

Honolulu, Hawaii

Feb. 16, 2006

RE: S.B. No. 3094  
S.D. 1

Honorable Robert Bunda  
President of the Senate  
Twenty-Third State Legislature  
Regular Session of 2006  
State of Hawaii

Sir:

Your Committee on Water, Land, and Agriculture, to which was referred S.B. No. 3094 entitled:

"A BILL FOR AN ACT RELATING TO THE LAND COURT,"

begs leave to report as follows:

The purpose of this measure is to clarify that landowners may not file claims for accreted land resulting from encouraged vegetation on the property's seaward boundary.

Testimony in support of this measure was submitted by the Department of Land and Natural Resources. Testimony in opposition of this bill was submitted by Mr. Robert Toyofuku, an attorney on behalf of several landowners. The Office of the Attorney General submitted comments.

Your Committee finds that the current law for accreted lands allows only the State to register accreted lands along the ocean, except for private landowners whose eroded land has been restored by accretion. This measure clarifies this provision by specifically precluding any private landowner from registering accreted lands on the seaward boundary of the property if the owner planted, maintained, or otherwise encouraged vegetation on the additional land.

Your Committee noted that there is a class action lawsuit pending in Circuit Court regarding private landowner rights to accreted lands, and the testimony given by Mr. Toyofuku, on behalf of several landowners, expressed concerns about the current laws



regarding accreted lands and the provisions in this measure. Mr. Toyofuku noted that the current law only permits the State to own accreted lands that extend along the shoreline, and he believes this provision, which was implemented in 2003, was a "marked departure from the clearly established common law of the State prior to 2003." As a remedy to this disparity, Mr. Toyofuku offered an amendment to this measure that:

- (1) Also precludes the registration of accreted lands extended by encouraged vegetation; and
- (2) Allows private landowners to register accreted lands on the seaward boundary of a property when the extension of land occurs naturally and is permanent.

Your Committee considered the testimony and the amendments suggested by Mr. Toyofuku, but did not adopt the changes.

Your Committee has amended this measure by making a technical, non-substantive amendment.

As affirmed by the record of votes of the members of your Committee on Water, Land, and Agriculture that is attached to this report, your Committee is in accord with the intent and purpose of S.B. No. 3094, as amended herein, and recommends that it pass Second Reading in the form attached hereto as S.B. No. 3094, S.D. 1, and be referred to the Committee on Judiciary and Hawaiian Affairs.

Respectfully submitted on  
behalf of the members of the  
Committee on Water, Land, and  
Agriculture,

  
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RUSSELL S. KOKUBUN, Chair



