

INTRODUCTION TO THE HAWAIIAN HOMES COMMISSION ACT

In 1921, Congress enacted the HHCA to provide a homesteading program for native Hawaiians¹ by placing approximately 200,000 acres of former crown lands (designated as “available lands” and eventually assuming the status of “Hawaiian home lands”) into the Hawaiian Home Lands Trust. The day-to-day management of the Hawaiian Home Lands Trust (and the Hawaiian Home Lands Trust Funds, *see* below) is vested in the Department of Hawaiian Home Lands (DHHL), an agency of the State of Hawai‘i, headed by an executive board known as the Hawaiian Homes Commission (HHC). The HHCA provides the Chairman of the HHC the authority to propose to the Secretary of the Interior (Secretary) the exchange of Hawaiian home lands (Trust lands) for land privately or publicly owned in furtherance of the purposes of the HHCA.

The HHCA also created a series of funds (the Hawaiian Home Lands Trust Funds, or “trust funds”) *See*, HHCA section 213 as amended. The purpose of one of these trust funds is the “rehabilitation of native Hawaiians, native Hawaiian families, and Hawaiian homestead communities,” which shall include “the educational, economic, political, social, and cultural processes by which the general welfare and conditions of native Hawaiians are thereby improved and perpetuated.” *Id.* Another in this series of trust funds seeks, for instance, to enhance construction of replacement homes, repairs or additions, and enhance development of farms, ranches or aquaculture, and to provide farm loans, including for soil and water conservation. Still another trust fund provides money for construction, reconstruction operations and maintenance of revenue-producing improvements intended to benefit occupants of Hawaiian home lands; for investments in water and other utilities, supplies, equipment, and goods; and for professional services needed to plan, implement, develop or operate such projects that will improve the value of Hawaiian home lands for their current and future occupants. Other money is provided to establish and maintain an account to serve as a reserve for loans issued or backed by the Federal Government, to further the purpose of the HHCA.

In 1959, Congress enacted the Hawai‘i Admission Act, 73 Stat. 4 (Admission Act) (*see* Appendix C of this document), to admit the Territory of Hawai‘i (Hawai‘i or State) into the United States as a state. In compliance with the Admission Act, and as a compact between the State and the United States relating to the management and disposition of the Hawaiian home lands, the State adopted the HHCA, as amended, as a law of the State through Article XII of its Constitution.

In section 223 of the HHCA, Congress reserved to itself the right to alter, amend, or repeal the HHCA. Consistent with this provision, section 4 of the Admission Act provides limitations on the State’s administration of the Hawaiian Home Lands Trust and the Hawaiian Home Lands Trust Funds (hereafter referred to together as “the Trust”) and also provides that the HHCA is subject to amendment or repeal by the State only with the consent of the United States. Recognizing, however, that it was vesting the State with day-to-day administrative authority, Congress in section 4 of the Admission Act also provided exceptions within which the State could amend certain administrative provisions of the HHCA without

¹ The term “native Hawaiian” with a lower case “n” means an individual who meets the definition of “Native Hawaiian” in HHCA section 201(a)(7). Congress chose to use a high blood quantum requirement in the HHCA for individuals to be eligible for awards of leases of Hawaiian home lands because such blood quantum alone supports a presumption that the individual is a member of a Native American Community (*Cf.* 25 C.F.R. part 83.11(b)(1)(i); (b)(2)(ii); and (c)(2)(ii)).

the consent of the United States. The HHCA is a cooperative federalism statute, a compound of interdependent Federal and State law that establishes a Federal law framework but also provides for implementation through State law.

Consistent with the provisions of the HHCA and the Admission Act, Congress enacted the Hawaiian Home Lands Recovery Act in 1995 (HHLRA), 109 Stat. 357, located in Appendix D of this document. In part, the HHLRA provides that the Secretary shall determine whether a State-proposed amendment to the HHCA requires the consent of the United States under section 4 of the Admission Act. It is appropriately the function of the United States to ensure conformance with the limitations in the Admission Act and protect the integrity of this statutory framework.

The HHLRA also clarified the Secretary's role in the oversight of the Hawaiian Home Lands Trust. Section 204(a)(3) of the HHCA, in conjunction with Section 205 of the HHLRA, requires the approval or disapproval of the Secretary for the exchange of Hawaiian home lands. The HHLRA details the Secretary's responsibilities to ensure that Hawaiian home lands are administered in a manner that advances the interests of the beneficiaries.

While the Secretary has broad responsibilities under the HHCA and the Admission Act, the HHLRA clarifies the scope of the continuing responsibilities of the Federal Government with regard to the HHCA. Two of these responsibilities are addressed in 43 CFR parts 47 & 48, located in Appendix F of this document. These two rules clarify the role of the Secretary in land exchanges involving Trust lands and the process for the Secretary's review of State-proposed amendments to the HHCA.