

A BILL FOR AN ACT

RELATING TO THE TRUST FOR ALL PERSONS OF HAWAIIAN ANCESTRY.

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

SECTION 1. The purpose of this Act is to establish and to provide lands and funding for a trust benefiting all the Hawaiian or kanaka maoli people. This Act provides partial compensation and an interim resolution of the claims of the Hawaiian people to the Crown and Government lands of the Kingdom of Hawaii pending the establishment of the sovereign Hawaiian nation.

SECTION 2. Sections ____ of the Hawaii Revised Statutes are amended by adding a new chapter containing the following provisions:

"Sec. ___-1--FINDINGS.

The Hawaii State Legislature finds that --

(1) The Hawaiian or kanaka maoli people comprise a distinct and unique indigenous people who are descendants of the original inhabitants of the Hawaiian archipelago who had a well-organized society prior to the arrival of the first nonindigenous people in 1778.

(2) In 1778, the Hawaiian or kanaka maoli people lived in a highly organized self-sufficient, subsistence social system based on a communal land tenure system with a sophisticated language, culture, and religion.

(3) A unified monarchical government of the Hawaiian Islands was established in 1810 under Kamehameha I, the first King of Hawaii.

(4) Throughout the 19th century and until 1893, the United States (A) recognized the independence of the Kingdom of Hawaii, (B) extended full and complete diplomatic recognition to the Hawaiian government, and (C) entered into treaties with the Hawaiian government to govern commerce and navigation in 1826, 1849, 1875, and 1884.

(5) In the year 1893, the United States Minister accredited to the sovereign and independent Kingdom of Hawaii (John L. Stevens) conspired with a small group of non-Hawaiian residents of the Kingdom, including citizens of the United States, to overthrow the indigenous and lawful government of Hawaii.

(6) In pursuance of that conspiracy, the United States Minister and the naval representative of the United States caused Armed Forces of the United States to invade the sovereign Hawaiian Nation in support of the overthrow of the lawful indigenous government, and the United States Minister thereupon extended diplomatic recognition to a provisional government formed by the conspirators without the consent of the Native Hawaiian people or the lawful Government of Hawaii in violation of treaties between the two nations and of international law.

(7) On December 18, 1893, in a message to the Congress, President Grover Cleveland reported fully and accurately on these illegal actions, and acknowledged that by these Acts, described by the President as acts of war, the government of a peaceful and friendly people was overthrown, and he said that a "substantial wrong has thus been done which a due regard for our national

character as well as the rights of the injured people requires that we endeavor to repair." These wrongful acts have subsequently been formally acknowledged in S.J. 19 (1993), a joint resolution through which the United States Congress apologized for the illegal actions of agents acting on behalf of the United States and recognized that these unjust acts led to the overthrow of a sovereign government and the taking of lands from the Hawaiian or kanaka maoli people. The Hawaiian or kanaka maoli people have not yet received any compensation from the United States or the State of Hawaii for the taking or use of their common property.

(8) Queen Liliuokalani, the lawful monarch of Hawaii, and the Hawaiian Patriotic League, representing the aboriginal citizens of Hawaii, promptly petitioned the United States for redress of these wrongs and for restoration of the indigenous government of the Hawaiian Nation, but this petition was not acted upon.

(9) In 1898, Hawaii was annexed to the United States through the Joint Resolution of Annexation (Newlands Resolution), 30 Stat. 750 (July 7, 1898), without the consent of or compensation to the indigenous people of Hawaii, or their sovereign government, who were thereby denied the mechanism for expression of their inherent sovereignty through self-government and self-determination, and were also deprived of their lands and ocean resources.

(10) Through the Newlands Resolution, supra, and Hawaii's

Organic Act, 31 Stat. 141 (1900), the United States received 1.75 million acres of lands owned by the Crown and Government of the Hawaiian Kingdom, but exempted these lands from the public land laws of the United States by mandating that the revenue and proceeds from these lands be "used solely for the benefit of the inhabitants of the Hawaiian Islands for the education and public purposes," thereby establishing a special trust relationship between the United States and the inhabitants of Hawaii.

(11) The Hawaiian Homes Commission Act of 1920, 42 Stat. 108 (July 9, 1921) created the Hawaiian Homes Land Trust whereby the United States set aside more than 200,000 acres it had acquired in 1898 which had been Crown and Government lands of the Kingdom of Hawaii, to provide homesteads, rehabilitation, and other benefits for Native Hawaiians. Section 201(a)(7) of this statute defines the term "Native Hawaiian" to mean "any descendant of not less than one-half part of the blood of the races inhabiting the Hawaiian Islands previous to 1778."

(12) The 1959 Admissions Act required the State of Hawaii to adopt the Hawaiian Homes Commission Act as a "compact with the United States" and hence as a condition of statehood. Responsibility for the administration of the Hawaiian Home Lands was transferred to the State of Hawaii, but the United States reaffirmed the trust relationship which existed between the United States and the Hawaiian people by retaining the exclusive power to approve land exchanges and legislative amendments affecting the rights of the beneficiaries under this Act.

(13) From 1959 to the present, the State of Hawaii has had the responsibility and obligation to manage the Hawaiian Homes Land Trust for the benefit of the Native Hawaiian beneficiaries of the Trust.

(14) In 1959, the United States transferred responsibility for administering the vast majority of the ceded public lands trust to the State of Hawaii, but reaffirmed the trust relationship between the United States and the Hawaiian or kanaka maoli people by requiring the State of Hawaii to use the revenues from these lands for the betterment of the conditions of Native Hawaiians (as defined in the Hawaiian Homes Commission Act, 1920) under Section 5(f) of the Act To Provide for the Admission of the State of Hawaii Into the Union, 73 Stat. 4 (March 18, 1959). The Hawaii State Legislature established in Hawaii Revised Statutes section 10-13.5 that "[t]wenty percent of all revenue derived from the public land trust shall be expended by the office [of Hawaiian affairs] for the betterment of the conditions of native Hawaiians," using the definition in the Hawaiian Homes Commission Act, 1920, which refers to persons with a 50 percent blood quantum.

(15) These acts have thus recognized the existence of two trusts that now operate for the benefit of the native Hawaiian people--the Hawaiian Homelands Trust and the public lands trust, which provides 20 percent of the revenues of these public lands to the office of Hawaiian affairs for the benefit of the native Hawaiian people.

(16) No trust has, however, been established for the benefit of the Hawaiian or kanaka maoli people with less than a 50 percent blood quantum, even though they and their ancestors have also suffered from the loss of land and loss of sovereignty that accompanied the illegal overthrow of the Kingdom of Hawaii.

(17) All the Hawaiian or kanaka maoli people have a substantial claim to recover land and revenues lost because of the illegal 1893 overthrow of the Kingdom of Hawaii. Although the ultimate resolution of these claims must wait until the establishment of the sovereign Hawaiian nation, it is appropriate as an interim measure to establish a trust for the benefit of all the Hawaiian or kanaka maoli people to provide a partial compensation for these losses.

"Sec. ___-2 - DEFINITIONS

For the purposes of this Act, the term --

(1) "native Hawaiian" means any descendant of not less than one-half part of the races inhabiting the Hawaiian Islands previous to 1778, as defined by the Hawaiian Homes Commission Act, 1920, as amended; provided that the term identically refers to the descendants of such blood quantum of such aboriginal peoples who exercised sovereignty and subsisted in the Hawaiian Islands in 1778 and which peoples thereafter continued to reside in Hawaii.

(2) "Hawaiian" or "kanaka maoli" means any descendant of the aboriginal peoples, who prior to 1778, occupied and exercised

sovereignty in the Hawaiian Islands.

(3) "office of Hawaiian affairs" means the body established by Article XII, Sections 5-6 of the Constitution of the State of Hawaii.

(5) "crown lands" means the lands held in trust by the monarchs of the Kingdom of Hawaii prior to 1893.

(6) "government lands" means the lands set aside by Kamehameha III as public lands for the benefit of the chiefs and people and which still had that status as of January 16, 1893.

(7) "ceded lands" means the crown lands and government lands taken together, which were taken by the United States government from the Republic of Hawaii in 1898 without the consent of or compensation to the Hawaiian people.

(8) "public land trust" means the trust consisting of the ceded lands and the revenues generated by these lands.

(9) "sovereign Hawaiian nation" means the self-governing political entity that will be established through a process of self-determination by all the Hawaiian or kanaka maoli people.

"Sec. ___-3. ESTABLISHMENT OF THE TRUST FOR ALL THE HAWAIIAN OR KANAKA MAOLI PEOPLE.

(a) The State of Hawaii will transfer title in trust for the benefit of all the Hawaiian or kanaka maoli people to the office of Hawaiian affairs, to hold and manage until the sovereign Hawaiian nation is established, lands that are assessed for tax purposes at 20 percent of the assessed cash value of all the

lands presently owned by the State of Hawaii (including the submerged lands and water column above, and including the Northwestern Hawaiian Islands, Johnston (Kalama) Atoll, Palmyra Atoll, and the Midway Islands) that were crown or government lands of the Kingdom of Hawaii on the day before the overthrow of Queen Liliuokalani, with the specific parcels that are to be transferred to be determined by agreement between the office of Hawaiian affairs and the state of Hawaii.

(b) The state may offer to substitute lands of a comparable value or to pay fair market value for any lands to be transferred pursuant to subsection (a) of this section, provided that the agreement of the office of Hawaiian affairs is necessary to substitute or pay for any such lands.

(c) Valid existing leases on the transferred lands will be preserved for the duration of the leases, provided that lease payments will be paid to the office of Hawaiian affairs for the benefit of all the Hawaiian or kanaka maoli people.

(d) The office of Hawaiian affairs shall be the manager of these lands and will act as trustee for the benefit of all the Hawaiian or kanaka maoli people, and will transfer these lands to the sovereign Hawaiian government when it is established.

(e) The state of Hawaii shall provide 20 percent of the revenues generated by activities on the public lands (including the submerged lands and water column above) it retains after the distributions listed in subsection (a) of this section are made to the office of Hawaiian affairs for the benefit of all the

Hawaiian or kanaka maoli people.

(f) Nothing in this act should be interpreted as affecting the obligations on the State of Hawaii under sections 10-13.5, Hawaii Revised Statutes, to provide 20 percent of the revenues derived from the public land trust to the office of Hawaiian affairs to be used for the betterment of the conditions of native Hawaiians as defined in the Hawaiian Homes Commission Act, 1920, and in this act; these obligations shall continue.

(g) The establishment in this act of the trust for the benefit of all the Hawaiian or kanaka maoli people is an interim step designed to provide partial compensation for the illegal overthrow of the Kingdom of Hawaii and the accompanying loss of land and sovereignty by the Hawaiian or kanaka maoli people. It is not designed to provide a comprehensive settlement, which can be accomplished only after the establishment of the sovereign Hawaiian nation."

SECTION 3. This Act shall take effect immediately upon adoption.