

ACT 302

S.B. NO. 1102

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 Home-ownership 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.¹ New statutory material is underscored.²

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

(Approved June 28, 2001.)

Notes

1. No bracketed material.
2. Edited pursuant to HRS §23G-16.5.