

JAN 17 2019

A BILL FOR AN ACT

RELATING TO EMINENT DOMAIN.

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

1 SECTION 1. The legislature finds that for the past sixty-
2 five years, residents and visitors of Oahu have been free to
3 walk along the cement path atop a seawall on or near the seaward
4 boundaries of property between 2943 Kalakaua Avenue and 3019
5 Kalakaua Avenue to access the beach, shoreline, and ocean for
6 swimming, surfing, fishing, and enjoying other activities of
7 island living. Over the course of these decades, the State has
8 paid for and completed repairs and maintenance on the seawall,
9 thereby enabling the public to continue to safely use the
10 footpath. As recently as 2006, the legislature appropriated
11 funds to repair the seawall. However, the State shortly
12 thereafter disclaimed any duty to maintain the seawall, which
13 resulted in a lawsuit to require the State to maintain and keep
14 the seawall in good and safe condition.

15 In *Gold Coast Neighborhood Association v. State*, 136
16 Hawaii 340, 361 P.3d 1243 (App. 2015), the intermediate court of
17 appeals affirmed the circuit court's holding that the State had



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1 acquired an easement over the seawall by common law implied
2 dedication and the seawall and real property under the seawall
3 by surrender. On certiorari, the supreme court in *Gold Coast*
4 *Neighborhood Association v. State*, 140 Hawaii 437, 403 P.3d 214
5 (2017) affirmed the circuit court and intermediate court of
6 appeals' decision that the State acquired an easement over and
7 across the seawall by virtue of implied dedication, but held
8 that the State did not own the seawall or the real property
9 underneath it by surrender.

10 As a result, the State has interpreted the ruling of the
11 case to mean that the State is only responsible for maintenance
12 of the top surface of the seawall rather than repair and
13 maintenance of the full length and depth of the seawall. The
14 Gold Coast Neighborhood Association has expressed support for
15 the option of the State taking the seawall and the real property
16 underneath the seawall through eminent domain in order to
17 provide for the repair and maintenance of the seawall and
18 continued public access to the beach and shoreline.

19 The purpose of this Act is to:

- 20 (1) Require the department of land and natural resources
21 to acquire by eminent domain the seawall and the real



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1 property underneath the seawall that is located on or
2 near the seaward boundaries of property between 2943
3 Kalakaua Avenue and 3019 Kalakaua Avenue;

4 (2) Appropriate funds to the department of land and
5 natural resources for the just compensation of taking
6 the seawall and the real property under the seawall;
7 and

8 (3) Appropriate funds to the department of land and
9 natural resources for the repair and maintenance of
10 the entire seawall and the real property under the
11 seawall.

12 SECTION 2. The department of land and natural resources
13 shall acquire by eminent domain pursuant to chapter 101, Hawaii
14 Revised Statutes, the seawall and the real property underneath
15 the seawall that is located on or near the seaward boundaries of
16 property between 2943 Kalakaua Avenue and 3019 Kalakaua Avenue,
17 for the purpose of improving public safety to enable continued
18 access to the beach, shoreline, and ocean.

19 SECTION 3. There is appropriated out of the general
20 revenues of the State of Hawaii the sum of \$100 or so much
21 thereof as may be necessary for fiscal year 2019-2020 for the



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1 just compensation of taking the seawall and the real property
 2 under the seawall that is located on or near the seaward
 3 boundaries of property between 2943 Kalakaua Avenue and 3019
 4 Kalakaua Avenue.



5 The sum appropriated shall be expended by the department of
 6 land and natural resources for the purposes of this Act.

7 SECTION 4. There is appropriated out of the general
 8 revenues of the State of Hawaii the sum of \$ or so
 9 much thereof as may be necessary for fiscal year 2019-2020 for
 10 the repair and maintenance of the entire seawall and the real
 11 property under the seawall that is located on or near the
 12 seaward boundaries of property between 2943 Kalakaua Avenue and
 13 3019 Kalakaua Avenue.

14 The sum appropriated shall be expended by the department of
 15 land and natural resources for the purposes of this Act.

16 SECTION 5. This Act shall take effect on July 1, 2019.

17

INTRODUCED BY: 




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Report Title:

Eminent Domain; Seawall; Department of Land and Natural Resources; Appropriations

Description:

Requires the department of land and natural resources to acquire by eminent domain the seawall and the real property underneath the seawall that is located on or near the seaward boundaries of property between 2943 Kalakaua Avenue and 3019 Kalakaua Avenue. Appropriates funds to the department of land and natural resources for the just compensation of taking, and the repair and maintenance of the entire seawall and the real property under the seawall.

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

