

Native Hawaiians Study Commission, 1973 - 1985: Native Hawaiian Claims Settlement Act, Ceded Land Act Analysis

Senator Daniel K. Inouye Papers

Native Hawaiian Issues, Box NH15, Folder 3

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Dear Friend:

We are forwarding for your review a package of three drafts of bills designed to implement certain recommendations of the Native Hawaiians Study Commission. The Study Commission, established by Congress in 1980, published its final report in 1983 and, in 1984, hearings on the report were held in Hawaii and Washington, D.C. by the U. S. Senate Committee on Energy and Natural Resources and the U. S. House of Representatives Committee on Interior and Insular Affairs.

During these hearings, members of the Native Hawaiian community urged Congress very strongly to reject certain findings of the Commission majority with respect to the overthrow of the Hawaiian monarchy and the validity of Native Hawaiian claims, and to adopt instead the recommendations of the Commission minority, contained in Volume II of the report. Because compelling evidence in support of this view was presented during the congressional hearings, our package of legislation seeks to implement the recommendations set forth in Volume II of the Study Commission report.

A brief summary of each of the three bills is outlined below. More detailed section-by-section analyses of the bills are also enclosed.

1. The Native Hawaiian Claims Settlement Act:

- * Clearly acknowledges the U. S. role in the overthrow of the Hawaiian monarchy.
- * Authorizes the appropriation of funds to be paid to the Office of Hawaiian Affairs (OHA) over a period of ten years for the establishment of social programs to meet the needs of the Native Hawaiian community and to acquire and develop land and natural resources for the benefit of Native Hawaiians.
- * Authorizes the Comptroller General of the United States to conduct a study of all federal programs and identify those which would benefit Native Hawaiians.

- * Defines "Native Hawaiian" as "Any individual whose ancestors were natives of the area which constituted the Hawaiian Islands prior to 1778".
- * Permits consultation with the Hawaiian community through the formal public hearings process of the appropriate congressional committee, and through informal processes such as this communication.

2. Hawaiian Ceded Lands Amendments Act:

- * Establishes a federal-state commission to review the present status, use and possible release of federally controlled ceded lands in Hawaii.
- * Amends the existing definition of "surplus property" to read "property no longer necessary to satisfy the original purpose for which the property was set aside" (underscoring supplied).
- * Amends existing law to provide for the conveyance of lands to the State of Hawaii without monetary consideration, and to provide for payment by the State of Hawaii of the estimated value (original cost less depreciation) of any improvements made on such lands.
- * Confers on the U. S. District Court for the District of Hawaii jurisdiction to hear, to determine, and render judgment on any claims against the United States arising out of the Hawaii Statehood Act and the Land Conveyance Act of 1963.

3. Office for Native Hawaiians Act:

- * Implements ^{the principal} recommendations of the federal-state task force on the Hawaiian Homes Commission Act.
- * Establishes an Office for Native Hawaiian Affairs in the Interior Department to advise the State of Hawaii on administration of the Hawaiian Homes Commission Act, review proposed land exchanges, and investigate complaints filed by Native Hawaiians.

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- * Provides for identification of all federal leases of Hawaiian Home Lands.
- * Provides for identification of all conveyances of Hawaiian Home Lands to the Federal Government.
- * Provides for renegotiation of leases of Hawaiian Home Lands at fair market value as determined by the State of Hawaii and the Interior Department.
- * Provides for independent appraisal of the value of Hawaiian Home Lands conveyed to the Federal Government and lands owned by the Federal Government and deemed suitable for exchange.

We hope that you will be able to complete your review of these draft bills and provide us with your comments before September 1, 1985. We expect soon thereafter to introduce legislation which would implement the recommendations of the Native Hawaiians Study Commission.

Should you have any questions about our proposed bills, please do not hesitate to write or call us.

Sincerely,

Daniel K. Inouye
U. S. Senator

Spark Matsunaga
U. S. Senator

Daniel K. Akaka
U. S. Representative

Cecil Heftel
U. S. Representative

Enclosures



Washington, D.C. 20540

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NATIVE HAWAIIAN CLAIMS SETTLEMENT ACT
SECTION BY SECTION ANALYSIS

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Analyst in American National Government
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May 9, 1985

NATIVE HAWAIIAN CLAIMS SETTLEMENT ACT

Section-by-Section Description

Findings and Purposes

Section 1(a) would provide that Congress recognize that the United States participated in activities which contributed to the overthrow of the Hawaiian monarchy in 1893; that the United States participation was opposed by the Native Hawaiians; that United States participation violated Hawaii's right to independence and violated the principle of nonintervention in the internal affairs of another nation; and that the United States has a moral obligation to provide reparation to the Native Hawaiians.

Section 1(b) would establish as the purpose of this Act the provision of reparations to the Native Hawaiians.

Section 2 would define "Native Hawaiian" as any individual whose ancestors were native to the area that constituted the Hawaiian Islands prior to 1778. Section 2 would also define "Office of Hawaiian Affairs" as the office established by law to provide programs to the Native Hawaiians.

Section 3(a) would provide that the Secretary of the Treasury pay to the Office of Hawaiian Affairs funds appropriated under this Act for the fiscal year by no later than thirty days after the date such funds become available.

Section 3(b)(1) would provide that payments may be made only after an agreement between the Secretary of the Interior and the Office of Hawaiian Affairs in which the Office of Hawaiian Affairs agrees to use the funds for

programs described, to submit a plan for monetary expenditures, to submit an annual report, and to make available for audit all necessary materials.

Section 3(b)(2) would specify that payments may only be used for the promotion of various economic, social, and educational programs for the Native Hawaiians. Payments may also be used for the purchase and development of land and natural resources for the benefit of the Native Hawaiian.

Section 3(c)(1) would provide that the State of Hawaii repay to the United States any portion of payment not spent on purposes described.

Section 3(c)(2) would permit the Secretary of the Treasury to offset any payment required under subsection (a) by any amount the State of Hawaii owes the United States by reason of paragraph (1).

Section 3(d)(1) would authorize the Comptroller General of the United States to have access, for purposes of audit, to any materials of the Office of Hawaiian Affairs and to any grantee, contractee, or subcontractee of the Office of Hawaiian Affairs.

Section 3(d)(2) would specify that an audit be made of expenditures of funds by the Comptroller General of the United States at least once during each two-year period within the twelve-year period beginning on the date funds are appropriated, and for a report to the Congress on each audit conducted.

Section 3(e) would authorize appropriation of \$100,000,000 for each of the ten fiscal years beginning after date of enactment of this Act for the purposes of making payments under subsection (a).

Section 4 would provide that all claims of the Native Hawaiians are barred until the day that is 12 years after enactment of this Act, and that all claims of the Native Hawaiians shall be terminated on the day the aggregate amount of payments equals the amount authorized to be appropriated.

Section 5(a) would require the Comptroller General to conduct a study of all Federal programs to determine those that might benefit the Native Hawaiians.

Section 5 (b) would require the Comptroller General to submit a report to the Congress on the study of Federal programs not later than two years after enactment of this Act.

Section 6 would provide that this Act may be cited as the "Native Hawaiian Claims Settlement Act."

PS/mb

DRAFT OF LEGISLATION

TO BE INTRODUCED

BY

HAWAII'S CONGRESSIONAL DELEGATION

A BILL

To provide funds for job training, education, and economic development of Native Hawaiians.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Section 1. (a) The Congress finds--

(1) that the United States participated in activities which contributed to the overthrow of the Hawaiian monarchy on January 17, 1893,

(2) that the participation of the United States in such activities was opposed by the Native Hawaiians,

(3) that the participation by the United States in such activities violated the Kingdom of Hawaii's right to independence and violated the international law principle of nonintervention in the internal affairs of another

1 nation, and

2 (4) that the United States has a moral obligation to
3 provide reparations to Native Hawaiians.

4 (b) The purpose of this Act is to provide reparations to
5 Native Hawaiians for the participation of the United States
6 in the overthrow of the Hawaiian monarchy on January 17,
7 1893.

8 Sec. 2. For purposes of this Act--

9 (1) The term "Native Hawaiian" means any individual
10 whose ancestors were natives of the area that constituted
11 the Hawaiian Islands prior to 1778.

12 (2) The term "Office of Hawaiian Affairs" means the
13 office established by the constitution of the State of
14 Hawaii to provide programs for Native Hawaiians or any
15 agency of the State of Hawaii that succeeds such office.

16 Sec. 3. (a) Except as otherwise provided in this Act, the
17 Secretary of the Treasury shall pay to the Office of Hawaiian
18 Affairs the funds appropriated under the authority of
19 subsection (e) for the fiscal year by no later than the date
20 that is 30 days after the date on which such funds become
21 available for expenditure.

22 (b)(1) Payments may be made under subsection (a) only if
23 an agreement has been entered into by the Secretary of the
24 Interior and the Office of Hawaiian Affairs under which the
25 Office of Hawaiian Affairs agrees--

1 (A) to use the funds received under subsection (a)
2 only for purposes described in paragraph (2),

3 (B) to submit to the Secretary of the Interior a plan
4 for monitoring the expenditure of such funds,

5 (C) to submit an annual report to the Secretary of
6 the Interior on the use of such funds by the Office of
7 Hawaiian Affairs for each of the 12 years succeeding the
8 year in which this Act is enacted, and

9 (D) to make available to the Comptroller General of
10 the United States all books, records, documents, and
11 papers necessary for completion of the audits required
12 under subsection (d).

13 (2) Payments received under subsection (a) may only be
14 used--

15 (A) to promote the economic development and self-
16 sufficiency of Native Hawaiians,

17 (B) to promote the social welfare of Native
18 Hawaiians,

19 (C) to provide educational programs for Native
20 Hawaiians,

21 (D) to provide health programs for Native Hawaiians,

22 (E) to provide programs that promote the cultural
23 preservation of Native Hawaiians,

24 (F) to provide job training and employment placement
25 of Native Hawaiians, and

1 (G) to acquire and develop land and natural resources
2 for the benefit of Native Hawaiians.

3 (c)(1) The State of Hawaii shall repay to the United
4 States any portion of a payment made under subsection (a)
5 that is not expended for a purpose described in subsection
6 (d)(2).

7 (2) The Secretary of the Treasury may offset any payment
8 which is required to be made under subsection (a) by any
9 amount that the State of Hawaii owes the United States by
10 reason of paragraph (1).

11 (d)(1) The Comptroller General of the United States, and
12 any duly authorized representatives of the Comptroller
13 General of the United States, shall have access for the
14 purpose of audit and examination to any books, documents,
15 papers, and records of--

16 (A) the Office of Hawaiian Affairs, and

17 (B) any grantee, contractee, or subcontractee of the
18 Office of Hawaiian Affairs,
19 that are pertinent to the expenditure of funds provided under
20 subsection (a).

21 (2) At least once during each 2-year period within the
22 12-year period beginning on the date funds are appropriated
23 under the authority of subsection (e), the Comptroller
24 General of the United States shall conduct an audit of the
25 expenditure of the funds paid under subsection (a) during the

1 period under investigation. The Comptroller General of the
2 United States shall submit to the Congress a report on each
3 audit conducted under this paragraph.

4 (e) There are authorized to be appropriated for each of
5 the 10 fiscal years beginning after the date of enactment of
6 this Act \$100,000,000 for the purpose of making payments
7 under subsection (a).

8 Sec. 4. All claims of Native Hawaiians against the United
9 States arising out of the overthrow of the Hawaiian
10 monarchy--

11 (1) are hereby barred until the day that is 12 years
12 after the date of enactment of this Act, and

13 (2) shall be extinguished on the day on which the
14 aggregate amount of payments that have been made under
15 section 3(a) equals the amount authorized to be
16 appropriated under section 3(e).

17 Sec. 5. (a) The Comptroller General of the United States
18 shall conduct a study of all Federal programs for the purpose
19 of identifying all Federal programs that could benefit Native
20 Hawaiians.

21 (b) The Comptroller General of the United States shall
22 submit to the Congress a report on the study conducted under
23 subsection (a) by no later than the date that is 2 years
24 after the date of enactment of this Act.

25 Sec. 6. This Act may be cited as the "Native Hawaiian

019910.109

T.L.C.

1 Claims Settlement Act.



Washington, D.C. 20540

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HAWAIIAN CEDED LANDS AMENDMENTS ACT OF 1985
SECTION BY SECTION ANALYSIS

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May 9, 1985

HAWAIIAN CEDED LANDS AMENDMENTS ACT OF 1985

Section-by-Section Description

Popular Name

Section 1 would provide that this Act may be cited as the "Hawaiian Ceded Lands Amendments Act of 1985."

Findings and Purposes

Section 2(a) would determine that at the time of annexation of Hawaii to the United States, certain lands were held in trust for the people of Hawaii. When Hawaii was admitted into the Union, most of these lands were given to the State of Hawaii. Section 2(a) would further determine that the remaining portion of land should be returned to the State of Hawaii, but that existing mechanisms to make such a transfer are inadequate and should be revised.

Section 2(b) would establish a mechanism for review and identification of Federal land holdings eligible for return to the State of Hawaii; amend the formula for compensation to the United States for improvements on ceded lands; and permit the State of Hawaii to enforce ceded lands obligation of the United States via the courts.

TITLE I--HAWAIIAN CEDED LANDS REVIEW COMMISSION

Establishment of Commission

Section 101 would establish a Hawaiian Ceded Lands Review Commission composed of two members appointed by the President, and two members appointed

by the Governor of Hawaii. Section 101 would also provide for the filling of vacancies on the Commission, time of meeting, compensation of members, and additional staffing of the Commission. Section 101 would further allow the Commission to obtain from any agency or department of the United States Government information necessary to carry out this title.

Duties of the Commission

Section 102 would require the Commission to review the inventory of Federal ceded lands and to make recommendations regarding the return to the State of Hawaii of any eligible ceded lands. Section 102 would further require the Commission to hold public hearings, and within one year of the first meeting of the Commission, to submit a report to the President, to the Congress, to the General Services Administration, and to the Governor of Hawaii.

Termination of the Commission

Section 103 would provide for the termination of the Commission sixty days after the submission of the Commission's report.

Additional Review

Section 104(a) would allow, on the request of the Governor of Hawaii, a new Commission to be established five years after enactment of this Act and each subsequent 5-year period.

Section 104(b) would provide for the termination of authority to convene a new Commission at such time as all ceded lands have been returned to the State of Hawaii.

Authorization

Section 105 would authorize the appropriation of necessary funds to carry out the provisions of this title.

TITLE II--AMENDMENTS TO PUBLIC LAW 88-233 RELATING TO HAWAIIAN LAND CONVEYANCE

Definition of Surplus Property

Section 201(a) would amend Public Law 88-233 by defining "surplus property" as "property no longer necessary to satisfy the original purpose for which the property was set aside."

Section 201(b) would further amend Public Law 88-233 by providing for the prompt review by the Administrator of the General Services Administration of any recommendations of the Hawaiian Ceded lands Commission, and for the conveyance of any lands based on the Commission's recommendations.

Assessment of Improvements on Conveyed Lands

Section 202 would amend Public Law 88-233 by providing for the conveyance of lands to the State of Hawaii without monetary consideration. Section 202 would further provide that the Administrator may require payment by the State of Hawaii of the estimated value (based on original cost less depreciation) of any improvements made on such lands.

TITLE III--WAIVER OF SOVEREIGN IMMUNITY

Jurisdiction

Section 301(a) would confer on the United States District Court for the District of Hawaii jurisdiction to hear, determine, and render judgment on any claims against the United States arising out of the Hawaii Statehood Act and the Land Conveyance Act of 1963.

Section 301(b) would provide that nothing in this section shall be construed as an inference of liability on the part of the United States.

PS/mb

DRAFT OF LEGISLATION

TO BE INTRODUCED

BY

HAWAII'S CONGRESSIONAL DELEGATION

A BILL

To facilitate the return of ceded lands in Hawaii currently subject to the control by the Federal Government to the Kingdom and Republic of Hawaii.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Hawaiian Ceded Lands Amendments Act of 1985".

FINDINGS AND PURPOSES

Sec. 2. (a). The Congress hereby finds that--

(1) at the time of the annexation of the Republic of Hawaii by the United States, the United States assumed ownership and control of over two million acres of crown and government lands previously belonging to the Republic

1 and Kingdom of Hawaii (Joint Resolution of Annexation, 34
2 Stat. 750);

3 (2) such lands were by law expressly excluded from
4 the Federal public domain and instead held in trust for
5 the benefit of the people of Hawaii;

6 (3) In recognition of this trust obligation, all such
7 "ceded lands" were conveyed to the State of Hawaii at
8 the time of its admission into the Union with the
9 exception of approximately 400,000 acres for which the
10 United States had an identified continuing need (Public
11 Law 86-3);

12 (4) it was, and remains, an obligation on the party
13 of the United States to return such ceded lands to the
14 State of Hawaii at the earliest possible date (Public Law
15 88-233);

16 (5) despite this continuing obligation only a small
17 part of the federally retained ceded lands have been
18 returned to the State in the 25 years since Hawaii's
19 statehood; and

20 (6) the existing mechanisms and standards to
21 facilitate such transfers have proven inadequate and in
22 need of review and revision.

23 (b) The purposes of this Act are to--

24 (1) establish a mechanism for the continuing review
25 of Federal ceded land holdings in Hawaii in order to

1 identify those parcels which are eligible for return to
2 the State;

3 (2) amend the existing standard pursuant to which
4 such lands are deemed eligible for transfer in order to
5 permit continued Federal use only when such usage
6 conforms to the purpose for which the property was
7 originally set aside;

8 (3) amend the formula by which the United States is
9 compensated for improvements placed upon ceded lands in
10 order to assure just compensation while avoiding any
11 unwarranted windfall; and

12 (4) permit the State of Hawaii to enforce the ceded
13 lands obligation of the United States via the courts.

14 TITLE I--HAWAIIAN CEDED LANDS REVIEW COMMISSION

15 ESTABLISHMENT OF COMMISSION

16 Sec. 101. There is hereby established the Hawaiian Ceded
17 Lands Review Commission (hereinafter in this title referred
18 to as the "Commission").

19 (b) The Commission shall be composed of--

20 (1) two members appointed by the President; and

21 (2) two members to be appointed by the Governor of
22 Hawaii.

23 (c) The Chairman of the Commission shall be designated by
24 the President, after consultation with the Governor of
25 Hawaii, at the time of appointment.

1 (d) Vacancies in the membership of the Commission shall
2 not affect the powers of the remaining members to execute the
3 functions of the Commission and shall be filled in the same
4 manner in which the original appointments were made.

5 (e) The President shall call the first meeting of the
6 Commission not more than ninety days after the date of the
7 enactment of this title.

8 (f) Three members of the Commission shall constitute a
9 quorum, but a smaller number specified by the Commission may
10 conduct hearings.

11 (g) Each member of the Commission shall receive \$100 for
12 each day such member is engaged in performing the duties of
13 the Commission, except that members of the Commission who are
14 fulltime officers or employees of the United States shall
15 receive no additional pay on account of their service on the
16 Commission other than official travel expenses.

17 (h) While away from their homes or regular places of
18 business in the performance of services for the Commission,
19 members of the Commission (including members who are fulltime
20 officers or employees of the United States) shall be allowed
21 travel expenses, including per diem, in lieu of subsistence,
22 in the same manner as persons employed intermittently in the
23 Government service are allowed expenses under section 5703 of
24 title 5, United States Code.

25 (i) Subject to such rules and regulations as may be

1 adopted by the Commission, the Chairman may--

2 (1) appoint and fix the compensation of an executive
3 director, a general counsel, and such additional staff as
4 he deems necessary, without regard to the provisions of
5 title 5, United States Code, governing appointments in
6 the competitive service, and without regard to chapter 51
7 and subchapter III of chapter 53 of such title relating
8 to classification and General Schedule pay rates, but at
9 rates not in excess of the maximum rate of pay in effect
10 from time to time for grade GS-18 of the General Schedule
11 under section 5332 of such title; and

12 (2) procure temporary and intermittent services to
13 the same extent as is authorized by section 3109 of title
14 5, United States Code, but at rates not to exceed \$100 a
15 day for individuals.

16 (j) Subject to section 552a of title 5, United States
17 Code, the Commission may secure directly from any department
18 or agency of the United States information necessary to
19 enable it to carry out this title. Upon request of the
20 Chairman of the Commission, the head of such department or
21 agency shall furnish such information to the Commission.

22 (k) The Commission may use the United States mails in the
23 same manner and upon the same conditions as other departments
24 and agencies of the United States.

25

DUTIES OF THE COMMISSION

1 Sec. 102. (a) The Commission shall, with the cooperation
2 of the Administrator of the General Services Administration,
3 review the inventory of Federal ceded land holdings in the
4 State of Hawaii and make recommendations to the President and
5 the Administrator of the General Services Administration with
6 respect to any ceded lands which are suitable for return to
7 the State of Hawaii.

8 (b) The Commission shall conduct such hearings as it
9 considers appropriate and shall provide notice of such
10 hearings to the public, including information concerning the
11 date, location and topic of each hearing. The Commission
12 shall take such other actions as it considers necessary to
13 obtain full public participation in the study undertaken by
14 the Commission.

15 (c) Within one year after the date of its first meeting,
16 the Commission shall report the recommendations of the study
17 to the President, the Congress, the Administrator of the
18 General Services Administration, and the Governor of Hawaii.

19 TERMINATION OF COMMISSION

20 Sec. 103. Subject to the provisions of section 104, upon
21 the expiration of the sixty day period following the
22 submission of the report required by section 102, the
23 Commission shall cease to exist.

24 ADDITIONAL REVIEW

25 Sec. 104. (a) Upon the request of the Governor of Hawaii,

1 a new Commission shall be appointed, as provided in section
2 101, five years after the date of enactment of this Act and
3 each subsequent five-year period after the first five-year
4 period. Each Commission shall be administered as provided in
5 section 101 and the duties of the Commission shall be as
6 provided in section 102.

7 (b) The authority to convene a new Commission every five
8 years under this section shall terminate at such time as all
9 ceded lands have been conveyed back to the State of Hawaii.

10 AUTHORIZATION

11 Sec. 105. There are authorized to be appropriated such
12 sums as are necessary to carry out the provisions of this
13 title.

14 TITLE II--AMENDMENTS TO PUBLIC LAW 88-233 RELATING TO

15 HAWAIIAN LAND CONVEYANCE

16 DEFINITION OF SURPLUS PROPERTY

17 Sec. 201. (a) Clause (11) of subsection (a) of the first
18 section of Public Law 88-233 is amended by--

19 (1) striking out ``to be surplus property`` and
20 inserting in lieu thereof ``to be property no longer
21 necessary to satisfy the original purpose for which the
22 property was set aside``; and

23 (2) striking out ``with the concurrence of the head
24 of the department or agency exercising administration or
25 control over such lands or property,``.

1

2 (b) Subsection (a) is further amended by adding at the
3 end thereof the following: "Whenever the Hawaiian Ceded
4 Lands Review Commission issues recommendations as provided
5 the Hawaiian Ceded Lands Amendments Act of 1985, the
6 Administrator shall promptly review the recommendations and
7 make any conveyances appropriate based on such
8 recommendations pursuant to clause (ii).".

9 ASSESSMENT OF IMPROVEMENTS ON CONVEYED LANDS

10 Sec. 202. (a) Subsection (b) of the first section of
11 Public Law 88-233 is amended by striking out the first
12 sentence and inserting in lieu thereof the following: "Such
13 lands and property shall be conveyed without monetary
14 consideration and in a condition sufficient to permit the
15 State to make reasonable use of such land and property. As a
16 condition precedent to the conveyance of such lands, the
17 Administrator may require payment by the State of Hawaii of
18 the estimated ~~fair-market~~ value (based on original cost less
19 depreciation) of any buildings, structures, and other
20 improvements erected and made on such lands after they were
21 set aside and which retain commercial value.".

22 (b) The second sentence of such subsection is amended
23 by--

24 (1) striking out "prescribed by the Administrator,
25 ne" and inserting in lieu thereof, "prescribed by this Act

1 (2) striking out ``that portion of any proceeds from
2 such disposal which he estimates to be`` and inserting in
3 lieu thereof ``an amount``.

4 TITLE III--WAIVER OF SOVEREIGN IMMUNITY

5 JURISDICTION

6 Sec. 301. (a) Jurisdiction is hereby conferred upon the
7 United States District Court for the District of Hawaii to
8 hear, determine, and render judgment on any claim against the
9 United States arising out of the enforcement of section 5 of
10 the Hawaii Statehood Act (73 Stat. 4) and the Land Conveyance
11 Act of 1963 (77 Stat. 472), as amended.

12 (b) Nothing in this section shall be construed as an
13 inference of liability on the part of the United States.



Washington, D.C. 20540

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SECTION-BY-SECTION SUMMARY OF PROPOSED LEGISLATION
TO CREATE AN OFFICE FOR NATIVE HAWAIIANS

SECTION BY SECTION ANALYSIS

Peter B. Sheridan
Analyst in American National Government
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May 2, 1985

SECTION-BY-SECTION SUMMARY OF PROPOSED LEGISLATION
TO CREATE AN OFFICE FOR NATIVE HAWAIIANS

Section 1 would provide that this Act may be cited as the "Office for Native Hawaiians Act of 1985."

Section 2 (a) would establish in the Department of the Interior an office to be known as the Office for Native Hawaiians. Section 2 would also provide for the method of selection and compensation of the Director of the Office for Native Hawaiians.

Section 2 (b) (1) would determine the duties of the Director as follows: to monitor management and disposal of lands held in trust for the benefit of the Native Hawaiians; to investigate complaints from the Native Hawaiians regarding the administration of the Hawaiian home lands; to make recommendations to the State of Hawaii regarding ways to obtain redress for past improprieties in the management of Hawaiian home lands, and methods of procedure in obtaining a fair market value for leases of said lands. This Section would also establish procedures for reviewing exchange transactions involving Hawaiian lands in order to ensure that such exchanges receive prompt and careful scrutiny by the Director, and that all of the requirements of the Statehood Act relating to such lands are satisfied.

Section 2 (b) (2) would further provide that the Director, upon the request of the State, advise the State of its duties and responsibilities under the Statehood Act, and assist the State in identifying and assessing natural resources on Hawaiian home lands, clearing discrepancies in land inventories,

and preparing and implementing legislation needed to assist the State in carrying out its duties regarding the Hawaiian home lands.

Section 2 (c) would require the Director to submit a report to Congress at the end of each fiscal year regarding the activities of the Office, and the progress made in correcting problems identified in the report of the Federal-State Task Force on the Hawaiian Homes Commission Act, together with such recommendations as the Director deems advisable.

Section 3 (a) would establish a time period, beginning on the effective date of this Act, during which the Secretary of the Interior and the State of Hawaii shall identify all leases for Hawaiian home lands between agencies of the Federal Government and the State of Hawaii.

Section 3 (b) would require the agencies of the Federal Government involved, on identification of any lease, to enter into negotiations with the State to re-lease the land for fair market value, as determined by the Secretary and the State.

Section 4 (a) would establish a time period, beginning on the effective date of this Act, for the identification of all conveyances of Hawaiian home lands made to the Federal Government.

Section 4 (b) would provide for the method of obtaining an independent appraisal of the value of lands identified in subsection (a).

Section 5 (a) would establish a time period, beginning on the effective date of this Act, for the identification of all lands owned by the Federal Government in the State.

Section 5 (b) would provide for the method of obtaining an independent appraisal of the value of the Federal lands identified in subsection (a).

Section 6 would require the Secretary to negotiate, based on identification and appraised value, with the State for the purpose of exchanging Federal lands of equal value for lands found to be conveyed under Section 4 (a).

Section 7 would define terms, for purposes of this Act, as follows:

1. "Director" would mean the person designated Director of the Office for Native Hawaiians.
2. "Office" would mean the Office for Native Hawaiians.
3. "Secretary" would mean the Secretary of the Interior.
4. "State" would mean the State of Hawaii.
5. "Statehood Act" would mean the Act entitled "An Act to provide for the admission of the State of Hawaii into the Union," approved March 18, 1959 (73 Stat. 4).

Section 8 would provide that contract authority under this Act shall be effective for any fiscal year only to the extent that appropriations are available for that purpose.

Section 9 would establish October 1, 1986, as the effective date for this Act.

DRAFT OF LEGISLATION

TO BE INTRODUCED

BY

HAWAII'S CONGRESSIONAL DELEGATION

A BILL

To establish an office for Native Hawaiians in the Department of the Interior and to implement certain recommendations of the Federal-State Task Force on the Hawaiian Homes Commission Act contained in the Task Force report dated August 15, 1983, submitted to the Secretary of the Interior and the Governor of the State of Hawaii.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

1 SECTION 1. SHORT TITLE.

2 This Act may be cited as the `` _____ Act
3 of 1985``.

4 SEC. 2. OFFICE FOR NATIVE HAWAIIANS.

5 (a) ESTABLISHMENT.--There hereby is established in the
6 Department of the Interior an office to be known as the
7 Office for Native Hawaiians. The Office shall have a
8 Director, who shall be appointed by the Secretary of the
9 Interior, and who shall be compensated at the maximum rate of
10 basic pay payable for GS-18 of the General Schedule under
11 section 5332 of title 5, United States Code.

12 (b) DUTIES OF DIRECTOR.--The duties of the Director are
13 as follows:

14 (1) IN GENERAL.--

15 (A) MONITER STATE RESPONSIBILITIES.--Monitor the
16 manner in which the State manages or disposes of the
17 lands held in trust for the benefit of native
18 Hawaiians under section 5(f) of the Statehood Act to
19 determine if the State is fulfilling its
20 responsibilities as trustee of such lands.

21 (B) INVESTIGATE COMPLAINTS.--Investigate
22 complaints from native Hawaiians regarding the
23 administration of the Hawaiian home lands.

24 (C) MAKE RECOMMENDATIONS.--Make recommendations
25 to the State as to--

1 (i) ways to redress past improprieties on the
2 part of the State and the Federal Government in
3 the management of the Hawaiian home lands; and

4 (ii) how to proceed in order to get fair
5 market value for leases of Hawaiian home lands.

6 (D) ESTABLISH PROCEDURES FOR REVIEWING EXCHANGE
7 TRANSACTIONS.--Establish procedures for reviewing
8 exchange transactions which involve Hawaiian home
9 lands to ensure--

10 (i) that such land exchanges receive prompt
11 and careful scrutiny by the Director; and

12 (ii) that all of the requirements of the
13 Statehood Act relating to Hawaiian home lands are
14 satisfied before such exchanges are approved.

15 (2) UPON REQUEST BY STATE.--Upon request by the
16 State:

17 (A) ADVISE STATE.--Advise the State as to its
18 duties and responsibilities under the Statehood Act.

19 (B) ASSIST STATE.--Assist the State in--

20 (i) identifying and assessing mineral and
21 other natural resources on Hawaiian home lands;

22 (ii) clearing up discrepancies in land
23 inventories; and

24 (iii) the preparation and implementation of
25 legislation needed to assist it in carrying out

1 its duties with respect to the Hawaiian home
2 lands.

3 (c) REPORTS.--The Director shall prepare and submit to
4 the Congress at the end of each fiscal year a report--

5 (1) of the activities of the Office; and

6 (2) on the progress made in correcting the problems
7 identified in the report entitled ``Report to United
8 States Secretary of the Interior and the Governor of the
9 State of Hawaii'' submitted by the Federal-State Task
10 Force on the Hawaiian Homes Commission Act, dated August
11 15, 1983;

12 together with such recommendations as the Director deems
13 advisable.

14 **SEC. 3. IDENTIFICATION OF LEASES AND RENEGOTIATION OF TERMS.**

15 (a) IDENTIFICATION.--The Secretary and the State shall,
16 not later than the end of the [* month] period
17 beginning on the effective date of this Act, identify--

18 (1) all leases in effect on the effective date of
19 this Act; and

20 (2) all former leases,
21 for Hawaiian home lands between agencies of the Federal
22 Government and the State.

23 (b) RENEGOTIATION OF TERMS.--Upon identification of any
24 lease under subsection (a)(1), the agency of the Federal
25 Government involved shall, notwithstanding the expiration

1 date of any such lease, enter into negotiations with the
2 State to re-lease the land involved for fair market value, as
3 determined by the Secretary and the State.

4 SEC. 4. IDENTIFICATION OF CONVEYANCES OF HAWAIIAN HOME LANDS.

5 (a) IDENTIFICATION OF LAND CONVEYANCES.--The Secretary,
6 in consultation with the State shall, not later than the end
7 of the [* month] period beginning on the effective
8 date of this Act, identify all conveyances of Hawaiian home
9 lands made to the Federal Government.

10 (b) DETERMINATION OF VALUE.--The Secretary shall, not
11 later than the end of the [* month] period beginning
12 on the date that the identification is made under subsection
13 (a), [*cause an independent appraisal of the lands identified
14 under subsection (a), together with the improvements thereon,
15 to be made by an independent appraiser he shall select who
16 shall be approved by the State before proceeding with the
17 appraisal, [the cost of the appraisal to be shared by the
18 Federal Government and the State]] [*cause an independent
19 appraisal of the lands identified under subsection (a),
20 together with improvements thereon, to be made by (number)
21 disinterested appraisers designated by (him) (the State)
22 (him, with the approval of the State)].

23 SEC. 5. IDENTIFICATION OF FEDERAL LAND LOCATED IN THE STATE.

24 (a) IDENTIFICATION OF FEDERAL LAND.--The Secretary shall,
25 not later than the end of the [* month] period

1 beginning on the effective date of this Act, identify lands
2 owned by the Federal Government in the State.

3 (b) DETERMINATION OF VALUE.--(1) The Secretary shall, not
4 later than the end of the [month] period beginning
5 on the date that the identification is made under subsection
6 (a), [*cause an independent appraisal of the lands identified
7 under subsection (a), together with the improvements thereon,
8 to be made by an independent appraiser he shall select who
9 shall be approved by the State before proceeding with the
10 appraisal, [the cost of the appraisal to be shared by the
11 Federal Government and the State]] [*cause an independent
12 appraisal of the lands identified under subsection (a),
13 together with improvements thereon, to be made by (number)
14 disinterested appraisers designated by (him) (him, with the
15 approval of the State)].

16 (2) If the land identified by the Secretary under
17 subsection (a) has any buildings or structures erected on it,
18 or has other improvements made to it, the appraiser shall
19 make--

20 (A) an appraisal of the land without considering the
21 value of such buildings, structures, or other
22 improvements; and

23 (B) a separate appraisal of the value of such
24 buildings, structures, or improvements (based on original
25 cost less depreciation).

1 SEC. 6. LAND EXCHANGES.

2 (a) FEDERAL LAND WITHOUT IMPROVEMENTS.--Based upon the
3 land identifications made under sections 4(a) and 5(a), and
4 the appraised fair market value determinations made under
5 sections 4(b) and 5(b)(2)(A), the Secretary shall enter into
6 negotiations with the State for the purpose of exchanging
7 Federal lands of equal value (not including the value of any
8 buildings, structures, or other improvements on such Federal
9 lands) for lands found to be conveyed under section 4(a).

10 (b) FEDERAL LAND WITH IMPROVEMENTS.--If the Federal land
11 to be exchanged has any buildings or structures erected on
12 it, or has other improvements made to it, the Secretary may,
13 prior to the conveyance of such lands to the State, require
14 payment by the State of an amount equal to the amount
15 determined under section 5(b)(2)(B) to be the value of such
16 buildings, structures, or other improvements.

17 (c) ENVIRONMENTAL RESTORATION.--Prior to conveying any
18 Federal land to the State under this section the Secretary
19 shall, [*at no cost to the State], provide for the removal of
20 any--

21 (1) hazardous waste and debris; and

22 (2) unsafe and unsightly buildings or structures,
23 from such lands.

24 SEC. 7. DEFINITIONS.

25 For purposes of this Act:

1 (1) DIRECTOR.--The term ``Director`` means the
2 Director of the Office for Native Hawaiians.

3 (2) OFFICE.--The term ``Office`` means the Office for
4 Native Hawaiians.

5 (3) SECRETARY.--The term ``Secretary`` means the
6 Secretary of the Interior.

7 (4) STATE.--The term ``State`` means the State of
8 Hawaii.

9 (5) STATEHOOD ACT.--The term ``Statehood Act`` means
10 the Act entitled ``An Act to provide for the admission of
11 the State of Hawaii into the Union``, approved March 18,
12 1959 (73 Stat. 4).

13 **SEC. 8. COMPLIANCE WITH BUDGET ACT.**

14 Contract authority under this Act shall be effective for
15 any fiscal year only to the extent that appropriations are
16 available for such purposes.

17 **SEC. 9. EFFECTIVE DATE.**

18 This Act shall take effect October 1, 1986.

As a result of unwarranted and prolonged participation by the American Government in the overthrow of the Hawaiian monarchy, the native residents of Hawaii lost their sovereignty and their land. The U.S. Congress shall therefore make restitutions to compensate native Hawaiians for their losses and shall provide them with special assistance so that they can more fully participate in the opportunities available to other Americans.

The issue of American involvement in the overthrow of the Hawaiian queen and the ensuing question of reparations have been a focus of attention in Hawaii and in Congress for many years. Congress debated the establishment of a Native Hawaiians Study Commission for six years before approving it. Although the law which finally passed only provides a general directive for the commission, it was understood that Congress wanted advice on the overthrow and reparations.

On December 22, 1980, the President approved legislation to create a Native Hawaiians Study Commission to "conduct a study of the culture, needs and concerns of the Native Hawaiians". The commission was established, and on June 23, 1983, it published a final report which was presented to Congress in two volumes: a majority and a minority report of dissenting views. The reports differed primarily in their interpretations and conclusions about the historical events surrounding the overthrow of the Hawaiian monarchy and in their recommendations about how native Hawaiians should be compensated.

The basis for reparations rests largely on the legality of American actions in the overthrow of the Hawaiian queen. It is

therefore highly significant that the majority and minority reports differ in their conclusions and recommendations.

The majority report concluded that the actions of U.S. Minister John L. Stevens, who requested that American troops be landed to protect American lives and property, were not sanctioned by the President or Congress. This lack of authorization, in addition to "the apparent limited role of United States forces in the overthrow", thus clears the United States of responsibility for the events that ensued, according to six of the nine commissioners. The report recommends that "as an ethical or moral matter, Congress should not provide for native Hawaiians to receive compensation either for loss of land or of sovereignty."

Upon review of the historical documents available, including those cited in the majority report, it is clear that the above mentioned conclusions of the report are seriously flawed. Furthermore, since Hawaii was subsequently annexed to the United States, the U.S. certainly played a major role in the fate that befell the Hawaiian people.

Unequivocal evidence of American intent to annex Hawaii dates back to several decades before the actual overthrow. Hawaii's location as a strategic military base in the Pacific and trade route for the Far East; the expansionist and manifest destiny policies of most major nations of the world during the latter half of the nineteenth century, including those of the United States; and the increasing dollar amount of American business pursuits in

Hawaii, particularly sugar, were among the pressing reasons for American interest in Hawaii.

Although a formal, explicit document from the U.S. Government to Minister Stevens ordering the landing of the troops has never been found, circumstantial evidence including private correspondence and formal declarations of American policy which ultimately condoned Stevens actions in doing whatever was necessary to promote Hawaii's annexation is overwhelming. Based on historical evidence, it is highly probable that without American intervention in the overthrow of the Hawaiian monarchy, the effort could not have been sustained. Furthermore, without subsequent American diplomatic support to the Provisional Government of Hawaii that was established after the monarchy, annexation may very well not have occurred. For the majority report to have concluded otherwise is erroneous and short-sighted.

The demographic statistics of native Hawaiians today speak for themselves. Hawaiians have the poorest records of educational attainment and employment, they exceed their share of the population in arrests and criminal detainment, they have the lowest income, poorest health, and highest infant mortality rates of all the people of Hawaii. Study after study shows that native Hawaiians are a depressed and disenfranchised people.

Hawaiians are unique in their history and in their isolation, and there can be no question that their loss of self-determination is at the root of their problems. As a territory of the United

States for sixty one years and now as a state, America certainly has had an obligation to assure that the people of Hawaii had access to the same opportunities as other Americans. American Indians and Alaskan natives, who have suffered similar disenfranchisement, have received acknowledgement of the wrongdoing of the U.S. Government and compensation.

It is clear that there has been a failure on the part of the U.S. Government to help those Hawaiians who lost their self-determination as a result of annexation. Those who were unable to or who chose not to give up their Hawaiian ways of life were left behind. Although the U.S. Congress attempted to accomodate Hawaiians through such legislation as the Hawaiian Homes Commission Act, the United States has never fully carried out its trust responsibilities, and the Hawaiian people have never received the special assistance and consideration they were due.

Based on the majority and minority reports of the Native Hawaiians Study Commission; on the thousands of pages of testimony that have been submitted for Congressional consideration; and on the literature and documentation that was not included or considered by the Commission which relates to the past and present conditions of native Hawaiians, it is the opinion of Hawaii's Congressional delegation that Hawaiians were unfairly deprived of the right to self-determination by the United States Government and are due reparations, both as a matter of legal and moral obligation.

These reparations are being requested in the form of a trust fund, to be administered by the Department of the Interior and distributed by the Office of Hawaiian Affairs; legislation to address the question of returning ceded and surplus federal lands to Hawaii and to update the Hawaiian Homes Commission Act; and programs that will provide Hawaiians with the tools they need to better control their own destinies.

We believe that these proposals are fair and reasonable. Hawaiians have waited too long for the attention and help they are due from the federal government. Their problems cannot wait any longer. Congress and the federal government must recognize the injustices that have caused the bleak situation of the Hawaiians and must address them without further delay.