

JOSH GREEN, M.D.
GOVERNOR | KE KIA'ĀINA

SYLVIA LUKE
LIEUTENANT GOVERNOR | KA HOPE KIA'ĀINA



STATE OF HAWAII | KA MOKU'ĀINA 'O HAWAII'
DEPARTMENT OF LAND AND NATURAL RESOURCES
KA 'OIHANA KUMUWAIWAI 'ĀINA

P.O. BOX 621
HONOLULU, HAWAII 96809

DAWN N.S. CHANG
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE
MANAGEMENT

RYAN K.P. KANAKA'OLE
FIRST DEPUTY

DEAN D. UYENO
ACTING 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

Testimony of
DAWN N.S. CHANG
Chairperson

Before the Senate Committees on
COMMERCE AND CONSUMER PROTECTION
and
WATER AND LAND

Thursday, February 15, 2024
9:30 AM
State Capitol, Conference Room 229

In consideration of
SENATE BILL 3258
RELATING TO DAM AND RESERVOIR SAFETY

Senate Bill 3258 proposes to amend the Dam and Reservoir Safety Law and require the Department of Land and Natural Resources (Department) to: (1) consider certain insurance coverage in conducting dam safety inspections; (2) relax any restrictions and stringent standards on a dam or appurtenance upon verification of certain insurance coverage; and (3) assume that a dam, reservoir, or appurtenance is safe absent certain documents. This measure also places the burden of proof on the Department to find that a dam, reservoir or appurtenance is high risk and also establishes additional requirements for the Dam and Appurtenance Improvement or Removal Grant Program. **The Department of Land and Natural Resources (Department) opposes this measure and offers amendments.**

In response to the deadly Ka Loko dam failure in 2006 that killed seven people on Kaua'i, the Legislature passed the Hawai'i Dam and Reservoir Safety Act (Act 262, SLH 2007). The purpose of this law was to increase the safety and effectiveness of dams and reservoirs and prevent future dam failures while enabling the State to increase the effectiveness of its dam safety program, by strengthening the monitoring and enforcement measures that provide dam and reservoir safety.¹ Furthermore, this law was based on recommendations from the Department of the Attorney General's Independent Civil Investigation of the Ka Loko dam breach and are consistent with national dam safety laws and standards. It is evident from the history of this law, the Legislature took a balanced approach in focusing the Department's monitoring and enforcement effort on dams that pose a high

¹ 2007 House Journal, Conference Committee Report 107 (pp.1811-1812)

risk.² Any amendment to this law that relaxes the dam safety regulations is contrary to the Legislature's intent and could compromise the safety of Hawai'i's dam and reservoirs, increase the threat to life and property, and expose the State to additional liability.

This measure shifts the burden of proof to the Department to assume a dam is safe and also requires the Department to relax restrictions and stringent standards if a dam owner can provide proof of insurance coverage to reclassify the hazard and risk associated with their dam. This measure also proposes that an insurance policy be considered in the risk assessment of a dam.

In 2016, the Department partnered with qualified experts at the Pacific Disaster Center and University of Hawai'i to prepare hazard assessment reports, which modeled and mapped a dam failure's downstream inundation zone. The findings of these reports concluded more than nine out of ten dam failures in Hawaii would result in probable loss of human life. Since these studies and hazard assessment reports have already been developed using the best available information, the Department does not see a need to redo them. If a dam owner does not agree with their current hazard classification or condition assessment, they may submit supporting studies and modeled results prepared by a professional engineer, which the Department will review and take into consideration.

Insurance policies should not be considered in a risk assessment, nor should it be used as criteria to relax dam safety requirements. Risk is based on the downstream population against the likelihood of a dam failure occurring. An insurance policy would only compensate the victims for damages after a failure occurs and could encourage dam owners to purchase insurance policies in lieu of complying with safety standards. The Department believes this is contrary to the intent of the dam safety law which is to minimize the risk of a dam failure to protect public health and safety.

If the committees decide to move this measure forward, the Department recommends amending this bill by striking Part I of the measure in its entirety and striking lines 18-19 on Page 3. These amendments shall preserve the original intent of the dam safety law.

Mahalo for the opportunity to provide testimony in opposition of this measure.

² 2007 House Journal, Standing Committee Report 1495 (p.1605)
Page 2



P.O. Box 253, Kunia, Hawai'i 96759
Phone: (808) 848-2074; Fax: (808) 848-1921
e-mail info@hfbf.org; www.hfbf.org

February 15, 2024

HEARING BEFORE THE
SENATE COMMITTEE ON WATER AND LAND
SENATE COMMITTEE ON COMMERCE AND CONSUMER PROTECTION

TESTIMONY ON SB 3258
RELATING TO DAM AND RESERVOIR SAFETY

Conference Room 229 & Videoconference
9:30 AM

Aloha Chairs Inouye and Keohokalole, Vice-Chairs Elefante and Fukunaga, and Members of the Committees:

I am Brian Miyamoto, Executive Director of the Hawai'i Farm Bureau (HFB). Organized since 1948, the HFB is comprised of 1,800 farm family members statewide and serves as Hawai'i's voice of agriculture to protect, advocate and advance the social, economic, and educational interests of our diverse agricultural community.

The Hawai'i Farm Bureau supports SB 3258, which requires the Department of Land and Natural Resources (DLNR) to: (1) consider certain insurance coverage in conducting safety inspections relating to dam and reservoir safety; (2) to relax any restrictions and stringent standards on a dam or appurtenance upon verification of certain insurance coverage; and (3) assume that a dam, reservoir, or appurtenance is safe absent certain documents, places the burden of proof on DLNR to find that a dam, reservoir, or appurtenance is high risk, and establishes additional requirements for DLNR and Board of Land and Natural Resources regarding the Dam and Appurtenance Improvement or Removal Grant Program.

While dam and reservoir safety rules represent an important public safety initiative, the rules codified in HRS chapter 179D are having an adverse effect by reducing water storage capacity across the state. At a time when changing weather patterns have demonstrated alternating periods of drought punctuated by significant storm events, coupled with the noble goal of achieving food security for our island state, water storage is more critical than ever. The new rules will discourage new dam and reservoir construction, and in many cases cause dam and reservoir owners to minimize the capacity or decommission existing storage capability.

Many of the reservoirs – built in an era of plantation agriculture—no longer generate enough revenue to be economically sustainable. But they are needed in ways few people

have yet imagined. The issue of how to pay for the upgrading and maintenance of this critical infrastructure is now gaining more attention as the state's budget comes into focus.

Dams and reservoirs are the keys not just to a future sustainable agricultural system in Hawai'i, but to the entire water and environmental health of the State. In addition to the conventional benefits of storing and delivering reliable water for agriculture in dry times, wildlife habitats, flood control during large storms, erosion control, and the reduction of sediment loading on our nearshore ocean reefs, reservoirs also ensure a supply of potable drinking water (after treatment) and provide water to help battle wildfires.

Reservoirs also help recharge our groundwater aquifers by capturing stormwater (for later release) that would otherwise rush to the ocean. There is growing evidence that there will be a pattern of fewer, but larger storms separated by longer intervals of drought. If the large rainfall flows are not captured, overall groundwater recharge may be significantly reduced. Groundwater is our primary source of drinking water and demand is relentlessly rising. We already face declining groundwater recharge every time we place hard impermeable surfaces (e.g. concrete) over previously open ground (agriculture).

Recent Dam and Reservoir Safety rules levy additional burdens on reservoir owners and Hawai'i farmers. Fuel, labor, equipment, transportation, and other expenses are already higher in Hawai'i than on the mainland, placing locally-grown products at a competitive disadvantage. Inevitably, increased costs will be passed on to consumers and are counterproductive to efforts to grow more food in Hawai'i. Some landowners will simply decommission their dams, abandon their reservoir systems, and decide what to do with their now-fallow lands when agriculture is no longer viable.

Thank you for the opportunity to testify on this matter of great importance to the agricultural community.



February 15, 2024

The Honorable Jarrett Keohokalole
Chairman
Committee on Consumer Protection
Hawaii State Capitol
Room 205
415 S. Beretania St.
Honolulu, HI 96813

The Honorable Lorraine Inouye
Chairwoman
Committee on Water and Land
Hawaii State Capitol
Room 210
415 S. Beretania St.
Honolulu, HI 96813

The Honorable Carol Fukunaga
Vice Chairwoman
Committee on Consumer Protection
Hawaii State Capitol
Room 216
415 S. Beretania St.
Honolulu, HI 96813

The Honorable Brandon Elefante
Vice Chairman
Committee on Water and Land
Hawaii State Capitol
Room 217
415 S. Beretania St.
Honolulu, HI 96813

RE: Senate Bill 3258

Dear Senators,

The Association of State Dam Safety Officials (ASDSO) strongly opposes the proposed measures put forward in Senate Bill 3258. It was less than 20 years ago when the privately owned Ka Loko Dam on the Island of Kaua`i failed killing seven people and causing severe property damage and an ecological disaster. This was a high-profile tragedy that garnered national attention at the time. It was after this tragedy that the Hawaii legislature enacted strong dam safety laws that were more in line with national models and other state dam safety programs than before the failure. Senate Bill 3258 would turn back the clock and reduce the ability of the State to make sure the risks associated with dam failures, especially at privately owned dams, are reduced.

ASDSO is a national non-profit organization of more than 3,000 state, federal and local dam safety professionals and private sector experts dedicated to improving dam safety through research, advocacy, education, and awareness. Our goal simply is to save lives and prevent damage to property and the environment by preventing dam failures. Dams are a critical part of the nation's infrastructure providing life-sustaining resources in all U.S. regions such as water supply for domestic, agricultural, industrial, and community use; flood control; recreation; and clean, renewable energy through hydropower. There are over 90,000 dams listed in the National Inventory of Dams and thousands of those dams have the potential to fail with tragic consequences. Recent failures in Michigan caused \$200 million in damages to 2,500 homes and buildings. The failure of Spencer Dam in Nebraska in 2019 cost a downstream homeowner his life, and the 2017 spillway incident at Oroville Dam in California forced 180,000 people to be evacuated from their homes.

Hawaii regulates 126 dams. Recent data show that over 75 percent are high-hazard potential dams that are in either unsatisfactory or poor condition. The good news is that the State of Hawaii is recognizing that its dam safety program is an important driver in reducing risk and passed updated dam safety statutes in 2007.

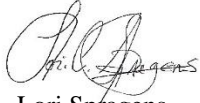
Senate Bill 3258 would amend the Hawaii Dam and Reservoir Safety Law and require the Department of Land and Natural Resources to: (1) consider certain insurance coverage as part of dam safety inspections and hazard classification criteria; (2) relax any restrictions and stringent standards on a dam or appurtenance upon verification of certain insurance coverage; (3) assume that a dam, reservoir, or appurtenance is safe if the State does not provide certain engineering studies and other documentation. This measure also places the burden of proof on the State of Hawaii to find that a dam, reservoir, or appurtenance is high risk.

Dam safety is based on risk. In the simplest terms, risk is the product of potential times consequences—the condition of the dam (potential for failure) in relation to the level of downstream consequences (populations and development). Insurance policies do not reduce risks. Insurance may provide compensation after a disaster happens but does nothing to improve the condition of the dam or to move people and property out of harm's way. If this bill were to be enacted, it would be unprecedented among state dam safety programs across the United States and would not be common or sound practice. Additionally, ASDSO suggests that it is generally difficult to negotiate and receive policies from insurance companies for dams.

If this bill were to be adopted, it would not improve dam safety in Hawaii and will certainly increase the risk to life and property.

Thank you for the opportunity to provide this testimony in opposition to this bill.

Sincerely,

A handwritten signature in black ink, appearing to read "Lori Spragens".

Lori Spragens
Executive Director

CC:

The Honorable Dru Mamo Kanuha
The Honorable Kurt Fevella
The Honorable Mark Nakashima
The Honorable Jackson Sayama
The Honorable Linda Ichiyama
The Honorable Mahina Poepoe