

JAN 24 2018

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



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 the
12 maintaining the top surface of the seawall rather than be
13 responsible for the repair and maintenance of the full length
14 and depth of the seawall. The Gold Coast Neighborhood
15 Association has expressed support for the option of the State
16 taking the seawall and the real property underneath the seawall
17 through eminent domain in order to provide for the repair and
18 maintenance of the seawall and continued public access to the
19 beach and shoreline.

20 The purpose of this Act is to:



(1) Require 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;

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

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

SECTION 2. The department of land and natural resources shall acquire by eminent domain pursuant to chapter 101, Hawaii Revised Statutes, 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, for the purpose of improving public safety to enable continued access to the beach, shoreline, and ocean.



1 SECTION 3. There is appropriated out of the general
2 revenues of the State of Hawaii the sum of \$100 or so much
3 thereof as may be necessary for fiscal year 2018-2019 for the
4 just compensation of taking the seawall and the real property
5 under the seawall that is located on or near the seaward
6 boundaries of property between 2943 Kalakaua Avenue and 3019
7 Kalakaua Avenue.

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

10 SECTION 4. There is appropriated out of the general
11 revenues of the State of Hawaii the sum of \$ or so
12 much thereof as may be necessary for fiscal year 2018-2019 for
13 the repair and maintenance of the entire seawall and the real
14 property under the seawall that is located on or near the
15 seaward boundaries of property between 2943 Kalakaua Avenue and
16 3019 Kalakaua Avenue.

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

19 SECTION 5. This Act shall take effect on July 1, 2018.

20
INTRODUCED BY: *Bt*



S.B. NO. 2940

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.

