

EXECUTIVE CHAMBERS

HONOLULU

April 26, 2002

COPY

STATEMENT OF OBJECTIONS TO HOUSE BILL NO. 2266

Honorable Members
Twenty-First Legislature
State of Hawaii

Pursuant to Section 16 of Article III of the Constitution of the State of Hawaii, I am returning herewith without my approval, House Bill No. 2266, entitled "A Bill for an Act Relating to Accreted Lands."

The purpose of House Bill No. 2266 generally is to permit only the State to own accreted land, which is a land extension along a shoreline (above the upper reaches of the wash of the waves) that has been formed by natural and gradual growth. This is a marked departure from the clearly established common law of this State and it does not appear that adequate consideration has been given to the impact of this measure or how it is to be implemented. Moreover, there are many unanswered questions raised by the bill that could have significant effects on private landowners.

The bill contains confusing provisions. For one thing, section 1 adds to section 171-1, Hawaii Revised Statutes, a definition of the term "accreted lands" to mean "lands formed by the gradual accumulation of land on a beach or shore along the ocean by the action of natural forces." The definition does not include the requirement in sections 501-33 and 669-1, Hawaii Revised Statutes, that an accretion be permanent (in existence for at least twenty years). Also, section 2 amends the definition of "public land" in section 171-2, Hawaii Revised Statutes, to include accreted lands formed after August 15,

STATEMENT OF OBJECTIONS
HOUSE BILL NO. 2266
Page 2

1895, without qualification, so that it could be interpreted to make even privately owned accreted land public land, thereby placing a cloud on the title of privately owned ocean front land.

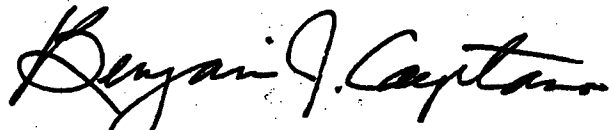
While generally precluding recognition of private ownership in accreted lands, the bill makes an exception when accretion merely restores land that had been previously eroded. Because shorelines are constantly changing, without specifying reference dates from which these determinations are to be made, in most cases it may be impossible to determine whether the accretion falls within the category of accretion or restoration of eroded lands.

Finally, I understand that the intent of this bill is not to undo any past adjudications of private ownership of accreted lands. However, the bill is silent as to the fate of currently pending applications for such adjudications.

There are too many uncertainties and issues about how this bill will be implemented. These uncertainties are likely to lead to costly litigation.

For the foregoing reasons, I am returning House Bill No. 2266 without my approval.

Respectfully,



BENJAMIN J. CAYETANO
Governor of Hawaii