

ACT 351

H.B. NO. 2010

A Bill for an Act Relating to the Hawaiian Home Lands Trust Individual Claims Review Panel.

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

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

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

- (1) By establishing a Hawaiian home lands trust individual claims review panel which shall:
 - (A) Receive, review, and evaluate the merits of an individual beneficiary's claim;
 - (B) Render findings and issue an advisory opinion regarding the merits of each claim filed with the panel, including an estimate of the probable award of actual damages or recommended corrective action that may be implemented to resolve each claim;
 - (C) Prepare and transmit a report to the governor and legislature, at least twenty days prior to the convening of [the 1993 legislature in regular] each regular legislative session, and a final report, at least twenty days prior to the convening of the [1994 legislature in regular] 1997 regular legislative session, on the activities of the panel including a summary of each claim brought before the panel, the panel's findings and advisory opinion regarding the merits of each claim, and an estimate of the probable compensation or any recommended corrective action for [legislation] legislative action;

- (D) Disburse any compensation awarded by the [1993 and 1994 legislatures] legislature in regular session or undertake [such] other [action] actions as provided by law which [is] are acceptable to a claimant; and
- (2) By providing an individual beneficiary claimant the right to bring an action to recover actual damages for a breach of trust, in the circuit courts of the State of Hawaii, if the action taken by the [1993 and 1994 legislatures] legislature in regular session on each claim brought before the panel is not acceptable to an individual beneficiary claimant.”

SECTION 2. Section 674-4, Hawaii Revised Statutes, is amended to read as follows:

“**[§674-4] Tenure and compensation of members.** The term of office of each member of the panel shall be until December 30, [1995.] 1997. Any member appointed to fill a vacancy shall be appointed by the governor for the remainder of the term. A vacancy in the panel shall not affect its powers.

Each member of the panel shall be compensated at the rate of \$100 per day for each day’s actual attendance to the member’s duties; provided that the compensation shall not exceed a maximum of \$10,000 per year. The members of the panel shall be paid their necessary traveling and subsistence expenses incurred in the discharge of their duties. [Such costs will] Expenses incurred under this section shall be paid by the department of commerce and consumer affairs.”

SECTION 3. Section 674-5, Hawaii Revised Statutes, is amended by amending subsection (a) and (b) to read as follows:

“(a) Supervisory, administrative, investigatory, hearings, and clerical personnel necessary for the efficient functioning of the panel shall be appointed by the panel and the director of [the department of] commerce and consumer affairs on a temporary exempt basis. There shall be a special assistant to the chairperson of the Hawaiian homes commission, to be hired by the commission, for the purposes of this chapter.

(b) Upon application by a claimant, the panel, under appropriate circumstances and in accordance with section 103-3, may [retain and] provide for legal services to assist a claimant in the preparation and presentation of a claim for review by the panel under this chapter.”

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

“**[§674-6] Rulemaking powers.** The panel shall adopt rules in accordance with chapter 91 [within six months after the effective date of this chapter] prescribing the procedures to be followed in the filing of claims and in the proceedings for review of claims under this chapter, and [such] any other rules as the panel deems necessary to carry out the purposes of this chapter.”

SECTION 5. Section 674-7, Hawaii Revised Statutes, is amended to read as follows:

“**[§674-7] Review by panel required.** Any individual beneficiary under the trust claiming actual damages arising out of or resulting from a breach of trust, which occurred between August 21, 1959, and June 30, 1988, and which was

caused by an act or omission of an employee of the State in the management and disposition of trust resources under the trust, shall file a claim therefor for review by the panel no later than August 31, [1993,] 1995, or shall forever be barred.”

SECTION 6. Section 674-9, Hawaii Revised Statutes, is amended to read as follows:

“**[§674-9] Panel hearing or review proceedings; fact-finding; evidence.** No persons other than the panel or hearings officer, the claimant, representatives of the concerned state agency, legal counsel, witnesses, and persons called by the panel to assist in its review, shall be present during any hearing or other proceedings conducted by the panel, except with the permission of the chairperson. For every claim filed, the department shall be notified and shall be entitled to be present during any hearing or other proceeding conducted by the panel. The panel may, in its discretion, conduct an inquiry of a party, witness, or any other person without the presence of any or all parties.

All proceedings shall be informal. Except as otherwise provided in this chapter, chapters 91 and 92 shall not apply. For the purpose of this chapter, the panel shall prepare a record of each claim. The record shall include:

- (1) All correspondence, pleadings, motions, and rulings;
- (2) Evidence received or considered, including oral or written testimony, exhibits, and a statement of any matters officially noticed;
- (3) Offers of proof and rulings thereon;
- (4) Proposed findings and exceptions;
- (5) Staff memoranda, including investigative reports, submitted to members of the panel in connection with their review of the claim;
- (6) Recommended or proposed findings of the hearings officer who presided at the hearing; and
- (7) The panel findings and advisory opinion.

No matters outside the record shall be considered by the panel in reviewing and evaluating a claim. Unless otherwise provided by chapter 92F, the record of each claim shall be public and open for public inspection, except that staff memoranda, including investigative reports, shall be confidential and shall be made public only after a hearing has been held on the claim pursuant to the panel's rules. At the discretion of the panel, staff memoranda, including investigative reports, may be disclosed to the parties prior to a hearing on the claim. Any party to whom a staff memorandum or investigative report is disclosed shall maintain its confidentiality and may make public its contents only after a hearing has been held on the claim.

The panel may require a stenographic record of all or part of its proceedings for the use of the panel, but [such] the stenographic record shall not be made available to the parties. The panel may receive any oral or documentary evidence, or any matter that, in the opinion of the panel, may contribute to its function under this chapter, whether or not [such] the statement, document, information or matter would be admissible in a court of law. Questioning of parties, and witnesses may be conducted by the panel, and the panel may, in its discretion, permit any party, or any counsel for a party to question other parties, witnesses, or other persons appearing before the panel. Discovery by the parties shall not be allowed.”

SECTION 7. Section 674-10, Hawaii Revised Statutes, is amended to read as follows:

“**[§674-10] Findings and advisory opinion.** (a) The panel shall prepare findings and an advisory opinion concerning the probable merits of a claim, probable award of compensation, or recommended corrective action by the State.

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(b) The findings and advisory opinion shall be signed by all members of the panel; provided that any member of the panel may file a written concurring or dissenting advisory opinion.

(c) The advisory opinion of the panel rendered on each claim shall be incorporated in the reports required by section 674-14 for submission [prior to the closing of the 1993 and 1994 legislatures.] to the legislature.”

SECTION 8. Section 674-11, Hawaii Revised Statutes, is amended to read as follows:

“**[§674-11] Subsequent litigation; excluded evidence.** No statement made in the course of any investigation, hearing, or review proceedings of the panel shall be admissible in evidence either as an admission, to impeach the credibility of a witness, or for any other purpose in any legal proceeding. No opinion, conclusion, finding, or recommendation of the panel on the issue of liability, or on the issue of compensation, or corrective action shall be admitted into evidence in any legal proceeding, nor shall any party to the panel hearing, or the counsel, or other representative of [such] the party, refer to or comment thereon in any opening statement, any argument, or at any other time, to any court or jury.”

SECTION 9. Section 674-14, Hawaii Revised Statutes, is amended to read as follows:

“**[§674-14] Annual report.** The panel shall prepare a report to be transmitted to the governor and to the legislature, at least twenty days prior to the convening of [the 1993 legislature in regular] each regular legislative session, and a final report to be transmitted to the governor and to the legislature, at least twenty days prior to the convening of the [1994 legislature in regular] 1997 regular legislative session, which summarizes its activities in furtherance of this chapter, and shall include a summary of each claim brought before the panel, the panel’s findings and advisory opinion regarding the merits of each claim, and an estimate of the probable compensation or recommended corrective action by the State, for action by the [1993 and 1994 legislatures] legislature in regular session.”

SECTION 10. Section 674-16, Hawaii Revised Statutes, is amended to read as follows:

“**[§674-16] Waiver of immunity.** (a) The State waives its immunity from liability for actual damages suffered by an individual beneficiary arising out of or resulting from a breach of trust or fiduciary duty, which occurred between August 21, 1959, to June 30, 1988, and was caused by an act or omission of an employee of the State in the management and disposition of trust resources.

(b) This waiver shall not apply to the following:

- (1) Any claim for which a remedy was or is provided elsewhere in or under the laws of the State;
- (2) Any claim which was or is the subject of prior or pending litigation; or
- (3) Any claim predicated, in whole or in part, upon any act or omission which occurred prior to August 21, 1959.”

SECTION 11. Section 674-17, Hawaii Revised Statutes, is amended to read as follows:

“**[§674-17] Right to sue, individual claims.** (a) An aggrieved individual claimant shall have the right to bring an action, in accordance with this part, in

the circuit courts of the State for recovery of actual damages suffered by the claimant arising out of or resulting from a breach of trust which occurred between August 21, 1959, to June 30, 1988; provided that no action shall be filed until after October 1, [1994.] 1997.

(b) "Aggrieved individual claimant", as used in this section, means an individual claimant whose claim was reviewed by the panel under this chapter and who has filed, no later than October 1, [1994,] 1997, a written notice with the panel that the claimant does not accept the action taken by the [1993 or 1994 legislatures] legislature in regular session upon [such] the claim. Any claimant who fails to file a written notice rejecting the action of the legislature upon the claim shall be deemed to have accepted the action taken by the legislature."

SECTION 12. Section 674-19, Hawaii Revised Statutes, is amended to read as follows:

"**[§674-19] Limitation on actions.** Every claim cognizable under this part shall forever be barred unless the action is commenced by September 30, [1996.] 1999."

SECTION 13. Section 674-20, Hawaii Revised Statutes, is amended to read as follows:

"**[§674-20] No implied liability or award.** In no case shall any liability be implied against the State, and no award shall be made against the State on any claim brought under this [chapter] part except upon [such] legal evidence [as] that would establish liability against an individual or corporation."

SECTION 14. Section 674-21, Hawaii Revised Statutes, is amended to read as follows:

"**[§674-21] Attorney's fees and costs.** In any action brought under this [chapter,] part, the court may, as it deems just, award to a prevailing claimant and enter as part of its order or judgment, a reasonable sum for costs and expenses incurred, including reasonable attorney's fees."

SECTION 15. There is appropriated out of the general revenues of the State of Hawaii the sum of \$797,799, or so much thereof as may be necessary for fiscal year 1993-1994, for the administration of this Act.

The sums appropriated shall be expended by the department of commerce and consumer affairs for the purposes of this Act.

SECTION 16. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 17. This Act shall take effect upon its approval; provided that section 15 shall take effect on July 1, 1993.

(Approved July 1, 1993.)

Note

1. Comma should be underscored.