemnity protection to landowners and farmers who own and run irrigation infrastructure including dams using good management practices.

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.

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HB2823 contains the language that will address the concern. Associated irrigation infrastructure to the dams was inadvertently left out. Having dams but no transmission systems does not make sense. Therefore, we would like to request an amendment to add language that would include transmission system or irrigation systems associated with the dams or reservoir in this measure.

Thank you.



Maui County Farm Bureau

*An Affiliate of the American Farm Bureau Federation and Hawaii Farm Bureau Federation
Serving Maui's Farmers and Ranchers*

JANUARY 30, 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 Warren Watanabe, Executive Director of the Maui County Farm Bureau, a non-profit general agriculture organization and an affiliate of the Hawaii Farm Bureau Federation.

Maui County Farm Bureau, on behalf of its member farmers, ranchers and agricultural organizations **strongly SUPPORT HB2823 with changes**, providing indemnity protection to landowners and farmers who own and run irrigation infrastructure including dams using good management practices.

The waters used by Maui farmers and ranchers originate in watersheds. The major source used by those on the Upper Kula line is from a reservoir mainly filled during storm events. There are often long periods without rainfall and if not for the reservoirs we would have no water. Continued years of droughts and competing uses for water leave farmers dry. Maui County has been extremely supportive of the small farmer and rancher, excluding them from water restrictions even during times of drought. However, farmers often voluntarily do not plant during the summer since they know that water supplies are limited and unrestricted use may end up hurting the entire community if supplies run out before the next rainfall event. We are therefore looking at increasing storage capacity for the systems. Liabilities associated with having reservoirs or irrigation infrastructure transecting their lands may make landowners reluctant to be part of this process. This Bill is important not only for existing structures but to encourage future development. As recommended by the Hawaii Farm Bureau, a reservoir without the associated transmission systems is useless. We therefore request an amendment to include the transmission systems associated with the reservoirs.

We therefore, respectfully request an amendment as recommended by HFBF and passage of this Bill. Thank you.

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**TESTIMONY OF ROBERT TOYOFUKU ON BEHALF OF THE CONSUMER
LAWYERS OF HAWAII (CLH) IN OPPOSITION TO H.B. NO. 2823 RELATING TO
DAM SAFETY**

February 4, 2008

To: Chairman Ken Ito and Members of the House Committee on Water, Land, Ocean and Hawaiian Affairs:

My name is Bob Toyofuku and I am presenting this testimony on behalf of the Consumer Lawyers of Hawaii (CLH) in strong opposition to H.B. No. 2823.

This bill provides immunity for owners and operators of dams or reservoirs. Immunity is a measure that should be utilized as a last resort when there are no other reasonable alternatives available. This is because immunity removes accountability and incentive to protect the public safety while arbitrarily eliminating fair and reasonable redress for those harmed by negligent conduct. Large dams have the potential to inflict large damages to people and property below them. Therefore the law should strive to encourage maximum efforts to safely maintain and operate dams and reservoirs to avoid unnecessary death and destruction to innocent persons and property. This measure removes an important incentive to safely operate and maintain dams and reservoirs to avoid liability for inadequate maintenance that cause dam or reservoir failures that imperil the lives and property of those below them.

If limitations on liability are to be afforded dam owners and operators, then the requirement that only those exercising proper maintenance and are not themselves negligent should be afforded the protections provided in this bill. Currently, the requirement that the dam owner be free of negligence applies only to a failure of the structure forming the dam and not to other modes of dam failure that may very well be caused by the negligence of the owner or operator of the dam. Subsection B should be reworded so that the phrase "provided that the

failure or partial failure was not proximately caused by the negligence of the entity or person,” apply to both Subsections (1) & (2). That same condition that an owner or operator of a dam must not be negligent in order to obtain the protections of his bill should also apply to Subsection (b) relating to waters that flow into the dam or pass through it into a natural stream below.

Subsection C currently provides insurance requirements, that if met, would provide immunity to owners and operators of dams or reservoirs. If an insurance (or financial responsibility) alternative to traditional liability is to be utilized, the insurance requirement should fit the circumstances of the dam or reservoir. It is one thing for a small reservoir located in a sparsely populated agricultural environment run by a non profit community organization to be protected by an insurance policy with \$50,000 per claim/\$500,000 per incident policy limits. It is another thing for a major municipal operator such as the Honolulu Board of Water Supply to carry such a small insurance policy for large reservoirs containing a billion gallons or more that have the potential to kill thousands of people and destroy hundreds of millions of dollars of property. The Nuuanu Reservoir can hold more than one billion gallons of water behind a 96-year old dam built of dirt. A failure of that dam could wreak havoc from Nuuanu through downtown Honolulu. There are many other large dams situated above highly populated areas, while there are many smaller dams used for agricultural purposes in sparsely populated areas. Insurance requirements should be tailored to reflect the danger posed by the dam and commensurate with the risks involved. A measure like this should apply only to small operators of agricultural dams and not municipal or large operators who have the ability to properly maintain their dams.

Subsection D provides that the liability limitations of this bill shall not apply to circumstances constituting criminal, fraudulent or malicious acts or omissions. It is suggested that gross negligence, intentional, willful, wanton, or conduct in reckless disregard of safety be added to include the types of egregious conduct normally excluded from protection.

CLH appreciates this opportunity to testify on this measure and asks that the bill be held or amended as discussed above.