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# 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. In *County of Hawaii v. Sotomura*, 55 Haw. 176,  
2 517 P.2d 57 (1973), the Hawaii supreme court held that "land  
3 below the high water mark, like flowing water, is a natural  
4 resource owned by the state subject to, but in some sense in  
5 trust for, the enjoyment of certain public rights." As a result  
6 of this ruling, any structures located seaward of the shoreline  
7 location as determined by the department of land and natural  
8 resources would be considered encroachments upon public land.

9           When an encroachment is discovered, it may be resolved by  
10 either removal or obtaining an easement from the department of  
11 land and natural resources. Generally, an easement must be  
12 obtained from the department of land and natural resources for a  
13 structure within the shoreline area even if the structure was  
14 located within the record boundary of the landward property at  
15 the time of construction.

16           The department of land and natural resources has been named  
17 as a party in claims regarding structures, improvements, and  
18 debris in the shoreline area that was once private property.



1 Pursuant to sections 171-13 and 171-17(b), Hawaii Revised  
2 Statutes, easements granted by the board of land and natural  
3 resources under the circumstances described above require  
4 compensation at fair market value.

5 The purpose of this Act is to provide the board of land and  
6 natural resources the discretion to grant easements for less  
7 than fair market value in regards to encroaching structures that  
8 were authorized by an appropriate regulatory agency and  
9 originally constructed landward of the shoreline and within the  
10 record boundary of an oceanfront property but are now located  
11 within the shoreline area, due to the dynamic nature of the  
12 location of the shoreline.

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

16 "§171- Special shoreline encroachment easements. (a)  
17 The term "special shoreline encroachment" means a structure that  
18 was authorized by a governmental authority and constructed  
19 landward of the shoreline as defined in chapter 205A, within the  
20 record boundary of the landward property at the time of  
21 construction, but is now located seaward of the shoreline on  
22 public land.



1        (b) The board may grant easements for special shoreline  
2 encroachments described and defined in subsection (a) for less  
3 than fair market value. The granting of an easement in  
4 accordance with this section shall not be construed as State  
5 approval of any risk taken by a property owner.

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

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

14        SECTION 3. Section 171-17, Hawaii Revised Statutes, is  
15 amended to read as follows:

16        "**§171-17 Appraisals.** (a) The appraisal of public lands  
17 for sale or lease at public auction for the determination of the  
18 upset price may be performed by an employee of the board of land  
19 and natural resources qualified to appraise lands, or by one but  
20 not more than three disinterested appraisers whose services  
21 shall be contracted for by the board; provided that the upset  
22 price or upset rental shall be determined by disinterested



1 appraisal whenever prudent management so dictates. No such  
2 lands shall be sold or leased for a sum less than the value  
3 fixed by appraisal; provided that for any sale or lease at  
4 public auction, the board may establish the upset sale or rental  
5 price at less than the appraisal value set by an employee of the  
6 board and the land may be sold or leased at that price. The  
7 board shall be reimbursed by the purchaser or lessee for the  
8 cost of any appraisal required to be made by a disinterested  
9 appraiser or appraisers contracted for by the board.

10 (b) The sale price or lease rental of lands to be disposed  
11 of by drawing or by negotiation shall be no less than the value  
12 determined by:

- 13 (1) An employee of the board qualified to appraise lands;  
14 or  
15 (2) A disinterested appraiser or appraisers whose services  
16 shall be contracted for by the board, and such  
17 appraisal, and any further appraisal with the approval  
18 of the board, shall be at the cost of the purchaser;  
19 provided that the sale price or lease rental shall be determined  
20 by disinterested appraisal whenever prudent management so  
21 dictates; provided further that should the purchaser fail to  
22 agree upon the sale price or lease rental, the purchaser may



1 appoint an appraiser who together with the board's appraiser  
 2 shall appoint a third appraiser, and the sale price or lease  
 3 rental shall be determined by arbitration as provided for in  
 4 chapter 658A which shall be final and binding. The purchaser  
 5 shall pay for all appraisal costs, except that the cost of the  
 6 third appraiser shall be borne equally by the purchaser and the  
 7 board.

8 (c) For special shoreline encroachment easements granted  
 9 pursuant to section 171- , the board may grant such easements  
 10 for less than fair market value.

11 [~~e~~] (d) In the repurchase of any land by the board, the  
 12 board shall have the option to repurchase the land for the  
 13 original sale price or the fair market value at the time of  
 14 repurchase, whichever is the lower. Any improvements affixed to  
 15 the realty shall be purchased at their fair market value. At  
 16 the time of the repurchase, the fair market value of the land,  
 17 and the improvements, if any, shall be determined by a qualified  
 18 appraiser whose services shall be contracted for by the board;  
 19 provided should the owner fail to agree upon the value, the  
 20 owner may appoint the owner's own appraiser who together with  
 21 the board's appraiser shall appoint a third appraiser, and the  
 22 value shall be determined by arbitration as provided in chapter



1 658A. The owner shall pay for all appraisal costs, except that  
2 the cost of the third appraiser shall be borne equally by the  
3 [~~purchaser~~] owner and the board.

4 [~~(d)~~] (e) In the event of reopening of the rental to be  
5 paid on a lease, the rental for any ensuing period shall be the  
6 fair market rental at the time of reopening. At least six  
7 months prior to the time of reopening, the fair market rental  
8 shall be determined by:

9 (1) An employee of the department qualified to appraise  
10 lands; or

11 (2) A disinterested appraiser whose services shall be  
12 contracted for by the board;

13 and the lessee shall be promptly notified of the determination;  
14 provided that should the lessee fail to agree upon the fair  
15 market rental, the lessee may appoint the lessee's own appraiser  
16 who together with the board's appraiser shall appoint a third  
17 appraiser and the fair market rental shall be determined by  
18 arbitration as provided in chapter 658A. The lessee shall pay  
19 for the lessee's own appraiser, the board shall pay for its  
20 appraiser, and the cost of the third appraiser shall be borne  
21 equally by the lessee and the board. Any language in present  
22 leases to the contrary notwithstanding, the provisions of this



1 subsection, when possible and notwithstanding the six-month  
2 notice required, shall apply to leases with original lease  
3 rental reopening dates effective before and after July 1, 1996.

4 ~~[(e)]~~ (f) Whenever more than one appraiser is appointed  
5 each shall prepare and submit an independent appraisal. All  
6 appraisal reports shall be available for study by the public."

7 SECTION 4. Section 171-53, Hawaii Revised Statutes, is  
8 amended by amending subsection (c) to read as follows:

9 "(c) The board, with the prior approval of the governor  
10 and the prior authorization of the legislature by concurrent  
11 resolution, may lease state submerged lands and lands beneath  
12 tidal waters under the terms, conditions, and restrictions  
13 provided in this chapter; provided that the authorization of the  
14 legislature shall not be required for leases issued under  
15 chapter 190D; and provided further that the approval of the  
16 governor and authorization of the legislature shall not be  
17 required for any grant of easement or lease of state submerged  
18 lands or lands beneath tidal waters used for moorings, cables,  
19 ~~[or]~~ pipelines~~[+]~~, or any special shoreline encroachment as  
20 described and defined in section 171- ; provided further that  
21 this exemption shall not apply to easements for cables used for  
22 interisland electrical transmission or slurry pipelines used for



1 transportive materials, mined at sea, or waste products from the  
2 processing of the same.

3 The lease shall provide that the lands shall be reclaimed  
4 at the expense of the lessee. Title to the reclaimed lands  
5 shall remain in the State."

6 SECTION 5. Statutory material to be repealed is bracketed  
7 and stricken. New statutory material is underscored.

8 SECTION 6. This Act, upon its approval, shall take effect  
9 on July 1, 2020.



**Report Title:**

Special Shoreline Encroachment Easements

**Description:**

Allows BLNR to grant easements for less than fair market value for structures that were authorized and constructed landward of the shoreline within the record boundary of landward property at the time of construction, but are now located seaward of the shoreline on public land. Effective July 1, 2020. (HB933 HD1)

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

