

STAND. COM. REP. NO.

156

Honolulu, Hawaii

FEB 11 2013

RE: S.B. No. 1164
S.D. 1

Honorable Donna Mercado Kim
President of the Senate
Twenty-Seventh State Legislature
Regular Session of 2013
State of Hawaii

Madam:

Your Committee on Water and Land, to which was referred S.B. No. 1164 entitled:

"A BILL FOR AN ACT RELATING TO SPECIAL SHORELINE ENCROACHMENT EASEMENTS,"

begs leave to report as follows:

The purpose and intent of this measure is to provide the Board of Land and Natural Resources the discretion to grant easements for less than fair market value in regard to encroaching structures of an oceanfront property that were authorized and constructed landward of the shoreline but are now located seaward of the shoreline, due to the dynamic nature of the location of the shoreline.

Your Committee received testimony in support of this measure from the Department of Land and Natural Resources, Office of Planning, and one individual. Testimony in opposition to this measure was received from three individuals.

In *County of Hawaii v. Sotomura*, 55 Haw. 176, 517 P.2d 57 (1973), the Hawaii Supreme Court held that "land below the high water mark, like flowing water, is a natural resource owned by the state subject to, but in some sense in trust for, the enjoyment of certain public rights." As a result of this ruling, any structures located seaward of the shoreline location as determined by the Department of Land and Natural Resources would be considered encroachments upon public land and require an easement to be obtained from the Department.

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Easements granted by the Board of Land and Natural Resources under the circumstances described above require the easement holder to compensate the Department at fair market value of the easement. This measure would allow the compensation to be at less than fair market value, which is only fair to the easement holder since the easement is non-exclusive and can vary with changes in the shoreline.

Your Committee has amended this measure by:

- (1) Rewording the special shoreline encroachment easements provision, on the recommendation of the Department of Land and Natural Resources; and
- (2) Making technical, nonsubstantive amendments for the purposes of clarity and consistency.

As affirmed by the record of votes of the members of your Committee on Water and Land that is attached to this report, your Committee is in accord with the intent and purpose of S.B. No. 1164, as amended herein, and recommends that it pass Second Reading in the form attached hereto as S.B. No. 1164, S.D. 1, and be referred to the Committee on Judiciary and Labor.

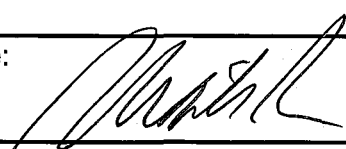
Respectfully submitted on
behalf of the members of the
Committee on Water and Land,


MALAMA SOLOMON, Chair



The Senate
 Twenty-Seventh Legislature
 State of Hawai'i

Record of Votes
Committee on Water and Land
WTL

| | | | | |
|---|---|---------------------------------------|----------------------------------|---------|
| Bill / Resolution No.:* | Committee Referral: | Date: | | |
| SB 1164 | WTL, JDL | 2/9/13 | | |
| <input type="checkbox"/> The committee is reconsidering its previous decision on this measure. If so, then the previous decision was to: _____ | | | | |
| The Recommendation is: | | | | |
| <input type="checkbox"/> Pass, unamended 2312 | <input checked="" type="checkbox"/> Pass, with amendments 2311 | <input type="checkbox"/> Hold 2310 | | |
| <input type="checkbox"/> Recommit 2313 | | | | |
| Members | Aye | Aye (WR) | Nay | Excused |
| SOLOMON, Malama (C) | ✓ | | | |
| SHIMABUKURO, Maile S.L. (VC) | ✓ | | | |
| DELA CRUZ, Donovan M. | | | | ✓ |
| IHARA, Jr., Les | | | | ✓ |
| RUDERMAN, Russell E. | ✓ | | | |
| THIELEN, Laura H. | | | | ✓ |
| SLOM, Sam | ✓ | | | |
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| TOTAL | 4 | | | 3 |
| Recommendation: | | | | |
| <input checked="" type="checkbox"/> Adopted <input type="checkbox"/> Not Adopted | | | | |
| Chair's or Designee's Signature: | | | | |
|  | | | | |
| Distribution: | | | | |
| Original File with Committee Report | Yellow Clerk's Office | Pink Drafting Agency | Goldenrod Committee File Copy | |

*Only one measure per Record of Votes