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SENATE

{ REPORT
105-19

HAWAIIAN HOMES COMMISSION ACT

MAY 16, 1997.—Ordered to be printed

Mr. MURKOWSKI, from the Committee on Energy and Natural Resources, submitted the following

REPORT

[To accompany H.J. Res. 32]

The Committee on Energy and Natural Resources, to which was referred the joint resolution (H.J. Res. 32) to consent to certain amendments enacted by the Legislature of the State of Hawaii to the Hawaiian Homes Commission Act, 1920, having considered the same, reports favorably thereon without amendment and recommends that the joint resolution do pass.

PURPOSE OF THE MEASURE

The legislation provides the consent of the United States to two amendments to the Hawaiian Homes Commission Act of 1920 made by the State of Hawaii (Act 339 of the Session Laws, 1993, and Act 37 of the Session Laws, 1994) as required by the Admissions Act for the State of Hawaii.

BACKGROUND AND NEED

The Hawaiian Homes Commission Act (HHCA) was enacted by the United States Congress in 1921 as a homesteading program to place native Hawaiians—defined as those of 50 percent or more Hawaiian blood—on lands in Hawaii designated for that purpose. Approximately 200,000 acres were defined as “available lands” under the Act. The Hawaiian Statehood Act in 1959 (Public Law 86-3, 73 Stat. 4) conveyed title to the “available lands” to the new State, and generally placed responsibility for the administration of the Hawaiian Homes Commission Act in the State.

Section 4 of the Statehood Act provides that the HHCA is to be included in the Constitution of the new State as a “compact” with the United States, and that, with certain exceptions, the HHCA

can be amended by the State “only with the consent of the United States”. The exceptions are amendments relating to administration and to the powers and duties of certain State officers. Section 4 contains other restrictions as well: the qualifications to lessees cannot be changed, certain encumbrances on Hawaiian Home Lands cannot be increased, and the benefits to lessees cannot be diminished without United States consent. There is also an absolute bar to the impairment or reduction of certain named funds and to the use of income from “available lands” for any purpose other than as specified under Section 5(f) of the Statehood Act.

The program itself has a history of controversy. In 1983, a State-Federal Task Force completed a review of the program to determine whether it was meeting its purposes. The Task Force documented many deficiencies including: a lack of accountability for the lands, improper use of lands by ineligible persons and the state, poor financial investments, and long waiting lists for leases. The Task Force also identified confusion regarding the rights and responsibilities of the Federal Government, state government and the program beneficiaries. The Task Force made numerous recommendations which have been the focus of efforts to improve program performance.

In addition, court judgments (particularly *Keaukaha-Panaewa Community Assoc. v. Hawaiian Homes Commission*, 588 F.2d 1216 (1978)), have found that “the state is the trustee” under the program, and that “The United States has only a somewhat tangential supervisory role * * *”. The courts have also defined the limited extent of the beneficiaries right to sue for breach of trust. Given the limited supervisory role of the United States, it is important that any proposed changes be carefully reviewed.

As a prophylactic measure, since the mid-1970’s, all amendments have been submitted to Congress for approval, even those limited to administrative matters. In 1990, Congress withheld consent from act 75 due to a concern that provisions permitting non-native Hawaiians to obtain leases in certain circumstances could lead to the effective alienation of the lands. Hawaii later changed the law.

Legislation identical to H.J. Res. 32 was introduced by Senator Akaka and Inouye on August 2, 1996 (S.J. Res. 59).

The two acts affected by this legislation are act 339 of 1993 that authorized the Department of Hawaiian Home Lands to obtain insurance coverage under the Hawaiian Hurricane Relief fund for Hawaiian Home lessees and act 37 that allows homestead lessees to designate grandchildren who are at least 25% Native Hawaiian as successors. The full text of the two measures is set forth in the Appendix to the House Report to accompany this measure (H. Rept. 105-16).

LEGISLATIVE HISTORY

H.J. Res. 32 was introduced on January 21, 1997 and referred to the Committee on Resources. The measure was reported without amendment, passed the House of Representatives on March 11, 1997, and was referred to the Committee on Energy and Natural Resources. The Committee held a hearing on S. 210, which contains language identical to section 10, on February 6, 1997. At the business meeting on May 14, 1997, the Committee on Energy and

Natural Resources ordered H.J. Res. 32 favorably reported without amendment.

COMMITTEE RECOMMENDATION AND TABULATION OF VOTES

The Committee on Energy and Natural Resources, in open business session on May 14, 1997, by a unanimous vote of a quorum present, recommends that the Senate pass H.J. Res. 32 without amendment.

SECTION-BY-SECTION ANALYSIS

The language of the bill is self-explanatory.

COST AND BUDGETARY CONSIDERATIONS

The following estimate of the cost of this measure has been provided by the Congressional Budget Office:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, May 15, 1997.

Hon. FRANK H. MURKOWSKI,
Chairman, Committee on Energy and Natural Resources,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.J. Res. 32, a joint resolution to consent to certain amendments enacted by the Legislature of the State of Hawaii to the Hawaiian Homes Commission Act, 1920.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Victoria V. Heid.

Sincerely,

JUNE E. O'NEILL, *Director.*

Enclosure.

H.J. Res. 32—A joint resolution to consent to certain amendments enacted by the Legislature of the State of Hawaii to the Hawaiian Homes Commission Act, 1920

H.J. Res. 32 would grant the consent of the United States to a number of amendments to the Hawaiian Homes Commission Act, 1920, already adopted by the state of Hawaii. These amendments generally concern the administration of the Hawaiian home lands.

CBO estimates that enacting this resolution would have no effect on the federal budget. Because the resolution would not affect direct spending or receipts, pay-as-you-go procedures would not apply. H.J. Res. 32 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act of 1995 and would impose no costs on state, local, or tribal governments.

CBO prepared a cost estimate for H.J. Res. 32 as ordered reported by the House Committee on Resources on March 5, 1997. The two versions of the resolution are identical, as are the cost estimates.

The CBO staff contact for this estimate is Victoria V. Heid. This estimate was approved by Paul N. Van de Water, Assistant Director for Budget Analysis.

REGULATORY IMPACT EVALUATION

In compliance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee makes the following evaluation of the regulatory impact which would be incurred in carrying out H.J. Res. 32. The bill is not a regulatory measure in the sense of imposing Government-established standards or significant economic responsibilities on private individuals and businesses.

No personal information would be collected in administering the program. Therefore, there would be no impact on personal privacy.

Little, if any, additional paperwork would result from the enactment of H.J. Res. 32, as ordered reported.

EXECUTIVE COMMUNICATIONS

Although the Committee did not request a formal legislative report on H.J. Res. 32 from the administration, the administration did testify in support of identical language during hearings on S. 210, legislation dealing with various issues affecting the territories, freely associated states, and the State of Hawaii. The pertinent portions of the administration statement on S. 210 are set forth below.

STATEMENT OF ALLEN P. STAYMAN, DIRECTOR, OFFICE OF INSULAR AFFAIRS, DEPARTMENT OF THE INTERIOR

Mr. Chairman and members of the Senate Committee on Energy and Natural Resources, I am pleased to be here today to discuss the provisions of S. 210. Additionally, I have comments on several other island issues that you may wish to consider for inclusion in the bill.

S. 210 contains eleven provisions designed to address a number of island issues.

* * * * *

Consent to Hawaiian Homes Commission Act Amendments. Section 10 would approve two laws of the state of Hawaii relating to the Hawaiian Homes Commission Act. Such approval is required before these Hawaii laws may take effect. Act 339 of the Session Laws of Hawaii (1993) established the Hawaiian Hurricane Relief fund and authorizes the Department of Hawaiian Home Lands to obtain homeowners' insurance coverage for Hawaiian Home Lands lessees. Act 37 of the Session Laws of Hawaii (1994) allows Hawaiian Home Lands homestead lessees to designate as a successor to the lease a grandchild who is at least twenty-five percent Native Hawaiian.

The Administration recommends approval of these Hawaiian amendments and supports enactment of section 10 of S. 210.

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, the Committee notes that no changes in existing law are made by the joint resolution, H.J. Res. 32, as ordered reported.

