

ACT 382

H.B. NO. 1857

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

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

SECTION 1. The legislature finds that chapter 674, Hawaii Revised Statutes, was enacted 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 in the management and disposition of trust resources.

Chapter 674, Hawaii Revised Statutes, established a Hawaiian home lands trust individual claims review panel which was charged with the responsibility to:

- (1) Receive, review, and evaluate the merits of an individual beneficiary's claim;
- (2) 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;
- (3) Prepare and transmit a report to the governor and legislature, at least twenty days prior to the convening of each regular session, and a final report, at least twenty days prior to the convening of the 1997 regular 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 legislative action; and
- (4) Disburse any compensation awarded by the legislature in regular session or undertake other actions as provided by law which are acceptable to a claimant.

Chapter 674, Hawaii Revised Statutes, also provided 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 legislature in regular session on each claim brought before the panel is not acceptable to an individual beneficiary claimant.

In response to its mandated responsibilities, the Hawaiian home lands trust individual claims review panel conducted an extensive hearing process to formulate a method of quantifying actual damages over claims made by trust beneficiaries. The legislature also finds that there is disagreement between the parties over the formula utilized by the Hawaiian home lands trust individual claims review panel to arrive at award amounts. This disagreement, coupled with the legislature's belief that these claims should be handled together, rather than in a piecemeal fashion, has led to the necessity of this Act.

The legislature believes that the process to settle individual claims for breaches under the Hawaiian home lands trust needs to be clarified and that the active and meaningful participation of all affected parties is necessary in order to ensure that a fair, equitable, and expedient solution is established for all Hawaiian home land trust beneficiaries.

The purpose of this Act is to conclusively address the issue of determining just compensation for Hawaiian home land trust beneficiaries who have made claims under chapter 674, Hawaii Revised Statutes.

SECTION 2. The attorney general, director of finance, chairperson of the Hawaiian homes commission, and the chairperson of the Hawaiian home lands trust individual claims review panel established pursuant to chapter 674, Hawaii Revised Statutes, shall convene within thirty days of the effective date of this Act to discuss and formulate an appropriate formula and any criteria necessary to qualify and resolve all claims made under chapter 674, Hawaii Revised Statutes. Once formulated, the formula and criteria shall be submitted for approval by the governor by October 15, 1997, and reported to the legislature no later than twenty days prior to the convening of the 1998 regular session.

For the purposes of this section, the attorney general shall be responsible for recording and submitting the formula and criteria for approval to the governor and reporting to the legislature on the formula.

SECTION 3. The Hawaiian home lands trust individual claims review panel established pursuant to chapter 674, Hawaii Revised Statutes, shall utilize the formula and criteria established and approved under section 2 of this Act to review properly submitted claims not included in the claims review panel's 1997 report to the legislature.

The chairperson of the Hawaii homes commission and the Hawaiian home lands trust individual claims review panel shall vigorously pursue nonmonetary remedial relief to resolve properly submitted claims incorporated in the claims review panel's 1997 report to the legislature.

SECTION 4. 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, 1997.] December 31, 1999. 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. Expenses incurred under this section shall be paid by the department of commerce and consumer affairs.”

SECTION 5. 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 [each regular legislative session,] the regular session of 1998, and a final report to be transmitted to the governor and to the legislature, at least twenty days prior to the convening of the [1997 regular legislative session,] regular session of 1999, 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 legislature in regular session.”

SECTION 6. Section 674-17, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(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, [1997,] 1999, a written notice with the panel that the claimant does not accept the action taken by the legislature in regular session upon 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 7. 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, 1998.] December 31, 1999.”

SECTION 8. Any resolution contained in this Act of the claims submitted with the claims review panel's 1997 report to the legislature shall not be considered a precedent for any other claims under chapter 674, Hawaii Revised Statutes. All properly submitted claims to be adjudicated by the Hawaiian home lands trust individual claims review panel shall be subject to the criteria and formula established and approved pursuant to section 2 of this Act.

SECTION 9. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 10. This Act shall take effect upon its approval.

(Approved July 8, 1997.)