

EXECUTIVE SESSION

H. R. 50

HAWAII STATEHOOD

- - -

THURSDAY, JANUARY 29, 1959

- - -

House of Representatives
Committee on Interior and
Insular Affairs
Washington, D. C.

The committee met, pursuant to recess, at 10 a.m. in the committee room, New House Office Building, Honorable Leo W., O'Brien, acting chairman of the committee, presiding.

Mr. O'Brien. The Committee on Interior and Insular Affairs will be in order.

We have met this morning for the purpose of marking up a bill providing statehood for Hawaii.

I yield to the distinguished Chairman of the Full Committee.

Mr. Aspinall. Mr. Chairman, I ask unanimous consent that we proceed to mark up H. R. 50, with the understanding that when the bill is marked up and receives the approval of the committee, a new bill, a clean bill will be introduced at that time, and it will be sponsored by whosoever the committee at the time desires to sponsor it.

Mr. O'Brien. Is there objection to the request of the gentleman?

The Chair hears none, and it is so ordered.

(Discussion off the record.)

Mr. Saylor. Mr. Chairman?

Mr. Aspinall. (presiding). The gentleman from Pennsylvania.

Mr. Saylor. I think that practically all of the members of the committee are in accord on the basic provisions of this bill, and so there will be no question about it. I ask unanimous consent that, if at any time after we have moved on from reading a section, there is bona fide effort to correct a found mistake in the bill in the language, that we be permitted to return to that section.

Mr. Aspinall. Unless there is an objection, that will be the order.

Hearing no objection, the clerk will read.

Mrs. Arnold (reading). Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That, subject to the provisions of this Act, and upon issuance of the proclamation required by section 7(c) of this Act, the State of Hawaii is hereby declared admitted into the Union on an equal footing with the other States in all respects whatever, and the constitution formed pursuant to the provisions of the Act of the Territorial Legislature of Hawaii entitled "An Act to provide for a constitutional convention, the adoption of a State constitution, and the forwarding of the same to the Congress

of the United States, and appropriating money therefor", approved May 20, 1949 (Act 334, Session Laws of Hawaii, 1949), and adopted by a vote of the people of Hawaii in the election held on November 7, 1950, is hereby found to be republican in form and in conformity with the Constitution of the United States and the principles of the Declaration of Independence, and is hereby accepted, ratified, and confirmed.

Mr. Aspinall. Are there any amendments proposed to section 1?

Is there any question that any member of the committee has on the contents of section 1?

Hearing no proposed amendments and no questions, the clerk will continue to read.

Mrs. Arnold (reading). The State of Hawaii shall consist of all the islands, together with their appurtenant reefs and territorial waters, included in the Territory of Hawaii on the date of enactment of this Act, except the atoll known as Palmyra Island, together with its appurtenant reefs and territorial waters, but said State shall not be deemed to include the Midway Islands, Johnston Island, Sand Island (offshore from Johnston Island), or Kingman Reef, together with their appurtenant reefs and territorial waters.

Mr. Aspinall. Are there any proposed amendments to section 2, or is there any question that anyone wishes to ask on section 2?

Mr. Rogers. A parliamentary inquiry, Mr. Chairman.

Mr. Aspinall. The gentleman from Texas.

Mr. Rogers. Are we operating under the rule that once this is read you cannot go back and offer an amendment?

Mr. Aspinall. We are operating under that rule, providing that if someone has an amendment he wishes to propose to that section that is being considered, if the person proposing that amendment wishes to reserve the right to come back to it, he may do so.

Mr. Rogers. I was going to say, we have moved so fast I have had trouble holding my seat and no chance to prepare amendments.

Mr. Aspinall. Does the gentleman have an amendment to section 2?

Mr. Rogers. No now.

Mr. Aspinall. Does the gentleman plan to have an amendment at any time to section 2?

Mr. Rogers. I do not know.

Mr. Edmondson. Mr. Chairman, may we go back to a technical question here on page 1?

Mr. Aspinall. Unless there is an objection, we will refer back. Is there any objection to referring back?

Hearing no objection, it is so ordered.

Mr. Edmondson. Line 5, page 1, refers in H. R. 888 to the Territory of Hawaii, and at the same line H. R. 50 refers

to the State of Hawaii. I wonder if the more exact language might not be to use the word "territory." -- "the Territory of Hawaii is hereby declared to be a State of the United States of America,".

Mr. Saylor. In response to that, even though I am the author of H. R. 888, on its counterpart, we have found that is the language that was used for the Alaska Statehood bill, and we have had the staff check practically all of the recent bills admitting states into the Union, and they have been to admit states and not territories.

Mr. Aspinall. Is there any further discussion?

Mr. Rogers. Mr. Chairman, let me make this observation: Of course, I think I am going to have an amendment, but rather than hold up these proceedings, I want the record to show that the statement was made here so that the issue will not be raised on the floor that an amendment was not offered in committee in arguing against the amendment. Just so that the committee will understand that there are two things involved here:

One is the fact that we may not be taking in enough in the State of Hawaii, as I think was included in the statement of Mr. Poage yesterday in regard to other islands.

Mr. Aspinall. Let me answer your first question.

Mr. Rogers. Yes.

Mr. Aspinall. Of course, no member of the committee,

as well as no member of the House, is bound by the decision of the committee to such an extent that amendments will not be in order on the floor of the House, regardless of whether or not it was considered by the committee when marking up the bill.

As to what the proponents of the bill or the sponsor of the bill might say in his position on the floor as he answers the proposed amendment, the Chair is unable to say. But I think my colleague will agree with me that we have always permitted any member of the committee to make an amendment.

Mr. Rogers. I understand the legal side, but I was thinking about the practical side. Sometimes those arguments appear on the floor, and I do not want anybody to think I was asleep over here.

Mr. Aspinall. Nobody would ever accuse my friend of being asleep when it comes to a statehood bill.

Mr. Rogers. The next thing I have in mind would have to do with the territory that is included within the State of Hawaii. Am I correct in my understanding that what is referred to in section 2 includes eight separate islands and pertinent reefs, and that is all that makes up the Territory of Hawaii and all that will make up the State of Hawaii?

Mr. Aspinall. I think the gentleman's last statement

is correct; that is, that is all that will make up the State of Hawaii.

I will let the delegate from Hawaii answer as to whether or not there is any other property or any other islands at the present time other than the eight islands to which Mr. Rogers makes reference that is incorporated presently in the Territory of Hawaii.

Mr. Burns. It has generally been held, by reason of the admission bill, that there was a title to Midway and your train of islands running out to Midway within the Territory of Hawaii, and that is why this is specifically limited to the eight islands.

The Kingdom of Hawaii exercised some title in there that has never been actually clear.

Mr. Rogers. As I understand it, what constitutes the Territory of Hawaii now includes the eight islands we are talking about plus the exceptions that you set out here, plus Midway, Johnston, and I do not know whether these others are included.

Mr. Burns. May I answer the gentleman this way: There is a color of claim to the other islands which we take out here.

Mr. Rogers. Who else has a color of claim to that?

Mr. Burns. They are possessions of the United States.

Mr. Rogers. How many islands are there?

Mr. Burns. I am afraid I cannot answer the gentleman. It runs up in great number.

Mr. Rogers. Why are not those included in this bill as part of the state?

Mr. Burns. There is nobody there. That is one reason basically -- there are no living persons on them. They are simply atolls or coral reefs in the middle of the ocean.

Mr. Rogers. Who owns the island that sticks up between Japan and Hawaii, sticks up about two thousand feet?

But that would not be included.

Mr. Burns. No, sir, that is not. Ours would be from Midway towards Hawaii. That is the best description I could give you there.

Mr. Rogers. What about any little islands laying off-shore from these eight islands?

Mr. Burns. They are included in the title "appurtenant reefs and territorial waters".

Mr. Rogers. The thing about it, as everybody who is on this committee will recall, in discussion of this bill on the House floor they always got around to what constitutes Hawaii or what constitutes the territorial waters of Hawaii. Now the definition is it will include those small islands off the coast.

Mr. Burns. Which are a part of the appurtenant reefs.

Mr. Rogers. How close would they have to be to the

mainland to be considered a part of it?

Mr. Burns. They are actually attached to the main body, the ones we are talking about, and they are not distinctly separated. There is a bay of water sometimes in between, but they are attached as part of the main island and not a separate island.

Mr. Rogers. Are any of them over three miles?

Mr. Burns. No.

Mr. Aspinall. Is there any other discussion?

Mr. Saylor. Just one matter, Mr. Chairman, for information. On page 2, line 12, it refers to Sand Island.

I would ask the delegate from Hawaii whether or not that Sand Island is the Sand Island that is referred to in other bills that have been before this committee, lying off Oahu?

Mr. Burns. Mr. Chairman, in answer to the question of the gentleman from Pennsylvania, it is not the same island. The one referred to off of Honolulu Harbor, or off the Island of Oahu, is a filled reef and part land.

Mr. Aspinall. Is there any other discussion?

Mr. Morris. Mr. Chairman?

Mr. Aspinall. Mr. Morris.

Mr. Morris. I would like to reserve the right to offer an amendment to this section later on.

Mr. Aspinall. The gentleman has that privilege.

Mr. Burdick. Mr. Chairman, apropos of what the gentleman

from Oklahoma said on the question of terminology, on page 8, it refers to the Territory of Hawaii, and I presume it is referred to thereafter. Yet he calls attention to the fact on page 5 of the first section it is referred to as the State of Hawaii.

Mr. Saylor. The State of Hawaii shall include what is now within the Territory of Hawaii with these exceptions.

Mr. Aspinall. The first section, as I understand it, to which you made reference contains a pronouncement of the status to be, the State of Hawaii. Then we come over to the second section and we refer to the State of Hawaii, and we use the word "Territory of Hawaii" to show one area is included within the state.

With the understanding that we may return to this section for a proposed amendment by the gentleman from New Mexico, we shall now continue.

Mr. Rogers. May I ask one more question of the delegate?

Mr. Aspinall. Yes.

Mr. Rogers. Why is it that these other islands are excepted?

Mr. Burns. Does the gentleman mean Midway, Johnston and Sand Island?

Mr. Rogers. Yes.

Mr. Burns. Because you are extending jurisdiction over lands which do not have any people, which do not appear

probably to have any in the future, and which might disappear from the face of the globe because they are just atolls.

Mr. Rogers. Are these islands named in here the part of Hawaii now?

Mr. Burns. With reference to the earlier statement, there is a color of title extending from the Kingdom of Hawaii, that under the Kingdom of Hawaii there was extension of sovereignty to the islands, that in the admission of the Territory of Hawaii the loose language included it within the Territory of Hawaii.

Mr. Rogers. Where would this country have gotten it if it did not get it from Hawaii when Hawaii became a territory?

Mr. Burns. I believe they did. That claim extended, with no one contesting it.

Mr. Rogers. That is the source of title this government has to them?

Mr. Burns. That is right.

In order to clarify it now, we are excluding them from the bill in order to make it clear they are not part of the State of Hawaii.

Mr. Aspinall. Let me ask this question: Does the gentleman from Texas also wish to reserve the right to propose an amendment before the committee on this?

Mr. Rogers. Yes, I would.

Mr. Aspinall. It has to be stated as we go through the marking up of the bill that a member wishes to reserve the right. So the record now shows the gentleman from Texas, Mr. Rogers, and the gentleman from New Mexico, Mr. Morris, reserve that right.

Mr. Rogers. May I offer an amendment right now. Beginning on page 2, line 9, place a period after the word "Act" and strike out beginning with the word "except" down through and including the period on line 14.

Mr. Aspinall. The gentleman will be recognized for five minutes in support of his amendment.

May the Chair suggest that we do our best to follow the rules and offer the amendments in writing. I know that is difficult at this time as we start out, but let us see if we cannot do that, take the time to make that preparation. This one is so easy of understanding that unless there is an objection we will proceed with this as it is offered by the gentleman from Texas.

Hearing no objection, the gentleman is recognized for five minutes.

Mr. Rogers. Off the record.

(Discussion off the record.)

Mr. Rogers. The reason this is offered this way is to take in, if this bill passes -- which I have a suspicion it will -- these other islands so it will not be discriminating

against those islands which, as the delegate has just said, are a part of the Territory of Hawaii that came as a territory of the United States by their own will and volition.

It has been argued that a promise was made to take in the Territory of Hawaii as a state. That was made by some Southerner or by somebody else who maybe did not have the right to bind the United States Government. For some reason we decided we wanted to be bound by what he said and rest part of the case on that.

If that promise is going to be used to admit the territory as a state, the promise did not only extend to the eight islands referred to, it extended to all of the Territory of Hawaii when it came in by its own volition. And to pass a bill that excludes these other areas from this statehood bill is nothing short, in my opinion, of discrimination.

I do not know how many people might live on those islands or whether they are adaptable. But if they are a part of the original Territory of Hawaii, it seems to me that we have very little right, if any, to go breaking them up.

Actually we do not have the right to do it; we have the power to do it.

If we are going to do that, then we are defeating part of the argument that has been offered to include them as a

state.

Sooner or later, as pointed out yesterday by the gentleman from Texas, Mr. Poage, as a witness, some action must be taken with regard to these islands in the Pacific owned by the United States. If those islands are not taken in a compact group with the other islands at this time, they are going to be nothing more or less than loose ends out in the Pacific Ocean. If there are any inhabitants on them, those inhabitants will be in the same position as the islands, -- they will be discriminated against.

If we move farther on this thing, I think we ought to be fair with it, and I think we ought to take in the whole group so there will not be any misunderstanding on the part of the people in Asia that we seem to want to please for some reason on this score. We are just breaking our backs to please them on this, and then we displease them otherwise.

I read that Indonesia was displeased that arms which showed up in the hands of the rebels came from Clark Field. That was not very conducive of good relationships between that country and this one. Yet we are willing to walk into a new political area in order to please those people, as some people argue, and at the same time we are breaking up this territory.

I think we ought either to do it or not to do it.

Thank you very much.

Mr. Aspinall. The time of the gentleman has expired. Does anyone want to be heard in opposition to the amendment?

Mr. Burns. Mr. Chairman?

Mr. Aspinall. The gentleman from Hawaii is recognized for five minutes.

Mr. Burns. Mr. Chairman, the atoll of Palmyra Island was included in statehood bills several years ago. At that time, because there was 890 miles or more of water between Hawaii proper, the eight islands, and the atoll of Palmyra Island, a considerable discussion arose over jurisdiction and ability to enforce the law and responsibility.

Hawaii itself -- I believe I can speak for the people of Hawaii within reasonable degree -- want only to include the eight main islands. This bill will be sent back to the people of Hawaii, who must agree to the land provisions thereof. So their choice on this, as to whether they wish to include those islands to which they have a color of claim, will be made in the ratification elections by which this is taken to them. I am sure they do not want to include these islands because of the many problems that would come in with these islands in administration and carrying out other responsibilities.

Mr. Aspinall. If the gentleman will yield, how far is Palmyra from the eight islands?

Mr. Burns. At least 890 miles from the Island of Hawaii.

Mr. Aspinall. How far is the Island of Hawaii from Honolulu?

Mr. Burns. Less than 190 miles.

Mr. Aspinall. How many people live on the Island of Palmyra?

Mr. Burns. None permanently.

Mr. Aspinall. How many people could take refuge on the Island of Palmyra?

Mr. Burns. That would be a difficult question, but I think actually, from what little I know of the size of the island, you would stack it up with a thousand people. You could not feed them. There is no water.

Mr. Aspinall. Would the cost of policing the Island of Palmyra be rather exorbitant for the value that could be found one way or another to the other eight islands?

Mr. Burns. The Chairman has stated the case exactly correctly: it would be exorbitant.

Mr. Rogers. Will the gentleman yield to me?

Mr. Burns. Yes, I will be happy to.

Mr. Rogers. How do the people of Hawaii justify or reconcile the situation that they claim to be cut off from the United States and they want to participate as a state, and yet they are at the same time cutting off part of the territory they have claimed and brought into the United States as a part of the Territory of Hawaii.

Mr. Burns. If the gentleman please, as I tried to explain at the beginning -- and perhaps it might be well to take a moment of the committee's time -- the islands of Hawaii are volcanic and coral. The whole chain extends from Midway down to the Island of Hawaii, from the Island of Hawaii in a grand half circle up to the Island of Midway. In between there are these little coral reefs that have gathered sand over a period of years, and when you are talking about Midway Island, that is what you are talking about.

That they would ever be habitable is improbable, with the exception of Midway, which is a base of the United States. There are no native inhabitants. It is strictly military and has been over a period of time.

Because of that particular point of view, the color of title attached to it because of geography, that the Kingdom of Hawaii was the only sovereign power that existed there.

Mr. Rogers. Why do you speak of color of title? Who has the other claim?

Mr. Burns. It would be like Christmas Island, but because of lack of value nobody made a claim. On Christmas Island, the United States and Great Britain both claimed it.

Mr. Rogers. We have title under the Statute of Limitations, do we not?

Mr. Burns. Great Britain went down and used it for a bombing range in the recent past.

Mr. Rogers. They found their way into the United States by virtue of when Hawaii moved in as a territory. Is that right?

Mr. Burns. Right.

Mr. Rogers. So any color of title is tied directly to Hawaii?

Mr. Burns. That is correct, the color of title is in regard to Hawaii and not with regard to the United States.

Mr. Ullman. Would the gentleman yield?

Mr. Burns. Yes.

Mr. Ullman. Whether these islands are or are not included in the State of Hawaii, there is no question about their ownership in the United States, is there? If we leave them out, will that in any way jeopardize United States ownership?

Mr. Burns. No, sir, it would not.

Mr. Rogers. Will the gentleman yield further?

Mr. Burns. Yes, I will be happy to yield.

Mr. Rogers. There is not anything in this bill that would permit the expansion of Hawaii to include these at a later date either, is there?

Mr. Burns. No, sir, there is not.

Mr. Rogers. In other words, they are completely cut

off even though they were an original part of the Territory of Hawaii?

Mr. Burns. That is correct.

Mr. O'Brien (presiding). The time of the gentleman has expired. Is there any further discussion?

The question occurs upon the amendment offered by the gentleman from Texas. All those in favor say aye.

Those opposed, no.

The amendment is not agreed to.

Mr. Aspinall. Mr. Chairman, may I suggest to the gentleman from New Mexico, now, that that amendment will not be in order any more, but an amendment could be made to change any part of the section that is left in there. The same amendment will not be before this committee again.

Mr. Morris. Yes, I understand that, Mr. Chairman.

Mr. O'Brien. The clerk will read.

Mrs. Arnold (reading). The constitution of the State of Hawaii shall always be republican in form and shall not be repugnant to the Constitution of the United States and the principles of the Declaration of Independence.

Mr. O'Brien. Are there any amendments to section 3?

Mr. Rogers. Mr. Chairman, I have a parliamentary inquiry about it. Why is that section in here? Why is it necessary?

Mr. Aspinall. Will the gentleman yield to me to answer

it?

Mr. Rogers. Yes.

Mr. Aspinall. This is the section that has been used in all statehood bills?

Mr. Rogers. But why has it been used in all statehood bills when they get it through the authority of the Constitution of the United States?

Mr. Aspinall. I will ask Mr. Witmer, What are the provisions the Constitution provides in all statehood bills?

Mr. Witmer. I think this is substantially it, sir, but I would like to add one comment to what you have made.

The people of the Territory of Hawaii, before they come in, will vote on acceptance of all the terms and conditions of this Act, and that will include on their part a vote agreeing that their constitution will always be republican in form, as the Congress declares that it is, and it will not be amended so it is not.

So you will have the double-barreled proposition: The Constitution of the United States requires that the President and the other Federal officials see that there is a republican form of government, and the people of the territory will be agreed that it is what they on their own behalf will do.

In other words, I believe that it is a double-barreled proposition.

Mr. Rogers. That is all very well, Mr. Witmer, but the fact of the matter is simply this: In accordance with law, if they adopted a constitution repugnant to the Constitution of the United States, it would be unconstitutional and would not have any force and effect.

Mr. Witmer. I quite agree it would not.

Mr. Rogers. I will not offer an amendment to strike that.

Mr. O'Brien. The clerk will read.

Mrs. Arnold (reading). As a compact with the United States relating to the management and disposition of the Hawaiian home lands, the Hawaiian Homes Commission Act, 1920, as amended, is adopted as a law of said State, subject to amendment or repeal only with the consent of the United States, and in no other manner: Provided, That (1) sections 202, 213, 219, 220, 222, 224, and 225 and other provisions relating to administration, and paragraph (2) of section 204, sections 206 and 212, and other provisions relating to the powers and duties of officers other than those charged with the administration of said Act, may be amended in the constitution, or in the manner required for State legislation, but the Hawaiian home-loan fund, the Hawaiian home-operating fund, and the Hawaiian home-development fund shall not be reduced or impaired by any such amendment, whether made in the constitution or in the manner required for State legislation,

and the encumbrances authorized to be placed on Hawaiian home lands by officers other than those charged with the administration of said Act, shall not be increased, except with the consent of the United States; (2) that any amendment to increase the benefits to lessees of Hawaiian home lands may be made in the constitution, or in the manner required for State legislation, but the qualifications of lessees shall not be changed except with the consent of the United States; and (3) that all proceeds and income from the "available lands", as defined by said Act, shall be used only in carrying out the provisions of said Act.

Mr. O'Brien. Are there any amendments to section 4?

Mr. Burns. Mr. Chairman?

Mr. O'Brien. Mr. Burns.

Mr. Burns. I would like to offer an amendment. I do have a suggestion from counsel that I think is perfectly in order.

On line 22, page 2, after the comma, strike the words "is adopted as a law of said State" and substitute therefor "shall be adopted as a provision of the constitution of said State as provided in section 7, subsection (b) of this Act."

Mr. Rogers. May we have that again?

Mr. Burns. Strike the words "is adopted as a law of said State", on line 22 of page 2, and substitute therefor

"shall be adopted as a provision of the constitution of said State as provided in section 7, subsection (b) of this Act."

Mr. O'Brien. The gentleman is recognized for five minutes.

Mr. Burns. The reason for that is that "is adopted" and "shall be adopted" are two different terminologies within the terms of lawyers, which I am not. It is preferable to have the term "shall be adopted" and identifies what you are talking about rather than saying "adopted as a law of the said State" it is adopted as part of the constitution of said State.

Mr. Rogers. Will the gentleman yield?

Mr. Burns. Yes, I will be happy to.

Mr. Rogers. The fact is that what has been done is, if this bill is passed, it would in effect result in the Congress of the United States passing a statute for the State of Hawaii by putting it into the constitution. What you propose to do is get away from the Congress adopting a statute of the state, calling it a statute, and simply saying that it is a part of the constitution, that it shall be a part of the constitution.

In other words, what is happening is that Congress is telling the Hawaiian people what to put into their constitution outside of its not being repugnant.

Mr. Aspinall. Will the gentleman yield?

Mr. Rogers. Yes.

Mr. Aspinall. What it is is just simply this: The Congress of the United States is giving to the people of Hawaii the right to make their own determination, and if they want this in the constitutional act, which agrees with the proposal of Congress, they state it. If they do not, they turn down the proposition of Congress. That is all.

Mr. Rogers. If the gentleman will yield further, what they turn down, if they turn down this proposition offered in this section, then they turn down statehood.

Mr. Burns. That is right.

Mr. Rogers. In other words, they either get statehood with this laced on or they do not get it?

Mr. Burns. Yes.

Mr. Rogers. Is not that, in effect, saying to the Hawaiian people, "We are going to grant you statehood, but we are going to grant it the way we want in regard to these lands, and you do not have any freedom at all to exercise with relation to them"?

Mr. Burns. May I say to the gentleman from Texas, this is in the nature of a contract. We have drawn our Constitution. The constitution of Hawaii has been presented to this committee. We are now, on behalf of the United States and Congress, making certain corrections and changes as it thinks should be made on its part to this constitution,

and we will then have an opportunity to accept those. It is a contract coming about between the sovereign State of Hawaii and the United States.

Mr. Rogers. Why include a compact? It is actually, in effect, a statute, a law, that will be binding on all the people of Hawaii with relation to this. Why not leave it out and let the matter be handled after statehood and after the constitution has been adopted? There is not any provision of this kind in the Constitution of the United States or in the constitution of any other states?

Mr. Burns. I think you have many agreements. If I may say so, you have them between every state that came into the Union and the United States. You have had many such agreements.

Mr. Rogers. As a matter of fact, we in Texas had such agreements. They have not all been kept. But our agreements had to do with retaining our rights insofar as the lands is concerned. I think here, even though you may be retaining some rights to land, you are giving up rights in this situation rather than retaining them.

Mr. Burns. If I may point out to the gentleman from Texas, our proposed state constitution which we drew up includes practically the same language.

Mr. Rogers. I understand that, but that just proves this: It proves that the Hawaiian people had an idea what

Congress wanted when they drew up their constitution, did it not?

Mr. Burns. Shall we say that both Hawaii and the Congress want the same thing, then?

Mr. Rogers. Whether they do or not, you may change your mind later on. Why do you want to tie yourself down with this?

Mr. Burns. As I say, we had in our Constitution, which is also susceptible to change.

Mr. Rogers. You are setting a precedent where you are tying this thing.

Let me ask you this question: What good does this do, this sort of a section in the constitution, insofar as the Hawaiian home lands are concerned, as far as the Hawaiian Homes Commission Act is concerned?

Mr. Aspinall. Will the gentleman yield to me to answer that?

Mr. Burns. I shall be happy to.

Mr. Aspinall. It does this: It keeps inviolate the organization and the act which set up these lands under the jurisdiction of the Hawaiian Homes Commission Act. That is all it does. It does not change any property rights that are now in existence.

Mr. Rogers. Do I understand that, if this was not in there, the power would be vested in this new state to change

the rights that have been created under the Hawaiian Homes Commission Act?

Mr. Burns. The gentleman understands exactly correctly.

Mr. Rogers. What kind of law is it that has been passed out there? I do not see how it can do that. Is title vested under the act insofar as the lands are concerned?

Mr. Burns. Yes, sir.

Mr. Aspinall. It is in the Hawaiian Government.

Mr. Burns. Four hundred thousand acres are vested in the Hawaiian Homes Commission.

Mr. Aspinall. And the manner by which they can be disposed of is in the act.

Mr. Burns. Right.

Mr. Rogers. Then the point is simply this: That what is being argued against here is a state official family that might disagree with what went on in the past and decide to do something else.

Mr. Burns. Yes, sir.

Mr. Rogers. Are you afraid of that happening?

Mr. Burns. No, sir, not at the moment. But there is also a Federal responsibility in this, if I may point that out.

Mr. Rogers. Because we did it before?

Mr. Burns. No, sir. If the gentleman please, and for the information of the other members of the committee, the lands that were ceded to the United States on annexation from

were the lands of the Kingdom of Hawaii and the lands of the Crown and the lands of the government. That would include the free lands that were ceded. There was some controversy as to whether the king or the Crown held lands in title for the Hawaiian people or whether it did not hold those lands in title. The case was never properly adjudicated because it could not be under the laws of the Kingdom of Hawaii.

The Kingdom of Hawaii was no more.

But in recognition of that principle and by reason of the introduction of a bill by my predecessor, Jonah Kuhio Kalaniana'ole, delegate to Congress, there was enacted this Hawaiian Homes Commission Act, which provided for the setting aside of some 400,000 acres of land for the rehabilitation of the people of the Hawaiian race, the Polynesians; and in order to be a beneficiary under the act you must have more than fifty percent of the blood of those who inhabited the Islands before 1778. And there is a special provision for their rehabilitation and their development. That is what we are trying to set aside.

Mr. O'Brien. Will the gentleman yield to me?

Mr. Burns. I will be happy to yield.

Mr. O'Brien. It seems to me the original language here, the language you seek to change, Mr. Rogers, does not give the new state any elbowroom at all. We say that it is adopted. We adopt it. We mandate that it is adopted as a

law of said state. They must do it. We adopt it by passing this, and it is subject to amendment or repeal only with the consent of the United States.

The better way to do it is to put it in the constitution.

Mr. Rogers. If the gentleman will yield further, the chairman misunderstands me. I want to give them elbowroom to do what they want. I do not think you are going to make a state out of them if you are going to take a lot of rights away from them to begin with, by making it something that has to be agreed to in order to get statehood.

Mr. O'Brien. If the gentleman will yield further, we do not give them elbowroom in the language you are trying to correct. We just pass a law for them.

Mr. Rogers. That is what I am talking about. I do not think we have the right to pass a law for them. My point is: We talk about giving them statehood and certain rights and powers and immunities and here we take it away from them.

Mr. O'Brien. We did it in the case of Alaska over matters we mandated to Alaska to do. We did it in the commonwealth for Puerto Rico. We required them to insert several provisions in their constitution.

Is that correct?

Mr. Aspinall. The gentleman is correct.

If I may be recognized at this place, we are simply

protecting the Polynesian people; that is all we are doing here. And they have been protected ever since the first delegate came here, and we are seeing to it that no matter what happens over there -- and we have a right to do so -- that there is no Polynesian people or those who bear one-half or more of the Polynesian blood that are not protected in their rights to use those lands in order to become -- the usual word is "rehabilitated" but that is not a good word here. Simply they have a right to use the rights which were theirs inherently when the Kingdom of Hawaii ceased to exist and came into the United States. That is all this provision does.

As far as the wording is concerned, it simply puts it, as I understand it, just a little bit clearer that the Hawaiian people have the right to pass their judgment on this rather than we should issue a direct mandate to them that that is going to take place.

Mr. Rogers. I may be mixed up on this thing, but I thought what we were doing in this bill was turning some people loose from being under our protection as a territory and getting away from colonialism. Here I find us creating an Indian reservation in the Hawaiian Islands, as that is exactly what this is.

Mr. O'Brien. Will the gentleman yield?

Mr. Aspinall. Yes.

Mr. O'Brien. Do you not have the same problem in some of the states with regard to the Indians, since you brought up the question?

Mr. Rogers. Mistakes in the past do not mean we should make mistakes in the future. We either ought to turn them loose or keep them.

Mr. O'Brien. Ought we to turn the Indians loose in all the states?

Mr. Rogers. Can these Polynesians get free, simple title to this land?

Mr. Burns. Not as yet.

Mr. Rogers. There have been more adjectives used in these hearings about identified Communists and -- when can they?

Mr. Burns. They can not. They get a 999 year lease.

Mr. Rogers. A 999 year lease?

Mr. Burns. That is right. And it is passed on to their family if they are qualified.

Mr. Rogers. Well, they are noted for old age. Why in the world under this act would you give a man a 999 year lease? That is darn near in violation of the law against perpetuity, is it not?

Mr. Burns. May I say, from the point of view as representative of Hawaii, the United States of America has not met these obligations to see these people had an opportunity

to get that land.

Mr. Rogers. Buy it?

Mr. Burns. Yes.

Mr. Rogers. Why don't we turn this loose and let the State of Hawaii say the Polynesian people are entitled to own this in fee simple and do what they want to exclusive of any lease-hold rights?

Mr. O'Brien. If the gentleman will yield, conversely, we would be giving the authority to the people of Hawaii to take it away from them.

Mr. Rogers. Sure. But we are sure the people of Hawaii are not intending to do that. When the people from outside went to Hawaii the natives owned the land, and the people from outside had the initiative and now it has switched around.

Mr. Burns. I might say to the gentleman, we have had many Americans move in there and they are not familiar with many of the older things that have gone on. We are simply protecting some of this.

Mr. Rogers. How much of this land in Hawaii can be owned in fee simple? I mean percentage-wise. What part can a man go out and buy in fee simple and get a title to it?

Mr. Burns. I think approximately ten percent as of the present time.

Mr. Rogers. Of all the lands in the Hawaiian Islands?

Mr. Burns. Yes, sir.

Mr. Rogers. Who has the rest of that land? Why cannot the simple title be obtained?

Mr. Burns. I am going to have to stretch that, take it up a little higher.

Mr. Rogers. Yes.

Mr. Burns. Approximately one-third of the area of Hawaii is arable, useable land. The rest runs into mountains and water reserves. Of that one-third, in private ownership there is approximately fifty percent or more.

Our problem is -- and I was answering you originally on small ownership of individuals rather than the large ones we are trying to break up.

Mr. Rogers. Fifty percent of the tillable land in Hawaii is owned in fee simple?

Mr. Burns. Yes, sir.

Mr. Rogers. Have the Polynesians, or the people of Hawaiian extraction with more than fifty percent Polynesian blood, the right to buy this land in fee simple, or are they confined to this Hawaiian Homes Commission Act?

Mr. Burns. They can buy in fee simple.

Mr. Rogers. If they can get the money?

Mr. Burns. That is correct.

Mr. Rogers. But they do not have the right to buy Hawaiian home lands?

Mr. Burns. No, sir.

Mr. Rogers. How much of the tillable territory of the Hawaiian Islands makes up the land under the domination of this commission?

Mr. Burns. Again it would be a relatively small percentage. I would not be able to give you a correct answer at the minute.

Mr. Rogers. About how many acres do you know?

Mr. Burns. A total of 400,000 acres is under their control, in round figures.

Mr. Rogers. Tillable lands?

Mr. Burns. No, sir; some of it is second grade pasture land.

Mr. O'Brien. The time of the gentleman has expired.

(Discussion off the record.)

Mr. O'Brien. Is there any further discussion of the amendment offered by the delegate from Hawaii?

Mr. Rogers. Mr. Chairman, I move to strike out the last word.

Mr. O'Brien. The gentleman from Texas.

Mr. Rogers. I want this for the purposes of the record. What we are doing here is another conflict with the arguments that have been advanced to justify Hawaiian statehood. We are saying that those people out there are entitled to statehood and are able to operate a state and have proven

themselves, and yet in the next breath and in the very bill that we are passing, we are telling them that, if you do not let us continue to run your land like we set up a mechanism here to run it in the past, if you do not let us continue to do that in the future, then you cannot have statehood.

Why do we need to do that? Either because we want to dominate the situation and we want to prevent any official state government from moving in there and doing as they please with these lands, or else we do not think the Hawaiian people or the Polynesian people are ready for statehood.

The only other alternative to that is that the Polynesian people are in the minority out in those islands to the extent that they are going to be the subject of exploitation by people who are not Polynesian, or not Hawaiian, and we are taking the position, as we did in many instances in this country -- and it is one of the black marks on the history of this country, the way we have treated the American Indians. And what we are doing right here is setting up an Indian reservation out there in the Hawaiian Islands.

Yet we are going back to this propaganda business of preaching that we are doing such a great thing.

I made a speech one time during the days of Hitler's drive and I went on about this terrible aggression and everything and how clean out hands were. And the Presbyterian minister

got up to speak and said, "I appreciate your remarks about aggression on the part of people all over the world. I want to call attention to the fact when our ancestors came to this country, the first thing they did was fall on their knees and then they fell on the Aborigines."

That is exactly what is happening in this, and we are begging the question when we say we are going to give people this great freedom and all the rights of statehood. Yet we are denying them the very thing they have got to have control of if they are going to operate a satisfactory government of any kind, and that is we are tying their hands with relation to their lands.

I asked, and the very able delegate from Hawaii pointed out they are given 999 year leases. Everyone who ever went to law school knows about the rule against perpetuity, and if this is not a violation of the rule against perpetuity, I do not know how in the world you make that out.

As a matter of fact, it is worse than the thing that was intended to be cured by the rule against perpetuity.

Mr. Aspinall. Will the gentleman yield?

Mr. Rogers. Yes.

Mr. Aspinall. No, sir, there is no similarity at all between what is proposed to be done in the Hawaiian home lands and the question of reservations. These lands are not all together. These lands are scattered about. These

lands are not set aside for the use of these people to hold indefinitely, until it is shown at the expiration of their leases that they desire them, and that determination is made at that time.

This is a procedure by which we have already established the rights of these people to have stable homes. That is all that it does. Small tracts of land anyplace from five to ten to fifteen acres, if I remember correctly; is that right?

Mr. Burns. Yes, with a maximum of forty acres.

Mr. Aspinall. A maximum of forty acres. There is no similarity at all between this and our reservation program, which I abhor as far as history is concerned as much as my colleague.

Mr. Rogers. If we have such confidence in the people of Hawaii to grant them statehood and say they can operate it, why do we lack confidence in turning over to them the situation involving these lands?

The difference between this and Indian reservations is that the Indian is made to live on the reservation. These people are not made to live there, they are told maybe they can live there for 999 years if they meet certain requirements, as I understand it. Otherwise they have not got any place to live.

Mr. O'Brien. Will the gentleman yield?

Mr. Rogers. Yes.

Mr. O'Brien. I am wondering whom the gentleman is trying to protect. The people of Hawaii have placed this in their constitution. So they want it. The people who have these homes obviously want it. I just do not see whom we are trying to protect, unless we are trying to give the new State of Hawaii at some future date authority without any strings from the Federal Government to go in and rip this thing apart and take these homes away.

Mr. Rogers. Let me ask this: Are we intending to let this go in there without any strings from the Federal Government?

Now I understand this: That we are granting statehood to a territory here, yet we are keeping strings on them.

Mr. O'Brien. Yes, we have done that repeatedly. We did it with Alaska. We kept control of the fisheries in Alaska, one of the vital bases of their economy.

Mr. Rogers. This is Hawaii. The mistakes we made last year cannot be corrected by making more this year. This is the point: Why keep strings on them if we are going to give them statehood? Why do we not give them statehood and let them go?

Mr. O'Brien. The time of the gentleman has expired.

Mr. Sisk. Mr. Chairman, I move to strike out the last word.

Mr. O'Brien. Mr. Sisk.

Mr. Sisk. I agree with everything my distinguished colleague from Texas has said except his conclusion, because I think the very thing we are attempting to do here is to do exactly what the gentleman is arguing for, and that is to give to these people some protection down through the years.

I certainly think we have to all realize political facts, and that is exactly what we are facing -- the cold facts of political life in this instance.

Mr. Rogers. Are the facts he is talking about, the cold political facts, the fear in everybody's mind that the people who get in control of the state government out there will bilk these people out of these lands if they get a chance?

Mr. Sisk. I am not going to pull any punches, I might say to my fine colleague. For example, through various types of pressure, political and otherwise, economics and so on, that could possibly develop due to the very nature of the Hawaiian Islands, which the gentleman is familiar with, as familiar as I am, and he knows what I am talking about without spelling it out. There is a great deal of harm to be done by ripping up this whole program of the Hawaiian Homes Commission and denying the Polynesian people what we believe, and certainly the Congress of the United States

believes, to be their just dues.

All we are attempting to do is just continue that protection and that equity to this group of native people of the Islands.

Mr. Rogers. Will the gentleman yield?

Mr. Sisk. Yes.

Mr. Rogers. Do you not think, if there is a fear of that kind and if there is any question of a doubt, that ought to be resolved in favor of the people. If there is a fear of that kind, then we are doing the wrong thing in trusting those kind of people with statehood, are we not?

Mr. Sisk. I might say to my colleague that it exactly what I am attempting to do -- resolve this thing in favor the people.

Mr. O'Brien. Will the gentleman yield?

Mr. Sisk. Yes.

Mr. O'Brien. The people have spoken out in their own constitution that they want this. They asked for it; they approved it in their constitution.

Mr. Rogers. Will the gentleman yield to me?

Mr. Sisk. Yes, I yield.

Mr. Rogers. Is that the same people you are afraid will bilk them out of these lands?

Mr. O'Brien. We are afraid of people who might move in from the States sometime in the future, some political

demagogue, if you will. We are just protecting the people of Hawaii against something that could conceivably happen in the future, as long as human greed is within the human heart.

The gentleman's time has expired.

The question occurs on the amendment offered by the delegate from Hawaii. Those in favor say aye.

Those opposed say no.

The amendment is adopted.

Mr. Rogers. Mr. Chairman, I move to strike out that whole section.

Mr. O'Brien. One whole section?

Mr. Rogers. Section 4.

Mr. O'Brien. The gentleman from Texas moves to strike out section 4. The gentleman is recognized for five minutes.

Mr. Rogers. I will not burden you with any more Fourth of July speeches on this, this morning, but I think this:

I think the very point Mr. Sisk made is excellent. It is a point that should be made in this situation. Here we are talking about the great confidence we have in the people out there in Hawaii to run their own government, yet we are afraid to turn over to those very people that are going to take over this state and run it the authority to handle these lands.

We are saying that the people in Washington, D. C.,

have a lot more sense and are not near as corrupt as the people that are going to get in charge in Hawaii,

We are taking the position that we want to turn this over to those people that we question insofar as their sincerity and non-corruption is concerned. We are taking the position that we are going to turn this all over to them, but we will not turn this over to them.

Mr. Sisk. Will the gentleman yield at that point?

Mr. Rogers. I will be happy to yield.

Mr. Sisk. I think my colleague will agree with me that we, first, understand the possibility of economic and political pressure in the immediate area. Whereas, I am not for one moment proposing to say that we are any more honest or any more sincere or any more dedicated to the rights and equities of people than the people in Hawaii, at the same time we are far removed from these economic and political pressures and, therefore, I think can operate in a much freer atmosphere with reference to these rights and equities and those who might be directly under the Hammer.

I think my friend will agree on that.

Mr. Rogers. Sure. But then we are just as far away from this situation in other political areas as we are in this area. Why separate this?

If the people out there are able, as it has been argued so many times, to run the business out there, why do

we not turn it over to them? Why do we keep begging the question?

Is the gentleman afraid, getting down to brass tacks, that there is a possibility of the Communists getting a hold of this thing and maybe upsetting the whole land deal?

Mr. Sisk. Will the gentleman yield further?

Mr. Rogers. Yes, I yield.

Mr. Sisk. No, sir. I will say to my colleague that I have no fear of Communist infiltration or Communist getting a hold of this particular situation. I simply attempted to bring out the fact, as I know my colleague agrees, that on some matters economic and political pressures can be prevalent, and in some instances they have been in this area where we are attempting to make it doubly sure.

I believe the Hawaiian people as a whole ought to be fair and equitable. I am not charging them with unfairness. We are simply cooperating with them in making doubly sure that a small minority group, which is, after all, the native Hawaiians, those of fifty percent Polynesian blood, are amply protected in the rights which we apparently in the field of government and others thought they were entitled to, going back fifty and sixty years ago when they first became a part of the United States.

Mr. Rogers. As a matter of fact, the retention of title in the handling of these lands as worked out in this section

4 is more or less in keeping with one of the basic philosophies of communism of permitting the people to use the land but retaining the title in the state, is it not?

Mr. O'Brien. Will the gentleman yield to me?

Mr. Rogers. Yes.

Mr. O'Brien. I always assumed the basic philosophy of communism -- if I ever could understand it. I shifts so much -- is to retain all power in the state. Here is a case where the people in their own constitution want to put a break on their own power.

Mr. Rogers. You talk about wanting to keep all your power in the state. The ownership of land being kept in the state. Why is it less communistic if you just do one thing the Communists do but not five? Why do any of the things?

Mr. O'Brien. If the gentleman will yield further, I cannot see how communism got in this at all. I think the gentleman is fully aware that the land deals that exist in Hawaii today were not engineered by the Communists. As we mentioned awhile ago, some of the missionaries acquired tracts over there. So I think it is just the opposite.

Mr. Sisk. I am attempting to bolster one of the main premises of my colleague's argument -- that they should be able to get title to the land.

Mr. Rogers. That is exactly right.

Mr. Sisk. And I think I agree, and sometime in the future

I will probably support an act to make it possible they do receive title to this.

Mr. Rogers. Why in the future? Why not now?

Mr. Sisk. It is possible even now probably they should. I think they should be able, at least through certain qualifications, to acquire title.

Mr. Rogers. They should be able to pay for it.

Mr. Sisk. I think my colleague will agree this was for their protection.

Mr. Rogers. The same thing applies to the Indians, too.

Mr. O'Brien. The time of the gentleman has expired. The question occurs upon the motion by the gentleman from Texas.

All in favor say aye.

Those opposed say no.

The amendment is not agreed to.

The clerk will read.

Mrs. Arnold (reading). The State of Hawaii and its political subdivisions, as the case may be, shall have and retain all the lands and other public property title to which is in the Territory of Hawaii or a political subdivision thereof, except as herein provided, and all such lands and other property shall remain and be the absolute property of the State of Hawaii and its political subdivisions, as the case may be, subject to the constitution and laws of said

State: Provided, however, That as to any such lands or other property heretofore or hereafter set aside by Act of Congress or by Executive order or proclamation of the President or the Governor of Hawaii, pursuant to law, for the use of the United States, whether absolutely or subject to limitations, and remaining so set aside immediately prior to the admission of the State of Hawaii into the Union, the United States shall be and become vested with absolute title thereto, or an interest therein conformable to such limitations, as the case may be.

(b) The United States hereby grants to the State of Hawaii, effective upon the date of its admission into the Union, the absolute title to all the public lands and other public property within the boundaries of the State of Hawaii as described herein, title to which is in the United States immediately prior to the admission of such State into the Union, except as otherwise provided in this Act: Provided, however, That as to any such lands or other property heretofore or hereafter set aside by Act of Congress or by Executive order or proclamation of the President or the Governor of Hawaii, pursuant to law, for the use of the United States, whether absolutely or subject to limitations, and remaining so set aside immediately prior to the admission of the State of Hawaii into the Union, the United States shall retain absolute title thereto, or an interest therein conformable to such limitations, as the case may be: Provided

further, That the provisions of section 91 of the Hawaiian Organic Act, as amended (48 U. S. C. 511), which authorize the President to restore to their previous status lands set aside for the use of the United States, shall not terminate upon the admission of the State of Hawaii into the Union but shall continue in effect for a period of five years thereafter. As used in this subsection, the term "public lands and other public property" means, and is limited to, the lands and other properties that were ceded to the United States by the Republic of Hawaii under the joining resolution of annexation approved July 7, 1898 (30 Stat. 750), or that have been acquired in exchange for lands or other properties so ceded. The lands hereby granted shall be in lieu of any and all grants provided for new States by provisions of law other than this Act, and such grants shall not extend to the State of Hawaii.

(c) The lands granted to the State of Hawaii pursuant to the preceding subsection, together with the proceeds thereof and the income therefrom, shall be held by said State as a public trust for the support of the public schools and other public educational institutions, for the betterment of the conditions of native Hawaiians, as defined in the Hawaiian Homes Commission Act, 1920, as amended, for the development of farm and home ownership on as widespread a basis as possible, for the making of public improvements, and

for the provision of lands for public use. Such lands, proceeds, and income shall be managed and disposed of for one or more of the foregoing purposes in such manner as the constitution and laws of said State may provide, and their use for any other object shall constitute a breach of trust for which suit may be brought by the United States. The schools and other educational institutions supported, in whole or in part, out of such public trust shall forever remain under the exclusive control of said State; and no part of the proceeds or income from the lands granted under the preceding subsection shall be used for the support of any sectarian or denominational school, college, or university.

(d) Effective upon the admission of the State of Hawaii into the Union all laws of the United States reserving to the United States the free use or enjoyment of property herinabove vested in the State of Hawaii or its political subdivisions, or the right to alter, amend, or repeal laws relating thereto, are hereby repealed.

(e) The Submerged Lands Act of 1953 (Public Law 31, Eighty-third Congress, first session; 67 Stat. 29) shall be applicable to the State of Hawaii, and the said State shall have the same rights as do existing States thereunder.

Mr. O'Brien. Are there any amendments?

Mr. Burns. Mr. Chairman, on page 5, lines 6, after the colon -- this is in a telegram from the Governor of Hawaii

and it is in connection with the question of the Department of Defense in the hearings day before yesterday.

Mr. Aspinall. Which page?

Mr. Burns. Page 5, line 6, after the colon.

Mr. Aspinall. There is no colon there.

Mr. Burns. Pardon me. I have the bill. In subsection (b), page 5, line 4.

Mr. Rogers. Where is that

Mr. Burns. Page 5, line 4, after the colon and before the "Provided further".

The amendment would read: "Provided also, That during the five years following the admission of Hawaii into the Union, any public lands or other public property that is conveyed to the State of Hawaii by the provisions of this subsection but which, immediately prior to the admission of the State, was controlled by the United States, pursuant to a license from the Territory of Hawaii or a department thereof, may, at any time during the period of five years following the admission of Hawaii into the Union, be set aside by Act of Congress or by executive order of the President, may pursuant to law, for the use of the United States, and the lands or property so set aside shall, subject only to valid rights then existing, be the property of the United States unless restored to the state as hereinafter provided:".

Mr. Aspinall. Mr. Chairman, for the sake of cleaning up the language, will the gentleman put "Provided further" instead of "Provided also"?

Mr. Burns. I would amend it according to the suggestion of the Chairman to "Provided further".

Mr. O'Brien. The delegate from Hawaii is recognized for five minutes.

Mr. Aspinall. Will the gentleman yield to me for one question?

Mr. Burns. Yes.

Mr. Aspinall. Is this the amendment that the Admiral in his presentation referred to, and which is necessary in order to protect the interest of the United States, and at the same time does it meet with the approval of the Governor of Hawaii?

Mr. Burns. The Chairman has exactly stated the case: that this will, in accordance with the statement made to the committee in the hearing day before yesterday by the Department of Defense, by Admiral McManes, allow them to have all that land which they presently have by license or otherwise become the subject of an executive order by the President of the United States or by Act of Congress, so that they can have permanent title thereto. It does not take away from them land which they are presently owning for defense purposes and which would otherwise be under the

provisions of H. R. 50, which they have under license.

Mr. Sisk. Will the gentleman yield?

Mr. Burns. Yes.

Mr. Sisk. In any sense does this represent an attempted evasion of the law which we passed in the Eighty-fifth Congress limiting the military acquisitions to five thousand acres by executive order or by a taking of Defense without Act of Congress?

Mr. Burns. I would say to the gentleman that I do not think so. I do not put it in that light. The Department of Defense is presently using on the Island of Hawaii particularly a large tract of land. I think it is difficult to identify it by metes and bounds. And the total need they have is not ascertainable.

As a result of that particular matter, they are using it under license by the Commissioner of Public Lands, allowing them to use it, but there is no ownership or fee or title. So that immediately upon Hawaii becoming a state, the Department of Defense would not have that land any further for its use.

In order to overcome that, the Department of Defense wanted a five-year period in order to take any land back from the state, any of the state land back. We are putting this provision in to say that any land in which they presently have an interest or which they presently own or presently

use, may be the object of an executive order by the President or an Act of Congress. It includes a total of approximately 114,000 acres.

Mr. Sisk. Will the gentleman yield further?

Mr. Burns. I will be happy to yield.

Mr. Sisk. I have no objection necessarily to the amendment, provided it is agreeable all around.

My only point is that I just do not wish to see something written in here which will provide for this period of five years, more or less, unimpaired grabs of land by the military. Because the gentleman from Hawaii will agree we first fought that battle over a long period of time in an attempt to restrict these land grabs. That was my only question.

Mr. Saylor. Mr. Chairman, May I be recognized?

Mr. O'Brien. The delegate from Hawaii has the time.

Mr. Burns. I yield to the gentleman from Pennsylvania.

Mr. Saylor. I might say to the gentleman from California and the other members of the committee, that I was the author of the original amendment which we are now trying to change.

The purpose of it grew out of my concern over the position of the military in the new state of Hawaii, not with regard to allowing them to take any more land, but with regard to the rights of the military in land which they

now use and occupy under license in the territory.

There is no doubt about it that, if the information that has been given to me is correct, there are a number of tracts now under license to the military in Hawaii that will not be needed. And so that the Department of Defense would not be called upon to come to a conclusion before the order signed by the President declaring Hawaii a state, that they would have to make up their mind with regard to what of that land they did or did not need, the purpose was to give them a five-year period in which to surrender the lands they did not need. That is the only purpose of it.

It is the converse of the situation which we found in the military withdrawal bill we passed last year.

Mr. Sisk. Will the gentleman yield?

Mr. Burns. Yes.

Mr. Sisk. As I understand it, the amendment which the delegate has proposed is in line with the thing you say is needed.

Mr. Saylor. That is correct. It is in line with the provision of the military withdrawal bill and in line with the amendment which I have prepared and which is in the bill we put in.

Mr. Sisk. I think the gentleman.

Mr. Saylor. This has been clarified by the Governor and the Attorney General of Hawaii because they, too, had

a fear, just as the gentleman from California, that the purpose was to allow the military to take more land. And it is not with that intention at all, and Admiral McManes so stated the other day -- that they do not intend to take any more. The question is of providing for the orderly return of lands to the territory.

Mr. Burns. I would like to put in the record the statement of the Governor so that we understand his position entirely.

"The purpose of the below amendment is to provide a means whereby the Department of Defense may acquire by Presidential action complete ownership of the lands which it now controls under license. There should be no provision giving a license the stature of an executive order or automatically federalizing areas where there is a mere license. Instead there should be a provision for issuance of a carefully drawn executive order which would have the effect of federalizing the area.

"It is understood, additionally, that the bill will provide for a means whereby for a five-year period the President may restore lands to the new state which are Federal reservations at the time of admission of the state or are taken under the below set out provisions."

Mr. Rogers. The gentleman from Pennsylvania made the observation that the five-year period provided for someone to pick and choose whatever they wanted. Does he have reference to the State of Hawaii or to the military?

Mr. Saylor. It is to the military. It is to choose from what they now have in the new state. This is not to allow them to go in and to select lands for the next five years anywhere they want to over the whole State of Hawaii.

Mr. Rogers. In other words, as I understand it, then, the military presently has about 114,000 acres in Hawaii. Is that right?

Mr. Saylor. That is right.

Mr. Burns. If the gentleman will yield, no. In this particular status. They have a lot more land than that.

Mr. Rogers. How much land do they have altogether?

Mr. Burns. It will take me a minute or two. Offhand I cannot give you the answer. I will look it up for you.

Mr. Rogers. Is it a heck of a lot?

Mr. Burns. Would the gentleman care to go on while I look?

Mr. Rogers. Yes. Now the 114,000 acres, do I understand that this amendment applies only to 114,000 acres?

Mr. Burns. Yes.

Mr. Rogers. Where is that 114,000 acres located?

Mr. Burns. It is scattered.

Mr. Rogers. How is it defined? How did you document it?

Mr. Burns. We are not including that in the bill at all, sir.

Mr. Rogers. How does anyone know which one of the acres is out of the 114,000?

Mr. Burns. The others they have by executive order of the Governor or the President or by Act of Congress. These are merely held under a verbal license, in some instances, from the Land Commissioner -- "If you want to use this, go ahead and use it."

Mr. Rogers. The Commissioner?

Mr. Burns. The Land Commissioner. He says for them to go ahead and use it.

Mr. Rogers. Yes.

Mr. Burns. That 114,000 acres, they have got to decide which of that land they want in five years and pinpoint it and take it by executive order or by --

Mr. Rogers. Or Act of Congress?

Mr. Burns. Or Act of Congress, right, sir.

Mr. Rogers. In other words, the state out there -- what about the state?

Mr. Burns. We are saying they can take it all if they want to.

Mr. Rogers. The Congress is still coming into this thing later on in order to pass title?

Mr. Burns. If by executive order or by Act of Congress. If the Congress so desires it wants to say all of it remains property of the United States for defense purposes, they can do so.

Mr. Rogers. Then the 114,000 acres is simply being retained in Federal status until this is decided; is that correct?

Mr. Burns. That is my understanding of it, sir.

Mr. Rogers. What about the other lands that are owned?

No, let us stay on the 114,000 acres for a minute or two. The United States can get, by Presidential order or by Act of Congress all the 114,000 acres?

Mr. Burns. Yes.

Mr. Rogers. But if they do not make some decision in five years -- beginning when?

Mr. Burns. The date of admission.

Mr. Rogers. The date of admission. If they do not make a decision in five years, then the 114,000 acres become the land of the State of Hawaii; is that correct?

Mr. Burns. Yes.

Mr. Rogers. And the only land that the United States has is the land which they owned prior to that?

Mr. Saylor. That is correct.

Mr. Rogers. Now this grant of all these public lands, does the United States have to go back in and get any land

at all, or do they get to retain all the lands they have got title to now?

Mr. Burns. They get to retain all of it.

Mr. Rogers. How do you separate the thing when it is all Federal land anyway?

Mr. Saylor. It is not all Federal land. That is one of the places where the people of Hawaii were as smart as the people of Texas.

Mr. Rogers. I doubt if either one is as smart as the Supreme Court.

Mr. Saylor. All of the public domain in the Territory of Hawaii belongs to the people of Hawaii.

Mr. Rogers. Yes.

Mr. Saylor. Just as the public lands in Texas belong to the State of Texas.

Mr. Rogers. Except that the land that is ceded to the Federal Government and which they properly hold title to is not. Is that correct?

Mr. Saylor. That is correct.

Mr. Rogers. The Federal Government does not lose any of the land we own out there at the present time?

Mr. Saylor. That is correct.

Mr. Rogers. We only lose the right to take the land that we are merely using by suffrage?

Mr. Saylor. Yes.

Mr. Rogers. I just want to get it clearly understood so there will not be any question later and fussing in the Supreme Court about who got robbed.

Have you found out, Mr. Burns, how much land we own?

Mr. Burns. No, sir, I do not have the exact figures.

Mr. Rogers. I do not want the exact figures, just approximately, if you know. I am not going to delay it. I would like to have it in the record.

Mr. Burns. May I supply it?

Mr. Rogers. If you will.

The point is this: After this five-year period is over, whatever land the Federal Government does not have, exclusive of the 114,000 acres, plus whatever they take out of the 114,000 acres, they cannot get in the future except by purchase?

Mr. Burns. That is correct, sir.

Mr. Aspinall. Or condemnation.

Mr. Rogers. That would be by purchase. The only way they could get any more land over and above what they now have, plus what they take out of the 114,000 acres, would be by purchase.

Mr. Burns. Yes.

Mr. O'Brien. The question occurs on the amendment offered by the delegate from Hawaii. Those in favor say aye.

Those opposed, no.

The amendment is adopted.

Are there any further amendments?

Mr. Aspinall. Mr. Chairman?

Mr. O'Brien. Mr. Aspinall.

Mr. Aspinall. May I be recognized for a point of securing information?

In the report from the Department of the Navy they suggest that the last paragraph in this section should be amended to include the "Outer Continental Shelf Lands Act."

I believe this is meaningless here. On the other hand, I see no reason why we should not place in that Act if they desire.

The reason I believe it is meaningless, as far as I know, there is not any continental shelf in that area. Now I may be wrong.

Mr. Saylor. If the gentleman will yield to me, as nearly as I understand, the continental shelf is at least twenty-four hundred miles away. But if the Department of Defense wants it included, it is perfectly all right with me.

I think the only purpose it might serve is to determine the limits of state jurisdiction and Federal jurisdiction. Your Federal jurisdiction extends out as far as the continental shelf.

Mr. Rogers. Your problem here is not going to be so much the continental shelf, it is going to be a question of

what are inland waters.

Mr. Saylor. I think the reason the Department of Defense wants that in is following the position of Norway and Iceland in claiming, instead of the usual three mile limit, that they are going out to the shelf in Iceland and in Norway and taking twelve miles from that point out. If you do, you would probably then not have the problem of international honors between islands, which bothers the gentleman from Texas, Mr. Rogers.

Mr. Rogers. The point in this thing: The way you describe the Territory of Hawaii as including the reefs, your land jurisdiction actually begins from that reef even though there may be a mile of water between that reef and the mainland, and that water is within the state. It would actually be inland water and the three miles would begin from the reefs.

Mr. Aspinall. In other words, what my colleague is saying, it ties these islands better with this proposal than without it.

Mr. Rogers. Well, I did not want to tie them together anyway.

Mr. O'Brien. May the Chair suggest that counsel and staff prepare specific language of the amendment to include Outer Continental Shelf Lands Act and we take a look at the question after the amendment is prepared.

Will that be difficult?

Mr. Witmer. There is no difficulty about that.

Mr. Aspinall. There is no reason to take it up at a later time. It is very simple just to put that act in.

Mr. Saylor. Do you have the citation?

Mr. Aspinall. No, but I see no reason why we cannot have approval and go on with the bill.

Mr. O'Brien. Does a member offer an amendment subject to phrasing by counsel?

Mr. Saylor. Yes.

Mr. O'Brien. The gentleman from Pennsylvania.

Mr. Saylor. On page 7 of the committee print No. 2, line 20, after the parentheses insert "and the Outer Continental Shelf Lands Act (Public Law)"; the usual statute citation to be filled in.

Mr. O'Brien. You have heard the amendment by the gentleman from Pennsylvania. All in favor say aye,

Those opposed say no.

The amendment is adopted.

Mr. Rogers. Mr. Chairman, I ask unanimous consent that the right be reserved to correct it if it is wrong.

Mr. O'Brien. That will be understood, yes.

Mr. Rogers. Mr. Chairman, I move to strike out the last word for one purpose. I would like if someone, the Chairman of the Full Committee or the chairman of the subcommittee and acting chairman here, or whoever would like

to do it, to give a brief explanation of the several sections of this particular section of this act for the purposes of the record, so I will not have to ask a lot of questions about it.

Mr. Aspinall. I will be glad to.

Mr. O'Brien. The Chair yields to the gentleman from Colorado.

Mr. Aspinall. I shall be glad to grant the gentleman's request and see that a statement of explanation of the section as amended is placed in the record at this place.

Mr. Rogers. My request was not that. I wanted to get a brief explanation right now, subdivision by subdivision, because there are several in here, and they are all dealing with a very technical situation.

I think the committee may not want it. I would like to have it myself so there will not be any misunderstanding later on about it.

Mr. Aspinall. Would the gentleman like to have Mr. Witmer make the statement?

Mr. Rogers. Yes, so far as I am concerned, so the record shows it here.

Mr. Sisk. Will the gentleman yield?

Mr. Rogers. Yes.

Mr. Sisk. I agree with the gentleman. I think an explanation would be good. But I am rather inclined to agree

with the Chairman that it be written out rather than go into it right here, unless he is prepared to give us that explanation.

Mr. Aspinall. Mr. Chairman, Counsel is in position to explain the technical parts of this.

Mr. Witmer. Mr. Chairman, I think the matters covered by section 5 are, if I may say so, more clearly outlined in the text of H. R. 888 than they are in H. R. 50. With one exception, so far as I know, there is no difference between the two. I have my copy marked up to show where each comes, and I may be referring, simply for the sake of clarity, to H. R. 888, but the explanation is applicable to H. R. 50.

The first item is the provision for the retention by the State of Hawaii of those lands and the title which the Territory of Hawaii now has.

Mr. Rogers. Is that section (a)?

Mr. Witmer. That is subsection (a).

Mr. Rogers. Yes.

Mr. Witmer. Now in H. R. 50 that is phrased as "having and retaining all lands except as otherwise provided" and at the top of page 4, line 1 -- that all such lands and other property shall remain and be the absolute property of the State of Hawaii.

My understanding of that is simply this: As I said,

the state takes what the territory now has, and that when the act speaks of the absolute property it means as between the state or the territory, as the case may be, and the United States.

If, however, there are any encumbrances on those lands -- and I do not know but what there may be in some cases -- those encumbrances will remain. In other words, I do not think that "absolute" means absolutely absolute.

In the second place, and for the sake of the record, I would say that the State of Hawaii, subject to the provisions which you discussed in connection with the Homes Commission section, will have the power to dispose of those lands if it so chooses; and that, therefore, when H. R. 50 says that they shall retain and be, that does not mean forever and forever.

As I say, I think that the text of H. R. 888 sets that out somewhat more clearly, but I think they mean identically the same thing.

What I have just said is subject to the proviso which begins on page 4, committee print No. 2, beginning on line 4, with respect to certain Hawaiian lands, territorial lands which have been set aside by Act of Congress or by executive order, Presidential proclamation or proclamation of the Governor of Hawaii.

The provision there is that they shall come to the United

States with absolute title, notwithstanding that at the present time the territory has some title to them.

Mr. Rogers. Is that the amendment offered by the delegate?

Mr. Witmer. No, this is a different one, I believe. But this proviso, the substance of it is repeated in the text of H. R. 888 in subsection (c).

Again, may I say, Mr. Chairman, Dr. Taylor and I with the departmental people worked on this to try to achieve a little bit more readability to it. Although the text varies slightly, the meaning and intent is the same exactly.

Mr. Rogers. One minute. On subsection (a), so it will be clearly understood, whatever is provided to be retained by the United States Government, either in the act as it appears in this committee print or in the amendment offered by the delegate, Mr. Burns, the Federal Government will not be required to apy any money whatever to the State of Hawaii for any of those lands?

Mr. Witmer. That is right.

Subsection (b) deals with those lands to which the United States now has title, and it provides that, with certain exceptions, these lands are granted to the Territory of Hawaii, and that this is -- and I emphasize this -- made in lieu of any and all grants provided for in general law with respect to grants of lands to new states.

You will recall in public land states it has generally

been provided they shall get section 16 and 36 and so on. This grant is in lieu of that.

Mr. Rogers. This says here "title to which is in the United States immediately prior to admission of such state into the Union". What land does that refer to? Does that refer to any military lands?

Mr. Witmer. I shall have to refer to the gentleman from Hawaii.

Mr. Burns. It does.

And in answer to your earlier question, that is 317,012 acres.

Mr. Rogers. I am getting all mixed up here. It says, "The United States hereby grants to the State of Hawaii certain public properties and public lands the title to which is in the United States immediately prior to the admission of such state."

Mr. Burns. All of the lands of Hawaii are in the United States at the present time. Every bit of public land.

Mr. Rogers. The reference to public lands does not include military lands, land owned by the military?

Mr. Burns. No, sir, because they have been set aside by executive order, by the President or the Governor of Hawaii or the military.

Mr. Rogers. In other words, the lands impressed for military use?

Mr. Burns. Title of them has been given to the military and the Federal Government.

Mr. Rogers. This says, "Title to which is in the United States". Now title cannot be in the military without being in the United States, and that is the thing that worries me about it.

(Reading) "title to all the public lands and other public property within the boundaries of the State of Hawaii as described herein, title to which is in the United States."

If you grant all of everything to somebody, the only way you are going to get it back is an exception in the deed of conveyance, which is what this is, or get it redeeded or reconveyed to you subsequently.

Mr. Burns. Will the gentleman yield?

Mr. Rogers. Yes.

Mr. Burns. On page 4, that proviso in line 4 takes care of that.

Mr. Rogers. I am talking about subsection (b).

Mr. Witmer. We have identically the same proviso to subsection (b). We were just discussing with respect to (a). It begins at line 20 on page 4.

Mr. Burns. Yes.

Mr. Rogers. Is this the same proviso as in subsection (a)?

Mr. Witmer. Yes, with this exception: that in one case we are speaking of lands which Hawaii now has title to, but is excepted to the United States; and in the other case we are speaking of a conveyance to Hawaii of title. Therefore, the language at the tail end is slightly different, but the substance of it is identically the same.

Mr. Rogers. Is that the amendment you offered, Mr. Burns, to subsection (a)?

Mr. Burns. Subsection (b), sir.

Mr. Rogers. You offered it to (a), did you not?

Mr. Burns. Subsection (b) on page 5.

Mr. Rogers. Yes, that is right. Yes, I see.

Mr. O'Brien. Proceed, Mr. Witmer.

Mr. Witmer. Then we have a second proviso beginning on page 5 at the very end of line 4 with respect to the President's restoration to previous status of lands which are set aside for the United States.

Since when Hawaii comes into the Union some of these laws are going to disappear from the books, this exception has to be made in order to retain in the President the right for five years to dispose of lands which are retained and to, in effect, convey them to the State of Hawaii; the reason being, as I understand it, very much the same -- it will take some time to decide whether there is, so to speak, surplus property there among these lands being retained. That is

roughly the situation.

We then follow the definition of the term "public lands and other public property" which goes back to the very basic law in Hawaii at the time she was admitted to the States. Public lands there does not mean the same thing as it does in the United States.

Then at the end of that is the statement, as I pointed out before, that this is in lieu of all other grants.

Subsection (c) is the usual provision with respect to the use of land for public schools, in this case, enlarged somewhat to cover not only public schools but, as is spelled out here, for the betterment of the conditions of native Hawaiians, for the development of farm and home ownership, for the making of public improvements, and for the provision of lands for public use.

In other words, this is the familiar provision that has been in most statehood acts, I think, since 1860.

Mr. Rogers. That is bringing up again, of course, the question you touched on earlier on the terms "shall be and remain in Hawaii". This says, on line 3, "shall be held by the state'.

Is there any language in here to relieve the state or to create a power in the state to dispose of land that the law says shall be held by the State of Hawaii?

Mr. Witmer. I think in this particular case, dealing

with subsection (c), Mr. Rogers, yes. If you go down to page 6, lines 10 and 11, "Such lands, proceeds, and incomes shall be managed and disposed of".

Mr. Rogers. Do you think that other language in the beginning should be amended?

Mr. Witmer. Frankly, and speaking only personally, I would be happier if it were. I can see quarrels arising over the meaning.

Mr. Rogers. That is one thing that worried me in the beginning. In other words, what I am thinking about is simply this: that if this language in the first instance nails it down, whether ~~this~~ general language here preceded the language it is intended to relieve.

Mr. Witmer. I think we should make this point: Subsection (c) refers only to those lands which are granted pursuant to subsection (b).

Mr. Rogers. Yes.

Mr. Witmer. It does not refer to those lands which the state takes from the territory under subsection (a).

So I think your point is -- this is between you and me and I am speaking personally again -- I think your point is still well taken.

Mr. Rogers. Just so it is clear.

Mr. Witmer. Then we have in subsection (d) the provision -- and this is the one I was referring to in part -- with

respect to free use or enjoyment of lands by the United States. It cuts off effective upon the admission of Hawaii, if those lands go to Hawaii, and it also cuts off the right which has been reserved in some instances to alter, amend, or repeal the laws relating to those. That, as I understand it, is intended to give the State of Hawaii an unencumbered right to use those lands from that time on except as there have been exceptions heretofore.

Mr. Rogers. Is there any conflict now between this subsection (c) and subsection (b)?

Mr. Witmer. I am frank to say I heard subsection (b) read with the amendment. I took it you were referring to the amendment. I do not know that I completely absorbed it, so I will just not pretend to answer.

Mr. Rogers. I reserve the right, then, to make any corrections on that.

Mr. O'Brien. Yes.

Mr. Witmer. Then subsection (e) goes with the amendment the committee has just adopted, with the Submerged Lands Act and Outer Continental Lands Act.

Mr. O'Brien. The gentleman reserves the right to make any change, the gentleman from Texas.

Mr. Rogers. Off the record.

(Discussion off the record.)

Mr. Burns. Before we adjourn, I would like to provide

the figures for the record that were asked for earlier by the gentleman from Texas.

The gentleman from Texas asked concerning the lands owned by the Federal Government and also asked earlier about private lands subject to fee simple.

There are in the territory 317,012 acres of federally owned land; that is, fee simple title is in the Federal Government. There are 1,415,684 acres of territorial land, and that includes all of this land we are talking about giving Hawaii.

Mr. Rogers. Would you make a clear statement as to that, Mr. Burns, because there may be some differentiation. In other words, just tell what those lands are.

Mr. Burns. Territorial lands are these lands we are to return to the Territory of Hawaii. They are called territorial lands, or you can call them public lands of the United States, although the term is not strictly correct.

Mr. Rogers. How many acres?

Mr. Burns. 1,415,684. The various counties have title to 10,808. And 2,373,722 acres are privately owned. So two-thirds of the land of Hawaii is privately owned, in answer to that earlier question.

Mr. O'Brien. Off the record.

(Discussion off the record.)

Mr. O'Brien. The committee will meet tomorrow morning

at 9:45 with the National Reclamation Association Commissioners, and we will return to this at approximately 10:45, or after the meeting with the Reclamation Association directors.

The committee is adjourned.

(Whereupon, at 11:50 a.m., the committee adjourned, to reconvene at 9:45 a.m., Friday, January 30, 1959.)