



# University of Hawaii at Manoa

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## SB 3097, SD 1 RELATING TO VESTED RIGHTS

Statement for  
House Committee on  
Water, Land Use, Development and Hawaiian Affairs  
Public Hearing, 21 March 1980

By  
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SB 3097, SD 1 would amend Chapter 46, Hawaii Revised Statutes to define the point in the land use development review process at which individual's property rights vest and are immune from subsequent prohibitory legislation. This statement on the bill does not reflect an institutional position of the University.

The intent of SB 3097 is to provide greater predictability to investors in land development by defining a point in the land development control process at which the owner (or his agents) is legally protected from the application of new public development controls.

There is a need, as the bill notes, to strike a balance between "the interests of the individual owner or developer in seeking reasonable certainty...and the right and duty of the government...to enact...reasonable laws...in the public interest." At issue here is how that balance is to be established.

SB 3097 states that "(t)he right of the landowner to use or develop his land in accordance with the existing zoning and permitted uses of the land shall absolutely vest upon the completion of that process in each county evidenced by the issuance of a permit which establishes any right to proceed allowed by the established zoning and permitted use." The language of this section is unnecessarily vague. Several development permits are required for land units having the appropriate zoning. Does the acquisition of a grading permit establish "any right to proceed"? Do development rights vest at that point in the process? Do development rights vest after the acquisition of a shoreline management permit? After a building permit? While the ostensible purpose of this bill is to protect the investor from new legislation, the language of this section makes possible the inference that development rights may vest before compliance with all existing laws and regulations.

The subsequent section in SB 3097 would require the payment of damages to any owner with a vested right if subsequent state or county plans or laws diminish "the use of the property or its values." Without a crystal clear definition of the point in the development review process at which the rights of the owner vest, this provision could have a chilling effect on future attempts to plan for and manage Hawaii's land resources. It is possible to conceive of innumerable situations in which a landowner might argue that a new plan, law or regulation reduces the value of his land.

The section on "applicability" contains a reference to a "development agreement." There is no other reference to such agreements in the bill.