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SB 97
RELATING TO ACCRETION

Statement for
Senate Committee on
Economic Development
Public Hearing - 23 February 1985


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SB 194 pertains to the registration and land-use designation of accreted land and to measures that may affect the erosion or further accretion to such land. This statement ont he bill does not reflect an institutional position of the University of Hawaii on the bill.

Before discussing details of the provisions proposed in the bill we wish to identify the problem in coastal-zone management that it is clearly intended to mitigate, and that it will indeed mitigate to a significant extent.

Natural coastal accretion, and its reciprocal, erosion, are processes whose human significance is restricted in Hawaii mainly to beaches. Particularly on open coasts, beaches are geomorphologically unstable features, being subject to extension and/or retreat on time scales ranging from seconds to durations of purely geological interest. By principles of common law applicable in Hawaii, the owner of land mauka of a beach shoreline loses title to land that is lost by erosion, that is through retreat, and gains title to land that is gained by accretion, that is through extension, at least when the erosion or accretion has persisted for some time.

Annual cycles are particularly marked on many Hawaiian beaches. It would be irrational to allow a land owner to claim ownership to land gained by beach extension during one season that will be lost less than a year later; and the courts generally do not apply to the annual cycles of extension and retreat the legal principles of accretion and erosion. However, many Hawaiian open-coastal beaches have had a history of not only annual cycles but net progressive retreat, net progressive extension, or successive periods of several decades duration during which there has been net progressive retreat and extension. It is with the implications of these longer term changes that HB 194 is concerned.

The principal problem that would be mitigated by the provisions proposed in the bill relates to the likelihood that the owner of land to which there has been net accretion over several years may treat the accretion as if permanent, will erect structures on it that will be at risk if there is subsequent erosion, and will then attempt to save these structures by erecting a sea wall or similar structure along the shore. Such a structure would very likely seriously decrease the chances of subsequent accretion even during a period when such accretion would occur naturally.

The bill would require "proof by clear preponderance of the evidence" that the accretion "has been in existence for at least twenty years" as a condition to the registration of the accreted land by the Land Court.

There are beaches in Hawaii on which net accretion over a period of as long as 20 years has been followed by net erosion over a period of similar duration. Nevertheless, the proposed 20-year criterion for registration is reasonable considering the provision of the bill that would place the accreted land in the Conservation District and the provision prohibiting measures that would affect the natural processes which might result in subsequent erosion or future further accretion.

We have but one suggestion regarding language used in the bill. In the proposed new section of Hawaii Revised Statutes that is to be designated 183-45, the proposed prohibition of measures that might affect the future natural processes would be applicable to "the newly accreted land under section 501-33 or 669-1". The first of these two cited sections is a new one proposed in the bill; the second is an existing section to which a new subsection (e) would be added; and both the new section and new subsection contain, not only the provisions for Conservation District designation but also the 20-year criterion. Nevertheless, the phrase "newly accreted" may suggest creation during a period considerably less than 20 years. We would suggest the language be changed to read: "land formed by accretion as defined in sections 501-33 and 669-1(e)".