

# HB 744 HD1

## RELATING TO DAM SAFETY.

Establishes a dam safety task force to recommend safety actions to be included in the Hawaii dam safety program. Sunsets on June 30, 2012. Effective July 1, 2030. (HB744 HD1)

NEIL ABERCROMBIE  
GOVERNOR OF HAWAII



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

POST OFFICE BOX 621  
HONOLULU, HAWAII 96809

**Testimony of  
WILLIAM J. AILA, JR.  
Chairperson**

**Before the Senate Committee on  
WATER, LAND AND HOUSING**

**Thursday, March 17, 2011  
1:15 PM  
State Capitol, Conference Room 225**

**In consideration of  
HOUSE BILL 744, HOUSE DRAFT 1  
RELATING TO DAM SAFETY**

House Bill 744, House Draft 1 establishes a dam safety task force to a) Review existing state laws, administrative rules, and county ordinances, and 2) Recommend actions the Department of Land and Natural Resources' (Department) Engineering Division should take in carrying out the Dam Safety Program. The Task Force is to report its finding and recommendations and any proposed legislation to the Legislature prior to the 2012 Regular Session. The Task Force terminates on June 30, 2012.

The Department **does NOT** support House Bill 744, House Draft 1 for the following reasons:

1. This bill proposes work that duplicates the work that has just been done by the Department over the past four years in response to the 2006 Kaloko Dam breach.
2. The Hawaii Dam and Reservoir Safety Act of 2007 (Chapter 179D, Hawaii Revised Statutes (HRS)) and a significant portion of the proposed administrative rules were based on an independent Department of the Attorney General's report (by Robert Godbey) commissioned by the 2007 Legislature after the 2006 Kaloko Dam event that killed seven (7) people and prompted a change to the dam safety laws. The present law is a result of the recommendations in that report which was based on a study of model dam safety laws in 48 other states, and discussions with the United States Army Corps of Engineers, the Association of State Dam Safety Officials, and the Federal Emergency Management Agency (FEMA).
3. Any change in the existing statute should be evaluated against these national considerations. New revisions inconsistent with the considered judgment of national

**WILLIAM J. AILA, JR.**  
CHAIRPERSON  
BOARD OF LAND AND NATURAL RESOURCES  
COMMISSION ON WATER RESOURCE MANAGEMENT

**GUY H. KAULUKUKUI**  
FIRST DEPUTY

**WILLIAM M. TAM**  
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES  
BOATING AND OCEAN RECREATION  
BUREAU OF CONVEYANCES  
COMMISSION ON WATER RESOURCE MANAGEMENT  
CONSERVATION AND COASTAL LANDS  
CONSERVATION AND RESOURCES ENFORCEMENT  
ENGINEERING  
FORESTRY AND WILDLIFE  
HISTORIC PRESERVATION  
KAHOOLAWE ISLAND RESERVE COMMISSION  
LAND  
STATE PARKS

experience would be bad for dam safety and contrary to the key purpose of the 2007 Act to protect public safety and minimize the risk of a dam failure.

4. The proposed Task Force includes members from agriculture, water resources, and ranching, whose competing private interests are often at odds with dam safety requirements and whose priorities and recommendations often conflict with overriding public safety mandates. The Task Force members may not represent all users or beneficiaries of dams, reservoirs, and their resources and, in fact, do not include members with experience in the dam safety field.
5. The bill's intent and authority is confused. The Task Force is administered by the Department, yet the Task Force's recommendations may not represent the Department's judgment or fiduciary duty regarding dam safety.
6. The proposed work repeats the analysis the Department just spent four years doing on the assumption that the careful study just completed is wrong
7. The Department is in ongoing informal conversations with landowners, some members of the Hawaii Farm Bureau, the Department of Agriculture, the Hawaii Cattleman's Association, and other users about the actual implementation of the proposed administrative rules to address procedural, timing, and cost issues. These matters should be addressed shortly.
8. The bill provides no funding for the Task Force yet imposes new tasks that can only be undertaken by diverting existing work and funds from the Department's Dam Safety Program.
9. The Department has no authority over county ordinances.
10. The Board of Land and Natural Resources, not the Engineering Division, oversees and issues permits under the Dam Safety Program.



March 17, 2011

Senator Donovan M. Dela Cruz, Chair and Senator Malama Solomon, Vice Chair  
Senate Committee on Water, Land and Housing

**Support for HB 744, HD 1, Relating to Dam Safety; Dam Safety Task Force**

**Thursday, March 17, 2011 at 1:15 p.m. in CR 225**

My name is Dave Arakawa, and I am the Executive Director of the Land Use Research Foundation of Hawaii (LURF), a private, non-profit research and trade association whose members include major Hawaii landowners, developers and a utility company. One of LURF's missions is to advocate for reasonable, rational and equitable land use planning, legislation and regulations that encourage well-planned economic growth and development, while safeguarding Hawaii's significant natural and cultural resources and public health and safety.

LURF appreciates the opportunity to provide our testimony **in support of HB 744, HD 1**, which establishes a dam safety task force (Task Force) to recommend safety actions to be included in the Hawaii dam safety program.

**HB 744, HD 1.** This bill establishes a Task Force which shall consist of members including various agricultural stakeholders representing the public and private sectors, as well as persons with specialized knowledge and experience in water resource management and engineering. The Task Force shall be placed within the State Department of Land and Natural Resources (DLNR) for administrative purposes only. The role and responsibility of the Task Force shall be to review applicable laws, rules and ordinances, and recommend actions to be taken by the DLNR in its administration of the Hawaii dam safety program.

**LURF's Position.** Dams and reservoirs are recognized as critical to the conduct of agricultural operations and businesses, as well as for the facilities' vital contributions to the community such as providing drinking water, renewable energy, and flood control – all of which are significant functions, tied to public safety.

LURF strongly supports the establishment of the Task Force and respectfully suggests that it be considered for inclusion in the Task Force and named as a Task Force member in HB 744, HD 1, based on the following:

- Over the past seven years, LURF has worked closely with the Board of Agriculture, the Hawaii Cattlemen's Council and the Hawaii Farm Bureau Federation (which organizations are or may be proposed by the bill to appoint representatives as members of the Task Force), and was instrumental in passing the Important Agricultural Lands (IAL) law.
- LURF represents numerous large agricultural land owners who have many dams and reservoirs located on their properties.

- LURF actively and consistently participated, commented and testified at the DLNR hearings regarding dam safety rules and regulations.
- LURF is qualified to undertake and accomplish the responsibilities of the Task Force, including review of applicable state laws, administrative rules and ordinances, and recommendation of actions to be taken, including legislation.

Given its extensive experience and involvement with agricultural lands and organizations, as well as the IAL laws, LURF possesses the qualifications and experience to identify and address safety concerns and other issues relating to agricultural irrigation water systems necessary to promote agricultural production, including dams and reservoirs, and would appreciate the opportunity to be included as a member of the dam safety task force.

LURF is in **support of HB 744, HD 1**, and respectfully urges your favorable consideration of its request to be a member of the Task Force.

Thank you for the opportunity to present testimony regarding this matter.

TESTIMONY OF DAVID TARNAS  
IN SUPPORT OF HB 744 HD1: RELATING TO DAM SAFETY  
HEARING BEFORE THE SENATE COMMITTEE ON WATER, LAND, AND HOUSING  
THURSDAY, MARCH 17, 2011 AT 1:15 PM IN  
CONFERENCE ROOM 415

Aloha,

My name is David Tarnas and I assist the owners of Hualua Land LLC in developing an agricultural park in North Kohala. There is an old reservoir (Hawi No. 5 Reservoir) located in the middle of a large area of pasture, partially on land owned by Hualua Land LLC and partially on land owned by Hawaii Department of Agriculture. This reservoir was used by the former Kohala Sugar Company, abandoned in the mid-1970s when the plantation shut down, and has not been used since. Cows graze in the reservoir, which is now pasture since it hasn't had water in it for over thirty years. There are no homes or structures around, and yet the reservoir has been deemed "HIGH RISK" by the DLNR Dam Safety Office.

Under the new rules proposed by DLNR, the reservoir owners are being faced with substantial costs and requirements that are not realistic for such an abandoned reservoir. I hope that the Governor does not sign the pending regulations at this time, and instead waits for the recommendations of the task force this bill would create.

I support HB 744 HD1 and strongly encourage the committee to pass the bill so that a dam safety task force can look at the situation of these old reservoirs in the state and figure out a reasonable way for the owners to proceed that still protects public safety, but is not unduly burdensome to the reservoir owners.

Thank you for your consideration.

David Tarnas  
Hoea Agricultural Park  
Hawi, Hawaii



## Hawaii Cattlemen's Council, Inc.

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SENATE COMMITTEE ON WATER LAND AND HOUSING  
Tuesday March 17, 2011 1:15 p.m. Room 225

### HB 744 HD1 RELATING TO DAM SAFETY.

Establishes a dam safety task force to recommend safety actions to be included in the Hawaii dam safety program. Sunsets 6/30/12.

Chairman Dela Cruz, Vice Chair Solomon and Members of the Committee:

My name is Alan Gottlieb, and I am a rancher and the Government Affairs Chair for the Hawaii Cattlemen's Council. The Hawaii Cattlemen's Council, Inc. (HCC) is the Statewide umbrella organization comprised of the five county level Cattlemen's Associations. Our 130+ member ranchers represent over 60,000 head of beef cows; more than 75% of all the beef cows in the State. Ranchers are the stewards of approximately 25% of the State's total land mass.

The Hawaii Cattlemen's Council **strongly supports HB 744 HD1.**

After the tragedy at Kaloko, this legislature passed new laws to improve the safety of our State's Dams and Reservoirs. Late last year, the Board of Land & Natural Resources approved new regulations which in part requires dam and reservoir owners to do extensive engineering studies and requires significant upgrades to dams and reservoirs built in the past under best management practices (many over engineered by plantations) and requiring that they be brought up to current engineering standards. No one argues that public safety should be taken lightly, and we agree that protection of life and property be the first priority. While we might argue that many of these dams and reservoirs have met the safety "test of time", some regulators argue that the passage of time has made them unsafe. As an analogy, what would happen if we required all buildings in downtown Honolulu to be retrofitted to today's building standards to withstand a large earthquake, for the safety of the public. Of course that would be impractical and impossible, but this is what is being asked of our State's Dams and Reservoirs. Furthermore the new rules and regs use a "one size fits all" mentality, imposing on dams that barely exceed the regulatory threshold the same requirements as for the largest dams in our State (in some cases over 250 times the size).

As an example, a major part of the concern in the Dam Safety Office specifications is overfilling during a major storm event, which could lead to a dam failing. What the regulations fail to consider is that some of the reservoirs which would be regulated due to the overfilling concern are filled by a pipe, which can be turned off during a storm event. In these cases, storm waters cannot in significant quantity overfill the reservoir.

We do not believe that the intent of the Dam and Reservoir safety law is to put farmers and ranchers out of business or to encourage them to decommission existing water resources. We believe these new rules and fees would lead to the closure of many dams and reservoirs, the opposite of what we need in this State if we want to increase our agricultural self sufficiency and improve our food security.

Thank you for giving me the opportunity to testify in favor of this very important issue.

**From:** [mailinglist@capitol.hawaii.gov](mailto:mailinglist@capitol.hawaii.gov)  
**To:** [WLH Testimony](#)  
**Cc:** [tpckahua@aol.com](mailto:tpckahua@aol.com)  
**Subject:** Testimony for HB744 on 3/17/2011 1:15:00 PM  
**Date:** Thursday, March 17, 2011 6:41:22 AM

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Testimony for WLH 3/17/2011 1:15:00 PM **HB744**

Conference room: 225  
Testifier position: **support**  
Testifier will be present: No  
Submitted by: Herbert M &quot;Tim&quot; Richards III DVM  
Organization: Hawaii Cattlemen's Council  
Address:  
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Submitted on: 3/17/2011

Comments:  
SENATE COMMITTEE ON WATER LAND AND HOUSING  
Tuesday March 17, 2011 1:15 p.m. Room 225  
HB 744 HD1 RELATING TO DAM SAFETY.

Establishes a dam safety task force to recommend safety actions to be included in the Hawaii dam safety program. Sunsets 6/30/12.

Chairman Dela Cruz, Vice Chair Solomon and Members of the Committee:

My name is Dr Tim Richards, and I am a rancher, livestock veterinarian, and the President for the Hawaii Cattlemen's Council. The Hawaii Cattlemen's Council, Inc. (HCC) is the Statewide umbrella organization comprised of the five county level Cattlemen's Associations. Our 130+ member ranchers represent over 60,000 head of beef cows; more than 75% of all the beef cows in the State. Ranchers are the stewards of approximately 25% of the State's total land mass.

The Hawaii Cattlemen's Council strongly supports HB 744 HD1.



**HB 744 HD1**  
**RELATING TO DAM SAFETY**

**PAUL OSHIRO**  
**MANAGER – GOVERNMENT RELATIONS**  
**ALEXANDER & BALDWIN, INC.**

**MARCH 17, 2011**

Chair Dela Cruz and Members of the Senate Committee on Water, Land & Housing:

I am Paul Oshiro, testifying on behalf of Alexander & Baldwin, Inc. (A&B), Hawaiian Commercial & Sugar Company (a division of A&B) and Kauai Coffee Company (a subsidiary of A&B), on HB 744 HD1, "A BILL FOR AN ACT RELATING TO DAM SAFETY."

Alexander & Baldwin and its agricultural companies Hawaiian Commercial & Sugar Company (HC&S) and Kauai Coffee Company, have 18 regulated reservoirs on Kauai and 30 on Maui, the majority of which are in active use by HC&S and Kauai Coffee Company. Because these dams and reservoirs are a vital part of our agricultural operations, they are operated, monitored, and maintained on an on-going basis. These facilities enable the storage of water so that HC&S and Kauai Coffee can better weather periods of drought. These facilities also enable us to make optimum use of water resources—by capturing waters during heavy rainfall periods, less has to be used from surface water sources and wells during other times. They are absolutely integral to our ability to continue to keep tens of thousands of acres in agriculture in this state.

In addition to serving as a valuable water resource for Hawaii's agricultural industry, dams and reservoirs also provide several other significant benefits to the

general public. Many of these facilities also provide drinking water for residential communities, renewable energy by way of hydropower, and flood control and drainage for public safety.

This bill establishes a Dam Safety Task Force to review applicable State Laws, Administrative Rules, and County Ordinances and recommend actions to be taken by DLNR in its administration of the Hawaii Dam Safety Program. We welcome the opportunity to participate in the work of this task force on this very important topic.

Thank you for the opportunity to testify.

**From:** [Stephen Bowles](#)  
**To:** [WLH Testimony](#)  
**Subject:** HB 744-HD1 hearing on 3-17-11  
**Date:** Wednesday, March 16, 2011 3:01:24 PM

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Senators,

My name Stephen Bowles, President of Island Resources, Ltd. I am submitting favorable testimony in support of HB 744-HD1. It is important that impacted stakeholders be involved and have direct word on the outcome of the Dam Safety issues. I submitted favorable testimony to the House during initial drafting of the HB 744. I want to continue my support of this process. Our focus should be on the hazards of human health and safety. Such decisions should be made with full recognition of the potential economic impacts of our agricultural enterprises now and in the future. None of us can afford to build new facilities on the order of the former sugar companies and we should aggressively protect such structures if not for today, certainly for tomorrow. Local zoning can and should be engaged in the aspects of human hazard downstream from such facilities. Please vote in favor of establishing a dam review commission