SECTION 3. The sum appropriated shall be expended as indicated in Section 2 by the department of labor and industrial relations (DLIR) and the department of education (DOE) for the purposes of this Act.

SECTION 4. This Act shall take effect on July 1, 1995.

(Approved June 29, 1995.)

ACT 14

H.B. NO. 10-S

A Bill for an Act Relating to Hawaiian Home Lands.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. **Findings.** The legislature finds that when the United States Congress passed the Hawaiian Homes Commission Act of 1920 (HHCA) and set aside 203,500 acres, more or less, of public lands as Hawaiian home lands for the rehabilitation of native Hawaiians, the United States reaffirmed the trust responsibility it had assumed toward the Hawaiian people.

The legislature also finds that under the Admission Act, the State of Hawaii assumed the trust responsibility to carry out the mandates of the HHCA.

The legislature further finds that thousands of acres of Hawaiian home lands were allegedly used, disposed of, or withdrawn from the trust by territorial or state executive actions in contravention of the HHCA. In recognition of these allegations and toward their resolution, the legislature enacted Act 395, Session Laws of Hawaii 1988, which, among other actions, provided a limited waiver of sovereign immunity for breaches of the Hawaiian home lands trust from July 1, 1988 forward. Act 395 also required the governor to present a proposal to the legislature prior to the convening of the 1991 Regular Session to resolve controversies which arose between August 21, 1959 and July 1, 1988. The governor's Action Plan to Address Controversies under the Hawaiian Home Lands Trust and the Public Land Trust (governor's Action Plan) was accepted by the legislature pursuant to its adoption of S.C.R. No. 185, H.D. 1, in 1991.

The governor's Action Plan, among other actions, proposed convening a task force of representatives from the department of Hawaiian home lands, the department of land and natural resources, the office of state planning, and the department of the attorney general to accelerate the review process concerning department of Hawaiian home lands' land title and compensation claims. The actions of the task force were to include verifying title claims, determining if improper uses were still in existence and whether these uses should be canceled or continued if authorized by the Hawaiian homes commission, conducting appraisals and determining appropriate compensation for past and continued use of Hawaiian home lands, and pursuing all avenues for return of lands and compensation from the federal government for wrongful actions during the territorial period.

In 1992, the legislature approved the resolution of the first set of claims covering gubernatorial executive orders and proclamations which set aside 29,633 acres of lands for public uses such as forest reserves, schools, and parks. Act 316, Session Laws of Hawaii 1992, provided $12,000,000 to pay verified claims and provide other means to resolve public use controversies.

In 1993, the legislature approved further means to resolve verified claims. Act 352, Session Laws of Hawaii 1993, extended the period within which to pay compensation, continued the authorization to the State to pursue claims against the

United States for the federal government's wrongful actions, and authorized land exchanges to resolve alienations of Hawaiian home lands.

By these previous acts, the State has resolved all disputed set asides of Hawaiian home lands that remain in the control of the State; paid compensation for uncompensated use of Hawaiian home lands from August 21, 1959 through October 28, 1992; paid fair market rent as set by the Hawaiian homes commission for continuing uses from October 28, 1992 through June 30, 1995; paid fair market rent for the use of lands under Nanaikapono elementary school through April 4, 1996; and initiated land exchanges for Hawaiian home lands held by the federal government under lease for nominal rents of $1 for sixty-five years at Pohakuloa and Kekaha. The legislature also recognizes that in 1994, by a separate administrative initiative, the State initiated the transfer of 16,518 acres of additional useable lands to the department of Hawaiian home lands to be used and administered in accordance with the HHCA.

In 1994, the task force continued to verify and value certain of the claims which remained unresolved, including claims for lands in Lualualei and Waimanalo on Oahu, Anahola, Moloaa, Kamalomalo, and Waimea on Kauai, Puukapu, Keaukaha, Panaewa, and Kawaihae on Hawaii, Kula on Maui, and Kalaupapa on Molokai; and compensation for periods of public use of trust land not already paid. The Hawaiian homes commission's claims to approximately 39,000 acres of such land are disputed due to different interpretations of the HHCA as it describes the lands to be made available for use under the provisions of HHCA. Due to the difficulty of determining the intent of Congress in 1921, it is untenable to administratively prove or disprove the validity of these claims.

The legislature finds that, due to the difficulty, time, uncertainty, disruption of public purposes, impact on the public land trust and private landowners, and expense of judicial resolution of remaining disputed claims, another approach, which results in the repair of the Hawaiian home lands trust and the final resolution of claims against the State, is necessary and in the best interests of the State and the beneficiaries of the trust.

The legislature recognizes and appreciates the hard work and valuable contributions of the task force in reviewing and presenting to the legislature certain recommendations as set forth in the Memorandum of Understanding dated December 1, 1994 (MOU). The legislature notes and expressly finds that the MOU does not bind the legislature and that it is the right and duty of the legislature to exercise its independent judgment and oversight in developing such implementing and related legislation which is in the overall public interest.

In so doing, the legislature finds that the recommendations set forth in the MOU do not bring closure to all matters charged to the task force for review and to all related issues. The legislature by this Act hereby takes these measures to bring the desired closure, to fully effectuate in part the intent of S.C.R. No. 185, H.D. 1, 1991 and the governor's Action Plan, and to fully effectuate the legislature's intent of final disposition of the matters addressed by this Act. The legislature also finds that the disputes surrounding the Hawaiian home lands trust have caused uncertainty in the State with regard to the limited waiver of sovereign immunity contained in Act 395, Session Laws of Hawaii 1988. With respect to all controversies arising between August 21, 1959 and July 1, 1988, excluding individual claims provided for pursuant to chapter 674, Hawaii Revised Statutes, the State hereby affirms that the limited waiver of sovereign immunity permitted by Act 395, Session Laws of Hawaii 1988, is now withdrawn and, to the extent the waiver was not previously withdrawn, it is now fully withdrawn. All claims arising between August 21, 1959 and July 1, 1988, or under any other law enacted in furtherance of the purposes or objectives of Act 395, Session Laws of Hawaii 1988, except those permitted by chapter 674, Hawaii Revised Statutes, are hereby forever barred.

The legislature also finds that the court-appointed independent representative of the beneficiaries of the Hawaiian home lands trust, who is deemed the sole representative of the beneficiary class, has participated in the non-judicial proceedings of the task force as required by Act 352, Session Laws of Hawaii 1993, and as contemplated by Ka'ai'ai v. Drake, First Circuit Civil No. 92-3642.

In passing this Act, it is the intent of the legislature in part to (a) resolve all controversies for the period between August 21, 1959 and July 1, 1988, allowed by Act 395, Session Laws of Hawaii 1988, except those permitted by chapter 674, Hawaii Revised Statutes, (b) resolve all controversies relating to the validity of patents issued after 1920 and prior to July 1, 1988 and affecting any lands covered by or allegedly covered by the HHCA and to all rights arising from or relating to such patents as issued, and (c) make certain other related amendments to chapters 673 and 674, Hawaii Revised Statutes. Additionally, it is the intent of the legislature that if the State is alleged to be liable, for claims of breaches of the Hawaiian home lands trust prior to statehood, this Act shall dispose of and resolve those claims against the State as well.

The legislature also finds that in order to properly utilize Hawaiian home lands, there is a need for a substantial, predictable funding mechanism for the department to appropriately plan for the development of these lands. Therefore, the establishment of a Hawaiian home lands trust fund to provide a steady availability of capital to fund Hawaiian home lands programs is appropriate.

Finally, the legislature acknowledges that generations of beneficiaries and potential beneficiaries have been patient and charitable in their prolonged wait for truth, justice and fair play. The legislature acknowledges the frustration, anxiety and spiritual loss of a class of native people whose culture welcomed strangers and generously shared finite resources. The legislature acknowledges that this Act represents an opportunity to effectuate the purposes of the HHCA.

SECTION 2. **Purpose.** The primary purposes of this Act are to:

(1) Resolve all controversies relating to the Hawaiian home lands trust which arose between August 21, 1959 and July 1, 1988;

(2) Prohibit any and all future claims against the State resulting out of any controversy relating to the Hawaiian home lands trust which arose between August 21, 1959 and July 1, 1988;

(3) Resolve all controversies after 1920 and prior to July 1, 1988 relating to the validity of patents issued and affecting any lands covered by or allegedly covered by HHCA and to all rights arising from or relating to such patents as issued;

(4) Appropriate such funds and provide additional means as may be necessary to accomplish the intent and purpose of this Act;

(5) Establish a trust fund to provide a substantial, secure, and predictable funding source for the department of Hawaiian home lands to use to effectuate the purposes of the HHCA;

(6) Further the public interest by ensuring that claims which have arisen or may arise in the future with respect to the administration of the Hawaiian home lands trust and are brought pursuant to chapters 673 and 674, Hawaii Revised Statutes, are resolved in a fair, complete, and timely manner.

This Act is not intended to replace or affect the claims of beneficiaries with regard to reparations from the federal government. It is however, intended to preclude forever any derivative or other claims of any description which the federal government may attempt to tender to the State.

SECTION 3. **Definitions.**

"Beneficiary" means any person eligible to receive benefits of homesteading and related programs of the Hawaiian home lands trust.

"Commission" means the Hawaiian homes commission.

"Department" means the department of Hawaiian home lands.

"Fair market value" means the definition of that term or, if that term is not defined, the definition of the term "market value", in the then-current edition of the Uniform Standards of Professional Appraisal Practice issued by The Appraisal Foundation or, if that publication is not in publication, then another publication of standard professional appraisal practice recognized by the department of commerce and consumer affairs.

"Governmental agency" or "State" means the State of Hawaii, municipal or county governments, or any department, bureau, division, agency or political subdivision thereof, or any board, commission, or administrative agency thereof.

"Hawaiian home lands" has the same meaning as defined in section 201(a)(5) of the HHCA.

"HHCA" means the Hawaiian Homes Commission Act of 1920, as amended.

"Independent representative" means the independent representative appointed in accordance with Act 352, Session Laws of Hawaii 1993.

"Patent" means any land patent grant, royal patent grant, patent upon award of the land commission, deed, grant, or other similar instrument in regular form duly executed on behalf of the State or its predecessors from and after January 1, 1846.

"Task force" means that task force created pursuant to the Governor's Action Plan to Address Controversies under the Hawaiian Home Lands Trust and the Public Land Trust as acknowledged by the legislature in its adoption of S.C.R. No. 185, H.D. 1, in 1991.

"Trust" means the Hawaiian home lands trust.

"Trust fund" means the Hawaiian home lands trust fund created by this Act and any additions thereto or increment thereon.

SECTION 4. The passage of this Act is in full satisfaction and resolution of all controversies at law and in equity, known or unknown, now existing or hereafter arising, established or inchoate, arising out of or in any way connected with the management, administration, supervision of the trust, or disposition by the State or any governmental agency of any lands or interests in land which are or were or are alleged to have been Hawaiian home lands, or to have been covered by the HHCA arising between August 21, 1959 and July 1, 1988.

The passage of this Act shall have the effect of res judicata as to all parties, claims, and issues which arise and defenses which have been at issue, or which could have been, or could in the future be, at issue, which arose between August 21, 1959 and July 1, 1988, whether brought against the State or its officials, directly or indirectly, by subrogation, derivative or third party action, tender, federal action, or by any other means whatsoever.

The passage of this Act shall not replace or affect the claims of beneficiaries against the federal government arising under the HHCA, provided that such claims are barred as against the State to the extent the State is alleged to be derivatively liable on such claims, or if the federal government tenders such claims to the State.

Nothing in this section shall replace or affect the claims of beneficiaries with regard to (a) reparations from the federal government, (b) claims arising subsequent to July 1, 1988 and brought pursuant to sections 2, 3, and 4 of Act 395, Session Laws of Hawaii 1988, except as otherwise provided in section 13 of this Act or (c) Hawaiian home lands trust individual claims brought pursuant to chapter 674, Hawaii Revised Statutes, except as otherwise provided in sections 14, 15 and 16 of this Act.

SECTION 5. All patents issued and affecting any lands covered by, or alleged to be covered by, the HHCA, from the inception of that Act to July 1, 1988, whether issued by the territory or the State of Hawaii, are hereby confirmed as issued, and no action on such patents may be maintained.

SECTION 6. The State, while not admitting the validity of any claims, hereby resolves and satisfies all controversies and claims encompassed by this Act by:

(1) The establishment of the Hawaiian home lands trust fund and the requirement that the State make twenty annual deposits of $30,000,000, or their discounted value equivalent, into the trust fund; provided that in lieu of sums deposited hereunder, the State may, with the approval of the Commission, substitute from time to time land or other consideration having the fair market value of such deposit, as mutually agreed by the State and Commission; provided that the State may, at any time, prepay sums due hereunder, without penalty, and that the total amount to be deposited into the trust fund shall be adjusted by such prepayment based on a discount rate per year equal to the then-average weekly investment rate on five year Treasury Bills; and provided further that the payment of funds into the trust fund shall include any interest, as determined by section 478-2, Hawaii Revised Statutes, on the unpaid balance of any funds due but not appropriated by the end of each respective fiscal year;

(2) The transfer of lands and resolution of claims in the Waimanalo, Anahola, Kamalomalo, and Moloaa areas; the compensation for all remaining confirmed uncompensated public uses of Hawaiian home lands; the initiation of a land exchange to remedy uncompensated use of Hawaiian home lands for state roads claims and highways; and the provision of the first selection of up to two hundred acres of land, to be conveyed to the department to fulfill the provisions of claims resolution, upon the return to the State of any ceded lands, comprising all, or a portion of Bellows Air Force Station (TMK: 4-1-15.) Disputes with respect to the transfer of lands and resolution of claims in the Waimanalo, Anahola, Kamalomalo and Moloaa areas, as identified by the task force and approved by the Commission at its meeting on November 4, 1994, are resolved by the exchanges more particularly described in the Commission's action;

(3) The payment of $2,348,558, appropriated herein, for the purpose of paying in advance all rent due for department of Hawaiian home lands license agreement no. 308 for the continued State use of trust lands under Nanaikapono elementary school between April 4, 1996 and October 27, 2002;

(4) The payment of $2,390,000, appropriated herein for the purpose of paying compensation for the State's uncompensated use of Hawaiian home lands between 1959 and 1995; and

(5) The payment of $1,539,000, appropriated herein, for the purpose of payment of moneys owed the department of Hawaiian home lands as its thirty per cent entitlement for the use of Hanapepe, Kauai, public lands formerly under lease of sugarcane cultivation on November 7, 1978, pursuant to section 1 of article XII of the Constitution of the State of Hawaii.

The fair market value of land or other consideration under subsection (1) of this section shall be established by the department of land and natural resources with the approval of the Commission.

Payments made under this Act shall not diminish funds that the department is entitled to under article XII, section 1, of the Constitution of the State of Hawaii.

SECTION 7. The HHCA is amended by adding a new section to be appropriately designated and to read as follows:

"§ - **Hawaiian home lands trust fund.** There is established in the treasury of the State a trust fund to be known as the Hawaiian home lands trust fund, into which shall be deposited all appropriations by the State legislature specified to be deposited therein. Moneys of the Hawaiian home lands trust fund shall be expended by the department as provided by law upon approval by the commission and shall be used for capital improvements and other purposes undertaken in furtherance of the Act. The department shall have fiduciary responsibility toward the trust fund, and shall provide annual reports therefor to the legislature and to the beneficiaries of the trust. Any interest or other earnings arising out of investments from the trust fund shall be credited to and deposited into the trust fund."

SECTION 8. (a) Notwithstanding the provisions of section 201E-207.5, Hawaii Revised Statutes, there is authorized and appropriated from moneys on deposit in the homes revolving fund created by section 201E-207, Hawaii Revised Statutes, $30,000,000 for fiscal year 1995–96 for deposit into the Hawaiian home lands trust fund. The foregoing authorization and appropriation constitutes a legislative reallocation of the moneys in the homes revolving fund and such transfer shall not constitute or be deemed to constitute a loan from the homes revolving fund.

(b) There is authorized and appropriated $30,000,000 in general obligation bond funds of the State of Hawaii for fiscal year 1996–97 for deposit into the Hawaiian home lands trust fund.

SECTION 9. There is appropriated out of the general revenues of the State of Hawaii the sum of $2,348,558, or so much thereof as may be necessary for fiscal year 1995–96, for the purpose of paying in advance all rent due for department of Hawaiian home lands license agreement no. 308, for the continued State use of Hawaiian home lands under Nanaikapono elementary school, for the period of April 4, 1996, through October 27, 2002. The sum appropriated shall be expended by the department of education.

SECTION 10. There is appropriated out of the general revenues of the State of Hawaii the sum of $2,390,000, or so much thereof as may be necessary for fiscal year 1995–96, for the purpose of paying compensation for the State's uncompensated use of Hawaiian home lands for the period of August 21, 1959 through June 30, 1995. The sum appropriated shall be expended by the department of budget and finance upon certification from the office of state planning that a wrongful use has been verified. Compensation may be paid as claims are verified and the amounts of compensation owed are determined.

SECTION 11. There is appropriated out of the general revenues of the State of Hawaii the sum of $1,539,000, or so much thereof as may be necessary for fiscal year 1995–1996, for the purpose of payment of moneys owed the department of Hawaiian home lands as its thirty per cent entitlement for the use of Hanapepe, Kauai, public lands formerly under lease for sugarcane cultivation on November 7, 1978, pursuant to section 1 of article XII of the Constitution of the State of Hawaii. The sum appropriated shall be expended by the department of budget and finance.

SECTION 12. To the extent still available, the limited waiver of sovereign immunity is hereby withdrawn with respect to any claim, cause of action or right of action against the State arising out of an act or omission committed or omitted between August 21, 1959 and July 1, 1988, excluding individual claims under chapter 674, Hawaii Revised Statutes, as first permitted by Act 395, Session Laws of Hawaii 1988, or under any other law enacted in furtherance of the purposes of that Act. Any claim, cause of action or right of action permitted by Act 395, Session Laws of Hawaii 1988, is forever barred except with regard to:

(1) A cause of action accruing after June 30, 1988 as may be permitted by chapter 673, Hawaii Revised Statutes; or

(2) An individual claim as may be permitted by chapter 674, Hawaii Revised Statutes.

SECTION 13. Section 673-10, Hawaii Revised Statutes, is amended to read as follows:

"[[]§673-10[]] **Limitation on actions; native Hawaiians.** Every claim arising under this chapter shall forever be barred unless the action is commenced within two years after the cause of action first accrues; provided that this statute of limitations shall be tolled until July 1, 1990; provided[1] that the filing of the claim in an administrative proceeding pursuant to this [[]chapter[]] shall toll any applicable statute of limitations, and any such statute of limitations shall remain tolled until ninety days after the date the decision is rendered in the administrative proceeding;[2] provided further that any cause of action that first accrues after July 1, 1995 shall forever be barred unless the action is commenced within two years after the cause of action first accrues."

SECTION 14. Section 674-2, Hawaii Revised Statutes, is amended by amending the definition of "actual damages" to read:

""Actual damages" means direct, monetary out-of-pocket loss, excluding noneconomic damages as defined in section 663-8.5 and consequential damages, sustained by the claimant individually rather than the beneficiary class generally, arising out of or resulting from a breach of trust, which occurred between August 21, 1959, and June 30, 1988, and was caused by an act or omission by an employee of the State with respect to an individual beneficiary in the management and disposition of trust resources."

SECTION 15. Section 674-19, Hawaii Revised Statutes, is amended to read as follows:

"**§674-19 Limitation on actions.** Every claim cognizable under this part shall forever be barred unless the action is commenced by September 30, [1999.] 1998."

SECTION 16. Chapter 674, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"**§674- Preclusion of title-related claims.** Nothing in this chapter shall be construed to affect title, or conveyance of title, or place a cloud upon title, to any lands in the State, including but not limited to lands which were, are, or may have been Hawaiian home lands."

SECTION 17. Notwithstanding any other law to the contrary, the State and its officials, the members of the board, the members of the Commission and the independent representative shall not be subject to suit by any party on any decision relating to the resolution of these claims, except for actions to enforce the provisions of this Act.

SECTION 18. If any portions of chapters 673 and 674, Hawaii Revised Statutes, are inconsistent with any of the provisions of this Act, then the provisions of this Act shall prevail. The Memorandum of Understanding is not binding on the legislature and the State and does not have the force and effect of law. To the extent that the Memorandum of Understanding is inconsistent with the provisions of this Act, then the provisions of this Act shall prevail.

SECTION 19. The 16,518 acres of land conveyed by the State to the department of Hawaiian home lands for the purpose of replenishing the trust corpus shall be treated by the department of Hawaiian home lands in the same manner as those lands originally established in the trust and subject to all the conditions thereon.

SECTION 20. Notwithstanding section 1-23, Hawaii Revised Statutes, if any provision of this Act or the application thereof to any person or circumstance is held invalid in whole or in part, this Act shall be invalid and no other provision shall have the force or effect of law, except that nothing in this section shall operate to (a) invalidate the withdrawal of the limited waiver of sovereign immunity as provided by section 12 of this Act, (b) the confirmation of patents as provided by section 5 of this Act, and (c) the undertakings set forth in sections 9, 10 and 11 of this Act.

SECTION 21. Statutory material to be repealed is bracketed. New statutory material is underscored.[3]

SECTION 22. This Act shall take effect upon its approval; except that sections 8, 9, 10 and 11 shall take effect on July 1, 1995.

(Approved June 29, 1995.)

Notes

1. Prior to amendment "further" appeared here.
2. Semicolon should be underscored.
3. Edited pursuant to HRS §23G-16.5.

ACT 15 H.B. NO. 11-S

A Bill for an Act Relating to State Finances.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Chapter 28, Hawaii Revised Statutes, is amended by adding a new section to part VI to be appropriately designated and to read as follows:

"**§28- Medicaid investigations recovery fund; established.** There is established in the state treasury the medicaid investigations recovery fund as a special fund, and which is to be administered by the department of the attorney general, into which shall be deposited all funds that have been recovered as a result of medicaid fraud settlements. Moneys from this special fund shall be used to