

THE ADMISSION ACT**An Act to Provide for the Admission of the State of Hawaii
into the Union****(Act of March 18, 1959, Pub L 86-3, 73 Stat 4)**

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That, subject to the provisions of this Act, and upon issuance of the proclamation required by section 7(c) of this Act, the State of Hawaii is hereby declared to be a State of the United States of America, is declared admitted into the Union on an equal footing with the other States in all respects whatever, and the constitution formed pursuant to the provisions of the Act of the Territorial Legislature of Hawaii entitled "An Act to provide for a constitutional convention, the adoption of a State constitution, and the forwarding of the same to the Congress of the United States, and appropriating money therefor", approved May 20, 1949 (Act 334, Session Laws of Hawaii, 1949), and adopted by a vote of the people of Hawaii in the election held on November 7, 1950, is hereby found to be republican in form and in conformity with the Constitution of the United States and the principles of the Declaration of Independence, and is hereby accepted, ratified, and confirmed.

Attorney General Opinions

Allows State to sell, alienate, or otherwise dispose of ceded lands; 1978 constitutional amendments did not alter State's authority. Att. Gen. Op. 95-3.

Case Notes

Hawaii not denied "equal footing" by reason of C.A.B. control over interisland air transportation. 363 F.2d 120.

Created a federal right enforceable under 42 U.S.C. 1983. 739 F.2d 1467.

Admission Act is a federal public trust, creating a federally enforceable right for beneficiaries to maintain action against trustees; plaintiff's 42 U.S.C. §1983 action thus proper. 3 F.3d 1220.

There is no positive command in this Act for the United States to bring a breach of trust action against the Hawaiian homes commission or its members. 824 F. Supp. 1480.

Where plaintiffs alleged, inter alia, state defendants breached their trust responsibilities under this Act, claims against State or its agencies or departments, and defendants in official capacities barred by Eleventh Amendment; state defendants sued in personal capacities were entitled to qualified immunity. 824 F. Supp. 1480.

"Equal footing," referred to: 44 H. 634, 642, 361 P.2d 390.

Association that included native Hawaiian beneficiaries asserted viable claim under 42 U.S.C. §1983 alleging breach of trust duties by appellees under Hawaiian Homes Commission Act via Admission Act. 78 H. 192, 891 P.2d 279.

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§2. The State of Hawaii shall consist of all the islands, together with their appurtenant reefs and territorial waters, included in the Territory of Hawaii on the date of enactment of this Act, except the atoll known as Palmyra Island, together with its appurtenant reefs and territorial waters, but said State shall not be deemed to include the Midway Islands, Johnston Island, Sand Island (off-shore from Johnston Island), or Kingman Reef, together with their appurtenant reefs and territorial waters.

Case Notes

See also notes to Const. Art. XV, §1.

Territorial waters extend only three miles from each island. 235 F. Supp. 990.

Question of jurisdiction over channels between islands raised but not decided. 47 H. 87, 384 P.2d 536.

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§3. The constitution of the State of Hawaii shall always be republican in form and shall not be repugnant to the Constitution of the United States and the principles of the Declaration of Independence.

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§4. As a compact with the United States relating to the management and disposition of the Hawaiian home lands, the Hawaiian Homes Commission Act, 1920, as amended, shall be adopted as a provision of the Constitution of said State, as provided in section 7, subsection (b) of this Act, subject to amendment or repeal only with the consent of the United States, and in no other manner: Provided, That (1) sections 202, 213, 219, 220, 222, 224, and 225 and other provisions relating to administration, and paragraph (2) of section 204, sections 206 and 212, and other provisions relating to the powers and duties of officers other than those charged with the administration of said Act, may be amended in the constitution, or in the manner required for State legislation, but the Hawaiian home-loan fund, the Hawaiian home-operating fund, and the Hawaiian home-development fund shall not be reduced or impaired by any such amendment, whether made in the constitution or in the manner required for State legislation, and the encumbrances authorized to be placed on Hawaiian home lands by officers other than those charged with the administration of said Act, shall not be increased, except with the consent of the United States; (2) that any amendment to increase the benefits to lessees of Hawaiian home lands may be made in the constitution, or in the manner required for State legislation, but the qualifications of lessees shall not be changed except with the consent of the United States; and (3) that all proceeds and income from the "available lands", as defined by said Act, shall be used only in carrying out the provisions of said Act.

Law Journals and Reviews

The Lum Court and Native Hawaiian Rights. 14 UH L. Rev. 377.

Native Hawaiians, Self-Determination, and the Inadequacy of the State Land Trusts. 14 UH L. Rev. 519.

The Native Hawaiian Trusts Judicial Relief Act: The First Step in an Attempt to Provide Relief. 14 UH L. Rev. 889.

Courts and the Cultural Performance: Native Hawaiians' Uncertain Federal and State Law Rights to Sue. 16 UH L. Rev. 1.

Native Hawaiian Homestead Water Reservation Rights: Providing Good Living Conditions for Native Hawaiian Homesteaders. 25 UH L. Rev. 85.

Case Notes

This section and §5(f) of Admission Act create rights enforceable under 42 U.S.C. §1983; plaintiffs had standing to enforce such rights. 996 F. Supp. 989.

In setting aside Hawaiian home lands, federal government undertook trust obligation benefitting aboriginal people. State assumed fiduciary obligation upon being admitted as a state. 64 H. 327, 640 P.2d 1161.

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§5. (a) Except as provided in subsection (c) of this section, the State of Hawaii and its political subdivisions, as the case may be, shall succeed to the title of the Territory of Hawaii and its subdivisions in those lands and other properties in which the Territory and its subdivisions now hold title.

(b) Except as provided in subsection (c) and (d) of this section, the United States grants to the State of Hawaii, effective upon its admission into the Union, the United States' title to all the public lands and other public property, and to all lands defined as "available lands" by section 203 of the Hawaiian Homes Commission Act, 1920, as amended, within the boundaries of the State of Hawaii, title to which is held by the United States immediately prior to its admission into the Union. The grant hereby made shall be in lieu of any and all grants provided for new States by provisions of law other than this Act, and such grants shall not extend to the State of Hawaii.

(c) Any lands and other properties that, on the date Hawaii is admitted into the Union, are set aside pursuant to law for the use of the United States under any (1) Act of Congress, (2) Executive order, (3) proclamation of the President, or (4) proclamation of the Governor of Hawaii shall remain the property of the United States subject only to the limitations, if any, imposed under (1), (2), (3), or (4), as the case may be.

(d) Any public lands or other public property that is conveyed to the State of Hawaii by subsection (b) of this section but that, immediately prior to the admission of said State into the Union, is controlled by the United States pursuant to permit, license, or permission, written or verbal, from the Territory of Hawaii or any department thereof may, at any time during the five years following the admission of Hawaii into the Union, be set aside by Act of Congress or by Executive order of the President, made pursuant to law, for the use of the United States, and the lands or property so set aside shall, subject only to valid rights then existing, be the property of the United States. [Am July 12, 1960, Pub L 86-624, 74 Stat 422]

(e) Within five years from the date Hawaii is admitted into the Union, each Federal agency having control over any land or property that is retained by the United States pursuant to subsections (c) and (d) of this section shall report to the President the facts regarding its continued need for such land or property, and if the President determines that the land or property is no longer needed by the United States it shall be conveyed to the State of Hawaii.

(f) The lands granted to the State of Hawaii by subsection (b) of this section and public lands retained by the United States under subsections (c) and (d) and later conveyed to the State under subsection (e), together with the proceeds from the sale or other disposition of any such lands and the income therefrom, shall be held by said State as a public trust for the support of the public schools and other public educational institutions, for the betterment of the conditions of native Hawaiians, as defined in the Hawaiian Homes Commission Act, 1920, as amended, for the development of farm and home ownership on as widespread a basis as possible for the making of public improvements, and for the provision of lands for public use. Such lands, proceeds, and income shall be managed and disposed of for one or more of the foregoing purposes in such manner as the constitution and laws of said State may provide, and their use for any other object shall constitute a breach of trust for which suit may be brought by the United States. The schools and other educational institutions supported, in whole or in part out of such public trust shall forever remain under the exclusive control of said State; and no part of the proceeds or income from the lands granted under this Act shall be used for the support of any sectarian or denominational school, college, or university.

(g) As used in this Act, the term "lands and other properties" includes public lands and other public property, and the term "public lands and other

public property" means, and is limited to, the lands and properties that were ceded to the United States by the Republic of Hawaii under the joint resolution of annexation approved July 7, 1898 (30 Stat. 750), or that have been acquired in exchange for lands or properties so ceded.

(h) All laws of the United States reserving to the United States the free use or enjoyment of property which vests in or is conveyed to the State of Hawaii or its political subdivisions pursuant to subsection (a), (b), or (e) of this section or reserving the right to alter, amend, or repeal laws relating thereto shall cease to be effective upon the admission of the State of Hawaii into the Union.

(i) The Submerged Lands Act of 1953 (Public Law 31, Eighty-third Congress, first session; 67 Stat. 29) and the Outer Continental Shelf Lands Act of 1953 (Public Law 212, Eighty-third Congress, first session, 67 Stat. 462) shall be applicable to the State of Hawaii, and the said State shall have the same rights as do existing States thereunder.

Revised conveyance procedures. Act of December 23, 1963, Pub L 88-233, 77 Stat 472, provides: That (a)(i) whenever after August 21, 1964, any of the public lands and other public property as defined in section 5(g) of Public Law 86-3 (73 Stat. 4, 6), or any lands acquired by the Territory of Hawaii and its subdivisions, which are the property of the United States pursuant to section 5(c) or become the property of the United States pursuant to section 5(d) of Public Law 86-3, except the lands administered pursuant to the Act of August 25, 1916 (39 Stat. 535), as amended, and (ii) whenever any of the lands of the United States on Sand Island, including the reef lands in connection therewith, in the city and county of Honolulu, are determined to be surplus property by the Administrator of General Services (hereinafter referred to as the "Administrator") with the concurrence of the head of the department or agency exercising administration or control over such lands and property, they shall be conveyed to the State of Hawaii by the Administrator subject to the provisions of this Act.

(b) Such lands and property shall be conveyed without monetary consideration, but subject to such other terms and conditions as the Administrator may prescribe: Provided, That, as a condition precedent to the conveyance of such lands, the Administrator shall require payment by the State of Hawaii of the estimated fair market value, as determined by the Administrator, of any buildings, structures, and other improvements erected and made on such lands after they were set aside. In the event that the State of Hawaii does not agree to any payment prescribed by the Administrator, he may remove, relocate, and otherwise dispose of any such buildings, structures, and other improvements under other applicable laws, or if the Administrator determines that they cannot be removed without substantial damage to them or the lands containing them, he may dispose of them and the lands involved under other applicable laws, but, in such cases he shall pay to the State of Hawaii that portion of any proceeds from such disposal which he estimates to be equal to the value of the lands involved. Nothing in this section shall prevent the disposal by the Administrator under other applicable laws of the lands subject to conveyance to the State of Hawaii under this section if the State of Hawaii so chooses.

Sec. 2. Any lands, property, improvements, and proceeds conveyed or paid to the State of Hawaii under section 1 of this Act shall be considered a part of public trust established by section 5(f) of Public Law 86-3, and shall be subject to the terms and conditions of that trust.

Note

Use of lands in public land trust; payments and accounting requirements. L 2006, c 178.

Attorney General Opinions

Duty imposed under paragraphs (c) and (e) on federal agency to report on its continued need of land is limited to lands ceded to U.S. upon annexation and does not extend to lands acquired by U.S. thereafter. U.S. Att. Gen. Op. June 12, 1961.

Legislature may not authorize office of Hawaiian affairs to use funds derived from public lands trust to better the conditions of "Hawaiians", as defined in section 10-2, HRS, distinguishing from "native Hawaiians" as defined in this section. Att. Gen. Op. 83-2.

Subsection (f) expressly acknowledges that ceded or public trust land may be alienated; proceeds of sale or disposition must be returned to the trust and held by State for use for one or more of five purposes set forth in subsection (f). Att. Gen. Op. 95-3.

Collaboration agreement between University and corporation requiring the University to provide the corporation with environmental samples from diverse habitats may be voidable but not null and void altogether if both the corporation and the University intended that all material come from only ceded lands the State owned. The University could still perform under the contract by collecting material from the lands it owns and by securing a land license so that it could collect materials from the ceded lands the State owns. Att. Gen. Op. 03-3.

Inasmuch as the genetic material or composition of the natural resources and things connected to public lands, including ceded lands, are an integral part of those resources and things, title to biogenetic resources will still be held by State if it has not sold the land. Legal title to biogenetic resources gathered from state public lands will not still be vested in the State if third persons were allowed to remove from public lands the natural resource or thing from which the biogenetic resources were extracted or the State sold or leased title to a parcel of public land without reserving title or retaining control of the resources or things connected to the transferred land, or their biogenetic contents. Att. Gen. Op. 03-3.

Legislature must again determine which income and proceeds from the public land trust lands are to go to the office of Hawaiian affairs (OHA). Until legislature reestablishes a funding mechanism for OHA, Executive Order No. 03-03 is the only mechanism in place for transferring receipts from the use of ceded lands to OHA; receipts from the sale or transfer of biogenetic resources do not qualify for transfer under the order. Att. Gen. Op. 03-3.

The scope of the University's authority to sell or transfer biogenetic resources gathered from ceded lands depends upon how the University acquired the ceded land from which the biogenetic resource originated. The University has complete authority over the lands that are set aside or conveyed to it by the State, and would have limited authority to dispose of biogenetic resources gathered from public lands it leases from the State, or lands that it has permits to use or licenses from which to remove materials. Att. Gen. Op. 03-3.

Law Journals and Reviews

Hawaii's Ceded Lands, Comment. 3 UH L. Rev. 101.

The Lum Court and Native Hawaiian Rights. 14 UH L. Rev. 377.

Native Hawaiians, Self-Determination, and the Inadequacy of the State Land

Trusts. 14 UH L. Rev. 519.

State-Federal Conflict Over Naval Defensive Sea Areas in Hawai'i. 14 UH L. Rev. 595.

The Native Hawaiian Trusts Judicial Relief Act: The First Step in an Attempt to Provide Relief. 14 UH L. Rev. 889.

Courts and the Cultural Performance: Native Hawaiians' Uncertain Federal and State Law Rights to Sue. 16 UH L. Rev. 1.

The Akaka Bill: The Native Hawaiians' Race For Federal Recognition. 23 UH L. Rev. 857.

Akaka Bill: Native Hawaiians, Legal Realities, and Politics as Usual. 24 UH L. Rev. 693.

Native Hawaiian Homestead Water Reservation Rights: Providing Good Living Conditions for Native Hawaiian Homesteaders. 25 UH L. Rev. 85.

Biopiracy in Paradise?: Fulfilling the Legal Duty to Regulate Bioprospecting in Hawai'i. 28 UH L. Rev. 387.

Case Notes

Hawaii's suit in supreme court, seeking to extend duty to acquired lands, dismissed on ground that U.S. could not be sued without its consent. 373 U.S. 57.

Native Hawaiian group had no private cause of action under Act; section creates federal "right" enforceable under 42 U.S.C. §1983; enforcement of federal-state compact created by section presents federal question. 764 F.2d 623.

Plaintiff alleged that office of Hawaiian affairs trustees were not spending funds pursuant to section. 915 F.2d 469.

Native Hawaiians stated federal claim by alleging that trustees of office of Hawaiian affairs expended income derived from lands conveyed as public trust for purposes other than those permitted under Admission Act. 928 F.2d 824.

Native Hawaiians' claim under 42 U.S.C. §1983 that land parcel was subject to public trust not actionable where private landowners did not act under color of state law. 939 F.2d 702.

OHA trustees entitled to qualified immunity from 42 U.S.C. §1983 claim that trustees violated Admission Act by improperly using §5(f) funds for referendum to define "native Hawaiians". 3 F.3d 1220.

Plaintiff had standing where plaintiff was among class of beneficiaries whose welfare was the object of the action at issue. 3 F.3d 1220.

Act does not impose upon the United States a general fiduciary obligation to bring suit against the State for any particular alleged breach of trust, only a right to bring such action. 45 F.3d 333.

Plaintiffs contended, inter alia, that phrase imposed a duty upon United States to sue State if State breached the trust, and that state defendants had violated and would continue to violate this section by not giving priority to the betterment of native Hawaiians by funding homesteads for them; judgment of district court affirmed, where court denied plaintiffs' motion for summary judgment and dismissed plaintiffs' complaint against all defendants. 183 F.3d 945.

Each native Hawaiian plaintiff, as a beneficiary of the trust created by §5(f), has an individual right to have the trust terms complied with, and therefore can sue under 42 U.S.C. §1983 for violation of that right. 496 F.3d 1027.

Under submerged lands act, Hawaii's boundaries extend one marine league. 235 F. Supp. 990.

Plaintiffs' breach of public land trust claims dismissed, where plaintiffs

claimed in their [subsection (f)] trust beneficiary capacities that they were being treated differently from a small class of native Hawaiians and did not proceed on the basis of any direct injury. 299 F. Supp. 2d 1090.

Plaintiffs' motion for reconsideration denied, where plaintiffs argued that the court erred in finding that plaintiffs lacked standing to assert claims as beneficiaries of the public land trust created by subsection (f). 299 F. Supp. 2d 1107.

Plaintiffs' Hawaiian home lands lease program claim dismissed, because plaintiffs' claim necessarily involved a challenge to the Admission Act, a challenge that could not be brought by a party with only state taxpayer standing. 299 F. Supp. 2d 1114.

Where plaintiffs contended that Act 359 of 1993 Hawaii legislature (relating to Hawaiian sovereignty), as amended in 1994 and 1996, breached fiduciary duty between State and its citizens, and brought suit under 42 U.S.C. §1983 to enforce subsection (f), on motion for preliminary injunction, plaintiffs not likely to prevail on their §1983 action regarding alleged violation of Admission Act. 941 F. Supp. 1529.

Plaintiffs' suit barred by Eleventh Amendment and prior Ninth Circuit authority, where, inter alia, plaintiffs asked court to compel state defendants to spend §5(f) funds on only one (Hawaiian home lands) of the five purposes provided for in the Admission Act, in order to compensate for past breaches of trust. 996 F. Supp. 989.

Section 4 of Admission Act and subsection (f) create rights enforceable under 42 U.S.C. §1983; plaintiffs had standing to enforce such rights. 996 F. Supp. 989.

New lava lands created by volcanic eruption were within "public lands" the title to which was granted by the federal government to the State upon admission to statehood. 58 H. 106, 566 P.2d 725.

Claim brought under 42 U.S.C. §1983 that exchange of ceded lands by State constituted a breach of trust under subsection (f) was barred by statute of limitations and res judicata. 73 H. 578, 837 P.2d 1247.

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§6. As soon as possible after the enactment of this Act, it shall be the duty of the President of the United States to certify such fact to the Governor of the Territory of Hawaii. Thereupon the Governor of the Territory shall, within thirty days after receipt of the official notification of such approval, issue his proclamation for the elections, as hereinafter provided, for officers of all State elective offices provided for by the constitution of the proposed State of Hawaii, and for two Senators and one Representative in Congress. In the first election of Senators from said State the two senatorial offices shall be separately identified and designated, and no person may be a candidate for both offices. No identification or designation of either of the two senatorial offices, however, shall refer to or be taken to refer to the term of that office, nor shall any such identification or designation in any way impair the privilege of the Senate to determine the class to which each of the Senators elected shall be assigned.

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§7. (a) The proclamation of the Governor of Hawaii required by section 6 shall provide for the holding of a primary election and a general election and at such elections the officers required to be elected as provided in section 6 shall be chosen by the people. Such elections shall be held, and the qualifications of voters thereat shall be, as prescribed by the constitution of the proposed State of Hawaii for the election of members of the proposed State legislature. The returns thereof shall be made and certified in such manner as the constitution of the proposed State of Hawaii may prescribe. The Governor of Hawaii shall certify the results of said elections, as so ascertained, to the President of the United States.

(b) At an election designated by proclamation of the Governor of Hawaii, which may be either the primary or the general election held pursuant to subsection (a) of this section, or a territorial general election, or a special election, there shall be submitted to the electors qualified to vote in said election, for adoption or rejection, the following propositions:

"(1) Shall Hawaii immediately be admitted into the Union as a State?

"(2) The boundaries of the State of Hawaii shall be as prescribed in the Act of Congress approved

(Date of approval of this Act)

and all claims of this State to any areas of land or sea outside the boundaries so prescribed are hereby irrevocably relinquished to the United States.

"(3) All provisions of the Act of Congress approved.....

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reserving rights or powers to the United States, as well as those prescribing the terms or conditions of the grants of lands or other property therein made to the State of Hawaii are consented to fully by said State and its people."

In the event the foregoing propositions are adopted at said election by a majority of the legal votes cast on said submission, the proposed constitution of the proposed State of Hawaii, ratified by the people at the election held on November 7, 1950, shall be deemed amended as follows: Section 1 of article XIII of said proposed constitution shall be deemed amended so as to contain the language of section 2 of this Act in lieu of any other language; article XI shall be deemed to include the provisions of section 4 of this Act; and section 8 of article XIV shall be deemed amended so as to contain the language of the third proposition above stated in lieu of any other language, and section 10 of article XVI shall be deemed amended by inserting the words "at which officers for all state elective offices provided for by this constitution and two Senators and one Representative in Congress shall be nominated and elected" in lieu of the words "at which officers for all state elective offices provided for by this constitution shall be nominated and elected; but the officers so to be elected shall in any event include two Senators and two Representatives to the Congress, and unless and until otherwise required by law, said Representatives shall be elected at large".

In the event the foregoing propositions are not adopted at said election by a majority of the legal votes cast on said submission, the provisions of this Act shall cease to be effective.

The Governor of Hawaii is hereby authorized and directed to take such action as may be necessary or appropriate to insure the submission of said

propositions to the people. The return of the votes cast on said propositions shall be made by the election officers directly to the Secretary of Hawaii, who shall certify the results of the submission to the Governor. The Governor shall certify the results of said submission, as so ascertained, to the President of the United States.

(c) If the President shall find that the propositions set forth in the preceding subsection have been duly adopted by the people of Hawaii, the President, upon certification of the returns of the election of the officers required to be elected as provided in section 6 of this Act, shall thereupon issue his proclamation announcing the results of said election as so ascertained. Upon the issuance of said proclamation by the President, the State of Hawaii shall be deemed admitted into the Union as provided in section 1 of this Act.

Until the said State is so admitted into the Union, the persons holding legislative, executive, and judicial office in, under, or by authority of the government of said Territory, and the Delegate in Congress thereof, shall continue to discharge the duties of their respective offices. Upon the issuance of said proclamation by the President of the United States and the admission of the State of Hawaii into the Union, the officers elected at said election, and qualified under the provisions of the constitution and laws of said State, shall proceed to exercise all the functions pertaining to their offices in, under, or by authority of the government of said State, and officers not required to be elected at said initial election shall be selected or continued in office as provided by the constitution and laws of said State. The Governor of said State shall certify the election of the Senators and Representative in the manner required by law, and the said Senators and Representative shall be entitled to be admitted to seats in Congress and to all the rights and privileges of Senators and Representatives of other States in the Congress of the United States.

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§8. The State of Hawaii upon its admission into the Union shall be entitled to one Representative until the taking effect of the next reapportionment, and such Representative shall be in addition to the membership of the House of Representatives as now prescribed by law: Provided, That such temporary increase in the membership shall not operate to either increase or decrease the permanent membership of the House of Representatives as prescribed in the Act of August 8, 1911 (37 Stat. 13), nor shall such temporary increase affect the basis of apportionment established by the Act of November 15, 1941 (55 Stat. 761; 2 U.S.C., sec. 2a), for the Eighty-third Congress and each Congress thereafter.

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§9. Effective upon the admission of the State of Hawaii into the Union--

(a) the United States District Court for the District of Hawaii established by and existing under title 28 of the United States Code shall henceforth be a court of the United States with judicial power derived from article III, section 1, of the Constitution of the United States; Provided, however, That the terms of office of the district judges for the district of Hawaii then in office shall terminate upon the effective date of this section and the President, pursuant to sections 133 and 134 of title 28, United States Code, as amended by this Act, shall appoint, by and with the advice and consent of the Senate, two district judges for the said district who shall hold office during good behavior;

(b) the last paragraph of section 133 of title 28, United States Code, is repealed; and

(c) subsection (a) of section 134 of title 28, United States Code, is amended by striking out the words "Hawaii and". The second sentence of the same section is amended by striking out the words "Hawaii and", "six and", and "respectively".

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§10. Effective upon the admission of the State of Hawaii into the Union the second paragraph of section 451 of title 28, United States Code, is amended by striking out the words "including the district courts of the United States for the districts of Hawaii and Puerto Rico," and inserting in lieu thereof the words "including the United States District for the District of Puerto Rico,".

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§11. Effective upon the admission of the State of Hawaii into the Union--

(a) the last paragraph of section 501 of title 28, United States Code, is repealed;

(b) the first sentence of subsection (a) of section 504 of title 28, United States Code, is amended by striking out at the end thereof the words", except in the district of Hawaii, where the term shall be six years";

(c) the first sentence of subsection (c) of section 541 of title 28, United States Code, is amended by striking out at the end thereof the words", except in the district of Hawaii where the term shall be six years"; and

(d) subsection (d) of section 541 of title 28, United States Code is repealed.

Cross References

See Public Law 89-554, 80 Stat 378, 660.

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§12. No writ, action, indictment, cause, or proceeding pending in any court of the Territory of Hawaii or in the United States District Court for the District of Hawaii shall abate by reason of the admission of said State into the Union, but the same shall be transferred to and proceeded with in such appropriate State courts as shall be established under the constitution of said State, or shall continue in the United States District Court for the District of Hawaii, as the nature of the case may require. And no writ, action, indictment, cause or proceeding shall abate by reason of any change in the courts, but shall be proceeded with in the State or United States courts according to the laws thereof, respectively. And the appropriate State courts shall be the successors of the courts of the Territory as to all cases arising within the limits embraced within the jurisdiction of such courts, respectively, with full power to proceed with the same, and award mesne or final process therein, and all the files, records, indictments, and proceedings relating to any such writ, action, indictment, cause or proceeding shall be transferred to such appropriate State courts and the same shall be proceeded with therein in due course of law.

All civil causes of action and all criminal offenses which shall have arisen or been committed prior to the admission of said State, but as to which no writ, action, indictment or proceeding shall be pending at the date of such admission, shall be subject to prosecution in the appropriate State courts or in the United States District Court for the District of Hawaii in like manner, to the same extent, and with like right of appellate review, as if said State had been created and said State courts had been established prior to the accrual of such causes of action or the commission of such offenses. The admission of said State shall effect no change in the substantive or criminal law governing such causes of action and criminal offenses which shall have arisen or been committed; and such of said criminal offenses as shall have been committed against the laws of the Territory shall be tried and punished by the appropriate courts of said State, and such as shall have been committed against the laws of the United States shall be tried and punished in the United States District Court for the District of Hawaii.

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Remand to Supreme Court of State as successor of Supreme Court of Territory.
274 F.2d 356.

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§13. Parties shall have the same rights of appeal from and appellate review of final decisions of the United States District Court for the District of Hawaii or the Supreme Court of the Territory of Hawaii in any case finally decided prior to admission of said State into the Union, whether or not an appeal therefrom shall have been perfected prior to such admission, and the United States Court of Appeals for the Ninth Circuit and the Supreme Court of the United States shall have the same jurisdiction therein, as by law provided prior to admission of said State into the Union, and any mandate issued subsequent to the admission of said State shall be to the United States District Court for the District of Hawaii or a court of the State, as may be appropriate. Parties shall have the same rights of appeal from and appellate review of all orders, judgments, and decrees of the United States District Court for the District of Hawaii and of the Supreme Court of the State of Hawaii as successor to the Supreme Court of the Territory of Hawaii, in any case pending at the time of admission of said State into the Union, and the United States Court of Appeals for the Ninth Circuit and the Supreme Court of the United States shall have the same jurisdiction therein, as by law provided in any case arising subsequent to the admission of said State into the Union.

Case Notes

Right of appeal from judgment of Supreme Court of Territory preserved by this section. 279 F.2d 636, 637, note 1; 283 F.2d 86; 287 F.2d 51, 52.

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§14. Effective upon the admission of the State of Hawaii into the Union--

(a) title 28, United States Code, section 1252, is amended by striking out "Hawaii and" from the clause relating to courts of record;

(b) title 28, United States Code, section 1293, is amended by striking out the words "First and Ninth Circuits" and by inserting in lieu thereof "First Circuit", and by striking out the words, "supreme courts of Puerto Rico and Hawaii, respectively" and inserting in lieu thereof, "supreme court of Puerto Rico";

(c) title 28, United States Code, section 1294, as amended, is further amended by striking out paragraph (4) thereof and by renumbering paragraphs (5) and (6) accordingly;

(d) the first paragraph of section 373 of title 28, United States Code, as amended, is further amended by striking out the words "United States District Courts for the districts of Hawaii or Puerto Rico," and inserting in lieu thereof the words "United States District Court for the District of Puerto Rico,"; and by striking out the words "and any justice of the Supreme Court of the Territory of Hawaii": Provided, That the amendments made by this subsection shall not affect the rights of any judge or justice who may have retired before the effective date of this subsection: And provided further, That service as a judge of the District Court for the Territory of Hawaii or as a judge of the United States District Court for the District of Hawaii or as a justice of the Supreme Court of the Territory of Hawaii or as a judge of the circuit courts of the Territory of Hawaii shall be included in computing under section 371, 372, or 373 of title 28, United States Code, the aggregate years of judicial service of any person who is in office as a district judge for the District of Hawaii on the date of enactment of this Act;

(e) section 92 of the Act of April 30, 1900 (ch. 339, 31 Stat. 159), as amended, and the Act of May 29, 1928 (ch. 904, 45 Stat. 997), as amended, are repealed;

(f) section 86 of the Act approved April 30, 1900 (ch. 339, 31 Stat. 158), as amended, is repealed;

(g) section 3771 of title 18, United States Code, as heretofore amended, is further amended by striking out from the first paragraph of such section the words "Supreme Courts of Hawaii and Puerto Rico" and inserting in lieu thereof the words "Supreme Court of Puerto Rico";

(h) section 3772 of title 18, United States Code, as heretofore amended, is further amended by striking out from the first paragraph of such section the words "Supreme Courts of Hawaii and Puerto Rico" and inserting in lieu thereof the words "Supreme Court of Puerto Rico";

(i) section 91 of title 28, United States Code, as heretofore amended, is further amended by inserting after "Kure Island" and before "Baker Island" the words "Palmyra Island,"; and

(j) the Act of June 15, 1950 (64 Stat. 217; 48 U.S.C., §644a), is amended by inserting after "Kure Island" and before "Baker Island" the words "Palmyra Island,".

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§15. All Territorial laws in force in the Territory of Hawaii at the time of its admission into the Union shall continue in force in the State of Hawaii, except as modified or changed by this Act or by the constitution of the State, and shall be subject to repeal or amendment by the Legislature of the State of Hawaii, except as provided in section 4 of this Act with respect to the Hawaiian Homes Commission Act, 1920, as amended; and the laws of the United States shall have the same force and effect within the said State as elsewhere within the United States: Provided, That, except as herein otherwise provided, a Territorial law enacted by the Congress shall be terminated two years after the date of admission of the State of Hawaii into the Union or upon the effective date of any law enacted by the State of Hawaii which amends or repeals it, whichever may occur first. As used in this section, the term "Territorial laws" includes (in addition to laws enacted by the Territorial Legislature of Hawaii) all laws or parts thereof enacted by the Congress the validity of which is dependent solely upon the authority of the Congress to provide for the government of Hawaii prior to its admission into the Union, and the term "laws of the United States" includes all laws or parts thereof enacted by the Congress that (1) apply to or within Hawaii at the time of its admission into the Union, (2) are not "Territorial laws" as defined in this paragraph, (3) are not in conflict with any other provision of this Act.

Attorney General Opinions

The two-year proviso terminating a territorial law enacted by Congress was intended to apply specifically to the administration of laws regulating intrastate commerce and is not applicable to the public land laws. Att. Gen. Op. 61-68.

Case Notes

A statute invalid under Sherman Act at time of statehood would not have been continued in force by this section. 283 F.2d 86, 89, note 2.

Concerning continuance of certain acts of Congress for two years, see 235 F. Supp. 705, 712.

As to cut-off period, Congress had in view specifically the termination of federal responsibility for the administration of laws regulating intrastate commerce. 44 H. 634, 361 P.2d 390.

Authority of Congress to provide for government of Hawaii prior to statehood was derived from Art. IV, §3, cl. 2, U.S. Const. 44 H. 634, 361 P.2d 390.

By section, C.A.B. jurisdiction over carriage by aircraft between places in the State continued to be an exception to rate-making authority of state public utilities commission during transition period. 44 H. 634, 361 P.2d 390.

Cited: 26 F.R.D. 384, 386.

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§16. (a) Notwithstanding the admission of the State of Hawaii into the Union, the United States shall continue to have sole and exclusive jurisdiction over the area which may then or thereafter be included in Hawaii National Park, saving, however, to the State of Hawaii the same rights as are reserved to the Territory of Hawaii by section 1 of the Act of April 19, 1930 (46 Stat. 227), and saving, further, to persons then or thereafter residing within such area the right to vote at all elections held within the political subdivisions where they respectively reside. Upon the admission of said State all references to the Territory of Hawaii in said Act or in other laws relating to Hawaii National Park shall be deemed to refer to the State of Hawaii. Nothing contained in this Act shall be construed to affect the ownership and control by the United States of any lands or other property within Hawaii National Park which may now belong to, or which may hereafter be acquired by, the United States.

(b) Notwithstanding the admission of the State of Hawaii into the Union, authority is reserved in the United States, subject to the proviso hereinafter set forth, for the exercise by the Congress of the United States of the power of exclusive legislation, as provided by article I, section 8, clause 17, of the Constitution of the United States, in all cases whatsoever over such tracts or parcels of land as, immediately prior to the admission of said State, are controlled or owned by the United States and held for Defense or Coast Guard purposes, whether such lands were acquired by cession and transfer to the United States by the Republic of Hawaii and set aside by Act of Congress or by Executive order or proclamation of the President or the Governor of Hawaii for the use of the United States, or were acquired by the United States by purchase, condemnation, donation, exchange, or otherwise: Provided, (i) That the State of Hawaii shall always have the right to serve civil or criminal process within the said tracts or parcels of land in suits or prosecutions for or on account of rights acquired, obligations incurred, or crimes committed within the said State but outside of the said tracts or parcels of land; (ii) that the reservation of authority in the United States for the exercise by the Congress of the United States of the power of exclusive legislation over the lands aforesaid shall not operate to prevent such lands from being a part of the State of Hawaii, or to prevent the said State from exercising over or upon such lands, concurrently with the United States, any jurisdiction whatsoever which it would have in the absence of such reservation of authority and which is consistent with the laws hereafter enacted by the Congress pursuant to such reservation of authority; and (iii) that such power of exclusive legislation shall vest and remain in the United States only so long as the particular tract or parcel of land involved is controlled or owned by the United States and used for Defense or Coast Guard purposes: Provided, however, That the United States shall continue to have sole and exclusive jurisdiction over such military installations as have been heretofore or hereafter determined to be critical areas as delineated by the President of the United States and/or the Secretary of Defense.

Case Notes

State had concurrent jurisdiction with federal government over military property owned by federal government immediately prior to Hawaii's admission as a state. 8 H. App. 497, 810 P.2d 668.

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§17. The next to last sentence of the first paragraph of section 2 of the Federal Reserve Act (38 Stat. 251) as amended by section 19 of the Act of July 7, 1958, (72 Stat. 339, 350) is amended by inserting after the word "Alaska" the words "or Hawaii."

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§18. (a) Nothing contained in this Act shall be construed as depriving the Federal Maritime Board of the exclusive jurisdiction heretofore conferred on it over common carriers engaged in transportation by water between any port in the State of Hawaii and other ports in the United States, or possessions, or as conferring on the Interstate Commerce Commission jurisdiction over transportation by water between any such ports.

(b) Effective on the admission of the State of Hawaii into the Union--

(1) The first sentence of section 506 of the Merchant Marine Act, 1936, as amended (46 U.S.C., §1156), is amended by inserting before the words "an island possession or island territory," the words "the State of Hawaii, or";

(2) Section 605(a) of the Merchant Marine Act, 1936, as amended (46 U.S.C., §1175), is amended by inserting before the words "an island possession or island territory", the words "the State of Hawaii, or"; and

(3) The second paragraph of section 714 of the Merchant Marine Act, 1936, as amended (46 U.S.C., §1204), is amended by inserting before the words "an island possession or island territory" the words "the State of Hawaii, or".
[Am July 12, 1960, Pub L 86-324, 74 Stat 423]

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§19. Nothing contained in this Act shall operate to confer United States nationality, nor to terminate nationality heretofore lawfully acquired, or restore nationality heretofore lost under any law of the United States or under any treaty to which the United States is or was a party.

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§20. (a) Section 101 (a)(36) of the Immigration and Nationality Act (66 Stat. 170, 8 U.S.C., §1101 (a)(36)), is amended by deleting the word "Hawaii,".

(b) Section 212 (d)(7) of the Immigration and Nationality Act (66 Stat. 188, 8 U.S.C. §1182 (d)(7)), is amended by deleting from the first sentence thereof the word "Hawaii" and by deleting the proviso to said first sentence.

(c) The first sentence of section 310(a) of the Immigration and Nationality Act, as amended (66 Stat. 239, 8 U.S.C. §1421(a), 72 Stat. 351) is further amended by deleting the words "for the Territory of Hawaii, and".

(d) Nothing contained in this Act shall be held to repeal, amend, or modify the provisions of section 305 of the Immigration and Nationality Act (66 Stat. 237, 8 U.S.C. §1405).

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§21. Effective upon the admission of the State of Hawaii into the Union, section 3, subsection (b), of the Act of September 7, 1957 (71 Stat. 629), is amended by substituting the words "State of Hawaii" for the words "Territory of Hawaii".

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§22. If any provision of this Act, or any section, subsection, sentence, clause, phrase, or individual word, or the application thereof in any circumstance is held invalid, the validity of the remainder of the Act and of the application of any such provision, section, subsection, sentence, clause, phrase, or individual word in other circumstances shall not be affected thereby.

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§23. All Acts or parts of Acts in conflict with the provisions of this Act, whether passed by the legislature of said Territory or by Congress are hereby repealed.

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