

Committee Reports

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HAWAIIAN HOME LANDS RECOVERY ACT

DATE: September 30, 1994. Ordered to be printed

SPONSOR: Mr. Johnston, from the Committee on Energy and Natural Resources, submitted the following

REPORT

(To accompany S. 2174)

TEXT:

The Committee on Energy and Natural Resources, to which was referred the bill (S. 2174) to provide for the administration of the Hawaiian Homes Commission Act, 1920, and for other purposes, having considered the same, reports favorably thereon with an amendment and recommends that the bill, as amended, do pass.

The amendment is as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Hawaiian Home Lands Recovery Act".

SEC. 2. DEFINITIONS.

As used in this Act:

(1) Agency. The term "agency" includes

(A) any instrumentality of the United States;

(B) any element of an agency; and

(C) any wholly owned or mixed-owned corporation of the United States Government.

(2) Beneficiary. The term "beneficiary" has the same meaning as is given the term "native Hawaiian" under section 201(7) of the Hawaiian Homes Commission Act.

(3) Chairperson. The term "Chairperson" means the Chairperson of the Department of Hawaiian Home Lands of the State of Hawaii.

(4) Commission. The term "Commission" means the Hawaiian Homes Commission established by section 202 of the Hawaiian Homes Commission Act.

(5) Hawaiian homes commission act. The term "Hawaiian Homes Commission Act" means the Hawaiian Homes Commission Act, 1920 (42 Stat. 108 et seq., chapter 42).

(6) Hawaii state admissions act. The term "Hawaii State Admissions Act" means 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, chapter 339; 48 U.S.C. note prec. 491).

(7) Lost use. The term "lost use" means the inability of beneficiaries or the Hawaiian Homes Commission to use lands as authorized by sections 204 and 207 of the Hawaiian Homes Commission Act because of the use of such lands by the Federal Government after August 21, 1959.

(8) Secretary. The term "Secretary" means the Secretary of the Interior.

SEC. 3. SETTLEMENT OF FEDERAL CLAIMS.

(a) In General.

(1) Determination. The Secretary shall determine the value of the following:

(A) Lands under the control of the Federal Government that

(i) were initially designated as Hawaiian home lands under section 203 of the Hawaiian Homes Commission Act (as in effect on the date of enactment of such Act); and

(ii) were nevertheless transferred to or otherwise acquired by the Federal Government.

(B) The lost use of lands described in subparagraph (A).

(C)(i) Except as provided in clause (ii), the determinations of value made under this subsection shall be made not later than 1 year after the date of enactment of this Act. In carrying out this subsection, the Secretary shall use a method of determining value that

(I) is acceptable to the Chairperson; and

(II) is in the best interest of the beneficiaries.

(ii) The Secretary and the Chairperson may mutually agree to extend the deadline for making

determinations under this subparagraph beyond the date specified in clause (i).

(D)(i) Except as provided in clause (iii), if the Secretary and the Chairperson do not agree on the determinations of values made by the Secretary under subparagraphs (A) and (B), such values shall be determined by an appraisal. An appraisal conducted under this subparagraph shall be conducted in accordance with the Uniform Standards for Federal Land Acquisitions developed by the Interagency Land Acquisition Conference or such other standards as the Secretary, with the concurrence of the Chairperson, determines to be appropriate.

(ii) If an appraisal is conducted pursuant to this subparagraph, during the appraisal process

(I) the Chairperson shall have the opportunity to present evidence of value to the Secretary;

(II) the Secretary shall provide the Chairperson a preliminary copy of the appraisal;

(III) the Chairperson shall have a reasonable and sufficient opportunity to comment on the preliminary copy of the appraisal; and

(IV) the Secretary shall give consideration to the comments and evidence of value submitted by the Chairperson under this clause.

(iii) The Chairperson shall have the right to dispute the determinations of values made by an appraisal conducted under this subparagraph. If the Chairperson disputes the appraisal, the Secretary and the Chairperson may mutually agree to employ a process of bargaining, mediation, or other means of dispute resolution to make the determinations of values described in subparagraphs (A) and (B).

(2) Authorization.

(A) Exchange. Subject to subparagraphs (B) and (E), the Secretary may convey Federal lands described in subparagraph (E) to the Department of Hawaiian Home Lands in exchange for the continued retention by the Federal Government of lands described in subsection (a)(1)(A).

(B) Value of lands. (i) The value of any lands conveyed to the Department of Hawaiian Home Lands by the Federal Government in accordance with an exchange made under subparagraph (A) may not be less than the value of the lands retained by the Federal Government pursuant to such exchange.

(ii) For the purposes of this paragraph, the value of any lands exchanged pursuant to subparagraph (A) shall be the value of the lands subject to the exchange on the date that the exchange is carried out, or any other date determined by the Secretary, with the concurrence of the Chairperson.

(C) Lost use. Subject to subparagraphs (D) and (E), the Secretary may convey Federal lands described in subparagraph (E) to the Department of Hawaiian Home Lands as compensation for the lost use of lands determined under subsection (a)(1).

(D) Value of lost use. (i) The value of any lands conveyed to the Department of Hawaiian Home Lands by the Federal Government as compensation under subparagraph (C) may not be less than the value of the lost use of lands described in subsection (a)(1)(A).

(ii) For the purposes of this paragraph, the value of any lands conveyed pursuant to subparagraph (C) shall be equal to the value of the lost use of lands determined under subsection (a)(1) on the date that the conveyance occurs, or any other date determined by the Secretary, with the concurrence of the Chairperson.

(E) Federal lands for exchange. (i) Subject to clauses (ii) and (iii), the Federal lands that may be conveyed to the Department of Hawaiian Home Lands under subparagraphs (A) and (C) are lands located in Hawaii that are under the control of an agency (other than lands within the National Park System or the National Wildlife Refuge System). To assist the Secretary in carrying out this Act, the head of an agency may transfer to the Department of the Interior, without reimbursement, jurisdiction and control of any lands and any structures that the Secretary determines to be suitable for conveyance to the Department of Hawaiian Home Lands pursuant to an exchange conducted under this section.

(ii) No Federal lands that the Federal Government is required to convey to the State of Hawaii under section 5 of the Hawaii State Admissions Act may be conveyed under subparagraph (A) or (C).

(iii) No Federal lands that generate income (or would be expected to generate income) for the Federal Government may be conveyed pursuant to an exchange made under this paragraph to the Department of Hawaiian Home Lands.

(3) Available lands.

(A) In general. Subject to subparagraph (B), the Secretary shall require that lands conveyed to the Department of Hawaiian Home Lands under this paragraph shall have the status of available lands under the Hawaiian Home Commission Act.

(B) Subsequent exchange of lands. Notwithstanding any other provision of law, lands conveyed to the Department of Hawaiian Home Lands under this paragraph may subsequently be exchanged pursuant to section 204(3) of the Hawaiian Homes Commission Act.

(4) Consultation. In carrying out their respective responsibilities under this section, the Secretary and the Chairperson shall

(A) consult with the beneficiaries and organizations representing the beneficiaries; and

(B) report to such organizations on a regular basis concerning the progress made to meet the requirements of this section.

(5) Hold harmless. Notwithstanding any other provision of law, the United States shall defend

and hold harmless the Department of Hawaiian Home Lands, the employees of the Department, and the beneficiaries with respect to any claim arising from the ownership of any land or structure that is conveyed to the Department pursuant to an exchange made under this section prior to the conveyance to the Department of such land or structure.

SEC. 4. PROCEDURE FOR APPROVAL OF AMENDMENTS TO HAWAIIAN HOMES COMMISSION ACT.

(a) Notice to the Secretary. Not later than 60 days after the legislature of the State of Hawaii approves a proposed amendment to the Hawaiian Homes Commission Act in the manner required for State legislation, the Chairperson shall submit to the Secretary

(1) a copy of the proposed amendment;

(2) the nature of the change proposed to be made by the amendment; and

(3) an opinion by the Chairperson regarding whether the proposed amendment requires the approval of Congress under section 4 of the Hawaii State Admissions Act.

(b) Determination by Secretary. Not later than 60 days after receiving the materials required to be submitted by the Chairperson pursuant to subsection (a), the Secretary shall determine whether the proposed amendment requires the approval of Congress under section 4 of the Hawaii State Admissions Act, and shall notify the Chairperson and Congress of the determination of the Secretary.

(c) Congressional Approval Required. If, pursuant to subsection (b), the Secretary determines that the proposed amendment requires the approval of Congress, the Secretary shall submit to the Committee on Energy and Natural Resources of the Senate and the Committee on Natural Resources of the House of Representatives

(1) a draft joint resolution approving the amendment;

(2) a description of the change made by the proposed amendment and an explanation of how the amendment advances the interests of the beneficiaries;

(3) a comparison of the existing law (as of the date of submission of the proposed amendment) that is the subject of the amendment with the proposed amendment;

(4) a recommendation concerning the advisability of approving the proposed amendment; and

(5) any documentation concerning the amendments received from the Chairperson.

SEC. 5. LAND EXCHANGES.

(a) Notice to the Secretary. If the Chairperson recommends for approval an exchange of

Hawaiian home lands, the Chairperson shall submit a report to the Secretary on the proposed exchange. The report shall contain

- (1) a description of the acreage and fair market value of the lands involved in the exchange;
- (2) surveys and appraisals prepared by the Department of Hawaiian Home Lands, if any; and
- (3) an identification of the benefits to the parties of the proposed exchange.

(b) Approval or Disapproval.

(1) In general. Not later than 120 days after receiving the information required to be submitted by the Chairperson pursuant to subsection (a), the Secretary shall approve or disapprove the proposed exchange.

(2) Notification. The Secretary shall notify the Chairperson, the Committee on Energy and Natural Resources of the Senate, and the Committee on Natural Resources of the House of Representatives of the reasons for the approval or disapproval of the proposed exchange.

(c) Exchanges Initiated by Secretary.

(1) In general. The Secretary may recommend to the Chairperson an exchange of Hawaiian home lands for Federal lands described in section 3(a)(2)(E), other than lands described clauses (ii) and (iii) of such section. If the Secretary initiates a recommendation for such an exchange, the Secretary shall submit a report to the Chairperson on the proposed exchange that meets the requirements of a report described in subsection (a).

(2) Approval by chairperson. Not later than 120 days after receiving a recommendation for an exchange from the Secretary under paragraph (1), the Chairperson shall provide written notification to the Secretary of the approval or disapproval of a proposed exchange. If the Chairperson approves the proposed exchange, upon receipt of the written notification, the Secretary shall notify the Committee on Energy and Natural Resources of the Senate, and the Committee on Natural Resources of the House of Representatives of the approval of the Chairperson of the proposed exchange.

(3) Exchange. Upon providing notification pursuant to paragraph (2) of a proposed exchange that has been approved by the Chairperson pursuant to this section, the Secretary may carry out the exchange.

(d) Surveys and Appraisals.

(1) Requirement. The Secretary shall conduct a survey of all Hawaiian home lands based on the report entitled "Survey Needs for the Hawaiian Home Lands", issued by the Inspector General of the Department of the Interior, and dated July 1991.

(2) Other surveys. The Secretary is authorized to conduct such other surveys and appraisals as

may be necessary to make an informed decision regarding approval or disapproval of a proposed exchange.

SEC. 6. ADMINISTRATION OF ACTS.

(a) Designation.

(1) In general. Not later than 120 days after the date of enactment of this Act, the Secretary shall designate an individual from within the Department of the Interior to administer the responsibilities of the United States under this Act and the Hawaiian Homes Commission Act.

(2) Default. If the Secretary fails to make an appointment by the date specified in paragraph (1), or if the position is vacant at any time thereafter, the Assistant Secretary for Policy, Budget, and Administration of the Department of the Interior shall exercise the responsibilities for the Department in accordance with subsection (b).

(b) Responsibilities. The individual designated pursuant to subsection (a) shall, in administering the Acts referred to in such subsection

(1) advance the interests of the beneficiaries; and

(2) assist the beneficiaries and the Department of Hawaiian Home Lands in obtaining assistance from programs of the Department of the Interior and other Federal agencies that will promote homesteading opportunities, economic self-sufficiency, and social well-being of the beneficiaries.

Purpose of the Measure

The purpose of S. 2174, as ordered reported, is to provide for the administration of the Hawaiian Homes Commission Act, and for other purposes.

Background and Need

The Hawaiian Homes Commission Act (the "HHCA") was passed by the United States Congress on July 9, 1921, for the purpose of "rehabilitating" Native Hawaiians by returning them to their lands through a Federally-sponsored homesteading program. Approximately 200,000 acres were set aside under the Act which provides that Native Hawaiians (defined as lineal descendants of inhabitants of the Hawaiian Islands prior to 1778, of at least 50% blood quantum) are eligible to lease Hawaiian home lands for up to 199 years.

Title to Hawaiian Home Lands was held by the Federal government until Hawaii was admitted into the Union on August 20, 1959, under the Hawaii Admission Act. As a condition of admission, Congress required that the HHCA be adopted as a provision of the State constitution, thereby transferring the management and disposition of the Hawaiian home land program to the State of Hawaii. Congress must approve substantive amendments made by the State of Hawaii, the Secretary of the Interior must approve any exchange of land, and the Attorney General is authorized to sue the State if it breaches its responsibilities to HHCA beneficiaries.

After admission into the Union, Hawaii's Department of Hawaiian Home Lands (the "DHHL") was vested with the authority to continue the process of providing Native Hawaiians with homestead property. Over the years, the DHHL has attempted to discharge this responsibility. Many Native Hawaiians have not received leases and the Federal government has continued to use some Hawaiian Home lands for military purposes.

There has been a series of studies and reports on the Administration of the program during territorial times, as well as subsequent to Statehood. Part of the focus has been on the propriety of certain transfers of land from the program to the Federal Government, whether such transfers were legal, whether there are any legal remedies, and the amount of harm, if any, suffered by the program as a result of the transfer. S. 2174 is designed to provide equitable relief.

S. 2174 would authorize the Secretary of the Interior to provide for the exchange of Federal land in Hawaii as a means of settling claims against the United States. Such a land exchange would be accomplished through a process overseen by the Secretary of the Interior. This legislation would also authorize the Secretary to convey lands to the DHHL as compensation for the lost use of lands initially designated as Hawaiian home lands under section 203 of the Hawaiian Homes Commission Act. Lost use would be based on the continuing Federal use of this land since Hawaii's statehood.

Legislative History

S. 2174 was introduced by Senator Akaka on June 9, 1994. The Subcommittee on Mineral

Resources and Development held a hearing on S. 2174 on June 16, 1994.

At the business meeting on September 21, 1994, the Committee on Energy and Natural Resources ordered S. 2174, as amended, favorably reported.

Committee Recommendations & Tabulation of Votes

The Committee on Energy and Natural Resources, in an open business session on September 21, 1994, by a voice vote of a quorum present, recommends that the Senate pass S. 2174, if amended as described herein.

Committee Amendment

During the consideration of S. 2174, the committee adopted an amendment in the nature of a substitute, clarifying the Secretary of the Interiors ability to convey Federal lands not within the jurisdiction of the Interior Department, with the consent of the relevant Federal agency.

Section-by-Section Analysis

Section 1 entitles the bill "The Hawaiian Home Lands Recovery Act."

Section 2 defines certain terms used in the Act.

Section 3 provides for the settlement of Federal claims by establishing a mechanism for valuing Hawaiian home lands under the control of the Federal Government and authorizing an exchange of land based upon the determination of value.

Subsection (a)(1) requires the Secretary of the Interior (the "Secretary") to determine the value of home lands that were transferred or otherwise acquired by the Federal Government as well as the value of the lost use of such lands. The subsection provides that if the Secretary and the Hawaiian Homes Commission Chairperson (the "chairperson") do not agree on the determinations of value made by the Secretary, the value will be determined by appraisal. The chairperson is allowed to present evidence of value to the Secretary, comment on an appraisal of lands, and dispute the appraisal prepared by the Secretary.

Subsection (a)(2) authorizes the Secretary to convey Federal lands to the Department of Hawaiian Home Lands (the "DHHL"). Such conveyances are in exchange for Hawaiian home lands retained by the Federal Government and as compensation for lost use of such lands. No land within the National Park System and the National Wildlife System, land that the Federal government is required to convey to the State of Hawaii under section 5 of the Hawaii State Admissions Act (the "HHCA"), or Federal land that generates income are eligible for exchange.

Subsection (a)(3) provides that lands conveyed to the DHHL shall have the status of available lands as defined under the HHCA.

Subsection (a)(4) requires the Secretary and the Chairperson to report to the beneficiaries on a

regular basis concerning the progress made to implement the Act.

Subsection (a)(5) indemnifies the DHHL, its employees, and beneficiaries from claims relating to ownership of Federal lands conveyed under this section.

Section 4 sets forth the procedure for approval of amendments to the HHCA requiring that the Secretary make a determination as to whether proposed amendments require Congressional approval under section 4 of the Hawaii State Admission Act. The chairperson is required to submit information to the Secretary which will assist the Secretary in making this determination. If the Secretary determines that the consent of Congress is required, the Secretary is required to submit a draft joint resolution, together with supporting justification, for consideration by Congress.

Section 5 requires the chairperson to submit a report to the Secretary listing lands recommended for exchange. The Secretary must then approve or disapprove the recommendation, notifying the relevant committees of Congress of his determinations. Under this section, the Secretary may also recommend exchanges, subject to similar approval requirements. The purpose of this provision is to permit Hawaiian home lands that are of marginal use for homesteading to be exchanged for Federal land that is better suited for housing. This section also requires the Secretary to conduct a survey of Hawaiian home lands to verify the land inventory.

Section 6 requires the Secretary to designate an official to administer Federal responsibilities under the HHCA. The section charges the designated official with responsibility for advancing the interests of beneficiaries and promoting homestead opportunities, economic self-sufficiency, and social well-being.

Cost and Budgetary Considerations

The Committee has requested that the Congressional Budget Office provide a cost estimate for this measure. The cost estimate was not available at the time the report was filed. When the estimate becomes available, the Chairman will request that it be printed in the Congressional Record for the advice of the Senate.

Regulatory Impact Evaluation

In compliance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee makes the following evaluation of the regulatory impact which would be incurred in carrying out S. 2174. The bill is not a regulatory measure in the sense of imposing Government-established standards or significant economic responsibilities on private individuals and businesses.

No personal information would be collected in administering the Act. Therefore, there would be no impact on personal privacy.

Little, if any, additional paperwork would result from the enactment of S. 2174, as ordered reported.

Executive Communications

On June 21, 1994, the Committee on Energy and Natural Resources requested legislative reports from the Department of the Interior and the Office of Management and Budget setting for the Executive agency recommendations on S. 2174. These reports had not been received at the time the report on S. 2174 was filed. When the reports become available, the Chairman will request that they be printed in the Congressional Record for the advice of the Senate. The testimony provided by the Department of the Interior at the Committee hearing follows:

Statement of I. Michael Heyman, Secretarys designated officer, Hawaiian Homes Commission Act

My name is I. Michael Heyman, Counsellor to Secretary of the Interior Bruce Babbitt and Deputy Assistant Secretary for Policy. I welcome the opportunity to be here this afternoon to respond on behalf of the Department of the Interior to the Committees request for our views on the proposed Hawaiian Home Lands Recovery Act. In summary, our view is that legislation would be premature at this time. Congressional action on this subject should be deferred pending completion of a claim review process already under way within the Administration.

Before addressing the bill, I would like to describe the genesis of my role as the Secretarys Designated Officer under the Hawaiian Homes Commission Act (HHCA) and the steps the Department is taking to investigate some of the important matters raised by the pending legislation. This background information is important to a full understanding of our position that the legislation is premature at this time.

On January 19, 1993, the outgoing Solicitor of the Department of the Interior from the prior Administration signed an opinion concluding that the Federal government had no trust responsibility to Native Hawaiians under the Hawaiian Homes Commission Act of 1920 and the Hawaii Statehood Act of 1959. On November 15, 1993, the current Solicitor of the Department, John D. Leshy, withdrew that opinion.

Upon the withdrawal of the opinion, Secretary Babbitt wrote to Governor Waihee and to Hawaiiis Congressional delegation stating that the withdrawal of the opinion would "clear the way for further discussions regarding the needs of Native Hawaiians" and announcing my appointment as his Special Representative under the Hawaiian Homes Commission Act. As you may be aware, the Department of the Interior had assumed the role of "lead Federal agency" with respect to the Hawaiian Homes program in accordance with the recommendations of a 1983 Federal-State Task Force on the HHCA. As a result of the Task Force Report, the Secretary of the Interior appoints an official to serve as the "Secretarys Designated Officer for the Hawaiian Homes Commission Act", and it is in that capacity that I appear before you today.

Secretary Babbitt was aware that important questions had arisen in recent years about whether the provisions of the HHCA and the Hawaii Statehood Act of 1959 regarding Native Hawaiians had been properly carried out. In designating me as his Special Representative, he asked me to meet with representatives of the State of Hawaii and with Hawaiiis Congressional delegation to

discuss these questions and to determine what further steps might be taken by the United States.

The State has presented certain land claims based upon alleged violations of the HHCA in the years prior to statehood. I would like to discuss the Department of the Interiors review of these claims, specifically our efforts to determine whether the allegations have merit, and to decide whether redress by the Federal government for these claimed statutory violations is in order.

The land transfers that the Department is reviewing occurred during Hawaii's territorial period, i.e., prior to 1959. The claims are for lands that were set aside for homesteading purposes for Native Hawaiians by Congress under the HHCA ("available lands"), and then were transferred and alienated from the Hawaiian Homes program, allegedly in violation of statutory restrictions in the HHCA. The first type of transfer involves lands that allegedly were wrongfully removed from the available lands for use by the Federal government. The State of Hawaii points principally to executive orders of the territorial governor of Hawaii which, in 1930 and 1933, set aside over 1356 acres of available lands at Lualualei, Oahu, for use by the Navy. These lands continue to be used by the Navy today. The second type of transfer involves the removal of some available lands by the territorial governor and transfer to the territorial government of Hawaii and, in some instances, to third parties. The State maintains that these lands could only have been used for Native homesteads or for general leases. The State is seeking redress in the form of the return of lands illegally taken from the available lands or their replacement by equivalent lands, and damages for lost value and income.

Based on the agreement of the Department and Hawaii to review the land claims, we have been engaged in an ongoing process of review. We have invited the State to provide us with factual and legal information, and the State has done so. In addition to factual documentation for the claims, the State has provided us with legal memoranda prepared by its Attorney General setting forth the theories on which it relies to establish the alleged illegality of the land transfers. The memoranda and other documents are under review by our Solicitors Office.

We have had two lengthy meetings with the State, on March 15 and May 13, 1994, to discuss the merits of the claims. These meetings were attended by Norma Wong, a personal representative of Governor Waihee, by Phil Shimer, of the States liaison office in Washington D.C., by William Tamm and George Kaeo, attorneys from the States Attorney Generals Office, and by Judge Edward King, a court-appointed and state law-sanctioned independent representative of the beneficiaries under the HHCA. Attorneys from our Solicitors office and I met with these State officials and the representative of the beneficiaries and engaged in a full, open dialogue on the nature of the claims that Hawaii has presented to us.

As I indicated, we have been considering, in our review of Hawaii's written submissions and in our meetings, the many issues raised by Hawaii's claims. We have not yet completed our review; therefore, I cannot speak definitively at this time to the merits of the States claims or whether we would recommend corrective action. I can say, however, that the State has raised several significant legal issues to which we are giving careful consideration. Preliminarily, it would appear that the United States has important threshold legal defenses, including the statute of limitations and, in the case of Lualualei, prior litigation in the Ninth Circuit under the Quiet Title Act, *State of Hawaii v. United States*, 676 F.Supp. 1024 (D. Hawaii 1988), *affd per curiam*, 866

F.2d 313 (9th Cir. 1989). Nonetheless, we are considering the merits of the States claims, including whether the land transfers were in fact illegal under the Hawaii Organic Act of 1900 and other authorities; whether the State or the beneficiaries had a compensable interest in the available lands; and whether any damages can be shown for the allegedly wrongful transfers. Finally, apart from the legal merits, we are considering whether the State or the beneficiaries have an equitable claim that would be appropriate for redress.

We anticipate bringing closure to the review process within the Department by providing a summary of the results of our review by the end of August, 1994. However, whatever recommendations the Department might reach would not end the review process within the Administration. The Administrations ultimate position on the claims, and on the proposed legislation, would need to be determined through the Office of Management and Budget in coordination with other Federal agencies which, in this instance, would likely include the Department of Defense and the Department of Justice.

With this background on the status of the Departments ongoing review process to consider the Native Hawaiian land claims, I will now offer some comments on the proposed legislation.

The heart of the proposed bill is section 3, which authorizes the Secretary of the Interior to settle claims for land against the United States through negotiations with a representative of the beneficiaries and the State of Hawaii. The lands at issue are those lands set aside under the HHCA which subsequently were transferred to the Federal government. The Secretary would be authorized to negotiate land exchanges "in exchange for the continued retention by the Federal Government of (the) lands described." The lands to be offered to the State are to have a value no less than the value of the lands retained by the Federal government. The lands which may be offered in exchange for the continued right of use include lands controlled by the Secretary of the Interior, other than lands within the National Park or National Wildlife Refuge systems, or surplus Federal lands that the Federal government is not required to convey to the State under the Hawaii State Admissions Act. The exchanges are to be completed within one year, subject to a possible extension of one additional year.

The legislation, as we read it, focuses on relief, and thus presupposes that the land claims are meritorious and should be redressed. In our view, this puts the cart before the horse. We are in the process of reviewing the validity of the claims from both a legal and equitable perspective and whether to recommend remedial action. We believe that such an analysis is an important first step to an informed consideration of any type of relief, including the relief set forth in the proposed legislation, and is likely to be a critical part of the Administrations considerations of any relief proposed. Thus, we would be unable to take a position on the merits of the claims or on the appropriate character of any form of relief until the Department and the Administration have completed their review of the claims. As I indicated, the Department hopes to have its review of the claims completed by the end of August.

Furthermore, the enactment of this legislation at this time would interrupt and render virtually irrelevant the review process that has been ongoing for the past seven months. Progress has been made as a result of the exchange of information, meetings, and dialogue among the existing participants in the review process. The present process should be allowed to be brought to a

conclusion before any alternative process, if necessary, is considered. We also note that the bill does not indicate how the representative of the beneficiaries is to be chosen. This uncertainty could be a source of confusion and delay in addressing the land claims under the bill.

We thus believe that Section 3 of the proposed legislation is premature and that action on it should be deferred.

In addition to the provisions governing land claims, the proposed legislation includes several sections formalizing the ongoing role of the Department of the Interior in the administration of the HHCA.

Section 4 establishes a procedure for Congressional approval of amendments to the HHCA. Section 5 establishes a procedure under which the Secretary of the Interior is to perform his statutory responsibility of approving proposed land exchanges under section 204(3) of the HHCA. Section 6 requires the Secretary of the Interior to designate a representative to administer the responsibilities of the United States under the HHCA and under this legislation.

Certain matters addressed in sections 4, 5, and 6 of the proposed legislation (amendments, exchanges and appointment of the Secretary's Designated Officer) are currently implemented through procedures that have been agreed to informally by the Department and the State. As I indicated earlier in my testimony, the position of Special Representative, addressed in section 6 of the bill, was established in accordance with the recommendation of a 1983 Federal State Task Force Report on the HHCA. The procedures addressed in section 4 of the bill for forwarding State legislation amending the HHCA to Congress for the approval required by Section 4 of the Hawaii Admission Act have been developed under an informal working arrangement among the Secretary of the Interior, the State of Hawaii and Congress. The procedures governing the Secretary's approval of land exchanges under the HHCA, addressed in section 5 of the bill, also were developed by the Department and the State in the course of reviewing and approving proposed land exchanges in the middle 1980s.

The Administration has not had the time to review these provisions so as to be able to take a position on whether they are appropriate or necessary. We see no real urgency at this time in formalizing Interior's role in administering the HHCA because the procedures I have outlined above appear to be working satisfactorily. Finally, our current review of the land claims could result in a proposal that would involve revisions to the ongoing role of the Department in the administration of the HHCA. Pending the completion of the review of the land claims, it would be advisable to allow us to retain the flexibility to structure a proposal with the State that could address, if warranted, the administrative issues covered in sections 4, 5, and 6 of the legislation. Thus, we recommend that action on these sections be deferred at this time.

I appreciate the opportunity to testify before you today and would be pleased to answer any questions you may have.

Changes in Existing Law

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, the

Committee notes that no changes in existing law are made by S. 2174, as ordered reported.