

JAN 25 2012

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**A BILL FOR AN ACT**

RELATING TO ACCRETED LANDS.

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

1 SECTION 1. Section 171-2, Hawaii Revised Statutes, is  
2 amended to read as follows:

3 **"§171-2 Definition of public lands.** "Public lands" means  
4 all lands or interest therein in the State classed as government  
5 or crown lands previous to August 15, 1895, or acquired or  
6 reserved by the government upon or subsequent to that date by  
7 purchase, exchange, escheat, or the exercise of the right of  
8 eminent domain, or in any other manner; including [~~accreted~~]  
9 lands accreted after May 20, 2003, and not otherwise awarded,  
10 submerged lands, and lands beneath tidal waters which are  
11 suitable for reclamation, together with reclaimed lands which  
12 have been given the status of public lands under this chapter,  
13 except:

- 14 (1) Lands designated in section 203 of the Hawaiian Homes  
15 Commission Act, 1920, as amended;
- 16 (2) Lands set aside pursuant to law for the use of the  
17 United States;
- 18 (3) Lands being used for roads and streets;

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- 1 (4) Lands to which the United States relinquished the  
2 absolute fee and ownership under section 91 of the  
3 Hawaiian Organic Act prior to the admission of Hawaii  
4 as a state of the United States unless subsequently  
5 placed under the control of the board of land and  
6 natural resources and given the status of public lands  
7 in accordance with the State Constitution, the  
8 Hawaiian Homes Commission Act, 1920, as amended, or  
9 other laws;
- 10 (5) Lands to which the University of Hawaii holds title;
- 11 (6) Lands to which the Hawaii housing finance and  
12 development corporation in its corporate capacity  
13 holds title;
- 14 (7) Lands to which the Hawaii community development  
15 authority in its corporate capacity holds title;
- 16 (8) Lands to which the department of agriculture holds  
17 title by way of foreclosure, voluntary surrender, or  
18 otherwise, to recover moneys loaned or to recover  
19 debts otherwise owed the department under chapter 167;
- 20 (9) Lands which are set aside by the governor to the Aloha  
21 Tower development corporation; lands leased to the  
22 Aloha Tower development corporation by any department  
23 or agency of the State; or lands to which the Aloha

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1 Tower development corporation holds title in its  
2 corporate capacity;

3 (10) Lands which are set aside by the governor to the  
4 agribusiness development corporation; lands leased to  
5 the agribusiness development corporation by any  
6 department or agency of the State; or lands to which  
7 the agribusiness development corporation in its  
8 corporate capacity holds title; and

9 (11) Lands to which the high technology development  
10 corporation in its corporate capacity holds title."

11 SECTION 2. Section 501-33, Hawaii Revised Statutes, is  
12 amended to read as follows:

13 "**§501-33 Accretion to land.** An applicant for registration  
14 of land by accretion shall prove by a preponderance of the  
15 evidence that the accretion is natural and permanent[+] and that  
16 the land accreted before or on May 20, 2003; provided that no  
17 applicant other than the State shall register land accreted  
18 along the ocean[+] after May 20, 2003, except that a private  
19 property owner whose eroded land has been restored by accretion  
20 may file an accretion claim to regain title to the restored  
21 portion. The applicant shall supply the office of environmental  
22 quality control with notice of the application, for publication  
23 in the office's periodic bulletin in compliance with section

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1 343-3(c)(4). The application shall not be approved unless the  
2 office of environmental quality control has published notice in  
3 the office's periodic bulletin.

4 As used in this section, "permanent" means that the  
5 accretion has been in existence for at least twenty years. The  
6 accreted portion of the land [~~shall be state land except as~~  
7 ~~otherwise provided in this section and~~] shall be considered  
8 within the conservation district. Land accreted after May 20,  
9 2003, shall be public land except as otherwise provided in this  
10 section. Prohibited uses are governed by section 183-45."

11 SECTION 3. Section 669-1, Hawaii Revised Statutes, is  
12 amended by amending subsection (e) to read as follows:

13 "(e) Action may be brought by any person to quiet title to  
14 land by accretion; provided that no action shall be brought by  
15 any person other than the State to quiet title to land accreted  
16 along the ocean[7] after May 20, 2003, except that a private  
17 property owner whose eroded land has been restored by accretion  
18 may also bring such an action for the restored portion. The  
19 person bringing the action shall prove by a preponderance of the  
20 evidence that the accretion is natural and permanent[-] and that  
21 the land accreted before or on May 20, 2003. The person  
22 bringing the action shall supply the office of environmental  
23 quality control with notice of the action for publication in the



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**Report Title:**

Accreted Lands

**Description:**

Clarifies that land accreted after May 20, 2003, shall be public land except as otherwise provided by law.

*The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.*

JUSTIFICATION SHEET

DEPARTMENT: Land and Natural Resources

TITLE: A BILL FOR AN ACT RELATING TO ACCRETED LANDS.

PURPOSE: To clarify that land accreted after May 20, 2003, shall be public land except as otherwise provided by law.

MEANS: Amend sections 171-2, 501-33, and 669-1(e), Hawaii Revised Statutes.

JUSTIFICATION: Act 73, Session Laws of Hawaii (SLH) 2003, asserted that "accreted land" was public land. The Act however did not define the scope of that term "accreted land."

A class action lawsuit was filed alleging that Act 73, SLH 2003, effected a constitutional "taking" of privately owned accreted land for which the State owed "just compensation." Both the Circuit Court and the Intermediate Court of Appeals have ruled that Act 73, SLH 2003, was a constitutional "taking" as to accreted land that accreted before and existed when the Act became effective (May 20, 2003). Both courts ruled that accretion occurring after May 20, 2003, can be public land without affecting any privately owned vested rights.

It does not appear to have been the intent of the Legislature to affect existing ownership rights. This measure tailors the law so that it only affects land that accreted after Act 73, SLH 2003, became effective (May 20, 2003).

Impact on the public: This bill would provide that privately owned property rights are not affected and the public is not required to pay for taking any such rights.

Impact on the department and other agencies: This bill would relieve the State from the

obligation to pay compensation resulting from a constitutional taking.

GENERAL FUND: None.

OTHER FUNDS: None.

PPBS PROGRAM  
DESIGNATION: LNR 101, LNR 906.

OTHER AFFECTED  
AGENCIES: Department of the Attorney General.

EFFECTIVE DATE: Upon approval.