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

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



1 The department of land and natural resources has been named  
2 as a party in claims regarding structures, improvements, and  
3 debris in the shoreline area that was once private property.

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

8 The purpose of this Act is to provide the board of land and  
9 natural resources with the discretion to grant easements for  
10 less than fair market value in regards to encroaching structures  
11 that were authorized by an appropriate regulatory agency and  
12 originally constructed landward of the shoreline and within the  
13 record boundary of an oceanfront property but are now located  
14 within the shoreline area, due to the dynamic nature of the  
15 location of the shoreline.

16 SECTION 2. Chapter 171, Hawaii Revised Statutes, is  
17 amended by adding a new section to be designated and to read as  
18 follows:

19 "§171- Special shoreline encroachment easements. (a)  
20 Special shoreline encroachments may be granted easements for a  
21 value determined by the board. The granting of an easement in



1 accordance with this section shall not be construed as state  
2 approval of any risk taken by a property owner, nor state  
3 ownership or approval of the shoreline encroachments.

4 (b) Notwithstanding section 171-53 to the contrary,  
5 easements granted in accordance with this section shall not  
6 require the prior approval of the governor or prior  
7 authorization of the legislature.

8 (c) Easements granted in accordance with this section  
9 shall take into account the public policies of protection and  
10 preservation of the natural shoreline, public pedestrian access  
11 along the shoreline, and the long-term risks from coastal  
12 hazards to life and property.

13 (d) For the purposes of this section, "special shoreline  
14 encroachment" means a structure that was authorized by a  
15 governmental authority and legally constructed landward of the  
16 shoreline, as defined in chapter 205A, within the record  
17 boundary of the landward property at the time of construction,  
18 but is now located seaward of the valid certified shoreline on  
19 public land."

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



1           "**§171-17 Appraisals.** (a) The appraisal of public lands  
2 for sale or lease at public auction for the determination of the  
3 upset price may be performed by an employee of the board of land  
4 and natural resources qualified to appraise lands, or by one but  
5 not more than three disinterested appraisers whose services  
6 shall be contracted for by the board; provided that the upset  
7 price or upset rental shall be determined by disinterested  
8 appraisal whenever prudent management so dictates. No such  
9 lands shall be sold or leased for a sum less than the value  
10 fixed by appraisal; provided that for any sale or lease at  
11 public auction, the board may establish the upset sale or rental  
12 price at less than the appraisal value set by an employee of the  
13 board and the land may be sold or leased at that price. The  
14 board shall be reimbursed by the purchaser or lessee for the  
15 cost of any appraisal required to be made by a disinterested  
16 appraiser or appraisers contracted for by the board.

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

20           (1) An employee of the board qualified to appraise lands;  
21           or



1           (2) A disinterested appraiser or appraisers whose services  
2           shall be contracted for by the board, and the  
3           appraisal, and any further appraisal with the approval  
4           of the board, shall be at the cost of the purchaser;  
5 provided that the sale price or lease rental shall be determined  
6 by disinterested appraisal whenever prudent management so  
7 dictates; provided further that if the purchaser does not agree  
8 upon the sale price or lease rental, the purchaser may appoint  
9 an appraiser who shall conduct an appraisal on behalf of the  
10 purchaser. If, after the purchaser's appraisal, the board and  
11 the purchaser do not agree on the sale price or lease rental,  
12 the parties shall make a good faith effort to resolve the  
13 dispute through nonbinding mediation by a single mediator,  
14 appointed by mutual agreement of the parties. The cost of  
15 mediation shall be borne equally by the parties. If mediation  
16 does not resolve the dispute, the purchaser's appraiser together  
17 with the board's appraiser shall appoint a third appraiser, and  
18 the sale price or lease rental shall be determined by  
19 arbitration as provided for in chapter 658A, which shall be  
20 final and binding. The purchaser shall pay for all appraisal



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

3 (c) Special shoreline encroachment easements granted  
4 pursuant to section 171- may be granted for a value determined  
5 by the board.

6 [~~e~~] (d) In the repurchase of any land by the board, the  
7 board shall have the option to repurchase the land for the  
8 original sale price or the fair market value at the time of  
9 repurchase, whichever is the lower. Any improvements affixed to  
10 the realty shall be purchased at their fair market value. At  
11 the time of the repurchase, the fair market value of the land,  
12 and the improvements, if any, shall be determined by a qualified  
13 appraiser whose services shall be contracted for by the board;  
14 provided that if the owner does not agree upon the value, the  
15 owner may appoint the owner's own appraiser who shall conduct an  
16 appraisal on behalf of the owner. If, after the owner's  
17 appraisal, the board and the owner do not agree on the sale  
18 price, the parties shall make a good faith effort to resolve the  
19 dispute through nonbinding mediation by a single mediator,  
20 appointed by mutual agreement of the parties. The cost of  
21 mediation shall be borne equally by the parties. If mediation



1 does not resolve the dispute, the owner's appraiser together  
2 with the board's appraiser shall appoint a third appraiser, and  
3 the value shall be determined by arbitration as provided in  
4 chapter 658A. The owner shall pay for all appraisal costs,  
5 except that the cost of the third appraiser shall be borne  
6 equally by the owner and the board.

7 ~~[(d)]~~ (e) If a reopening of the rental to be paid on a  
8 lease occurs, the rental for any ensuing period shall be the  
9 fair market rental at the time of reopening. At least six  
10 months prior to the time of reopening, the fair market rental  
11 shall be determined by:

12 (1) An employee of the department qualified to appraise  
13 lands; or

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

16 and the lessee shall be promptly notified of the determination  
17 and provided with the complete appraisal prepared by the board  
18 or the board's appraiser; provided that if the lessee does not  
19 agree upon the fair market rental, the lessee may appoint the  
20 lessee's own appraiser and the lessee shall provide the board  
21 with the complete appraisal prepared by the lessee's appraiser.



1 Each party shall pay for its own appraiser. If the board's and  
2 the lessee's appraisers do not agree upon the lease rental, the  
3 lessee and the board shall in good faith attempt to resolve the  
4 dispute by nonbinding mediation by a single mediator mutually  
5 agreed upon by the parties. If the dispute is not resolved by  
6 the mediation, the fair market rental shall be determined by  
7 arbitration as provided in chapter 658A, which shall be final  
8 and binding. Either the board or the lessee may initiate  
9 arbitration by a written demand to the other party. The  
10 arbitration shall be conducted by a single arbitrator, who shall  
11 be an attorney licensed in the State, a person with experience  
12 in contracts and real estate valuation, or another qualified  
13 person, who shall be mutually agreed upon by the parties. If an  
14 arbitrator is not selected within fifteen days of the demand for  
15 arbitration, appointment of an arbitrator may be requested by  
16 either party by motion made to the circuit court in circuit in  
17 which the land is located. The cost of mediation or arbitration  
18 shall be borne equally by the lessee and the board. Any  
19 language in present leases to the contrary notwithstanding, the  
20 provisions of this subsection, when possible and notwithstanding  
21 the six-month notice required, shall apply to leases with





1 original lease rental reopening dates effective before and after  
2 July 1, 1996.

3 ~~[(e)]~~ (f) Complete appraisal reports, including all  
4 comparables relied upon in the appraisal reports, shall be  
5 available for study by the public. All complete appraisal  
6 reports shall be provided to the opposing party prior to the  
7 commencement of mediation or arbitration, if applicable, of the  
8 valuation dispute."

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

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

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



1           "(c) The board, with the prior approval of the governor  
2 and the prior authorization of the legislature by concurrent  
3 resolution, may lease state submerged lands and lands beneath  
4 tidal waters under the terms, conditions, and restrictions  
5 provided in this chapter; provided that the authorization of the  
6 legislature shall not be required for leases issued under  
7 chapter 190D; [~~and~~] provided further that the approval of the  
8 governor and authorization of the legislature shall not be  
9 required for any grant of easement or lease of state submerged  
10 lands or lands beneath tidal waters used for moorings, cables,  
11 or pipelines[+], or for any grant of easement for a special  
12 shoreline encroachment as defined in section 171- ; provided  
13 further that this exemption shall not apply to easements for  
14 cables used for interisland electrical transmission or slurry  
15 pipelines used for transportive materials, mined at sea, or  
16 waste products from the processing of the same.

17           The lease shall provide that the lands shall be reclaimed  
18 at the expense of the lessee. Title to the reclaimed lands  
19 shall remain in the State."

20           SECTION 6. Statutory material to be repealed is bracketed  
21 and stricken. New statutory material is underscored.



1 SECTION 7. This Act shall take effect retroactive to  
2 July 1, 2012.

3



**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 and without gubernatorial or legislative approval or authorization for structures that were authorized by a governmental authority and legally 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 valid certified shoreline on public land. Takes effect retroactive to 7/1/2012. (SD1)

*The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.*

