

ACT 44

A Bill for an Act Amending Chapter 112 of the Revised Laws of Hawaii 1955, as Amended, Relating to Harbors.

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:

On the basis of an improper delegation of power, the District Court recently ruled that Act 115, Session Laws of Hawaii 1965, giving the Director of Transportation the power to promulgate regula-

tions governing the uses and activities wherever the State has a public easement along the shores of the State, was unconstitutional. A review of the enabling statutes upon which the Hawaii Shore Waters Regulations were promulgated indicates that they should be amended in order to avoid similar attacks on the constitutionality of said regulations.

Though the constitutionality of the Hawaii Shore Waters Regulations has not yet been contested, it is desirable that the enabling statute be amended to provide more specific language to insure against such a contest. The safety and protection of tourists and the users of the waters of the State would thus be assured.

SECTION 2. Section 112-5 of the Revised Laws of Hawaii 1955, is hereby amended by adding a new paragraph, to read as follows:

"In addition to the powers vested in the director of transportation by sections 112-1 and 112-3, the director, to promote public safety, health and welfare in or on the shore waters and shores and on beaches encumbered with easements in favor of the public, may promulgate, alter, amend and repeal rules and regulations governing the shore waters, shores and beaches encumbered with easements in favor of the public. The rules and regulations to be promulgated under this paragraph may include:

(a) Safety measures, requirements and practices in or on the shore waters and shores of the State;

(b) The licensing and registration of persons or organizations engaged in commercial activities in or on the shore waters or shores of the State;

(c) The licensing and registration of equipment utilized for commercial activities in or on the shore waters or shores of the State;

(d) The prohibition of the following uses and activities on beaches encumbered with easements in favor of the public: (1) commercial activities, (2) the storage, parking and display of any personal property, (3) the placement of any structures or obstructions, and (4) any other uses or activities that may interfere with the public use and enjoyment of said beaches.

(e) Any other matters relating to the safety, health and welfare of the general public."

SECTION 3. Part I of chapter 112 is hereby amended by adding a new section, to read as follows:

"**Section 112- . Definitions.** For the purpose of this part, if not inconsistent with the context:

'Shore waters and shores' shall mean all ocean waters below mean high water mark and within the jurisdiction of the State.

'Beaches encumbered with easements in favor of the public' means any lands which lie along the shores of the State above mean high water mark and which are now, or may hereafter be encumbered by easements in favor of the public for bathing purposes and for foot passage."

SECTION 4. Severability. If any portion of this Act or its application to any persons or circumstance is held to be invalid for any

reason, then the legislature hereby declares that the decision of invalidity shall not affect the validity of the remaining portions of this Act.

SECTION 5. This Act shall take effect upon its approval.
(Approved May 4, 1966.) **S.B. 192.**