

**TERRITORY OF HAWAII: STATEMENTS
BEFORE THE COMMITTEE ON PACIFIC
ISLANDS AND PORTO RICO US
SENATE. ON CERTAIN BILLS PENDING
BEFORE THE COMMITTEE RELATING TO
THE TERRITORY OF HAWAII**

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Territory of Hawaii: Statements Before the Committee on Pacific Islands and Porto Rico US Senate. On certain bills pending before the committee relating to the territory of Hawaii by Various

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TERRITORY OF HAWAII

STATEMENTS

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BEFORE THE

COMMITTEE ON PACIFIC ISLANDS AND PORTO RICO
UNITED STATES SENATE

ON CERTAIN BILLS PENDING BEFORE
THE COMMITTEE RELATING TO THE

TERRITORY OF HAWAII

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TERRITORY OF HAWAII.

FRIDAY, DECEMBER 11, 1908.

The committee met at 10.30 a. m.

Present, Senators Foraker (chairman), Flint, Piles, Warner, and Milton.

Hon. Walter F. Frear, governor of the Territory of Hawaii; Hon. Jonah K. Kalanianaʻole, Delegate in Congress from the Territory of Hawaii, and Mr. George B. McClellan, secretary to the Delegate, appeared.

STATEMENT OF GOVERNOR WALTER F. FREAR.

The CHAIRMAN (Senator Foraker). Governor, while the committee are gathering, I will ask you some questions about the bill (S. 7033) to prohibit importation of opium into Hawaii except by the Government for medicinal uses only. Will you kindly tell us what, in your opinion, is the necessity, if any at all, for such legislation as is by this bill proposed?

Governor FREAR. There is a considerable Chinese population in Hawaii which naturally is, to some extent, addicted to the opium habit, and through that the habit has been spreading somewhat among other classes of the population, particularly among the native Hawaiians. Anything of that sort is very apt to spread rapidly among that class of people and at the same time prove most disastrous.

The CHAIRMAN. You would recommend the passing of this bill, then?

Governor FREAR. I should, most decidedly. I might add that the habit has spread some among the whites, but of course that is not so open.

The CHAIRMAN. But the habit is really extending to all classes of the people?

Governor FREAR. Yes.

Senator MILTON. I am pretty familiar with the matter. We have lower classes in the South, and they acquire the habit very rapidly.

The CHAIRMAN. The opium habit?

Senator MILTON. Cocaine, opium, or any form of drug like that.

The CHAIRMAN. I pass over the bill (S. 5157) to confirm to the Wahiawa Water Company, of Hawaii, the right of way for irrigation purposes, because that is included in the recommendation of the Committee on Military Affairs in the omnibus bill which was passed

at the last session by the Senate and is now on the Speaker's table awaiting action.

Governor FREAR. Very well.

HAWAIIAN LAND LAWS.

The CHAIRMAN. Governor, I call your attention now to the bill (S. 7695) to amend an act entitled "An act to provide a government for the Territory of Hawaii," approved April 30, 1900, which was introduced yesterday in the Senate by Senator Flint. I wish you would explain to the committee the necessity for this legislation, if there be any necessity, and whether the bill is in a satisfactory form as it now stands.

Governor FREAR. It is a bill to amend eleven sections and repeal one section of the organic act of the Territory of Hawaii. The part that is of greatest importance and most pressing necessity is that which amends the land laws of the Territory, but there are a number of other amendments. It is thought best to incorporate in the bill all the important amendments which the experience now of eight years under the organic act has shown to be desirable, so that we need not for some time to come, it is hoped, ask Congress to further amend the act.

The CHAIRMAN. Which is the section to which you refer as the most important?

Governor FREAR. Section 5, beginning on page 3 of the bill.

The CHAIRMAN. Amending section 73 of the organic act?

Governor FREAR. Yes. The land laws of Hawaii were taken largely from the New Zealand land laws. They are somewhat lengthy and complicated, and it was thought best to amend them by a short provision like this rather than attempt to go over the whole ground. There has been a feeling for a long time in Hawaii that the laws are in many respects not adapted to present conditions. The people have found out how to evade the laws and endeavor to get lands largely for purposes of speculation and investment.

The CHAIRMAN. State in a general way what your land system is.

Governor FREAR. In general there are four specific methods by which land may be taken in Hawaii for homestead purposes. First, the homestead lease, by which a person may acquire for 999 years a small area of land which can not be alienated but will descend to his heirs. He obtains this free of charge except a small fee.

The CHAIRMAN. What do you mean by a small area?

Governor FREAR. It varies. For instance, if it is wet land the area is limited to 1 acre. If it is agricultural land of the first class it is limited to 8 acres and of the second class to 16 acres, and if it is pasture land to a larger area. This was intended principally for the Hawaiians who, as a rule, can not make use of a large area, and who in general are poor, and who are very much inclined, if they have the land in fee simple unqualifiedly, to mortgage it and make no provision for paying off the mortgage, with the consequence that they are apt to lose the land by foreclosure. This method gives them the land for nine hundred and ninety-nine years as long as they and their descendants live upon it; but they can not alienate it in any way by mortgage or otherwise.

Senator MILTON. If a person mortgage it or if his descendants move off the land does it revert to the Government?

Governor FREAR. Yes.

The CHAIRMAN. That is one class.

Governor FREAR. Then, secondly, there is the right of purchase lease, by which a person may obtain a larger area, varying with the class of land, under a twenty-one year lease, with the condition that he shall reside on the land from the end of the first to the end of the fifth year and shall cultivate 10 per cent of the land and pay 8 per cent annually upon the appraised value of the land, with the privilege at any time after three years (provided he has reduced 25 per cent of it to cultivation and resided on it two years and paid for it) of obtaining a patent for the land.

This is very well adapted to certain classes of takers and to certain classes of land and has been the principal method by which land has been taken up by the American and Portuguese elements of the population. But the conditions are altogether too lax. For instance, one may obtain his patent by residing almost nominally on the land, under a recent decision of the territorial supreme court, that is, without having a real bona fide residence, and by cultivating, say, 25 per cent of the land for only a week, and then he may sublease it, which means that he can get sufficient by renting out the land to pay for it, and perhaps he can have others do all the cultivating. Of course, that has induced a great deal of speculation and repeating. One man, I am informed, is now on the sixth lot within twice that number of years.

Then, thirdly, there is the cash freehold agreement. This is much like the right of purchase lease excepting that payment must be made in four annual installments, the first at the time of the sale and the last at the end of three years. In this case the land is sold at public auction and goes to the highest bidder.

The CHAIRMAN. Is there any limitation as to the amount that may be sold in that case?

Governor FREAR. Yes; the same as in the case of a right of purchase lease. It is 100 acres of first-class agricultural land, and so on.

Then, fourthly, there is the settlement association, by which a group of six or more persons may take up lands under either the right of purchase lease or the cash freehold referred to, without any competition. These persons have a preference right, the object being to afford an incentive to groups of Americans to come from the mainland by enabling them to settle on adjoining lots so that they can form a community by themselves and not be scattered among various other classes of people.

The CHAIRMAN. How much can they take?

Governor FREAR. The area is the same as under the right of purchase lease and the cash freehold.

The CHAIRMAN. The aggregate is then, of course, limited by the number in the group?

Governor FREAR. By the number of persons in the community. This has not fulfilled its purpose, but has been the method by which the greatest abuses have been practiced.

The CHAIRMAN. Let me ask you what quantity of land the Government now owns?

Governor FREAR. One million six hundred and seventy-six thousand seven hundred and five acres.

The CHAIRMAN. I was not expecting such an accurate answer. Has there been much government land disposed of by the Government during the last eight years, since we assumed jurisdiction there?

Governor FREAR. Considerable. Under this act, which was enacted in 1895, there have been disposed of 1,840 homesteads.

The CHAIRMAN. Do you mean 1895?

Governor FREAR. Eighteen hundred and ninety-five. These laws were enacted by the Republic of Hawaii and continued in force by act of Congress in the organic act of the Territory, the joint resolution of annexation having provided that the general land laws of the United States should not apply to Hawaii, but that Congress should legislate specially on the subject.

The CHAIRMAN. The government had two or three kinds of lands, did it not?

Governor FREAR. Yes. There were the old crown lands, the income from which went to the reigning sovereign.

The CHAIRMAN. About what is the amount of those lands?

Governor FREAR. They amount, I think, to about 900,000 or 1,000,000 acres.

The CHAIRMAN. Is that a part of the present estimate of 1,676,705 acres?

Governor FREAR. It is. Upon the overthrow of the monarchy the crown lands became government lands, differing in no respect from other government lands.

The CHAIRMAN. What other kind of land does the government have besides the crown lands?

Governor FREAR. There are what are known as "school lands," consisting of lands set aside in 1850 by the government for the support of schools. These are under the control of the department of public instruction and may be sold or leased by that department. Of course, many of them are used for school purposes.

The CHAIRMAN. They are a part of the same grand aggregate of 1,767,705 acres that you mentioned?

Governor FREAR. Yes. Then there is a portion of the public lands which is in actual use for public purposes—as, for instance, for public-building sites, parks, roads, forest reservations, and such things. These lands are under the department of public works, while the general lands which are intended for purposes of settlement are under the commissioner of public lands.

Right here I may say that some provisions in this section are intended, for the purpose of simplicity, to put all these lands under the commissioner of public lands excepting so far as portions of them may be transferred by the governor to other departments for their actual use.

The CHAIRMAN. Before you come to a discussion of the proposed legislation, I wish to ask you a question of a general nature about your government lands. You have spoken of the crown lands and the school lands. Now, is there any other class of public lands?

Governor FREAR. There is no other class of public lands.

The CHAIRMAN. Then you may explain what the legislation is that you are asking for by this bill.

Governor FREAR. I may say preliminarily that this is a matter to which I have given a great deal of study since I came into my present office, and finally I appointed an advisory land-law commission consisting of seven persons to study into the whole subject. This commission gave public hearings on all the larger islands and sent out circulars to hundreds of persons for their views, and finally made a report. This section is intended to embody in a large measure the recommendations of that commission. Some of the recommendations would more appropriately come within the action of the territorial legislature.

The CHAIRMAN. Is the report to which you refer a printed report?

Governor FREAR. It may be printed by this time. I left an order to print it. It was handed to me just before I came away.

The CHAIRMAN. Could you forward a copy of it to the committee for our use?

Governor FREAR. Yes; I will cable for copies to be sent to the committee.

The first provision of section 5 is intended to put in operation there, so far as the disposition of lands is concerned, very much the same system that is in vogue on the mainland in respect of reclaimed arid lands. The lands of Hawaii resemble such lands on the mainland much more than they resemble the general unirrigated public lands. The lands there are, many of them, irrigated, but all lands as a rule that are suitable for settlement purposes require considerable capital for their development. They yield heavily and are of great value. The same reasons which require, for instance, small holdings on the reclaimed arid lands of this country would require small holdings there. The idea is to have the lots of no greater area than is required for the support of a family.

It is intended also to increase the conditions of residence and cultivation by requiring residence, say, for five years, and requiring by the end of five or six years the cultivation of perhaps as much as 50 per cent of the arable area of the lot sold. At the same time it is intended to make the terms of payment easier by distributing the payments over ten years and without interest.

The CHAIRMAN. I notice the provision is, in the first place, that the land shall be sold "after public notice." It does not specify how long a notice shall be given. Do you not think there ought to be some specification?

Governor FREAR. Later on——

The CHAIRMAN. Then, if I may in the same connection call your attention to it, it provides that the lands may be disposed of after public notice "by drawing or by auction." What do you mean by drawing there—a sort of lottery scheme?

Governor FREAR. Yes. At present the lands are sold at public auction generally, and they are apt to be run up and to be put beyond the means of a great many of the persons who would desire to become settlers. It is thought well to authorize their disposition by drawing, the same as is done here in disposing of public lands, especially the reclaimed lands.

The CHAIRMAN. We have a system of drawing?

Governor FREAR. Yes.

The CHAIRMAN. I was not aware of it. What is it?

Governor FREAR. When a tract of land is opened to settlement it is advertised thoroughly throughout the country and then applications are filed. There may be a hundred thousand applications for lots in a particular tract.

The CHAIRMAN. Oh, yes, I understand now what you mean.

Governor FREAR. But of course there are not lots enough to go around. In order to be fair and not give them out to applicants in the order of their application they have a drawing, and the applicants select their lots in the order of their drawing.

Senator MILTON. It is also to prevent litigation and strife, I think, which would arise if we did not have some system of allotment.

The CHAIRMAN. Now, since you speak of it, I recall that there is some such system. I never had any occasion to give any attention to it. The system of drawing which you contemplate would be similar to that which we have here?

Governor FREAR. Yes, that is the idea.

The CHAIRMAN. But with our system the Government fixes the price, does it not?

Governor FREAR. Yes, and we would do the same thing.

The CHAIRMAN. The price at which those who are fortunate enough to be successful drawers can take the property?

Governor FREAR. Yes.

The CHAIRMAN. Is there any provision here for fixing the price of this government land?

Governor FREAR. The method actually used in Hawaii is this: Appraisers are appointed to fix the actual cash value of the land. Then about 25 per cent of that value is taken for the purposes of homesteads, the other conditions of residence and cultivation being supposed to make up for the balance, the idea being to encourage the small settler.

The CHAIRMAN. Who would prescribe all these additional terms and conditions?

Governor FREAR. That would be done by the commissioner, with the approval of the governor.

The CHAIRMAN. Under local legislation?

Governor FREAR. Well, our territorial legislature has no authority to legislate on public-land matters. This would be expected to be complete, and to give that discretionary authority to the commissioner there, with the approval of the governor, very much the same as it rests here in the Secretary of the Interior.

The CHAIRMAN. We could authorize your legislature to legislate about it, could we not?

Governor FREAR. Oh, yes.

The CHAIRMAN. You mean simply that in the organic act the legislature is precluded from legislating on the subject?

Governor FREAR. That is the provision now in the organic act.

The CHAIRMAN. So I understand.

Governor FREAR. And we come to Congress now for an amendment of the act because we can not go to our own legislature. On that point I will say——

The CHAIRMAN. Before you pass from that, let me ask whether your legislature should not have authority to prescribe all these terms and conditions rather than some individual, and should you not be relieved of the necessity of coming here about all these details, to take