

A Bill for an Act Relating to Hawaiian Home Lands.

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

SECTION 1. The legislature finds that when the United States Congress passed the Hawaiian Homes Commission Act and set aside approximately 203,000 acres of public lands as Hawaiian home lands for the rehabilitation of native Hawaiians, the United States reaffirmed the trust responsibility it had assumed towards the Hawaiian people.

The legislature also finds that, in contravention of the Hawaiian Homes Commission Act, many thousands of acres of Hawaiian home lands have been withdrawn from the trust by territorial and state executive actions. Other trust lands have been taken or held by government agencies or private entities with no record of transactions, formal conveyances, or compensation. Trust lands were also exchanged for lands of lesser value and other trust lands were leased for nominal rents. While the vast majority of these violations occurred before statehood, various agencies or private parties continued to use trust lands after statehood.

The legislature finds that restoring those lands to the trust or exchanging them for lands of equal value and compensating the trust for the State's past use of the lands:

- (1) Is in accord with the State's responsibility under Hawaii's Admission Act;
- (2) Serves to strengthen the trust; and
- (3) Will better enable the department of Hawaiian home lands and the department's executive board, the Hawaiian homes commission, to accomplish the department's goal of accelerating the settlement of native Hawaiians on Hawaiian home lands.

The legislature further finds that it is the responsibility of the State, as trustee of Hawaiian home lands, to pursue claims against the federal government for those actions that originated under the auspices of the federal government and its agent, the Territory of Hawaii.

SECTION 2. The purposes of this Act are to:

- (1) Appropriate funds and provide additional means necessary to remedy the State's past wrongful, improper, or unauthorized withdrawals, transfers, takings, or uses of Hawaiian home lands between August 21, 1959, and the present;
- (2) Authorize the State to pursue claims against the United States for the federal government's wrongful, improper, and unauthorized uses, transfers, or takings of Hawaiian home lands; and
- (3) Authorize the State to initiate land exchanges to resolve wrongful transfers and grants of Hawaiian home lands, otherwise known as alienations, to non-government entities.

SECTION 3. Act 316, Session Laws of Hawaii 1992, is amended by amending section 4 to read as follows:

“SECTION 4. There is appropriated out of the general revenues of the State of Hawaii the sum of \$12,000,000, or so much thereof as may be necessary for fiscal year 1992-1993, for the purpose of paying compensation for the State's uncompensated use of Hawaiian home lands since August 21, 1959, including the use of these lands under governors' executive orders and proclamations[.], but the

unexpended and unencumbered balance of the appropriated sum shall not lapse until the close of business on June 30, 1994. The sum appropriated shall be expended by the department of budget and finance upon certification by the office of state planning that a wrongful use has been verified. Compensation may be paid [throughout fiscal year 1992-1993,] as claims are verified and the amounts of compensation owed are determined. The office of state planning may adopt rules pursuant to chapter 91, Hawaii Revised Statutes, as may be necessary for the purposes of this section.”

SECTION 4. Section 5, Act 316, Session Laws of Hawaii 1992, is amended by amending subsection (b) to read as follows:

“(b) The department of Hawaiian home lands may purchase parcels of public land until December 31, [1993.] 1994. Notwithstanding any law to the contrary, the department of land and natural resources shall convey by quitclaim deed, with the prior concurrence of the office of state planning, the parcels of land purchased by the department of Hawaiian home lands.”

SECTION 5. (a) The office of the governor is authorized to present proposals to the legislature to resolve claims against the State of Hawaii for breaches of the Hawaiian home lands trust. The governor shall consult with a court-appointed independent representative of the beneficiaries of the Hawaiian home lands trust. In this process, the independent representative shall be deemed to be the sole representative of the beneficiary class. Actions of the independent representative are binding on the class of beneficiaries. The independent representative, when appointed, shall participate in pending non-judicial proceedings to resolve claims against the State with the Hawaiian homes commission and other administrative agencies which have a role in the resolution until:

- (1) The Hawaiian home lands trust corpus and its assets are transferred by the State to a sovereign, native Hawaiian entity upon its recognition by the United States government and the State;
- (2) The Hawaiian homes commission members are selected by their beneficiaries; or
- (3) December 1, 1994.

The office of the governor and the department of budget and finance shall submit a report on the actions taken to resolve the claims brought forth by the department of Hawaiian home lands and the final amount of compensation due to the department of Hawaiian home lands to the legislature at least twenty days prior to the convening of the regular session of 1994. The independent representative may also submit, if necessary, findings and recommendations to the legislature at least twenty days prior to the convening of the regular session of 1994.

(b) There is appropriated out of the general revenues of the State of Hawaii the sum of \$200,000, or so much thereof as may be necessary for fiscal year 1993-1994, for the purpose of paying the independent representative and any additional services that may be required.

The sum appropriated shall be expended by the department of the attorney general.

SECTION 6. In accordance with section 204(a)(3) of the Hawaiian Homes Commission Act, the State and the department of Hawaiian home lands may exchange lands previously alienated from the Hawaiian home lands trust for lands of equal value. The exchanges are subject to the consent and approval of the Secretary of the United States Department of the Interior. The State may provide

ACT 352

additional compensation to the department of Hawaiian home lands in the form of additional land for Hawaiian home lands previously alienated from the trust.

SECTION 7. The department of the attorney general, the department of Hawaiian home lands, and the office of state planning are authorized to pursue Hawaiian home lands trust claims against the federal government. In these endeavors, the department of the attorney general, the department of Hawaiian home lands, and the office of state planning shall consult with the independent representative authorized in section 5 of this Act.

SECTION 8. (a) The department of land and natural resources is authorized to convey public lands to the department of Hawaiian home lands in full or partial satisfaction of the past rent due to the department of Hawaiian home lands to implement the purposes of this Act.

(b) The department of Hawaiian home lands may use the amounts appropriated in section 3 of this Act in payment for or credit towards the acquisition of public lands.

SECTION 9. There is appropriated out of the general revenues of the State of Hawaii the sum of \$475,000, or so much thereof as may be necessary for fiscal year 1993-1994, to assist the state task force on department of Hawaiian home lands title and related claims in preparing the remaining claims package for submission to the legislature in 1994.

The sum appropriated shall be expended by the office of state planning.

SECTION 10. There is appropriated out of the general revenues of the State of Hawaii the sum of \$350,000, or so much thereof as may be necessary for fiscal year 1993-1994, to continue the pursuit of Hawaiian home lands trust claims against the federal government.

The sum appropriated shall be expended by the department of the attorney general.

SECTION 11. If any provision of this Act, or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of the Act that can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

SECTION 12. Session law material to be repealed is bracketed. New session law material is underscored.

SECTION 13. This Act shall take effect upon its approval; except that section 5(b) and sections 9 and 10 shall take effect on July 1, 1993.

(Approved July 1, 1993.)