

SB 1125



**STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES**

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**Testimony of
SUZANNE D. CASE
Chairperson**

**Before the Senate Committee on
WATER, LAND AND AGRICULTURE**

**Wednesday, February 17, 2016
2:45 PM
State Capitol, Room 224**

**In consideration of
SENATE BILL 1125
RELATING TO SPECIAL SHORELINE ENCROACHMENT EASEMENTS**

Senate Bill 1125 proposes to provide the Board of Land and Natural Resources (Board) the discretion to grant easements for a value it determines 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 shoreline on public land. **The Department of Land and Natural Resources (Department) strongly supports this Administration measure.**

Many of these structures were constructed mauka of the shoreline by private landowners to benefit their property, i.e., as shoreline protection structures. Over the years, many of these structures are now situated within or seaward of the shoreline and are a liability concern. In exchange for the granting of an easement, the Department requires insurance and indemnity protection. The problem under current law is that the Board must charge fair market value as determined by an appraiser for the easement. This bill seeks to remedy that problem by allowing the Board the discretion to grant the easement at below fair market value if the structure was authorized by a governmental authority and originally constructed landward of the shoreline within the record boundary of the landward property at the time of construction, but is now located seaward of the shoreline on public land.

Considering that the structures were originally built on private property, waiving the requirements for prior approval of the Governor and prior authorization from the Legislature pursuant to Section 171-53, Hawaii Revised Statutes (HRS), likely would not compromise the State's fiduciary obligations. In addition, given the volume of easements that are expected to be processed, this exemption would greatly expedite the disposition process. Allowing the

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BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

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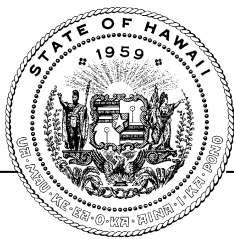
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BOATING AND OCEAN RECREATION
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COMMISSION ON WATER RESOURCE MANAGEMENT
CONSERVATION AND COASTAL LANDS
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ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
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easements to be granted at less than fair market value via a streamlined processⁱ would assist in encouraging compliance from littoral landowners entering into easements with the State. By resolving the liability and indemnity issues, taxpayers will have greater protection from potential legal and financial liability against the State with regard to these structures. By facilitating compliance from landowners, this bill will reduce the burden on staff resources from having to pursue enforcement actions.

Enactment of this measure will not negatively impact beach resources or proliferate shoreline hardening. The bill does not act as a substitute to any permitting requirements as shoreline protection structures will still be subject to all existing state and county regulatory requirements. Furthermore, current Department practice requires that prior to taking any request for a shoreline encroachment easement to the Board for approval all such requests are subject to review by the Office of Conservation and Coastal Lands (“OCCL”). As part of their review criteria, OCCL examines whether the continued presence of the encroachment will detrimentally impact the existing coastal resources.

ⁱ The appraisal process under Section 171-17, HRS, can sometimes be expensive and time consuming.



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Statement of
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before the
SENATE COMMITTEE ON WATER, LAND AND AGRICULTURE
Wednesday, February 17, 2016
2:45 PM
State Capitol, Conference Room 224

in consideration of
SB 1125
RELATING TO SPECIAL SHORELINE ENCROACHMENT EASEMENTS.

Chair Gabbard, Vice Chair Nishihara, and Members of the Senate Committees on Water, Land and Agriculture.

The Office of Planning (OP) administers Hawaii Revised Statutes (HRS) Chapter 205A, the Coastal Zone Management (CZM) law. The purpose of Hawaii CZM Act is to "provide for the effective management, beneficial use, protection, and development of the coastal zone." See L. 1977, c 188, § 1.

Administration Bill SB 1125, Relating to Special Shoreline Encroachment Easements, 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.

OP has no position on SB 1125, and respectfully offers the following comments on this measure:

This bill opens a door to the private property owners to maintain their existing shoreline structure, and more likely request for repairs, and even emergency repairs of their existing shoreline structures. In addition, this bill sets up a policy that those shoreline protection structures (e.g., seawalls) currently located within the private land, will be granted shoreline encroachment easement in the future from the State.

Please note that at the beginning of SB 1125: "When an encroachment is discovered, it may be resolved by either removal or obtaining an easement from the department." SB 1125 only encourages the preservation of the existing shoreline structures, which is opposite to the increasing efforts to deal with the threats of coastal hazards on Hawaii's coasts.

Thank you for the opportunity to testify on this measure.