

EXECUTIVE CHAMBERS

HONOLULU

June 10, 1999

ORIGINAL

STATEMENT OF OBJECTIONS TO HOUSE BILL NO. 1675

Honorable Members
Twentieth Legislature
State of Hawaii

Pursuant to Section 16 of Article III of the Constitution of the State of Hawaii, I am returning herewith, without my approval, House Bill No. 1675, entitled "A Bill for an Act Relating to Hawaiian Home Lands Trust Individual Claims."

The purpose of this bill is to extend the individual claims review process for one more year, without correcting the applicable criteria and formula for damages. This bill will also create a compensation commission to develop proposals for alternative means of compensating claimants who have received a favorable ruling from the Hawaiian Home Lands Individual Trust Claims Review Panel ("Panel").

By way of background, the individual claims review process was established by the Legislature in 1991 and it has been in operation for the last eight years. Moreover, after being established, the Panel took six long years before it finally submitted its first report to the Legislature with its recommended damage awards. This occurred in 1997. To date, the Panel has reviewed less than half of the more than 4000 claims filed. At this pace, it would certainly take more than "one more year" for the Panel to complete its review of all the claims. This is totally unacceptable. The claimants as well as the State have been dragged through this process long enough, and this bill does nothing to expedite the matter.

Moreover, throughout the Panel's administrative review process, the Panel has continually misapplied the claims' criteria and formula for damages. For example, the Panel has improperly included "wait list" claims as viable claims under chapter 674, Hawaii Revised Statutes. The problem of

beneficiaries "waiting" too long for a homestead was intended to be remedied by Act 14, Session Laws of Hawaii 1995, and not by the individual claims review process under chapter 674. Yet, under the currently applied criteria and formula, the Panel has deemed waiting list claims to be compensable. This bill fails to correct the Panel's erroneous inclusion of wait list claims as compensable claims.

Furthermore, in response to the Panel's first report to the Legislature containing recommended damages, the Legislature in 1997 enacted Act 382, which created a Working Group consisting of the Attorney General, the Director of Finance, the Chairperson of the Hawaiian Homes Commission, and the Chairperson of the Panel. This Working Group was created because the Legislature specifically found that there was "disagreement between the parties over the formula utilized by the [Panel] to arrive at award amounts." Accordingly, the Working Group was directed to discuss and formulate "an appropriate formula and any criteria necessary to qualify and resolve all claims made under chapter 674, Hawaii Revised Statutes." Upon approval by the Governor, the recommendations of the Working Group were to be applied by the Panel. Unfortunately, due to a civil lawsuit brought by several of the claimants, the Panel was enjoined from considering the twenty-five recommendations of the Working Group. Notwithstanding the injunction, this Legislature was still free to correct the disagreement over the claims' criteria and formula. The Legislature, having the opportunity this past legislative session to correct this matter, nevertheless failed to do this.

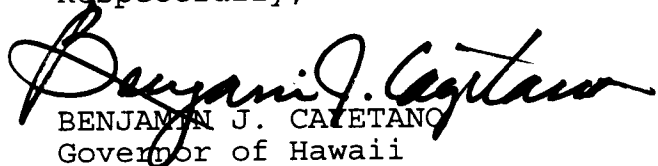
Other concerns with the validity of the Panel's recommended awards were further identified by the Attorney General in her response to the Panel's Report to the Governor and the 1999 Hawaii Legislature. Concerns were also raised by the Attorney General relative to the Panel's bias and conflicts of

interests. None of these concerns are addressed by this bill.

Consequently, not only has the Legislature failed to clarify the disagreement over the criteria and formula for damages for these claims, but the Legislature is also responsible, in part, for the two-year delay, caused by the litigation, in processing these claims. Now, this bill will perpetuate the same erroneous standards for another year. This, in turn, will perpetuate the beneficiaries' misunderstanding that the Panel's recommended awards are valid. This misunderstanding by the beneficiaries cannot be allowed to continue.

For the foregoing reasons, I am returning House Bill No. 1675 without my approval.

Respectfully,


BENJAMIN J. CAYETANO
Governor of Hawaii

P R O C L A M A T I O N


WHEREAS, under Section 16 of Article III of the Constitution of the State of Hawaii, the Governor is required to give notice, by a proclamation, of his plan to return with his objections any bill presented to him less than ten days before adjournment sine die or presented to him after adjournment sine die of the Legislature; and

WHEREAS, House Bill No. 1675, entitled "A Bill for an Act Relating to Hawaiian Home Lands Trust Individual Claims," was presented to the Governor within the aforementioned period; and

WHEREAS, House Bill No. 1675 is unacceptable to the Governor of the State of Hawaii;

NOW, THEREFORE, I, BENJAMIN J. CAYETANO, Governor of the State of Hawaii, do hereby issue this proclamation, pursuant to the provisions of Section 16 of Article III of the Constitution of the State of Hawaii, giving notice of my plan to return House Bill No. 1675 with my objections thereon to the Legislature as provided by said Section 16 of Article III of the Constitution.

DONE at the State Capitol, Honolulu,
State of Hawaii, this 10th
day of June, 1999.


BENJAMIN J. CAYETANO
Governor of Hawaii

A BILL FOR AN ACT

RELATING TO HAWAIIAN HOME LANDS TRUST INDIVIDUAL CLAIMS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

PART I.

1

2 SECTION 1. Section 674-1, Hawaii Revised Statutes, is
3 amended to read as follows:

4 "§674-1 Purpose. The purpose of this chapter is to
5 establish a process under which individual beneficiaries under
6 the Hawaiian home lands trust may resolve claims for actual
7 damages arising out of or resulting from a breach of trust, which
8 occurred between August 21, 1959, and June 30, 1988, and was
9 caused by an act or omission of an employee of the State in the
10 management and disposition of trust resources:

11 (1) By establishing a Hawaiian home lands trust individual
12 claims review panel which shall:

13 (A) Receive, review, and evaluate the merits of an
14 individual beneficiary's claim;

15 (B) Render findings and issue an advisory opinion
16 regarding the merits of each claim filed with the
17 panel, including an estimate of the probable award
18 of actual damages or recommended corrective action
19 that may be implemented to resolve each claim;

20 (C) Prepare and transmit [a report to the governor and

1 legislature, at least twenty days prior to the
2 convening of each regular legislative session,
3 and] a final report, at least twenty days prior to
4 the convening of the [1997] 2000 regular
5 legislative session, on the activities of the
6 panel including a summary of each claim brought
7 before the panel, the panel's findings and
8 advisory opinion regarding the merits of each
9 claim, and an estimate of the probable
10 compensation or any recommended corrective action
11 for legislative action;

12 (D) Disburse any compensation awarded by the
13 legislature in regular session or undertake other
14 actions as provided by law which are acceptable to
15 a claimant; and

16 (2) By providing an individual beneficiary claimant the
17 right to bring an action to recover actual damages for
18 a breach of trust, in the circuit courts of the State
19 of Hawaii, if the action taken by the legislature in
20 regular session on each claim brought before the panel
21 is not acceptable to an individual beneficiary
22 claimant."

23 SECTION 2. Section 674-4, Hawaii Revised Statutes, is

1 amended to read as follows:

2 **"§674-4 Tenure and compensation of members.** The term of
3 office of each member of the panel shall be until December 31,
4 [1999.] 2000. Any member appointed to fill a vacancy shall be
5 appointed by the governor for the remainder of the term. A
6 vacancy in the panel shall not affect its powers.

7 Each member of the panel shall be compensated at the rate of
8 \$100 per day for each day's actual attendance to the member's
9 duties; provided that the compensation shall not exceed a maximum
10 of \$10,000 per year. The members of the panel shall be paid
11 their necessary traveling and subsistence expenses incurred in
12 the discharge of their duties. Expenses incurred under this
13 section shall be paid by the department of commerce and consumer
14 affairs."

15 SECTION 3. Section 674-14, Hawaii Revised Statutes, is
16 amended to read as follows:

17 **"§674-14 Annual report.** The panel shall prepare [a report
18 to be transmitted to the governor and to the legislature, at
19 least twenty days prior to the convening of the regular session
20 of 1998, and] a final report to be transmitted to the governor
21 and to the legislature, at least twenty days prior to the
22 convening of the regular session of [1999,] 2000, which
23 summarizes [its] the panel's activities in furtherance of this

1 chapter, and shall include a summary of each claim brought before
2 the panel, the panel's findings and advisory opinion regarding
3 the merits of each claim, and an estimate of the probable
4 compensation or recommended corrective action by the State, for
5 action by the legislature in regular session."

6 SECTION 4. Section 674-17, Hawaii Revised Statutes, is
7 amended to read as follows:

8 **"§674-17 Right to sue, individual claims.** (a) An
9 aggrieved individual claimant shall have the right to bring an
10 action, in accordance with this part, in the circuit courts of
11 the State for recovery of actual damages suffered by the claimant
12 arising out of or resulting from a breach of trust which occurred
13 between August 21, 1959, to June 30, 1988; provided that no
14 action shall be filed until after October 1, [1997.] 2000.

15 (b) "Aggrieved individual claimant", as used in this
16 section, means an individual claimant whose claim was reviewed by
17 the panel under this chapter and who has filed, no later than
18 October 1, [1999,] 2000, a written notice with the panel that the
19 claimant does not accept the action taken by the legislature in
20 regular session upon the claim. Any claimant who fails to file a
21 written notice rejecting the action of the legislature upon the
22 claim shall be deemed to have accepted the action taken by the
23 legislature."

1 SECTION 5. Section 674-19, Hawaii Revised Statutes, is
2 amended to read as follows:

3 "§674-19 Limitation on actions. Every claim cognizable
4 under this part shall forever be barred unless the action is
5 commenced by December 31, [1999.] 2000."

6 PART II.

7 SECTION 6. The purpose of this Part is to establish a
8 commission to evaluate funding mechanisms to compensate native
9 Hawaiian beneficiaries that have successfully asserted claims
10 against the State under chapter 674, Hawaii Revised Statutes.

11 SECTION 7. (a) There is established in the legislative
12 reference bureau for administrative purposes only, a Hawaiian
13 home lands trust individual claims compensation commission which
14 shall be comprised of seven voting members who shall be:

- 15 (1) The director of budget and finance or the director's
16 designee;
- 17 (2) The chairperson of the Hawaiian homes commission or the
18 chairperson's designee;
- 19 (3) The chairperson of the Hawaiian home lands individual
20 trust claims review panel or the chairperson's
21 designee;
- 22 (4) A claimant who has successfully engaged the process
23 established under chapter 674, Hawaii Revised Statutes,

1 to resolve the claimant's individual claim of breach of
2 the Hawaiian Home Lands Trust;

3 (5) A beneficiary of the Hawaiian home lands trust who is
4 not a claimant under chapter 674, Hawaii Revised
5 Statutes;

6 (6) The president of the senate or the president's
7 designee; and

8 (7) The speaker of the house of representatives or the
9 speaker's designee.

10 (b) The governor shall appoint the members specified under
11 subsection (a) (4) and (5) to serve on the Hawaiian home lands
12 trust individual claims compensation commission from lists
13 submitted by the various Hawaiian homestead associations in the
14 State. Any vacancy that may occur for a commission seat that was
15 appointed under subsection (a) (4) or (5) shall be filled in the
16 same manner that the replacement's predecessor was appointed.

17 (c) The Hawaiian home lands trust individual claims
18 compensation commission shall develop proposals for alternative
19 means of compensating claimants who have received a favorable
20 ruling under the process established under chapter 674, Hawaii
21 Revised Statutes. The proposals may be formulated on an
22 individual or class basis as deemed appropriate by the commission
23 and shall include but not be limited to:

- 1 (1) Means of financing for claims against the State under
2 chapter 674, Hawaii Revised Statutes;
- 3 (2) Compensation in the form of reparations and the means
4 of financing thereof;
- 5 (3) The provision of low-cost rental housing for elderly,
6 low-income claimant beneficiaries; and
- 7 (4) Any combination of subsections (1), (2), (3), or any
8 other proposal the commission deems appropriate.
- 9 (d) The Hawaiian home lands trust individual claims
10 compensation commission may draw upon the expertise and
11 experience of those persons in the community, including
12 representatives of beneficiary groups and claimants, and
13 financial experts, bankers, and economists who are willing to
14 provide information and advice to the commission.
- 15 (e) The Hawaiian home lands trust individual claims
16 compensation commission shall not be subject to the requirements
17 of chapters 91 and 92, Hawaii Revised Statutes, but may hold
18 public hearings to obtain public input.
- 19 (f) The Hawaiian home lands trust individual claims
20 compensation commission shall submit a final report of its
21 findings and recommendations to the legislature not later than
22 twenty days prior to the convening of the regular session of
23 2000.

- 1 (g) The Hawaiian home lands trust individual claims
2 compensation commission shall cease to exist on June 30, 2000.
3 SECTION 8. Statutory material to be repealed is bracketed.
4 New statutory material is underscored.
5 SECTION 9. This Act shall take effect upon its approval.

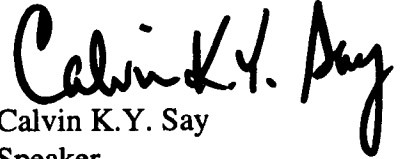
APPROVED this day of , 1999

GOVERNOR OF THE STATE OF HAWAII

THE HOUSE OF REPRESENTATIVES OF THE STATE OF HAWAII

Date: May 4, 1999
Honolulu, Hawaii

We hereby certify that the foregoing Bill this day passed Final Reading in the House of Representatives of the Twentieth Legislature of the State of Hawaii, Regular Session of 1999.



Calvin K.Y. Say
Speaker
House of Representatives

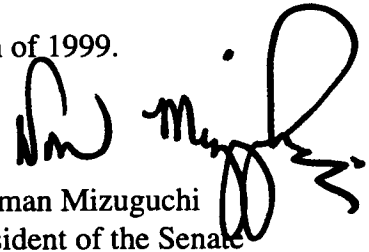


Patricia Mau-Shimizu
Chief Clerk
House of Representatives

THE SENATE OF THE STATE OF HAWAII

Date: May 4, 1999
Honolulu, Hawaii

We hereby certify that the foregoing Bill this day passed Final Reading in the Senate of the Twentieth Legislature of the State of Hawaii, Regular Session of 1999.



Norman Mizuguchi
President of the Senate



Paul Kawaguchi
Clerk of the Senate