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SB 1640

RELATING TO UNAUTHORIZED STRUCTURES

Senate Committee on Ecology and Environmental Protection

Public Hearing - February 6, 1995
2:00 P.M., Rm 305 SOT

by

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SB 1640 would amend Chapter 171, HRS, to provide for the removal of unauthorized structures from state beach lands. Examples of such structures include seawalls, revetments, groins, jetties, breakwaters, buildings, piers, pipes, flumes, or any other building of a solid, or highly impermeable design.

Our statement on this bill does not represent an institutional position of the University of Hawaii.

Presumably, the intent of this bill is to address concerns over the loss of beach lands and concomitant denial of public access to the shoreline resulting from inappropriate structures in the shoreline. We frequently review both current and after-the-fact applications for shoreline setback variances to authorize shoreline protective structures. Generally, we emphasize the naturally fluctuating attribute of shorelines, and we try to encourage shoreline stabilization only as a last resort where there is a compelling public interest, and where a site-specific, appropriate design is utilized. Thus, we certainly would concur with the intent of this measure. However, we are concerned that a number of aspects of the bill are unclear, and in keeping with the site-specific aspects of each potentially problematic situation, it may be that a broad brush approach such as this may raise more concerns than it solves.

There are likely to be numerous structures, either built by the government or of

indeterminate origin and lacking any official documentation which a "littoral owner" would be required to remove from state property at his or her expense. Failure to do so would result in a statutory lien placed on the private property, which would certainly be challenged in court on Constitutional grounds. Section (c) appears to acknowledge situations of this sort, but in offering a variance process, the net regulatory effect reverts to a situation roughly comparable to the after-the-fact permitting arrangement that presently exists.

We also are concerned that an automatic requirement for removal of any structure may result in unnecessary environmental damage. For example, a grouted rock walkway along a rocky coast where there is no sand beach or other sensitive erosional feature may be functionally and environmentally benign, yet removal of such a structure will likely incur significant impacts to nearby biota.

We note that the term, "beach", is not defined in the Hawaii Revised Statutes. Also, the proposed definition of "littoral owner" relies on the word, "adjacent" which also is undefined.

The proliferation of shoreline protective structures has had disastrous effects on Hawaii's beaches. Analysis of aerial photographs of Oahu's shorelines by Dennis Hwang, and recent revisitation of study sites by researchers in the School of Ocean and Earth Sciences and Technology reveals that over the past decades, 8-9 miles, or 15% of Oahu's beaches have been lost. The rate of beach loss is directly correlated with seawall and revetment construction. From a shoreline management perspective, the only appropriate protective structure is one placed landward of wave energy for emergency, high water conditions. Even a structure so placed will accelerate beach loss whenever wave energy impinges upon it. It is worth noting that examination of NOAA tide gauge records in Pearl Harbor, Nawilili, and elsewhere in the state reveals that the islands are sinking: sea level rise may well accelerate markedly over the coming decades, and the problem of beach loss will likewise worsen.

Clearly, there are beach systems which must be protected for economic, if not aesthetic reasons. For these systems, beach renourishment is certainly preferable to the less costly, yet more destructive alternative of seawalls or revetments. And clearly, existing shoreline structures are an environmental menace as well as a public nuisance. However, as presently drafted, SB 1640 will probably not offer any substantive improvement over existing regulatory mechanisms.