

ACT 31

A Bill for an Act to Amend Item 3(c), Subsection B, Section 1, of Act 201, Session Laws of Hawaii 1963.

Be it Enacted by the Legislature of the State of Hawaii:

SECTION 1. This Act is hereby declared to be an urgency measure deemed necessary in the public interest within the meaning of Section 11 of Article III of the Constitution of the State of Hawaii.

The following is a statement of facts constituting such urgency:

Item 3(c), Subsection B, Section 1, of Act 201, Session Laws of Hawaii 1963, hereinafter called "Act 201," authorizes \$540,000 for improvements at Kuhio Beach, Honolulu. As a prerequisite to the improvement of Kuhio Beach, however, Act 201 mandated that (1) an agreement be executed between the State and at least two-thirds of the owners of property located within a given area along Waikiki Beach in which the owners would agree to fix the boundaries of their private properties along Waikiki Beach so that no addition or accretion to private land along said beach would accrue thenceforth, and (2) "the existing public easement created under the 1928-1929 Waikiki Beach Reclamation Agreements shall remain as is." Act 201 also directed the Attorney General to draft an agreement to meet the foregoing conditions.

The State, through the Department of the Attorney General, is currently negotiating the agreement authorized by Act 201 with the private owners. However, it is encountering difficulty in reaching an agreement because of (1) a possible ambiguity in the wording of Act 201 and (2) the restrictions imposed by Act 201 upon those negotiating the agreement for the State.

Act 201, as aforementioned, requires the "existing public easement created under the 1928-1929 Waikiki Beach Reclamation Agreements" to remain "as is." The public easement created by the 1928-1929 Agree-

ments is 75 feet landward from the "mean high water mark of the beach as it may exist from time to time." The interpretation to be accorded the public easement condition in Act 201 is unclear and it is uncertain whether that condition is intended to mean (1) that the concept of the public easement created by the 1928-1929 Agreements shall remain "as is" but that any measurement of the public easement area shall be 75 feet from the boundaries agreed upon between the owners and the State as mandated by Act 201, or (2) that the 75 feet public easement area shall be measured from the mean highwater mark of the beaches as constituted when Act 201 was enacted in 1963.

The foregoing indicates that, before the State can completely negotiate the agreement mandated by Act 201, an amendment to Act 201 will be necessary to clarify its ambiguous aspect and to give greater flexibility to the Attorney General in negotiating the agreement for the State.

The amendment to Act 201 is immediately necessary since (1) any delay in amending Act 201 will delay the much needed rehabilitation of Waikiki Beach, and consequently, adversely affect the tourist element of the economy of the State, and (2) the present owners of the properties along Waikiki Beach are in general willing to settle with the State on matters relative to their accretion and boundary rights; however, because of recent changes in the ownership of property along Waikiki Beach, the owners of said properties a year hence may be different and consequently may not be receptive to the idea of fixing their shoreline boundaries. In view of the reasons stated above, this Legislature deems this Act to be an urgency measure necessary in the public interest.

SECTION 2. Item 3(c) of Subsection B of Section 1 of Act 201, Session Laws of Hawaii 1963, is amended in its entirety to read as follows:

"c. KUHIO BEACH IMPROVEMENTS, Honolulu..... 540,000 Rehabilitate existing beach between Kapahulu storm drain and the Waikiki Beach Center in accordance with federally approved plans—provided, however, that such improvements shall not be constructed until the owners of at least two-thirds of the property along the shoreline along Waikiki Beach from the northern boundary of Kuhio Beach to the northern boundary of the Royal Hawaiian Hotel shall enter into an agreement with the State of Hawaii to so fix the boundaries of their private properties along such beach, so that no accretion to private land along said beach shall accrue from thenceforth, except as may be provided in the terms of the agreement referred to herein. The Attorney General is directed to draft the agreement and shall include therein the foregoing condition and such other terms, covenants and conditions as he deems necessary. Any agreement authorized herein shall, prior to its execution by the State, be submitted to the governor for his approval. The Attorney General is also directed to condemn the littoral rights of such lands, whose owners do not agree to the above mentioned terms and conditions; using the funds appropriated under this paragraph."

SECTION 3. This Act shall take effect upon its approval.

(Approved April 21, 1964.) H.B. 561.