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HAWAIIAN HOMES COMMISSION ACT

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By the early 1900s, after disease, the Great Mahele, and the overthrow of the Hawaiian kingdom, the numbers of Hawaiians had declined at an alarming rate and many were living in poverty. To address this problem, in 1921 Congress passed the Hawaiian Homes Commission Act (HHCA) to carve out some of the ceded lands to provide homesteads for persons of 50% or more Hawaiian blood. The HHCA, the Department of Hawaiian Homes Lands which administers it, and its actions frequently are targets for change. This note explains the history behind the HHCA, and the complexities that lie in making changes to the HHCA.

Q1: *Who created the Hawaiian Homes Commission Act and why?*

A1: The U.S. Congress created the Hawaiian Homes Commission Act (HHCA) in 1921 in response to Hawaii's delegate to Congress, Jonah Kalaniana'ole Kuhio, who was concerned about the rapid decline in the population of the Hawaiian population. The goal was to return Hawaiians, who had been disenfranchised by sale of their lands after the Great Mahele, to the land and encourage them to be self-sufficient farmers, ranchers and homesteaders on leasehold parcels.

The original HHCA was an act of Congress. When Hawaii became a state, the responsibilities of the Act and title to the land passed to the State of Hawaii, although Congress retained some oversight (discussed below) over operations. The current HHCA is now construed as part of the state constitution.

Q2: *What does the Hawaiian Homes Commission Act do?*

A2: The HHCA makes 99-year leases (which can be extended up to 199 years) at \$1 per year to native Hawaiians, who are defined as people who are at least 50% Hawaiian. The land can be used for residences (lease of up to 1 acre), agriculture or aquaculture (up to 40 acres), or ranching (up to 100 acres if irrigated, and up to 1000 acres if not).

Q3: *Where did the lands come from?*

A3: The Hawaiian Homes Commission (HHC) lands came from the "ceded lands" of the Hawaiian monarchy. After the overthrow of the monarchy, all of the lands that had been designated as Crown lands and government lands were "ceded" to the Republic of Hawaii, which in turn ceded them to the United States upon resolution of annexation. The exact total of the ceded lands is unclear even today, but approximately 203,000 acres of them were spun off and designated as Hawaiian Homes lands, now administered by the Department of Hawaiian Home Lands (DHHL). The Hawaiian home lands are set aside and cannot be used by the government. They are no longer included in the general discussion of "ceded lands."

Q4: *Who are the beneficiaries of the Act?*

A4: In general, to be a "native Hawaiian" under the Act, able to be placed on the waiting list for a leasehold lot, the lessee needs to be at least 50% Hawaiian by blood. Adoption does not count. However, a recent exception was added to permit a husband, wife, child, or grandchild to *succeed* a lessee if the successor is at least one-quarter Hawaiian by blood (but those with less than a 50% Hawaiian blood quantum cannot themselves be placed on the waiting list).

Q5: *How is the Hawaiian Homes Commission funded?*

A5: For many years, the HHC was underfunded and unable to place many people on the lands as it did not have sufficient funding for infrastructure. Land that could have been used for income-producing leases to pay for that infrastructure was improperly used, disposed of, or withdrawn from the trust by the Territory and the State. In recognition of this fact, and of the hundreds of people thereby deprived of the opportunity for a leasehold, the Legislature passed Act 14, Special Session Laws of Hawaii 1995. This Act committed \$600 million to the HHC, \$20 million per year for the next 30 years, to provide a "substantial, predictable funding mechanism" for the Commission.

Q6: *Who is responsible for administering the Hawaiian Homes Commission Act?*

A6: The HHCA is administered by the Department of Hawaiian Home Lands, which is headed by an executive board known as the Hawaiian Homes Commission. The Commission is composed of nine members who are all appointed by the Governor with the advice and consent of the Senate. The members must come from various geographic areas of the State. The Governor designates the chairperson of the Commission. The chairperson serves in a full-time capacity and performs all of the duties and functions delegated to it by the Commission.

Q7: *How can the Hawaiian Homes Commission Act be amended?*

A7: In many cases, the HHCA can be amended by the State Legislature like any other law. Although it is no longer an Act of Congress, in some cases Congress retains oversight of the Act and its consent must be obtained to amendments of the Act. For example, changes to lessee qualifications will require congressional approval. Article XII, section 3 of the state constitution lists specific sections relating to administration which can be amended by state statute or by constitutional amendment *without* the need for congressional approval.

Q8: *How does the HHCA fit in with other benefits for Hawaiians such as OHA and ceded lands?*

A8: HHCA benefits only Hawaiians with 50% Hawaiian blood or more, while OHA benefits all Hawaiians, including the larger percentage of Hawaiians who have less than 50% Hawaiian blood. HHCA's main focus is the provision of leasehold lots for residences, farming, and ranching. While the HHCA does contain the Native Hawaiian Rehabilitation Trust fund to promote the general economic welfare of native Hawaiians, OHA serves as the principal public agency responsible for the performance, development, and coordination of programs benefiting all Hawaiians. OHA is funded in part through the public trust containing the remainder of the ceded lands (for programs for native Hawaiians only) and from the state general fund (for programs for all Hawaiians).

Q9: *What is the Hawaiian Homes Trust Individual Claims Review Panel?*

A9: Created in 1991, the Hawaiian home lands trust individual claims review panel was to review breach of trust claims against DHHL, from statehood to June 30, 1988, from native Hawaiians who are on the homestead waiting list or who have received homestead leases. The law set up a review process by the panel, approval and payment by the Legislature, and allowed the claimants to sue in state court at the end of this process if they did not agree with the results. The majority of complaints had to do with waiting list claims, as claimants typically had to wait many years for a lot, in some cases over 40 years without receiving one. Other claims concerned construction claims and administrative errors, such as lost applications or incorrectly applied policies. An attempt was made by the Governor to change the law to exclude the waiting list claims, which was found unconstitutional by the circuit court and not appealed by the State.

The panel's deadline was extended to 1999 but it was able to handle only a little over half of the claims in this time period. The Governor vetoed a bill to extend the life of the panel to finish addressing these claims. A group of claimants with unresolved claims filed a class action suit, Kalima v State, asking for a right to present their cases directly to the court, and won in Circuit Court. The State's appeal is now pending before the Hawaii Supreme Court.