
A BILL FOR AN ACT

RELATING TO SPECIAL SHORELINE ENCROACHMENT EASEMENTS.

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

1 SECTION 1. In *County of Hawaii v. Sotomura*, 55 Haw. 176,
2 517 P.2d 57 (1973), the Hawaii supreme court held that "land
3 below the high water mark, like flowing water, is a natural
4 resource owned by the state subject to, but in some sense in
5 trust for, the enjoyment of certain public rights." As a result
6 of this ruling, any structures located seaward of the shoreline
7 location as determined by the department of land and natural
8 resources would be considered encroachments upon public land.

9 When an encroachment is discovered, it may be resolved by
10 either removal or obtaining an easement from the department.
11 Generally, an easement must be obtained from the department for
12 a structure within the shoreline area even if the structure was
13 located within the record boundary of the landward property at
14 the time of construction.

15 The department has been named as a party in claims
16 regarding structures, improvements, and debris in the shoreline
17 area that was once private property.



1 Pursuant to sections 171-13 and 171-17(b), Hawaii Revised
2 Statutes, easements granted by the board of land and natural
3 resources under the circumstances described above require
4 compensation at fair market value.

5 The purpose of this Act is to allow the board of land and
6 natural resources to grant easements for special shoreline
7 encroachments for less than fair market value.

8 SECTION 2. Chapter 171, Hawaii Revised Statutes, is
9 amended by adding a new section to be appropriately designated
10 and to read as follows:

11 "§171- Special shoreline encroachment easements. (a)
12 The board may grant easements for special shoreline
13 encroachments, as defined in subsection (d), for less than fair
14 market value. The granting of such easements shall not be
15 construed as state approval of any risk taken by an owner.

16 (b) Easements granted under this section shall take into
17 account the public policies of protection and preservation of
18 the natural shoreline, public pedestrian access along the
19 shoreline, and the long-term risks to life and property from
20 coastal hazards.

1 (c) Easements granted under this section shall not require
2 the prior approval of the governor or prior authorization of the
3 legislature pursuant to section 171-53.

4 (d) For purposes of this section, the term "special
5 shoreline encroachment" means a structure that was authorized by
6 a governmental authority and constructed landward of the
7 shoreline, as defined in chapter 205A, within the record
8 boundary of the landward property at the time of construction
9 but is now located seaward of the shoreline on public land."

10 SECTION 3. Section 171-17, Hawaii Revised Statutes, is
11 amended to read as follows:

12 "**§171-17 Appraisals.** (a) The appraisal of public lands
13 for sale or lease at public auction for the determination of the
14 upset price may be performed by an employee of the board of land
15 and natural resources qualified to appraise lands, or by one but
16 not more than three disinterested appraisers whose services
17 shall be contracted for by the board; provided that the upset
18 price or upset rental shall be determined by disinterested
19 appraisal whenever prudent management so dictates. No such
20 lands shall be sold or leased for a sum less than the value
21 fixed by appraisal; provided that for any sale or lease at
22 public auction, the board may establish the upset sale or rental

1 price at less than the appraisal value set by an employee of the
2 board and the land may be sold or leased at that price. The
3 board shall be reimbursed by the purchaser or lessee for the
4 cost of any appraisal required to be made by a disinterested
5 appraiser or appraisers contracted for by the board.

6 (b) The sale price or lease rental of lands to be disposed
7 of by drawing or by negotiation shall be no less than the value
8 determined by:

- 9 (1) An employee of the board qualified to appraise lands;
- 10 or
- 11 (2) A disinterested appraiser or appraisers whose services
- 12 shall be contracted for by the board, and such
- 13 appraisal, and any further appraisal with the approval
- 14 of the board, shall be at the cost of the purchaser;

15 provided that the sale price or lease rental shall be determined
16 by disinterested appraisal whenever prudent management so
17 dictates; provided further that should the purchaser fail to
18 agree upon the sale price or lease rental, the purchaser may
19 appoint an appraiser who together with the board's appraiser
20 shall appoint a third appraiser, and the sale price or lease
21 rental shall be determined by arbitration as provided for in
22 chapter 658A which shall be final and binding. The purchaser



1 shall pay for all appraisal costs, except that the cost of the
2 third appraiser shall be borne equally by the purchaser and the
3 board.

4 (c) For special shoreline encroachment easements granted
5 pursuant to section 171- , the board may grant such easements
6 for less than fair market value.

7 [~~e~~] (d) In the repurchase of any land by the board, the
8 board shall have the option to repurchase the land for the
9 original sale price or the fair market value at the time of
10 repurchase, whichever is the lower. Any improvements affixed to
11 the realty shall be purchased at their fair market value. At
12 the time of the repurchase, the fair market value of the land,
13 and the improvements, if any, shall be determined by a qualified
14 appraiser whose services shall be contracted for by the board;
15 provided should the owner fail to agree upon the value, the
16 owner may appoint the owner's own appraiser who together with
17 the board's appraiser shall appoint a third appraiser, and the
18 value shall be determined by arbitration as provided in chapter
19 658A. The owner shall pay for all appraisal costs, except that
20 the cost of the third appraiser shall be borne equally by the
21 purchaser and the board.



1 ~~(d)~~ (e) In the event of reopening of the rental to be
2 paid on a lease, the rental for any ensuing period shall be the
3 fair market rental at the time of reopening. At least six
4 months prior to the time of reopening, the fair market rental
5 shall be determined by:

6 (1) An employee of the department qualified to appraise
7 lands; or

8 (2) A disinterested appraiser whose services shall be
9 contracted for by the board;

10 and the lessee shall be promptly notified of the determination;
11 provided that should the lessee fail to agree upon the fair
12 market rental, the lessee may appoint the lessee's own appraiser
13 who together with the board's appraiser shall appoint a third
14 appraiser and the fair market rental shall be determined by
15 arbitration as provided in chapter 658A. The lessee shall pay
16 for the lessee's own appraiser, the board shall pay for its
17 appraiser, and the cost of the third appraiser shall be borne
18 equally by the lessee and the board. Any language in present
19 leases to the contrary notwithstanding, the provisions of this
20 subsection, when possible and notwithstanding the six-month
21 notice required, shall apply to leases with original lease
22 rental reopening dates effective before and after July 1, 1996.



1 ~~[(e)]~~ (f) Whenever more than one appraiser is appointed
2 each shall prepare and submit an independent appraisal. All
3 appraisal reports shall be available for study by the public."

4 SECTION 4. Section 171-49.5, Hawaii Revised Statutes, is
5 amended to read as follows:

6 "~~[\dagger]~~**\$171-49.5[\dagger]** **Resale, first offer to board; limitation**
7 **on resale price.** Any lot ~~[\dagger]~~sold~~[\dagger]~~ or leased for residential
8 use pursuant to this part shall not be sold or transferred again
9 by the purchaser, the purchaser's personal representative, or
10 the purchaser's heirs for a period of ten years from date of
11 disposition unless the purchaser first offers the land or lease
12 and improvements for sale and surrender to the board in
13 accordance with the provisions of section ~~[171-17(e)]~~ 171-17(d)
14 or section 171-81, as the case may be."

15 SECTION 5. Section 171-53, Hawaii Revised Statutes, is
16 amended by amending subsection (c) to read as follows:

17 "(c) The board, with the prior approval of the governor
18 and the prior authorization of the legislature by concurrent
19 resolution, may lease state submerged lands and lands beneath
20 tidal waters under the terms, conditions, and restrictions
21 provided in this chapter; provided that the authorization of the
22 legislature shall not be required for leases issued under



1 chapter 190D; and provided further that the approval of the
2 governor and authorization of the legislature shall not be
3 required for any grant of easement or lease of state submerged
4 lands or lands beneath tidal waters used for moorings, cables,
5 [~~e~~] pipelines[+], or any special shoreline encroachment, as
6 defined in section 171- ; provided further that this exemption
7 shall not apply to easements for cables used for interisland
8 electrical transmission or slurry pipelines used for
9 transportive materials, mined at sea, or waste products from the
10 processing of the same.

11 The lease shall provide that the lands shall be reclaimed
12 at the expense of the lessee. Title to the reclaimed lands
13 shall remain in the State."

14 SECTION 6. Statutory material to be repealed is bracketed
15 and stricken. New statutory material is underscored.

16 SECTION 7. This Act, upon its approval, shall take effect
17 retroactive to July 1, 2012.

18



Report Title:

Special Shoreline Encroachment Easements

Description:

Provides the Board of Land and Natural Resources discretion to grant easements for less than fair market value for structures that were authorized by a governmental authority and constructed landward of the shoreline within the record boundary of the landward property at the time of construction, but are now located seaward of the shoreline on public land. (SD1)

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