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Statement of
JESSE K. SOUKI
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before the
**HOUSE COMMITTEE ON WATER AND LAND
AND
HOUSE COMMITTEE ON OCEAN, MARINE RESOURCES, AND
HAWAIIAN AFFAIRS**
Friday, February 1, 2013
8:00 AM
State Capitol, Conference Room 325

in consideration of
HB 933
RELATING TO SPECIAL SHORELINE ENCROACHMENT EASEMENTS.

Chairs Evans and Hanohano, Vice Chairs Lowen and Cullen, and Members of the House Committees on Water and Land and Ocean, Marine Resources, and Hawaiian Affairs.

House Bill 933 Relating to Special Shoreline Encroachment Easements provides the Board of Land and Natural Resources the discretion to grant easements for less than fair market value for structures that were authorized by a governmental agency 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.

The Office of Planning (OP) administers Hawaii Revised Statutes Chapter 205A, Hawaii's Coastal Zone Management (CZM) law, which implements the CZM Act passed by the U.S. Congress in 1972. The purpose of HRS Chapter 205A is to "provide for the effective

management, beneficial use, protection, and development of the coastal zone.” L. 1997, c 188

§1. OP offers comments on HB 933 as follows:

Climate change adaptation priority guidelines were enacted by Act 286, Session Laws of Hawaii 2012. Sea level rise will likely be accelerated by climate change. Due to the dynamic nature of the location of the shoreline, HB 933 may promote building of structures within the shoreline area towards coastal hazards, including storm waves and coastal erosion. This policy could potentially increase the risk of coastal hazard threats to life and property along the shoreline.

Thank you for the opportunity to provide comments on this measure.

lowen2-Anosh

From: mailinglist@capitol.hawaii.gov
Sent: Wednesday, January 30, 2013 9:11 PM
To: waltestimony
Cc: Thorneabbott@yahoo.com
Subject: Submitted testimony for HB933 on Feb 1, 2013 08:00AM

HB933

Submitted on: 1/30/2013

Testimony for WAL/OMH on Feb 1, 2013 08:00AM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Thorne Abbott	Individual	Support	No

Comments: Recommend amending subsection (b) to ensure that the Board's decision incorporates the Office of Conservation and Coastal Lands position on the matter by adding items in quotation marks below: (b) "In consideration of the Office of Conservation and Coastal Lands recommendation," the board may grant easements for such special shoreline encroachments described and defined in subsection (a) for less than fair market value.

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GOVERNOR OF HAWAII



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

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**Testimony of
WILLIAM J. AILA, JR.
Chairperson**

**Before the House Committees on
WATER & LAND
and
OCEAN, MARINE RESOURCES & HAWAIIAN AFFAIRS**

**Friday, February 1, 2013
8:00AM
State Capitol, Room 325**

**In consideration of
HOUSE BILL 933
RELATING TO SPECIAL SHORELINE ENCROACHMENT EASEMENTS**

House Bill 933 proposes to provide the Board of Land and Natural Resources (Board) the 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. The Department of Land and Natural Resources (Department) strongly supports this Administration measure with amendments.

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 are now located seaward of the shoreline on public land.

Considering that the structures were originally built on private property, an exemption from Section 171-53(c), 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 easements to be granted at less than fair market value via a streamlined process¹ would assist in

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CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCES ENFORCEMENT
ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

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.

Upon consultation with the Office of Planning, the Department respectfully requests that SECTION 2 of the bill be amended to appear as below. Amendments include revising subsection (b) to note that the granting of an easement shall not be construed as State approval of any risk taken by a littoral landowner. In addition, the inclusion of a new subsection (c) requires that the Board consider public policy factors such as protection and preservation of the natural shoreline, public access along the shoreline, and long term risks to life and property from coastal hazards when in its approval of an easement.

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

"§171- Special shoreline encroachment easements. (a)
The term "special shoreline encroachment" means a structure that was authorized by a governmental authority and constructed landward of the shoreline as defined in chapter 205A, within the record boundary of the landward property at the time of construction, but is now located seaward of the shoreline on public land.

(b) The board may grant easements for such special shoreline encroachments described and defined in subsection (a) for less than fair market value. The granting of such easement shall not be construed as state approval of any risk taken by an owner.

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

(d) Easements granted in accordance with this section shall not require the prior approval of the governor or prior authorization of the legislature pursuant to section 171-53."

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