A BILL FOR AN ACT

RELATING TO INDEMNITY.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1	SECTION 1. The purpose of this Act is to declare that the
2	State indemnifies, defends, and holds harmless the owner of an
3	irrigation system, dam, or reservoir under certain conditions.
4	The legislature finds this Act is necessary to encourage the
5	continued operation and maintenance of irrigation systems, dams,
6	and reservoirs that deliver water for agricultural use.
7	SECTION 2. Chapter 663, Hawaii Revised Statutes, is
8	amended by adding a new section to part I to be appropriately
9	designated and to read as follows:
10	" <u>§663-</u> State indemnification of owner of irrigation
11	system, dam, or reservoir. (a) For the purposes of this
12	section:
13	"Agricultural land" means land in the agricultural district
14	under chapter 205.
15	"Dam" means the same as defined under section 179D-3.
15 16	"Dam" means the same as defined under section 179D-3. "Irrigation system" means a system of intakes, diversions,



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1	facilitie	s established to provide water for agricultural
2	productio	n or other use.
3	"Res	ervoir" means the same as defined under section 179D-3.
4	(b)	Except as otherwise provided under subsection (c) or
5	(d), the	State shall indemnify, defend, and hold harmless an
6	owner of	an irrigation system, dam, or reservoir for personal
7	injury or	property damage caused by the owner's act or omission
8	if:	
9	(1)	The land use commission, after receipt of a petition
10		from the owner, designates all agricultural land owned
11		by the owner and irrigated by the irrigation system,
12		dam, or reservoir as "important agricultural land"
13		pursuant to chapter 205; and
14	(2)	The attorney general, after consultation with the
15		chairperson of the board of agriculture, finds in
16		writing that the condition of paragraph (1) has been
17		met. The attorney general shall not unreasonably
18		delay making this finding after notification from the
19		owner or land use commission that the condition under
20		paragraph (1) has been met.
21	(C)	Subsection (b) shall apply only as long as all of the
22	agricultu	ral land designated as "important agricultural land"

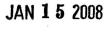
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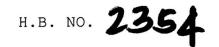
1	pursuant to subsection (b)(1) remains in that designation,
2	whether or not the land or applicable irrigation system, dam, or
3	reservoir continues to be owned by the owner originally
4	indemnified.
5	The State shall not be responsible for indemnifying,
6	defending, or holding harmless any person when subsection (b) is
7	inapplicable. No express declaration to this effect from the
8	attorney general, any other state officer, or any court shall be
9	necessary to remove the State's responsibility as soon as the
10	"important agricultural land" designation is removed from any
11	parcel initially designated under subsection (b)(1).
12	(d) Subsection (b) shall not apply when personal injury or
13	property damage is determined by the attorney general to have
14	been caused by the gross negligence or wanton act or omission of
15	the owner of an irrigation system, dam, or reservoir. When the
16	attorney general makes such a finding, the State shall have no
17	duty to indemnify, defend, or hold harmless the owner for the
18	personal injury or property damage and the State shall have no
19	liability, jointly or severally, to any person or the owner for
20	the owner's act or omission or for the attorney general's
21	finding of inapplicability. The finding by the attorney general
22	shall be conclusive in any court action, except if a party shows
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1	by the preponderance of the evidence that the finding resulted
2	from the attorney general's clear abuse of discretion or wilful
3	misconduct."
4	SECTION 3. New statutory material is underscored.
5	SECTION 4. This Act shall take effect upon its approval.
6	INTRODUCED BY:







Report Title:

Important Agricultural Lands; State Indemnification; Irrigation Systems, Dams, and Reservoirs

Description:

Provides that the State indemnifies the owner of an irrigation system, dam, or reservoir for tort liability under certain conditions.

