

JAN 24 2018

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 shorelines are one
2 of our planet's most dynamic physical features and Hawaii's
3 shorelines are no exception. Communities along our shores have
4 flourished for centuries in harmony with the ebb and flow of the
5 tides. However, rapid warming of the atmosphere and oceans,
6 caused by two centuries of unabated carbon emissions, is causing
7 unprecedented increased rates of sea level rise that threaten
8 natural environments and the development in low lying areas.

9 In December 2017, the Hawaii climate change mitigation and
10 adaptation commission accepted the Sea Level Rise Vulnerability
11 and Adaptation Report (SLR report), which was mandated by the
12 legislature during the regular session of 2017. The SLR report
13 found that with 3.2 feet of sea level rise by the mid to later
14 part of the twenty-first century, six thousand five hundred
15 structures would be lost across the State, twenty thousand
16 residents would be displaced, and over \$19,000,000,000 in
17 damages would be incurred on property and structures. The SLR



1 report further found that the State and counties will need to
2 act upon this threat and develop adaption measures to ameliorate
3 the social, economic, and environmental impacts of sea level
4 rise.

5 The legislature further finds that as noted in a recent
6 attorney general opinion, the State owns all lands makai of the
7 shoreline. As a result, any structures located seaward of the
8 shoreline location are encroachments upon public land. When an
9 encroachment is discovered, it may be resolved by either removal
10 or obtaining an easement from the department of land and natural
11 resources. Generally, an easement must be obtained from the
12 department of land and natural resources for a structure within
13 the shoreline area even if the structure was located within the
14 recorded boundary of the landward property at the time of
15 construction. Pursuant to sections 171-13 and 171-17(b), Hawaii
16 Revised Statutes, easements granted by the board of land and
17 natural resources under these circumstances require compensation
18 at fair market value.

19 The purpose of this Act is to support a managed and orderly
20 shoreline retreat strategy by authorizing the board of land and
21 natural resources to provide qualified coastal landowners, who



1 have privately owned structures situated on previously private
2 land that has become submerged public land due to erosion and
3 sea level rise, with short duration term easements at values
4 determined by the board to enable these landowners to consider
5 alternatives to ultimately relocate these private structures
6 landward of the sea level rise exposure area.

7 SECTION 2. Chapter 171, Hawaii Revised Statutes, is
8 amended by adding a new section to be appropriately designated
9 and to read as follows:

10 "§171- Special shoreline encroachment easements. (a)

11 The board may grant a special shoreline encroachment easement to
12 a qualified landowner for a value determined by the board
13 notwithstanding section 171-17 to enable these landowners to
14 relocate a special shoreline encroachment landward of the sea
15 level rise exposure area; provided that the granting of this
16 easement shall not be construed as state ownership of the
17 special shoreline encroachment.

18 (b) A special shoreline encroachment easement shall be
19 valid for a term not to exceed ten years. The board may extend
20 the easement for additional terms not to exceed ten years;



1 provided that the aggregate initial term and any extensions
2 granted by the board shall not exceed thirty-five years.

3 (c) Special shoreline encroachment easements granted by
4 the board in accordance with this section shall not require
5 prior approval of the governor and prior authorization of the
6 legislature by concurrent resolution pursuant to section 171-53.

7 (d) Special shoreline encroachment easements granted by
8 the board in accordance with this section shall take into
9 account:

10 (1) The public policies of protection and preservation of
11 the natural shoreline, the beach processes and public
12 pedestrian access along the shoreline, and the long-
13 term risks to life and property from coastal hazards;
14 and

15 (2) The objectives and policies of the coastal zone
16 management program under section 205A-2.

17 (e) For purposes of this section:

18 "Qualified landowner" means a landowner of a coastal
19 property with structures that were legally constructed
20 originally landward of the shoreline and within the recorded



1 boundary of the oceanfront property, but are now located seaward
2 of the shoreline.

3 "Special shoreline encroachment" means a structure that was
4 legally constructed and located landward of the shoreline, as
5 defined under chapter 205A, within the recorded boundary of the
6 property at the time of construction, but is now located seaward
7 of the shoreline on public land."

8 SECTION 3. Section 171-53, Hawaii Revised Statutes, is
9 amended by amending subsection (c) to read as follows:

10 "(c) The board, with the prior approval of the governor
11 and the prior authorization of the legislature by concurrent
12 resolution, may lease state submerged lands and lands beneath
13 tidal waters under the terms, conditions, and restrictions
14 provided in this chapter; provided that [the]:

15 (1) The authorization of the legislature shall not be
16 required for leases issued under chapter 190D; [~~and~~
17 ~~provided further that the~~]

18 (2) The approval of the governor and authorization of the
19 legislature shall not be required for any grant of
20 easement or lease of state submerged lands or lands
21 beneath tidal waters used for moorings, cables, [~~or~~]



1 pipelines [~~provided further that this~~], or any
 2 special shoreline encroachment easement granted
 3 pursuant to section 171- ; and

4 (3) This exemption shall not apply to easements for cables
 5 used for interisland electrical transmission or slurry
 6 pipelines used for transportive materials, mined at
 7 sea, or waste products from the processing of the
 8 same.

9 The lease shall provide that the lands shall be reclaimed
 10 at the expense of the lessee. Title to the reclaimed lands
 11 shall remain in the State."

12 SECTION 4. Statutory material to be repealed is bracketed
 13 and stricken. New statutory material is underscored.

14 SECTION 5. This Act, upon its approval, shall take effect
 15 retroactive to July 1, 2012.

16 INTRODUCED BY:

[Signatures]
 Anne Mercedes Kie
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S.B. NO. **3093**

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S.B. NO. 3093

Report Title:

Public Land; Shoreline Encroachments; Easements; Board of Land and Natural Resources

Description:

Authorizes the board of land and natural resources to provide qualified coastal landowners, who have privately owned structures situated on previously private land that has become submerged public land due to erosion and sea level rise, with short duration term easements at values determined by the board to enable these landowners to consider alternatives to ultimately relocate these private structures landward of the sea level rise exposure area. Applies retroactively to 07/01/2012.

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

