

Report Title:

Hawaiian Homes; Self Governance

Act 302

Description:

Authorizes community-based self-determination on Hawaiian home lands. (CD1)

THE SENATE

TWENTY-FIRST
LEGISLATURE, 2001

STATE OF HAWAII

S.B. NO. 1102
S.D. 2

H.D. 1

C.D. 1

A BILL FOR AN ACT

RELATING TO THE HAWAIIAN HOMES COMMISSION ACT, 1920,
AS AMENDED.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF
HAWAII:**

SECTION 1. The legislature finds that:

(1) In Public Law 106-569, subtitle, the "Hawaiian Homelands Homeownership Act of 2000", the United States "recognized and reaffirmed that:

(A) Congress extends services to Native Hawaiians "because of their

unique status as the indigenous people of a once sovereign nation as to whom the United States has established a trust relationship";

(B) "Congress has also delegated broad authority to administer a portion of the Federal trust responsibility to the State of Hawaii"; and

(C) "In the area of housing, the United States has recognized and reaffirmed "the political relationship with the Native Hawaiian people through:

(i) The enactment of the Hawaiian Homes Commission Act, 1920 (42 Stat. 108 et seq.) which set aside approximately 200,000 acres of public lands that became known as Hawaiian Home Lands in the Territory of Hawaii that had been ceded to the United States for homesteading by Native Hawaiians in order to rehabilitate a landless and dying people;

(ii) The enactment of the Act entitled "An Act to provide for the admission of the State of Hawaii into the Union", approved on March 18, 1959 (73 Stat.4) by:

(a) Ceding to the State of Hawaii title to the public lands formerly held by the United States, and mandating that those

lands be held in public trust, for the betterment of the conditions of Native Hawaiians, as that term is defined in section 201 of the Hawaiian Homes Commission Act, 1920 (42 Stat. 108 et. seq.); and

(b) Transferring the United States responsibility for the administration of Hawaiian Home Lands to the State of Hawaii, but retaining the authority to enforce the trust, including the exclusive right of the United States to consent to any actions affecting the lands which comprise the corpus of the trust and any amendments to the Hawaiian Homes Commission Act, 1920 (42 Stat. 108 et. seq.), enacted by the legislature of the State of Hawaii affecting the beneficiaries under the Act;

(iii) The authorization of mortgage loans insured under the Federal Housing Administration for the purchase, construction, or refinancing of homes on Hawaiian Home Lands under the National Housing Act (Public

Law 479; 73d Congress; 12
U.S.C. 1701 et. seq.);

(iv) Authorizing Native
Hawaiian representation on the
National Commission on American
Indian, Alaska Native, and
Native Hawaiian Housing under
Public Law 101-235;

(v) The inclusion of Native
Hawaiians in the definition
under section 3764 of title 38,
United States Code, applicable
to subchapter V of chapter 37
or title 38, United States Code
(relating to a housing loan
program for Native American
veterans); and

(vi) The enactment of the
Hawaiian Home Lands Recovery
Act (109 Stat. 357; 48 U.S.C.
491, note prec.) which
establishes a process for the
conveyance of Federal lands to
the Department of Hawaiian Home
Lands that are equivalent in
value to lands acquired by the
United States from the Hawaiian
Home Lands inventory."

(2) The Hawaiian Homes Commission Act, 1920,
as amended, has assisted the Native Hawaiian
people in maintaining distinct native
communities on Hawaiian Home Lands. These
communities provide the Hawaiian people with
an important foundation that has fostered and
perpetuated the Hawaiian language, culture,
and traditions; and

(3) The beneficiaries of the Hawaiian Home
Lands trust individually and collectively

through their representative organizations including homestead community associations have expressed a strong desire for greater participation and governance over their own affairs.

The purpose of this Act is to promote increased self-governance by Hawaiian homestead community organizations over the affairs of their distinct native communities on Hawaiian home lands.

SECTION 2. The Hawaiian Homes Commission Act, 1920, as amended, is amended by adding two new sections to be appropriately designated and to read as follows:

§ Federal reaffirmation. The United States and State of Hawaii hereby reaffirm and recognize that:

(1) The native Hawaiian people are a distinct native, indigenous people who have maintained their own language, culture, and traditions, and have established Hawaiian home lands areas protected under federal and state law;

(2) The United States has a unique trust responsibility to promote the welfare of the aboriginal, indigenous people of the State, and the federal government has delegated broad authority to the State to act for their betterment; and

(3) The aboriginal, indigenous people of the State retain their inherent sovereign authority and their right to organize for their common welfare.

§ Community based governance on Hawaiian home lands. It is the policy of the State to support participation in governance by promoting the empowerment of democratically-elected Hawaiian homestead community self-governance organizations.

In furtherance of this policy, and with the consent of the

Congress of the United States, the State may delegate to a democratically-elected organization representing a Hawaiian homestead community or communities the authorities delegated to the State by the United States relating to the administration of the Hawaiian Homes Commission Act, 1920, as amended.

The commission may establish a working relationship with a democratically-elected Hawaiian homestead community self-governance organization to promote community welfare. The selection of authorities to be delegated shall be left to the Hawaiian homes commission's discretion. The commission may establish criteria to determine the boundaries and location of a Hawaiian homestead community and whether a Hawaiian homestead community organization is eligible for delegation. Criteria for eligibility shall include but not be limited to the following:

- (1) The organization and its leadership is a bona fide representative body of native Hawaiian residents, homestead lessees, qualified successors residing within the homestead community, and native Hawaiians who have designated that homestead community as their primary choice of residence with the department of Hawaiian home lands and who are awaiting an award of a lease under this Act;
- (2) The organization is governed by free and fair elections; and
- (3) The organization demonstrates sufficient capacity to implement the authorities that are delegated.

The commission may contract with and delegate authority to a Hawaiian homestead community self-governance organization to perform governmental services for the homestead community represented by that homestead organization. Any such contract shall include a requirement that the government service shall be performed at a level and quality comparable to the services that would otherwise be provided by the department of Hawaiian home lands.

The department of Hawaiian home lands may adopt rules in accordance with chapter 91, Hawaii Revised Statutes, to implement this section."

SECTION 3. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 4. This Act shall take effect upon its approval and with the consent of Congress.

Honolulu, Hawaii

, 2001

April 14

RE: S.B. No. 1102
S.D. 2
H.D. 1
C.D. 1

Honorable Robert Bunda
President of the Senate
Twenty-First State Legislature
Regular Session of 2001
State of Hawaii

Honorable Calvin K.Y. Say
Speaker, House of Representatives
Twenty-First State Legislature
Regular Session of 2001
State of Hawaii

Sir:

Your Committee on Conference on the disagreeing vote of the Senate to the amendments proposed by the House of Representatives in S.B. No. 1102, S.D. 2, H.D. 1, entitled:

"A BILL FOR AN ACT RELATING TO THE HAWAIIAN HOMES
COMMISSION ACT, 1920, AS AMENDED,"

having met, and after full and free discussion, has agreed to recommend and does recommend to the respective Houses the final passage of this bill in an amended form.

The purpose of this measure is to provide Hawaiian homestead communities with a greater level of self-determination by:

- (1) Reaffirming the federal trust relationship between the indigenous people of Hawaii and the federal government; and
- (2) Allowing the delegation of authority from the Department of Hawaiian Home Lands to homestead community organizations.



Your Committee on Conference wishes to make clear that the purpose of this measure is to provide for greater self-determination by native Hawaiians residing on Hawaiian home lands over the affairs of their communities, and not to advocate sovereignty.

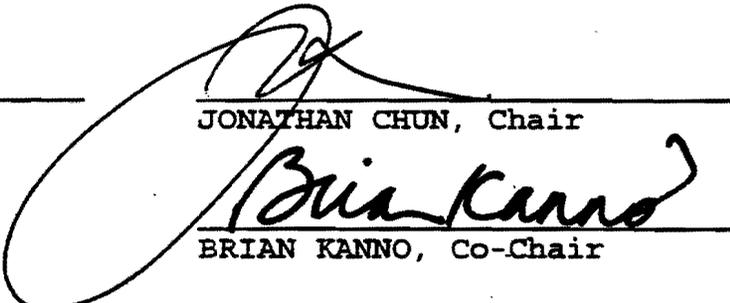
As affirmed by the record of votes of the managers of your Committee on Conference that is attached to this report, your Committee on Conference is in accord with the intent and purpose of S.B. No. 1102, S.D. 2, H.D. 1, as amended herein, and recommends that it pass Final Reading in the form attached hereto as S.B. No. 1102, S.D. 2, H.D. 1, C.D. 1.

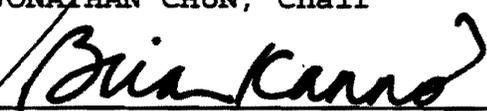
Respectfully submitted on
behalf of the managers:

ON THE PART OF THE HOUSE

ON THE PART OF THE SENATE


ERIC G. HAMAKAWA, Chair


JONATHAN CHUN, Chair


BRIAN KANNO, Co-Chair

A BILL FOR AN ACT

RELATING TO THE HAWAIIAN HOMES COMMISSION ACT, 1920, AS AMENDED.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

- 1 SECTION 1. The legislature finds that:
- 2 (1) In Public Law 106-569, subtitle, the "Hawaiian
- 3 Homelands Homeownership Act of 2000", the United
- 4 States "recognized and reaffirmed that:
- 5 (A) Congress extends services to Native Hawaiians
- 6 "because of their unique status as the indigenous
- 7 people of a once sovereign nation as to whom the
- 8 United States has established a trust
- 9 relationship";
- 10 (B) "Congress has also delegated broad authority to
- 11 administer a portion of the Federal trust
- 12 responsibility to the State of Hawaii"; and
- 13 (C) "In the area of housing, the United States has
- 14 recognized and reaffirmed "the political
- 15 relationship with the Native Hawaiian people
- 16 through:



1 (b) Transferring the United States
2 responsibility for the administration
3 of Hawaiian Home Lands to the State of
4 Hawaii, but retaining the authority to
5 enforce the trust, including the
6 exclusive right of the United States to
7 consent to any actions affecting the
8 lands which comprise the corpus of the
9 trust and any amendments to the
10 Hawaiian Homes Commission Act, 1920 (42
11 Stat. 108 et. seq.), enacted by the
12 legislature of the State of Hawaii
13 affecting the beneficiaries under the
14 Act;

15 (iii) The authorization of mortgage loans insured
16 under the Federal Housing Administration for
17 the purchase, construction, or refinancing
18 of homes on Hawaiian Home Lands under the
19 National Housing Act (Public Law 479; 73d
20 Congress; 12 U.S.C. 1701 et. seq.);

21 (iv) Authorizing Native Hawaiian representation
22 on the National Commission on American



1 (3) The beneficiaries of the Hawaiian Home Lands trust
 2 individually and collectively through their
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 4 community associations have expressed a strong desire
 5 for greater participation and governance over their
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7 The purpose of this Act is to promote increased self-
 8 governance by Hawaiian homestead community organizations over
 9 the affairs of their distinct native communities on Hawaiian
 10 home lands.

11 SECTION 2. The Hawaiian Homes Commission Act, 1920, as
 12 amended, is amended by adding two new sections to be
 13 appropriately designated and to read as follows:

14 "§ Federal reaffirmation. The United States and
 15 State of Hawaii hereby reaffirm and recognize that:

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 18 language, culture, and traditions, and have
 19 established Hawaiian home lands areas protected under
 20 federal and state law;

21 (2) The United States has a unique trust responsibility to
 22 promote the welfare of the aboriginal, indigenous



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14 elections; and

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16 implement the authorities that are delegated.

17 The commission may contract with and delegate authority to
18 a Hawaiian homestead community self-governance organization to
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BENJAMIN J. CAYETANO
GOVERNOR
STATE OF HAWAII



RAYNARD C. SOON
CHAIRMAN
HAWAIIAN HOMES COMMISSION

JOBIE M. K. M. YAMAGUCHI
DEPUTY TO THE CHAIRMAN

STATE OF HAWAII
DEPARTMENT OF HAWAIIAN HOME LANDS
P.O. BOX 1879
HONOLULU, HAWAII 96805

TESTIMONY ON S.B. 1102, S.D. 1
RELATING TO THE HAWAIIAN HOMES COMMISSION ACT, 1920, AS AMENDED
BEFORE THE SENATE COMMITTEE ON HAWAIIAN AFFAIRS

February 15, 2001

Chair Chun and Members of the Committee:

Thank you for the opportunity to testify on the proposed S.D. 1 to S.B. 1102. The proposed draft would amend the Hawaiian Homes Commission Act, 1920, as amended, to add two new sections.

First, the bill includes language that reaffirms the federal trust relationship and provides for a restatement of strong findings that already exist in federal law, federal reports, or State resolution. Second, the bill allows for the delegation of authorities from the Department of Hawaiian Home Lands (DHHL) to homestead community self-governance organizations. This is intended to provide the homestead communities with a greater level of self-governance. The bill also provides for language that Congress and the State of Hawaii sees this delegation of authorities as an important first step in the process of achieving a "government to government" relationship, or federal recognition.

DHHL supports the intent of these amendments as a means of providing the homestead communities with a greater level of self-determination. This is consistent with the direction the Hawaiian Homes Commission is currently pursuing. We would like to note the following:

1. While this bill is intended to provide those communities that are ready for delegation with additional authority and greater say over their community affairs, it is not intended to force delegation upon a community that does not desire it or does not feel ready for it. In those situations, the relationship of the community with the Department will remain the same.
2. This bill formalizes and standardizes a process that is already going on to some extent already. Some homestead associations are exercising some of these authorities currently.
3. Training and capacity building programs for community leaders are under development in the department. The intent is to develop the capacity of the community leadership to handle the additional responsibilities that comes with delegation.

We appreciate the opportunity to testify in support of this bill and are available to answer any questions you may have.