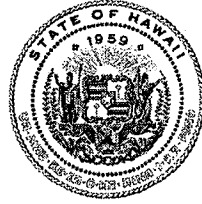
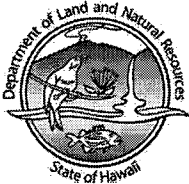


HB 744

HD1, SD1

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
WAYS AND MEANS**

**Friday, April 01, 2011
9:00 AM
State Capitol, Conference Room 211**

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

House Bill 744, House Draft 2: (1) Provides that certain dams and related reservoirs designated as important agricultural lands shall be included in the total area calculation for important agricultural lands and (2) Establishes a dam safety task force to review existing state laws, administrative rules, and county ordinances, and 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 strenuously opposes any unfunded mandate, duplication of effort, and any distraction from its core public management. Given the budgetary cuts the Department has endured and further cuts anticipated due to the current fiscal climate, the Department's formal participation in a task force will negatively impact the Dam Safety Program by drawing resources away from its core function and mandate to protect public health and safety in accordance with Chapter 179D, Hawaii Revised Statutes (HRS). Because this measure identifies other state departments to participate on the task force, the Department defers to those agencies on the impacts to their programs and resources.

The Department also does NOT support House Bill 744, House Draft 1, Senate Draft 1 and offers the following reasons and clarifications:

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.

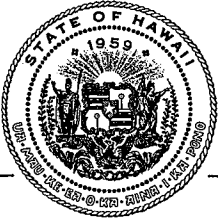
WILLIAM J. AILA, JR.
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

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

2. The Hawaii Dam and Reservoir Safety Act of 2007 (Chapter 179D, 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 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 specifies that members shall be reimbursed for certain expenses, however does not provide an appropriation for this. The bill also imposes new tasks for the Dam Safety Program that can only be undertaken by diverting attention away from existing work and creating additional funding expenses for the Program which currently cannot support this without any negative impacts.
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.



**DEPARTMENT OF BUSINESS,
ECONOMIC DEVELOPMENT & TOURISM**

NEIL ABERCROMBIE
GOVERNOR
RICHARD C. LIM
DIRECTOR
JESSE K. SOUKI
INTERIM DIRECTOR
OFFICE OF PLANNING

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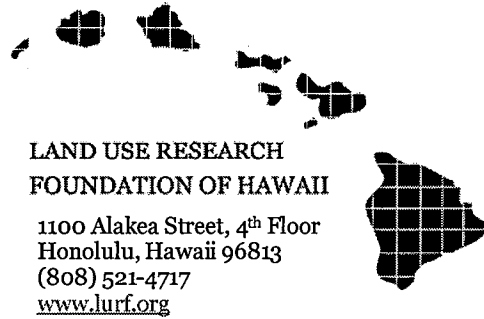
Statement of
JESSE K. SOUKI
Interim Director, Office of Planning
Department of Business, Economic Development, and Tourism
before the
SENATE COMMITTEE ON WAYS AND MEANS
Friday, April 1, 2011
9:00 AM
State Capitol, Conference Room 211

in consideration of
HB 744, HD1, SD1
RELATING TO DAM SAFETY.

Chair Ige, Vice Chair Kidani, and Members of the Senate Committee on Ways and Means.

HB 744, HD1, SD1, requests that the Legislature amend Hawaii Revised Statutes Chapter 205 by creating a new section to allow dams and related reservoir areas designated as important agricultural lands (IAL) that support cultivation of crops, game and fish propagation, or commercial animal production to be included in the total acreage calculation for important agricultural lands, but not included in the 85/15 percent acreage calculation for a declaratory order to designate lands into the state urban, rural or conservation district. If adopted, this bill will help to clarify when a dam and related reservoir should be allowed in IAL.

The Office Planning has no objections to the proposed amendment. Thank you for the opportunity to offer these comments.



March 30, 2011

Senator David Y. Ige, Chair and Senator Michelle N. Kidani, Vice Chair
Senate Committee on Ways and Means

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

Friday, April 1, 2011 at 9:00 a.m. in CR 211

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.

HB 744, HD 1, SD 1. This bill proposes to include dams and reservoirs designated as Important Agricultural Lands (IAL) in the calculation of "total acreage" for IAL, and to qualify such dams and reservoirs for incentives pursuant to Hawaii Revised Statutes (HRS), Section 205-46. The bill also establishes a dam safety task force (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. LURF supports HB 744, HD 1, SD 1, because it is consistent with the spirit, intent and principles of the IAL laws; proposes amendments and additions to the existing law to support agriculture and assist agriculture-related businesses; and provides mechanisms through which the IAL laws may be implemented.

The IAL laws were enacted to fulfill the mandate in Article XI, Section 3 of the Hawaii State Constitution, "to conserve and protect agricultural lands, promote diversified agriculture, increase agricultural self-sufficiency and assure the availability of agriculturally suitable lands." The "new paradigm" established by the IAL laws avoids requirements and mandates, and instead focuses on promoting agricultural viability by providing incentives for farmers and landowners to designate lands as IAL, and to build necessary infrastructure.

Local farmers and agricultural stakeholders are consequently relying on the legislature and State agencies to assist them through efforts, including implementing mechanisms, which will allow them to utilize the IAL laws to continue working toward expansion of diversified agriculture; promoting the agricultural self-sufficiency of the State; and protecting water as a vitally important resource, including and incorporating dams and reservoirs.

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 also 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, SD 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 IAL laws.
- 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.

Conclusion. LURF strongly supports legislation intended to further the underlying spirit and principles of the IAL laws, including this bill, which amends and expands the existing laws to support agriculture, including dams and reservoirs, and to aid agriculture-related businesses.

Based on the above, LURF respectfully urges this Committee's **favorable consideration of HB 744, HD 1, SD 1**, including its request to be included as a member of the Task Force.

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

**HB 744 SD1
RELATING TO DAM SAFETY**

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

APRIL 1, 2011

Chair Ige and Members of the Senate Committee on Ways & Means:

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 SD1, "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.



Hawaii Farm Bureau
F E D E R A T I O N

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April 1, 2011

HEARING BEFORE THE
SENATE COMMITTEE ON WAYS AND MEANS

TESTIMONY ON HB 744 HD 1 SD1
RELATING TO DAM SAFETY

Room 211
9:00 AM

Aloha Chair Ige, Vice Chair Kidani and Members of the Committee:

Hawaii Farm Bureau Federation, representing approximately 1,600 farm and ranch family members statewide, **supports HB 744 HD1 which establishes a Dam Safety Task Force.**

Dams and reservoirs are critically important infrastructure to agriculture and the general public across the state. Moreover, we are cognizant of the duty of Government to uphold public safety.

Agriculture cannot exist without water. Climatic influences, both long and short term, drive the need for diversion and storage of water. These resources are critical to food security and overall sustainability of our island state.

The cost to construct, operate and maintain structures and to comply with Dam and Reservoir Safety Rules will invariably be passed to consumers and should be gauged carefully by policy makers. As the cost to produce food locally increases, our ability to compete with less expensive imports decreases. If compliance with said rules drives local producers out of the marketplace, the dependence on imported goods increases, and the sustainability structure erodes to the point of collapse. The importance of this delicate balance cannot be understated. If we are ever to achieve food security, cost of production must be kept low in order to compete and reduce dependence on imported food products.

The Task Force proposed by HB 744 HD1 would create a structure in which public and private stakeholders can collaborate, evaluate impacts, and make recommendations to policy makers. So important is this issue that public and private stakeholders have already begun meeting.

We also ask you to support measures that would appropriate funds to DLNR for the purpose of implementing the state's Dam and Reservoir Safety program and help fund the cost of compliance for owners and operators.

Thank you.

Chris Manfredi
Vice President
Chairperson, Government Affairs

TESTIMONY OF DAVID TARNAS
IN SUPPORT OF HB 744 HD1 SD1: RELATING TO DAM SAFETY
HEARING BEFORE THE SENATE COMMITTEE ON WAY AND MEANS
FRIDAY, APRIL 1, 2011 AT 9:00 AM IN
CONFERENCE ROOM 211

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 SD1 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